

# FEDERAL REGISTER

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## Agencies in this issue—

Agricultural Research Service  
Atomic Energy Commission  
Civil Aeronautics Board  
Coast Guard  
Consumer and Marketing Service  
Customs Bureau  
Farm Credit Administration  
Federal Aviation Administration  
Federal Communications Commission  
Federal Highway Administration  
Federal Home Loan Bank Board  
Federal Maritime Commission  
Federal Power Commission  
Federal Reserve System  
Fish and Wildlife Service  
Food and Drug Administration  
Foreign Assets Control Office  
International Commerce Bureau  
Interior Department  
Internal Revenue Service  
Interstate Commerce Commission  
Maritime Administration  
Post Office Department  
Soil Conservation Service  
State Department  
Tariff Commission

Detailed list of Contents appears inside.





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# Contents

## AGRICULTURAL RESEARCH SERVICE

- Rules and Regulations  
Hog cholera and other communicable swine diseases; areas quarantined ..... 4043

## AGRICULTURE DEPARTMENT

See Agricultural Research Service; Consumer and Marketing Service; Soil Conservation Service.

## ATOMIC ENERGY COMMISSION

- Proposed Rule Making  
Contract appeals; rules of procedure ..... 4056  
Notices  
University of Maryland; proposed issuance of construction permit.. 4082

## CIVIL AERONAUTICS BOARD

- Notices  
Hearings, etc.:  
Domestic passenger-fare investigation et al..... 4087  
Eastern Air Lines, Inc..... 4089

## COAST GUARD

- Rules and Regulations  
Claims in favor of U.S..... 4045

## COMMERCE DEPARTMENT

See International Commerce Bureau; Maritime Administration.

## CONSUMER AND MARKETING SERVICE

- Rules and Regulations  
Grapefruit grown in Arizona and certain parts of California; shipment limitations..... 4041  
Milk handling:  
Miami Valley marketing area... 4042  
Northwestern Ohio marketing area ..... 4043  
Upper Chesapeake Bay (Maryland) marketing area..... 4042

## Proposed Rule Making

- Milk handling:  
Chicago Regional marketing area ..... 4064  
Massachusetts-Rhode Island-New Hampshire and Connecticut marketing areas..... 4056

## CUSTOMS BUREAU

- Notices  
Fish; tariff rate quota..... 4082

## FARM CREDIT ADMINISTRATION

- Notices  
Formation of separate research and information divisions..... 4089

## FEDERAL AVIATION ADMINISTRATION

- Rules and Regulations  
Prohibited area; designation..... 4053

## FEDERAL COMMUNICATIONS COMMISSION

- Proposed Rule Making  
Interim policy for applications for radio call boxes in 72-76 MHz band ..... 4079

## Notices

- Hearings, etc.:  
Abernethy, John A..... 4089  
Brinsfield Broadcasting Co..... 4090  
Frontier Broadcasting Co..... 4091

## FEDERAL HIGHWAY ADMINISTRATION

- Proposed Rule Making  
Tires and rims; multipurpose passenger vehicles etc..... 4080

## FEDERAL HOME LOAN BANK BOARD

- Rules and Regulations  
Charter and bylaws; reserve credits ..... 4044  
Operations; semiannual credit requirements for Federal insurance reserve..... 4044

## FEDERAL MARITIME COMMISSION

- Notices  
Hearings, etc.:  
Bolton & Mitchell, Inc..... 4093  
Matson Navigation Co..... 4094  
Pacific Coast European Conference ..... 4094

## FEDERAL POWER COMMISSION

- Proposed Rule Making  
Accounting and rate treatment of advance payments to suppliers for gas..... 4080  
Collection of steam-electric generating plant pollution control data ..... 4080  
Exemption of certain transport and/or sales of liquefied natural gas ..... 4080

## Notices

- Hearings, etc.:  
Citizens Utility Co..... 4095  
Colorado Interstate Gas Co..... 4096  
Diamond International Corp..... 4096  
Manufacturers Light and Heat Co., and Home Gas Co..... 4096  
McConnell, D. B., et al..... 4097  
Public Service Company of Colorado ..... 4097  
West Tennessee Public Utility District of Weakley..... 4097  
Wisconsin Michigan Power Co. (3 documents)..... 4098

## FEDERAL RESERVE SYSTEM

- Rules and Regulations  
Competitive factor reports..... 4044  
Proposed Rule Making  
Commercial paper of bank affiliates ..... 4080

## Notices

- Bank of New Jersey; order approving merger of banks (2 documents) ..... 4099  
Denver U.S. Bancorporation, Inc.; order approving application... 4099

## FISH AND WILDLIFE SERVICE

- Rules and Regulations  
Fishermen's Protective Act procedures; provision for fees..... 4052

## FOOD AND DRUG ADMINISTRATION

- Notices  
Petitions regarding food additives or pesticides:  
Ansul Co..... 4086  
Hoffmann-La Roche, Inc..... 4086  
Scherer Corp..... 4087

## FOREIGN ASSETS CONTROL OFFICE

- Rules and Regulations  
Miscellaneous amendments to chapter ..... 4045

## HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See Food and Drug Administration.

## INTERNATIONAL COMMERCE BUREAU

- Notices  
Iida, Kazuo et al.; order denying export privileges..... 4084

## INTERIOR DEPARTMENT

See also Fish and Wildlife Service.

## Notices

- Statements of changes in financial interests (14 documents) --- 4082-4084

## INTERNAL REVENUE SERVICE

- Proposed Rule Making  
Income tax; capital gain distribution defined..... 4054

## INTERSTATE COMMERCE COMMISSION

- Rules and Regulations  
Tariffs of motor carriers; emergency transportation of property ..... 4052

(Continued on next page)



**Notices**

Chesapeake and Ohio Railway Co.; rerouting or diversion of traffic .....	4100
Fourth section application for relief .....	4100
Motor carrier:	
Alternate route deviation notices .....	4100
Applications and certain other proceedings .....	4101
Intrastate applications .....	4105
Transfer proceedings .....	4105

**MARITIME ADMINISTRATION****Rules and Regulations**

Policy and procedure regarding conducting of subsidy condition surveys and accomplishment of subsidized vessel maintenance repairs .....	4048
--	------

**Notices**

Isthmian Lines, Inc.; notice of application .....	4086
---	------

**POST OFFICE DEPARTMENT****Proposed Rule Making**

Requirements relating to business delivery in office buildings .....	4054
--	------

**SOIL CONSERVATION SERVICE****Rules and Regulations**

Great Plains conservation program; correction .....	4041
---	------

**STATE DEPARTMENT****Notices**

Certain nonimmigrant visas; validity .....	4082
--	------

**TARIFF COMMISSION****Notices**

Workers' petition for determination of eligibility to apply for adjustment assistance; notice of investigation .....	4100
--	------

**TRANSPORTATION DEPARTMENT**

See Coast Guard; Federal Aviation Administration; Federal Highway Administration.

**TREASURY DEPARTMENT**

See Customs Bureau; Foreign Assets Control Office; Internal Revenue Service.

**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, 1970, and specifies how they are affected.

**7 CFR**

601 .....	4041
909 .....	4041
1016 .....	4042
1034 .....	4042
1041 .....	4043
PROPOSED RULES:	
1001 .....	4056
1015 .....	4056
1030 .....	4064

**9 CFR**

76 .....	4043
----------	------

**10 CFR**

PROPOSED RULES:	
3 .....	4056

**12 CFR**

265 .....	4044
544 .....	4044
563 .....	4044
PROPOSED RULES:	
204 .....	4080
217 .....	4080

**14 CFR**

73 .....	4053
----------	------

**18 CFR**

PROPOSED RULES:	
141 .....	4080
154 .....	4080
157 .....	4080
201 .....	4080
260 .....	4080

**23 CFR**

PROPOSED RULES:	
255 .....	4080

**26 CFR**

PROPOSED RULES:	
1 .....	4054

**31 CFR**

500 .....	4045
-----------	------

**33 CFR**

25 .....	4045
----------	------

**39 CFR**

PROPOSED RULES:	
155 .....	4054

**46 CFR**

272 .....	4048
-----------	------

**47 CFR**

PROPOSED RULES:	
89 .....	4079

**49 CFR**

1307 .....	4052
------------	------

**50 CFR**

258 .....	4052
-----------	------



# Rules and Regulations

## Title 7—AGRICULTURE

### Chapter VI—Soil Conservation Service, Department of Agriculture

#### PART 601—GREAT PLAINS CONSERVATION PROGRAM

##### General Program Provisions

###### Correction

In F.R. Doc. 70-1678 appearing on page 2817 in the issue for Wednesday, February 11, 1970, the following changes should be made:

1. The reference in the seventh line of § 601.23(c) to "CSC" should read "SCS".
2. In the fourteenth line of the second column, the word "be" should be inserted between the words "shall" and "no".

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

[Grapefruit Reg. 36, Amdt. 3]

#### PART 909—GRAPEFRUIT GROWN IN THE STATE OF ARIZONA; IN IMPERIAL COUNTY, CALIF.; AND IN THAT PART OF RIVERSIDE COUNTY, CALIF., SITUATED SOUTH AND EAST OF WHITE WATER, CALIF.

##### Limitation of Shipments

**Findings.** (1) Pursuant to the marketing agreement, as amended, and Order No. 909, as amended (7 CFR Part 909), regulating the handling of grapefruit grown in the State of Arizona; in Imperial County, Calif.; and in that part of Riverside County, Calif., situated south and east of White Water, Calif., effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation of the Administrative Committee (established under the aforesaid amended marketing agreement and order), and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The recommendation of the Administrative Committee reflects its appraisal of the current grapefruit crop and the current and prospective market conditions. The grade requirements provided herein are necessary to prevent the handling, on and after March 1, 1970, of any grapefruit of lower grades than those hereinafter specified so as to provide consumers with good quality fruit, consistent with (1) the overall quality of the crop, and (2) maximizing returns to the producers pursuant to the declared policy of the act.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) 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 a reasonable time is permitted under the circumstances, for preparation for such effective date. The Administrative Committee held an assembled meeting on February 17, 1970, to consider recommendation for regulation; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such assembled meeting; necessary supplemental economic and statistical information upon which this recommended amendment is based were received February 18, 1970; information regarding the provisions of the regulation recommended by the committee, including the effective time thereof, has been disseminated to shippers of grapefruit, grown as aforesaid; this amendment is identical with the recommendation of the committee; it is necessary, in order to effectuate the declared policy of the act, to make this amendment effective on the date hereinafter set forth; compliance with this amendment will not require any special preparation on the part of the persons subject thereto which cannot be completed on or before the effective date hereof; and this amendment relieves restrictions on the handling of grapefruit.

**Order.** In § 909.336 (Grapefruit Regulation 36; 34 F.R. 15747; 34 F.R. 18294; 34 F.R. 18813) the provisions of paragraph (a) are amended to read as follows:

##### § 909.336 Grapefruit Regulation 36.

(a) **Order.** (1) Except as otherwise provided in subparagraph (2) of this paragraph, during the period March 1, 1970, through August 31, 1970, no handler shall handle from the State of California or the State of Arizona to any point outside thereof:

(i) Any grapefruit which do not meet the requirements of the U.S. No. 2 grade which for purposes of this regulation shall include as a part of the fairly well formed requirement the requirement that the fruit be free from peel that is more than one inch in thickness at the stem end (measured from the flesh to the highest point of the peel): *Provided*, That in lieu of the 10 percent tolerances provided for the U.S. No. 2 grade, the following tolerances, by count, shall be allowed for the defects listed:

(a) 25 percent for grapefruit which fail to meet the requirements of the grade: *Provided*, That included in this amount not more than the following percentages shall be allowed for the defects listed:

(1) 10 percent for grapefruit which are not at least slightly colored;

(2) 10 percent for defects other than not being at least slightly colored or fairly well formed or free from serious damage caused by dryness or mushy condition, including therein not more than one-half of 1 percent for decay, and not more than 5 percent for any other defect other than stems not properly clipped or for serious damage caused by sprayburn, fumigation, sprouting, insect or mechanical means;

(3) 15 percent in addition to the tolerance provided in subdivision (i) (a) (2) of this subparagraph for scars which are light colored, fairly smooth, with no depth and aggregate more than 25 percent of the fruit surface;

(4) 15 percent for grapefruit failing to meet the requirement of fairly well formed except that not more than one-third of this amount or 5 percent shall be allowed for fruit having peel that is more than 1 inch in thickness at the stem end: *Provided*, That the 10 percent tolerance provided in subdivision (i) (a) (2) of this subparagraph shall be diminished by an amount equal to the percentage of grapefruit having peel more than 1 inch in thickness at the stem end; and

(5) 15 percent for serious damage caused by dryness or mushy condition, including therein not more than 5 percent for grapefruit having 40 percent or more of the pulp affected by dryness or mushy condition: *Provided*, That for any lot of grapefruit affected by dryness or mushy condition the total tolerance for defects permitted by this subdivision (i) (a) (5) and for defects for which a tolerance is provided under subdivision (i) (a) (2) shall not exceed 15 percent.

(ii) Any grapefruit which measure less than  $3\frac{1}{16}$  inches in diameter, except that a tolerance of 5 percent, by count, for grapefruit smaller than  $3\frac{1}{16}$  inches shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the revised U.S. Standards for Grapefruit (California and Arizona), 7 CFR 51.925-51.955: *Provided*, That in determining the percentage of grapefruit in any lot which are smaller than  $3\frac{1}{16}$  inches in diameter, such percentage shall be based only on the grapefruit in such lot which are of a size  $3\frac{1}{16}$  inches in diameter and smaller.

(2) Subject to the requirements of subparagraph (1) (i) of this paragraph, any handler may, but only as the initial handler thereof, handle grapefruit smaller than  $3\frac{1}{16}$  inches in diameter directly to a destination in Zone 4, Zone 3,



or Zone 2; and if the grapefruit is so handled directly to Zone 2 the grapefruit does not measure less than  $3\frac{1}{16}$  inches in diameter: *Provided*, That a tolerance of 5 percent, by count, of grapefruit smaller than  $3\frac{1}{16}$  inches in diameter shall be permitted, which tolerance shall be applied in accordance with the aforesaid provisions for the application of tolerances and, in determining the percentage of grapefruit in any lot which are smaller than  $3\frac{1}{16}$  inches in diameter, such percentage shall be based only on the grapefruit in such lot which are  $3\frac{1}{16}$  inches in diameter and smaller.

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

Dated: February 27, 1970, to become effective March 1, 1970.

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

[F.R. Doc. 70-2644; Filed, Mar. 3, 1970; 8:51 a.m.]

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

[Milk Order No. 16]

#### PART 1016—MILK IN THE UPPER CHESAPEAKE BAY (MARYLAND) MARKETING AREA

##### Order Suspending Certain Provision

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Upper Chesapeake Bay marketing area.

It is hereby found and determined that for the month of February 1970, the following provisions of the order no longer tend to effectuate the declared policy of the Act:

In paragraph (e) (Producer definition) of § 1016.2, the text commencing with the words "(s) of March through September, or which is diverted \* \* \*" and through to the end of the paragraph (including subparagraphs (1), (2), and (3)) except for the first and second provisions thereunder.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area;

(b) This suspension order will permit unlimited diversion of producer milk to nonpool plants for the month of February 1970.

The suspension action was requested by the Maryland Cooperative Milk Producers Association, Inc., and was supported by Inter-State Milk Producers Cooperative, Inc., Capitol Milk Produc-

ers Cooperative, Inc., and by milk dealers doing the preponderance of business in the market.

The order provides certain limitations on diversions during the months of September through February. There are no limitations on diversions during other months of the year.

Producer deliveries have increased more than usual in recent months in relation to Class I sales. The available pool manufacturing facilities in the market are operating to capacity and it has been necessary to divert substantial quantities of milk to nonpool plants during the month. The suspension action is necessary in order that established producers whose milk is being diverted will continue to have their milk pooled under the order; and

(c) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.

Therefore, good cause exists for making this order effective with respect to producer milk deliveries during February 1970.

It is therefore ordered, That the aforesaid provisions of order are hereby suspended for the month of February 1970. (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Effective date: Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on: February 27, 1970.

RICHARD E. LYNG,  
Assistant Secretary.

[F.R. Doc. 70-2643; Filed, Mar. 3, 1970; 8:51 a.m.]

[Milk Order No. 34]

#### PART 1034—MILK IN THE MIAMI VALLEY MARKETING AREA

##### Order Suspending Certain Provision

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Miami Valley marketing area.

It is hereby found and determined that the following provision of the order no longer tends to effectuate the declared policy of the Act:

In § 1034.16, which defines a "fluid milk product", the provision "or cultured."

##### STATEMENT OF CONSIDERATION

Suspension of this provision will change the classification of yogurt from a Class I product to a Class II product.

The suspension was requested by a handler regulated under the Miami Valley order and supported by another Miami Valley handler who distributes yogurt. These handlers contend that milk used in yogurt should be priced to Miami Valley handlers at the same level as under orders for nearby competing markets. Such orders as the Indiana, Eastern Ohio-Western Pennsylvania, Louisville-Lexington-Evansville and Southern Michigan orders classify yogurt in a class equivalent to Class II under the Miami

Valley order. Therefore, it was claimed, Miami Valley handlers are unable to compete on a comparable basis with handlers in these neighboring markets who pay the surplus price for milk used in yogurt.

Opposition to this suspension was expressed by cooperative associations in Ohio, including the principal cooperative in the Miami Valley area. These groups note that the classification of yogurt was an issue at a hearing on proposals to merge the Miami Valley, Northwestern Ohio, Cincinnati, Columbus, and Tri-State Federal orders and that a decision based on this hearing is still pending. The cooperatives express concern that this suspension might prejudice the decision resulting from that hearing with respect to the classification of yogurt.

In view of the current competitive situation described by handlers, the temporary suspension of yogurt from the fluid milk product definition of the order is appropriate. The difference in prices under the Miami Valley order and nearby orders for milk used in the same product is not conducive to orderly marketing.

The suspension should be made effective as of February 1, 1970, and should continue until such time as the amendatory proceedings on proposals to merge the Miami Valley, Northwestern Ohio, Cincinnati, Columbus, and Tri-State orders are completed. This date will coincide with the effective date of similar suspension actions for the Northwestern Ohio and Southern Michigan orders.

This suspension action should not be construed as precluding any different pricing of milk used in yogurt that may be found appropriate on the basis of the merger hearing.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that Miami Valley handlers are now competitively disadvantaged relative to handlers in nearby markets with respect to the sale of yogurt;

(b) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Interested parties were afforded opportunity to file written data, views, or arguments concerning this suspension (35 F.R. 2731).

Therefore, good cause exists for making this order effective on February 1, 1970.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended effective February 1, 1970.

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

Effective date: February 1, 1970.

Signed at Washington, D.C., on February 27, 1970.

RICHARD E. LYNG,  
Assistant Secretary.

[F.R. Doc. 70-2646; Filed, Mar. 3, 1970; 8:51 a.m.]



[Milk Order No. 41]

**PART 1041—MILK IN THE NORTH-WESTERN OHIO MARKETING AREA**

**Order Suspending Certain Provisions**

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Northwestern Ohio marketing area.

It is hereby found and determined that the following provisions of the order no longer tend to effectuate the declared policy of the Act:

In § 1041.16, which defines a "fluid milk product", the provisions "or cultured" appearing in the first sentence and "and yogurt" appearing in the second sentence.

**STATEMENT OF CONSIDERATION**

Suspension of these provisions will change the classification of yogurt from a Class I product to a Class II product.

The suspension was requested by a handler regulated under the Northwestern Ohio order who competes for sales of yogurt with handlers regulated under the Indiana, Eastern Ohio-Western Pennsylvania, Louisville-Lexington-Evansville, and Southern Michigan orders. These orders classify yogurt in a class equivalent to Class II under the Northwestern Ohio order. Petitioner contends that because of the lower classification of yogurt under these other orders, he is unable to compete on a comparable basis with handlers in these neighboring markets who pay the surplus price for milk used in yogurt.

Petitioner requested also that the suspension be effective February 1, 1970, to coincide with the effective date of a similar suspension action for the Southern Michigan order. He claims that this timing is imperative since he has about 60 percent of his yogurt sales in the Southern Michigan marketing area.

Opposition to this suspension was expressed by cooperative associations in Ohio, including one representing over 80 percent of the producers under the Northwestern Ohio order. These groups note that the classification of yogurt was an issue at a hearing on proposals to merge the Northwestern Ohio, Cincinnati, Miami Valley, Columbus, and Tri-State Federal orders and that a decision based on this hearing is still pending. The cooperatives express concern that this suspension might prejudice the decision resulting from that hearing with respect to the classification of yogurt.

In view of the current competitive situation described by petitioner, the temporary suspension of yogurt from the fluid milk product definition of the order is appropriate. The difference in prices being paid by Northwestern Ohio handlers and by competing handlers in other markets for milk used in the same product is not conducive to orderly marketing.

The suspension should be made effective as of February 1, 1970, and should continue until such time as the amendatory proceedings on proposals to merge the Northwestern Ohio, Cincinnati,

Miami Valley, Columbus and Tri-State orders are completed.

This suspension action should not be construed as precluding any different pricing of milk used in yogurt that may be found appropriate on the basis of the merger hearing.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that Northwestern Ohio handlers are now competitively disadvantaged relative to handlers in nearby markets with respect to the sale of yogurt;

(b) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Interested parties were afforded opportunity to file written data, views or arguments concerning this suspension (35 F.R. 2730).

Therefore, good cause exists for making this order effective on February 1, 1970.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended effective February 1, 1970.

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

Effective date: February 1, 1970.

Signed at Washington, D.C., on February 27, 1970.

RICHARD E. LYNG,  
Assistant Secretary.

[F.R. Doc. 70-2647; Filed, Mar. 3, 1970; 8:51 a.m.]

**Title 9—ANIMALS AND ANIMAL PRODUCTS**

**Chapter I—Agricultural Research Service, Department of Agriculture**

**SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY**

**PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES**

**Areas Quarantined**

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111-113, 114g, 115, 117, 120, 121, 123-126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

1. In § 76.2, the introductory portion in paragraph (e) is amended by adding thereto the name of the State of New Jersey.

2. In § 76.2, paragraph (e) (9) relating to the State of Missouri, subdivision (i) relating to Dunklin County is amended to read:

(e) \* \* \*

(9) *Missouri.*

(i) The adjacent portions of Dunklin and Stoddard Counties bounded by a line beginning at the junction of State Highway U and the Missouri-Arkansas State line; thence, following State Highway U in an easterly direction to State Highway 25; thence, following State Highway 25 in a southerly direction to U.S. Highway 62; thence, following U.S. Highway 62 in a westerly direction to State Highway 53; thence, following State Highway 53 in a southeasterly direction to State Highway B; thence, following State Highway B in a westerly direction to State Highway BB; thence, following State Highway BB in a westerly direction to the Missouri-Arkansas State line; thence, following the Missouri-Arkansas State line in a generally northerly direction to its junction with State Highway U.

\* \* \* \* \*

3. In § 76.2, paragraph (e) (12) relating to the State of North Carolina, subdivision (i) relating to Duplin County is amended to read:

(e) \* \* \*

(12) *North Carolina.*

(i) The adjacent portions of Duplin and Lenoir Counties bounded by a line beginning at the junction of State Roads 1544 and 1121 at the Duplin-Lenoir County line; thence, following State Road 1121 in a southeasterly direction to State Road 1120; thence, following State Road 1120 in a northeasterly direction to U.S. Highway 258; thence, following U.S. Highway 258 in a southerly direction to the Lenoir-Jones County line; thence, following the Lenoir-Jones County line in a southwesterly direction to the eastern boundary of Duplin County; thence, following the eastern boundary line in a southeasterly direction to State Road 1715; thence, following State Road 1715 in a westerly direction to State Highway 50; thence, following State Highway 50 in a northwesterly direction to the Northeast Cape Fear River; thence, following the east bank of the Northeast Cape Fear River in a northerly direction to State Highway 11; thence, following State Highway 11 in a southwesterly direction to State Road 1501; thence, following State Road 1501 in a northwesterly direction to State Road 1519; thence, following State Road 1519 in a northeasterly direction to State Road 1002; thence, following State Road 1002 in a northerly direction to State Road 1539; thence, following State Road 1539 in a northeasterly direction to State Road 1544; thence, following State Road 1544 in an easterly direction to its junction with State Road 1121 at the Duplin-Lenoir County line.

\* \* \* \* \*

4. In § 76.2, paragraph (e) (20) relating to the State of New Jersey is added to read:



(e) \* \* \*

(20) *New Jersey*. That portion of Gloucester County comprised of Deptford Township.

(Secs. 4-7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791-792, as amended, secs. 1-4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 29 F.R. 16210, as amended)

**Effective date.** The foregoing amendments shall become effective upon issuance.

The amendments quarantine portions of Dunklin and Stoddard Counties in Missouri; a portion of Gloucester County in New Jersey; and a portion of Lenoir County in North Carolina because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to the quarantined areas designated herein.

The amendments impose certain further restrictions necessary to prevent the interstate spread of hog cholera and must be made effective immediately to accomplish their purpose in the public interest. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and contrary to the public interest and good cause is found for making them effective less than 30 days after publication in the *FEDERAL REGISTER*.

Done at Washington, D.C., this 26th day of February 1970.

R. J. ANDERSON,  
Acting Administrator,  
Agricultural Research Service.

[F.R. Doc. 70-2585; Filed, Mar. 3, 1970; 8:46 a.m.]

## Title 12—BANKS AND BANKING

### Chapter II—Federal Reserve System

#### SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

#### PART 265—RULES REGARDING DELEGATION OF AUTHORITY

##### Competitive Factor Reports

1. Effective February 19, 1970, § 265.2 (c) is amended by adding subparagraph (17) as follows:

§ 265.2 Specific functions delegated to Board employees and Federal Reserve banks.

(c) The Director of the Division of Supervision and Regulation (or, in his absence, the Acting Director) is authorized:

(17) Under section 18(c)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1848(c)(4)), to furnish to the Com-

troller of the Currency and the Federal Deposit Insurance Corporation reports on competitive factors involved in a bank merger required to be approved by one of those agencies if the appropriate departments or divisions of the appropriate Federal Reserve Bank and the Board of Governors are in unanimous agreement that the proposed merger would have no adverse competitive effects and if no member of the Board has indicated an objection prior to the forwarding of the report to the appropriate agency.

2a. This amendment is designed to expedite processing of the competitive factor report required by the so-called "Bank Merger Act of 1960" where Federal Reserve staff unanimously concurs in the view that the proposed bank merger would have no adverse competitive effect.

b. The provisions of section 553 of title 5, United States Code, relating to notice and public participation and to deferred effective dates, were not followed in connection with the adoption of this amendment, because the rules contained therein are procedural in nature and accordingly do not constitute substantive rules subject to the requirements of such section.

By order of the Board of Governors, February 19, 1970.

[SEAL] KENNETH A. KENYON,  
Deputy Secretary.

[F.R. Doc. 70-2574; Filed, Mar. 3, 1970; 8:45 a.m.]

### Chapter V—Federal Home Loan Bank Board

#### SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[23,858]

#### PART 544—CHARTER AND BYLAWS

##### Charter Requirement for Reserve Credits

FEBRUARY 26, 1970.

Resolved That the Federal Home Loan Bank Board, upon the basis of its consideration of the advisability of amending § 544.8 of the rules and regulations for the Federal Savings and Loan System (12 CFR 544.8) for the purpose of permitting a Federal savings and loan association to amend its charter by deleting therefrom the requirement for a credit of 5 percent of net earnings each 6 months to general reserves, until such reserves are equal to at least 10 percent of capital, hereby amends said § 544.8 by adding a new paragraph (c) thereto, to read as follows, effective April 10, 1970:

§ 544.8 Amendment of charter.

(c) *Amendment of charter relating to reserve credits*—(1) *General*. (i) A Federal association which has a charter in the form of Charter N or Charter K (rev.) may amend its charter by deleting from section 10 thereof the following sentence:

If and whenever the general reserves of the association are not equal to at least 10 percent of its capital, it shall, as of June 30 and December 31 of each year, credit to such reserves an amount equivalent to at least 5 percent of its net earnings for the 6 months' period, or such amount as may be required by the Federal Savings and Loan Insurance Corporation, whichever is greater, until such reserves are equal to at least 10 percent of the association's capital.

Notwithstanding any other provisions of this subchapter, including without limitation § 544.1, the above-quoted sentence shall be deleted from any Charter N or Charter K (rev.) which is hereafter issued.

(ii) A Federal association which has a charter in the form of Charter K may amend its charter by deleting from section 9 thereof the following sentence:

If and whenever the aggregate reserves of the association (less reserve for bonus) are not equal to 10 percent of the share capital, the association shall, at each dividend date, transfer to reserves (other than reserve for bonus) a credit equivalent to at least 5 percent of the net earnings of the association, until such aggregate reserves are equal to 10 percent of the share capital.

(2) *Approval by Board*. The provisions of this paragraph (2) shall constitute the approval by the Board of the proposal by the board of directors of any Federal association of the amendment of its charter as set forth in paragraph (1) of this section: *Provided*, That such association follows the requirements of its charter in adopting such amendment.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943-48 Comp., p. 1071)

Resolved further that, since the above amendment provides for an optional charter amendment for Federal savings and loan associations and since the charter amendment would permit relief from a present requirement, the Board hereby finds that notice and public procedure on the amendment are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b).

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER,  
Secretary.

[F.R. Doc. 70-2651; Filed, Mar. 3, 1970; 8:51 a.m.]

#### SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[23,859]

#### PART 563—OPERATIONS

##### Semiannual Credit Requirements for Federal Insurance Reserve

FEBRUARY 26, 1970.

Resolved, that the Federal Home Loan Bank Board, upon the basis of its consideration of the advisability of amending paragraph (b) of § 563.13 of the rules and regulations for Insurance of Accounts (12 CFR 563.13(b)) for the purpose of suspending, for the two semiannual periods commencing on or after



January 1, 1970, the percentage-of-net-income semiannual credits which certain insured institutions must make to their Federal insurance reserve accounts, hereby amends said § 563.13(b) by revising subparagraph (5) thereof to read as follows, effective June 1, 1970:

**§ 563.13 Required amounts and maintenance of Federal insurance reserve.**

**(b) Semiannual credits.**

(5) During the two semiannual periods commencing on or after January 1, 1970, and during any following semiannual period commencing while this subparagraph (5) is in effect, the 10 percent of net income semiannual credit requirements in subparagraphs (2) and (3) of this paragraph shall be suspended.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943-1948 Comp., p. 1071)

Resolved further that, since the above amendment grants exemption from regulatory requirements, the Board hereby finds that notice and public procedure with respect to the amendment are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b).

By the Federal Home Loan Bank Board.

[SEAL]

JACK CARTER,  
Secretary.

[F.R. Doc. 70-2652; Filed, Mar. 3, 1970; 8:51 a.m.]

## Title 31—MONEY AND FINANCE: TREASURY

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

#### PART 500—FOREIGN ASSETS CONTROL REGULATIONS

##### Miscellaneous Amendments

The Foreign Assets Control regulations are being amended in the following respects:

Sections 500.517(c) and 500.804 are being amended in view of the revocation on December 10, 1969 of § 500.603. (34 F.R. 19504)

Items (27), (28), and (30) of the appendix to § 500.204 are being amended and Items (114), (210), and (214) are being deleted to reflect the amendments of the regulations effective December 22, 1969. (34 F.R. 20189)

Item (113) of the appendix to § 500.204 is being amended to make clear that unlicensed imports of human hair products from Asiatic countries will be detained by Customs.

Section 500.517(c) is amended to read as follows:

**§ 500.517 Access to safe deposit boxes under certain conditions.**

(c) The lessee or other person granted access to any safe deposit box pursuant

to this section (except an agent or representative of the Office of Alien Property) shall furnish to the lessor a certificate in triplicate that he has filed or will promptly file a report with respect to such box, if leased to a designated national, and with respect to all property contained in the box to which access is had in which any designated national has an interest. The lessor shall transmit two copies of such certificate to the Treasury Department, Washington, D.C. The certificate is required only on the first access to the box. In case a report on Form TFR-603 was not made, a report is hereby required to be filed. All reports made pursuant to this section shall bear on their face or have securely attached to them a statement reading, "this report is filed pursuant to 31 CFR 500.517".

Section 500.804 is amended to read as follows:

**§ 500.804 Records and reporting.**

Records are required to be kept by every person engaging in any transaction subject to the provisions of this chapter, as provided in § 500.601. Reports may be required from any person with respect to any transaction subject to the provisions of this chapter or relative to any property in which any foreign country or any national thereof has any interest, as provided in § 500.602.

**§ 500.204 [Amended]**

Item (27) of the appendix to section 500.204 is amended to read as follows:

(27) *Dealings Abroad in Commodities Subject to the Regulations.* Section 500.204 prohibits not only the unlicensed importation into the United States of commodities specified in (a)(1) thereof, that is commodities of Communist Chinese, North Korean or North Vietnamese origin, but it also prohibits, unless licensed, persons subject to the jurisdiction of the United States from purchasing, transporting or otherwise dealing in such commodities which are outside the United States. The term "persons subject to the jurisdiction of the United States" includes foreign firms owned or controlled by Americans, as defined in § 500.329. A general license in § 500.541 authorizes such firms to deal in goods of mainland Chinese origin under certain circumstances but does not authorize such firms to deal in goods of North Korean or North Vietnamese origin.

Section 500.204 also prohibits the unlicensed importation of the commodities specified in subparagraphs (2), (3) and (4) thereof, but does not prohibit dealings abroad in those commodities.

Item (28) of the appendix to § 500.204 is amended to read as follows:

(28) *Rejection of Imports.* Imports of merchandise subject to § 500.204(a) (2), (3) or (4) not authorized under § 500.544 are refused, although an appropriate certificate of origin or specific license has been obtained, if there is reason to believe either that the merchandise is of Communist Chinese, North Korean, or North Vietnamese origin or that there exists an interest of a designated national therein. (See also Item (112) below.)

Item (30) of the appendix to § 500.204 is amended to read as follows:

(30) *Unlicensed Commitments.* In the absence of an appropriate general license, contractual commitments to engage in

transactions prohibited by § 500.204 should be made only if the contract specifies that it is subject to the issuance of a specific Foreign Assets Control license or other authorization from the Office of Foreign Assets Control. General licenses which may be applicable are §§ 500.536, 500.538, 500.539, 500.541, 500.544, and 500.545.

The fact that an unlicensed firm commitment or payment may have been made in connection with a transaction prohibited by § 500.204 is not a basis for licensing the transaction.

Item (113) of the appendix to § 500.204 is being amended to read as follows:

(113) *Wigs and Other Human Hair Products.* Wigs and other human hair products being imported from any Asiatic country are presumed to be made of Asiatic hair. Additionally, it has been determined that substantial quantities of Asiatic hair are used in the production of human hair products being imported from Austria, Belgium, Federal Republic of Germany, France, Italy, Portugal, Spain, and the United Kingdom.

Accordingly, Customs will detain all such human hair products unless either a specific license or an appropriate certificate of origin is presented, or the importation is authorized under § 500.544.

Items (114), (210), and (214) of the appendix to § 500.204 are deleted.

[SEAL] MARGARET W. SCHWARTZ,  
Director,

Office of Foreign Assets Control.

[F.R. Doc. 70-2638; Filed, Mar. 3, 1970; 8:50 a.m.]

## Title 33—NAVIGATION AND NAVIGABLE WATERS

### Chapter I—Coast Guard, Department of Transportation

#### SUBCHAPTER A—GENERAL

[CGFR 70-7]

#### PART 25—CLAIMS

##### SUBCHAPTER C—AIDS TO NAVIGATION

#### PART 74—CHARGES FOR COAST GUARD AIDS TO NAVIGATION WORK

##### Claims Regulations

The purpose of this amendment is to add a new Part 25 to Subchapter A. Part 25 will cover the administrative handling of claims which arise from the activities of the Coast Guard. At the present time, it is contemplated that Part 25 will consist of at least 5 subparts. The various aspects of the administrative function with which the subparts will be concerned include processing of claims, claims in favor of and against the Government, redress of injuries to property, and non-appropriated fund claims.

This document includes Subpart C of Part 25 which is concerned with the collection of claims in favor of the United States. The new Subpart is divided into 3 internal divisions. "Implementation of Federal Claims Collection Act" (31 U.S.C. 951-953) is the division heading for §§ 25.301 through 25.325. This division delegates certain authority to the Chief



Counsel, U.S. Coast Guard, and to other designated Coast Guard officials and implements the Federal Claims Collection Act of 1966 (Act of July 19, 1966, 80 Stat. 308, 31 U.S.C. 951-953). "Admiralty Claims" (14 U.S.C. 647) is the division heading for §§ 25.341 through 25.349. This division delegates certain authority to the Chief Counsel, U.S. Coast Guard, and to other designated Coast Guard officials and implements, sec. 647 of the Act of August 4, 1949, as amended (63 Stat. 549, 14 U.S.C. 647). "Aids to Navigation Damage Claims" is the division heading for §§ 25.361 through 25.373. This division implements sec. 642 of the Act of August 4, 1949 (63 Stat. 547, 14 U.S.C. 642) and sec. 16 of the Act of March 3, 1899 (30 Stat. 1153, 33 U.S.C. 412).

Since this amendment relates to agency management, procedure, and practice, it is exempted from notice of proposed rule making and public procedure thereon by 5 U.S.C. 553 and may be made effective in less than 30 days after publication in the *FEDERAL REGISTER*.

Accordingly, Subchapter A of Title 33, Code of Federal Regulations, is amended by adding a new Part 25 to read as follows:

**Subpart C—Claims in Favor of the United States**  
IMPLEMENTATION OF FEDERAL CLAIMS COLLECTION ACT (31 U.S.C. 951-953)

- Sec.  
25.301 Delegations of authority.  
25.303 Exceptions to delegated authority.  
25.305 Redelegation.  
25.307 Standards for exercise of delegated authority.  
25.309 Aggressive claims collection action.  
25.311 Single claim.  
25.313 Direct private payment.  
25.315 Releases.  
25.317 Reports.  
25.319 Referral to U.S. Attorney.  
25.321 Referral to Chief Counsel.  
25.323 Statute of limitations.  
25.325 Disposition of claims under other authorities.

**ADMIRALTY CLAIMS (14 U.S.C. 647)**

- 25.341 Delegations of authority.  
25.343 Redelegation.  
25.345 Section not exclusive.  
25.347 Settlement conclusive.  
25.349 Disposition of payments.

**AIDS TO NAVIGATION DAMAGE CLAIMS (14 U.S.C. 642, 33 U.S.C. 412)**

- 25.361 Damage to aid to navigation.  
25.363 Destruction of aid to navigation.  
25.365 Displacement of aid to navigation.  
25.367 Repair or replacement.  
25.369 Elements of cost.  
25.371 Settlement authority.  
25.373 Disposition of payments.

**AUTHORITY:** The provisions of this Part 25 issued under secs. 2, 3, 80 Stat. 308, 309, secs. 633, 642, 647, 63 Stat. 545, 547, 549; sec. 16, 30 Stat. 1153, sec. 6(b) (1), 80 Stat. 937; 31 U.S.C. 951, 952, 14 U.S.C. 633, 642, 647, 33 U.S.C. 412, 49 U.S.C. 1655(b) (1); 49 CFR 1.4(a) (2), 89.1(b).

**IMPLEMENTATION OF FEDERAL CLAIMS COLLECTION ACT (31 U.S.C. 951)**

**§ 25.301 Delegations of authority.**

(a) The functions, powers, and duties of the Commandant, U.S. Coast Guard to

attempt collection of claims of the United States arising out of the activities of the Coast Guard, or referred to him, and to compromise, suspend, or terminate action to collect those claims not exceeding \$20,000 are delegated to the Chief Counsel, U.S. Coast Guard with respect to claims arising out of the activities or responsibilities of his office, or referred to him.

(b) The functions, powers, and duties of the Commandant, U.S. Coast Guard to attempt collection of claims of the United States arising out of the activities of the Coast Guard, or referred to him, and to compromise, suspend, or terminate action to collect those claims not exceeding \$5,000 are delegated to—

(1) The Comptroller, U.S. Coast Guard, with respect to claims arising out of the activities under his cognizance or referred to him.

(2) The Commander of each Coast Guard District with respect to claims arising out of the activities of his command, or referred to him, except authority to compromise, suspend, or terminate action to collect, claims arising out of erroneous payments or overpayments of military pay and allowances.

(3) The Commanding Officer of each Headquarters Unit having a permanent legal officers billet, with respect to claims arising out of the activities of his command, or referred to him, except authority to compromise, suspend, or terminate action to collect, claims arising out of erroneous payments or overpayments of military pay and allowances.

**§ 25.303 Exceptions to delegated authority.**

The authority delegated under § 25.301 does not apply to the following:

(a) Any claim against another agency or instrumentality of the United States for damage to property of the United States in the custody of the Coast Guard.

(b) Any claim against a nonappropriated fund activity which is an instrumentality of the United States except where the activity carries insurance to cover the type of damage caused.

(c) Any claim against a foreign government unless specifically authorized by the Commandant.

(d) Any claim involving an adjustment for unused passenger transportation services.

(e) Any claim against a civilian employee as a result of an erroneous payment or overpayment of pay.

(f) Any claim listed in 49 CFR 89.3.

**§ 25.305 Redelegation.**

The Chief Counsel and Comptroller may respectively redelegate the authority delegated to them under § 25.301 to any officer not below the level of division chief in their offices. The Commander of each Coast Guard District may redelegate the authority delegated to him under § 25.301 to his chief of staff or legal officer. The Commanding Officer of a Headquarters Unit may redelegate the authority delegated to him under § 25.301 to his executive officer or legal officer. Further redelegation is not authorized.

**§ 25.307 Standards for exercise of delegated authority.**

Each officer to whom authority is delegated under this subpart shall exercise that authority in accordance with the standards for the collection and compromise of claims and for the suspension and termination of action to collect claims promulgated by the U.S. General Accounting Office and U.S. Department of Justice, and published at 4 CFR, Chapter II.

**§ 25.309 Aggressive claims collection action.**

Each officer to whom authority is delegated under this subpart shall take aggressive action on a timely basis, with effective followup to collect each claim in favor of the United States arising out of the activities of, or referred to, the Coast Guard in accordance with the standards for the exercise of delegated authority in § 25.307. However, a claim of less than \$50 need not be asserted or otherwise processed unless the circumstances indicate that collection is economically feasible (e.g., a case of clear liability and insurance coverage) or desirable in the best interests of the United States. For record purposes, a claim of less than \$50 which is not economically feasible or desirable to assert shall be treated as one which has been terminated for that reason. The claims record shall clearly show the basis for termination action.

**§ 25.311 Single claim.**

A debtor's total liability to the United States arising from a particular incident is considered as a single claim in determining whether the claim is within the authority delegated under § 25.301, for the purpose of compromise, suspension, or termination of collection action.

**§ 25.313 Direct private payment.**

(a) When a person who is responsible for damage to Government property, or his insurer, offers to have the property repaired to the satisfaction of the United States and to pay the cost of repairs directly to the repairer, direct payment is authorized where that procedure is in the best interests of the United States. The offeror shall be assured that a full release of the claim of the United States arising from the damage will be executed upon completion of the repairs to the full satisfaction of the Government, and upon receipt of evidence of payment, in full to the repairer by the offeror. The claims record, however, shall contain a statement of the cost of repairs and a certification by the officer concerned that all damages have been satisfactorily repaired and that full payment therefor has been made.

(b) The United States will assume no liability for restored depreciation or enhanced value of the repaired or replaced property unless a specific sum was mutually agreed to in writing in advance by the officer concerned and the damaging party.



**§ 25.315 Releases.**

Each officer to whom authority is delegated under this subpart may receive in payment of a claim the amount due the United States, and may execute and deliver a full release of the claim in favor of the United States in exchange for payment.

**§ 25.317 Reports and supporting documentation.**

(a) Each officer to whom authority is delegated under § 25.301 shall make a report to the Chief Counsel listing those claims compromised or with respect to which collection action has been suspended or terminated, specifying the name of the debtor, the amount of the claim, the nature of the claim, the type of action taken, and the general basis for the action taken. The report shall be made for the period beginning 1 January and ending 30 June and for the period beginning 1 July and ending 31 December of each year and shall be submitted not later than the 15th day of the month following the termination of the period covered by the report.

(b) Each officer to whom authority is delegated under this subpart shall, before exercising that authority, acquire sufficient documentation to demonstrate that the action taken is in the best interest of the United States. This documentation shall be retained.

**§ 25.319 Referral to U.S. Attorney.**

A designee under § 25.301(b) (2) within whose command a claim under this subpart arises or to whom a claim is referred, may refer any such claim not exceeding his monetary jurisdiction on which collection action has been taken and which cannot be compromised or on which collection action cannot be suspended or terminated in accordance with 4 CFR, chapter II, directly to the appropriate U.S. attorney for collection. The Chief Counsel may refer a claim to the Department of Justice or the General Accounting Office as may be necessary.

**§ 25.321 Referral to Chief Counsel.**

Any claim in excess of the authority delegated under § 25.301(b) which cannot be collected in full, and any claim which is not otherwise referable to the U.S. attorney, shall be referred to the Chief Counsel with appropriate recommendations for action.

**§ 25.323 Statute of limitations.**

(a) Except as provided in sections 2415 and 2416 of title 28, United States Code, a claim of the United States founded upon any contract is barred unless the complaint is filed within 6 years after the right of action accrues or within 1 year after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

(b) Except as provided in sections 2415 and 2416 of title 28, United States Code, a claim of the United States founded upon a tort is barred unless the complaint is filed within 3 years after the right of action first accrues.

**§ 25.325 Disposition of claims under other authorities.**

This subpart does not diminish any existing authority to settle, compromise, or close claims.

**ADMIRALTY CLAIMS (14 U.S.C. 647)**

**§ 25.341 Delegations of authority.**

(a) The authority of the Commandant, U.S. Coast Guard, to consider, ascertain, adjust, determine, compromise, or settle claims in favor of the United States for damage cognizable in admiralty and all claims for damage caused by a vessel or floating object, to property of the United States under the jurisdiction of the Coast Guard is delegated to—

(1) The Chief Counsel, U.S. Coast Guard, as to claims where there is involved a payment in a net amount not exceeding \$25,000, which may be referred to him.

(2) The Commander of each Coast Guard District as to claims not exceeding \$5,000, arising out of the activities of his command, or referred to him.

(3) The Commanding Officer of each Headquarters Unit having a permanent legal officer billet, as to claims not exceeding \$5,000, arising out of the activities of his command, or referred to him.

**§ 25.343 Redelegation.**

Each officer to whom authority is delegated under § 25.341 may redelegate that authority as prescribed in § 25.305.

**§ 25.345 Section not exclusive.**

(a) The authority granted under 14 U.S.C. 647 to determine, compromise, and settle claims is supplementary to, and not in lieu of, any other provision of law authorizing the determination, compromise, and settlement of claims for damage to property described in 14 U.S.C. 647.

(b) Additional regulations covering the collection of claims for damage cognizable in admiralty and caused by a vessel or floating object to property of the United States and for their compromise, suspension, termination, or referral for collection are found in §§ 25.301–25.325.

**§ 25.347 Settlement conclusive.**

Upon the acceptance of the amount due the United States pursuant to determination, compromise, or settlement under 14 U.S.C. 647, such determination, compromise, or settlement becomes final and conclusive for all purposes.

**§ 25.349 Disposition of payments.**

All payments received under 14 U.S.C. 647 shall be covered into the Treasury of the United States as miscellaneous receipts.

**AIDS TO NAVIGATION DAMAGE CLAIMS (14 U.S.C. 642, 33 U.S.C. 412)**

**§ 25.361 Damage to aid to navigation.**

Whenever an aid to navigation is damaged and can be repaired, a claim shall be promptly made for the cost to the Government to repair the aid and for all other costs directly caused by reason of

the damage. The cost to make repairs shall be the cost of restoring the damaged aid to operating condition acceptable to the Coast Guard. This shall include the cost of all labor, material and overhead required to make the repairs, whether the repairs are made by a Government facility or a private contractor.

**§ 25.363 Destruction of aid to navigation.**

(a) Whenever an aid to navigation is destroyed, or is damaged to the extent that the cost of repair will exceed its value (a constructive total loss), a claim shall be promptly made for the cost to the Government to replace the aid with an identical aid or with a substitute aid acceptable to the Coast Guard, and for all other costs directly caused by reason of the destruction or total loss. A claim shall be made whether or not the aid is actually replaced, and whether or not the new aid is established at the same, or a different location, as that of the aid being replaced.

(b) The amount of the claim shall be the total cost to replace the aid less any salvage value and any enhanced value. Enhanced value is the extent to which the fair value of the aid immediately after replacement is greater than its fair value immediately before it was destroyed. Where maintenance equals the depreciation, there would be no enhanced value.

(c) The cost to replace an aid shall be the actual present day cost to reproduce an identical aid or an aid having similar general characteristics and permanence satisfactory to the Coast Guard. It shall include the cost of all labor, material, and overhead required to replace the aid, whether done by a Government facility or a private contractor.

**§ 25.365 Displacement of aid to navigation.**

Whenever a floating aid to navigation is moved off station, without being damaged, a claim shall be promptly made for the cost to the Government of returning it to its station.

**§ 25.367 Repair or replacement.**

The repair or replacement of an aid may be accomplished by the responsible interests, or by contractors employed for that purpose by them, provided the plans for the repair or replacement are satisfactory, and any delay incident thereto, is acceptable to the Coast Guard. The United States will assume no liability for restored depreciation or enhanced value of the repaired or replaced aid to navigation unless a specific sum was mutually agreed to in writing in advance by the Coast Guard and the responsible interests.

**§ 25.369 Elements of cost.**

Expenses incident to and directly caused by reason of the damage or destruction of an aid to navigation shall be included as part of the total claim against the responsible interests and shall include, but not be limited to, the following items, whichever are applicable:



(1) Cost of placing a replacement aid in operation on station, whether as a permanent substitute or to serve as a temporary auxiliary aid for that which was damaged or destroyed.

(2) Cost of removing a replacement aid which was placed in operation on station to serve as a temporary or auxiliary aid for that which was damaged or destroyed.

(3) Cost of searching for, recovering and removing, or attempting to recover or remove, the damaged or destroyed aid or any of its component parts which may require recovery or removal.

(4) Cost or value of time consumed by Government personnel (excluding ship's complement), including such services as inspection, supervision, etc., on projects where necessary to insure that the project is being completed in accordance with prepared plans and/or contract. These costs shall include: Actual travel expenses incurred and paid to personnel from public funds and actual payroll value of time of all personnel expended upon the project, including the travel time during paid status.

(5) Cost or value of time consumed by Government vessel including ship's complement employed by reason of and directly attributed to the damage or destruction. For the performance of this work, no charge shall be made for the time and expense of Coast Guard vessels including ship's complement, when the aid can be or is repaired or restored on station by the vessel on routine, scheduled duty where only minimum interruption of that assignment occurs. If such vessel time is charged, it will be charged in accordance with the type of damaged aid which must be serviced as set forth in § 74.20 of this chapter.

(6) Where tender work other than servicing the specific types of aids covered under § 74.20 of this chapter is required in connection with damaged aids, vessel time shall be an hourly charge determined by dividing the latest fiscal year cost for operating the applicable class of vessel in the district by the number of hours the vessel was operationally employed for the fiscal year.

#### § 25.371 Settlement authority.

(a) Additional regulations covering the collection of claims for damage to aids to navigation and for their compromise, suspension, termination, or referral for collection are found in §§ 25.301-25.325.

(b) The Chief Counsel, U.S. Coast Guard and the Commander of each Coast Guard District are designated to administer 14 U.S.C. 642.

(c) The authority of the Commandant, U.S. Coast Guard to accept and deposit payments for the repair or replacement of damaged or destroyed aids to navigation under 14 U.S.C. 642 is delegated to the Chief Counsel, U.S. Coast Guard and the Commander of each Coast Guard District. This authority may be redelegated as prescribed in § 25.305.

#### § 25.373 Disposition of payments.

All payments received as a result of claims for the damage, destruction, or

displacement of an aid to navigation or other property shall be disposed of in accordance with 14 U.S.C. 642.

Subchapter C of Title 33, Code of Federal Regulations, is amended as follows:

1. Section 74.01-1 is revised to read as follows:

#### § 74.01-1 Claim for damage, destruction, or displacement.

Whenever an aid to navigation is damaged, destroyed, or displaced from its station, a claim shall be made on behalf of the United States in accordance with Part 25 of this title.

#### § 74.01-5 [Deleted]

2. Section 74.01-5 is deleted.

*Effective date.* These amendments shall become effective on the date of publication in the FEDERAL REGISTER.

Dated: February 26, 1970.

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

[F.R. Doc. 70-2643; Filed, Mar. 3, 1970;  
8:50 a.m.]

## Title 46—SHIPPING

### Chapter II—Maritime Administration, Department of Commerce

#### SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND OPERATORS

[General Order 20, 3d Rev.]

#### PART 272—POLICY AND PROCEDURE REGARDING CONDUCTING OF SUBSIDY CONDITION SURVEYS AND ACCOMPLISHMENT OF SUB- SIDIZED VESSEL MAINTENANCE AND REPAIRS

Effective upon the date of publication in the FEDERAL REGISTER, Part 272 is hereby revised to read as follows:

- |        |   |
|--------|---|
| Sec.   |   |
| 272.1  | Purpose.  |
| 272.2  | Subsidy condition survey requirements.  |
| 272.3  | Subsidy condition instructions; general.  |
| 272.4  | Execution of subsidy condition survey reports.  |
| 272.5  | Distribution.   |
| 272.6  | Subsidy maintenance and repair procedure.   |
| 272.7  | Subsidy repair summaries.   |
| 272.8  | Categorizing and allocating charges.  |
| 272.9  | Modifications, alterations, additions and betterments.  |
| 272.10 | Maintenance and repairs; definition.  |
| 272.11 | Examples of expenses ineligible for subsidy participation at the maintenance and repair rate. |
| 272.12 | Definition of "consumables," "expendables" and "expendable equipment".                        |
| 272.13 | Effective date.   |

*AUTHORITY:* The provisions of this Part 272 issued under sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

#### § 272.1 Purpose.

The purpose of this part is to establish the policy and procedure to be followed by the Maritime Administration

and by the subsidized steamship operators in conducting subsidy condition surveys and accomplishment and reporting of maintenance and repairs on vessels approved for operation under the Maritime Subsidy Board Operating-Differential Subsidy Agreements.

#### § 272.2 Subsidy condition survey requirements.

(a) Condition surveys of vessels approved for subsidized operation shall be conducted in the following instances:

(1) At the commencement of the first subsidized voyage of each vessel placed in subsidized operation, except newly constructed vessels which enter subsidized service immediately upon completion of building and for which there is a survey report made by the Trial and Guarantee Survey Boards of the Maritime Administration or any other condition report satisfactory to the United States.

(2) At the commencement of the first voyage of each vessel after resumption of subsidized operation following temporary withdrawal from subsidized operation. For the purposes of the surveys required by this subparagraph and subparagraph (6) of this paragraph a vessel which is not withdrawn from the agreement shall not be considered as temporarily withdrawn if it performs unsubsidized voyages in a subsidized service of the same operator.

(3) At the commencement of the first voyage of each vessel following the effective date of the establishment of a maintenance and repair subsidy rate, if such subsidy rate was not established as of subparagraph (1) of this paragraph.

(4) During the drydocking period incident to the vessel's American Bureau of Shipping Special Surveys.

(5) Upon the discontinuance of a maintenance and repair subsidy rate.

(6) Upon the withdrawal of each vessel from subsidized service, either temporarily or permanently. For the purposes of the surveys required by this subparagraph and subparagraph (2) of this paragraph, a vessel which is not withdrawn from the agreement shall not be considered as temporarily withdrawn if it performs unsubsidized voyages in a subsidized service of the same operator.

(7) Upon termination of the last voyage of each vessel under the operating-differential subsidy contract or at the end of the contract period with respect to subsidized vessels in idle status at that time, unless such contract is immediately superseded by a new operating-differential subsidy contract with the same operator.

(b) A vessel commencing subsidized operation outside the continental limits of the United States shall be surveyed immediately at her first port of call in the United States, and it shall be incumbent upon the operator to make arrangements with the appropriate Ship Repair and Maintenance Field Office for the conducting of such survey.

#### § 272.3 Subsidy condition instructions; general.

Instructions and information relative to conducting subsidy condition surveys



as outlined in § 272.2, and to take other action determined to be necessary to protect the Government's interest, will be furnished the respective Region Director by the Division of Ship Repair and Maintenance; however, the Ship Repair and Maintenance Field Offices are authorized, when requested by subsidized operators, to conduct condition surveys specified in § 272.2. At the time a subsidy condition survey is to be conducted, the operator is to be invited to arrange for attendance of his representative; however, such representative is not required to be present.

(a) Condition surveys conducted in conformance with requirements of subparagraphs (1), (2), (3), and (4) of paragraph (a) of § 272.2 will be reported on Ship Survey Report, Form MA-58, and shall be prepared in sufficient detail to readily reveal a comprehensive picture of the conditions noted with an evaluation of each item in accordance with the instructions on the form. Condition report forms—MA-55 Turbine and Gears, MA-56 Tooth Contact Report, MA-57 Drydock Report, and MA-59 Diesel Engine Report—are to be used as applicable.

(b) The condition surveys prescribed in subparagraphs (5), (6), and (7) of paragraph (a) of § 272.2 shall be accomplished as follows:

(1) The subsidized operator shall prepare and furnish the appropriate Ship Repair and Maintenance Field Office detailed repair specifications covering all work outstanding on the vessel after completion of repairs for the voyage immediately preceding the survey requirement. The Ship Repair and Maintenance Field Office shall conduct an inspection of the vessel prior to its next sailing for the purpose of assuring that the operator's specifications cover outstanding defects which require attention and which are attributable to subsidized operation. These specifications, together with the findings of the Ship Repair and Maintenance Field Office regarding the contents thereof, shall constitute the subsidy condition survey report required by the Operating-Differential Subsidy Contract.

(2) In those cases involving discontinuance of maintenance and repair rate, permanent withdrawal from subsidized service, or contract termination without simultaneous renewal, only that work contained in these specifications and verified by the Ship Repair and Maintenance Field Office as defects attributable to subsidized operation, will be considered for subsidy participation, if such work is accomplished not later than the next drydocking period (periodical or otherwise) and the ownership of the vessel is retained by the particular operator: *Provided, however*, That the transfer of the ownership of a vessel to the United States pursuant to the provisions of section 510 of the Merchant Marine Act, 1936, as amended, shall not preclude subsidy participation otherwise permitted.

(3) The costs of correcting all maintenance and repair items which are noted on any condition survey report shall be chargeable to the period of operations covered by the report, except that effective

January 1, 1964, the costs of any such items which have been noted on a recapture condition survey report as previously required and which are properly includable in the subsidized accountings, shall be chargeable to the recapture period in which the work is performed.

(c) The operator shall make arrangements with the appropriate Ship Repair and Maintenance Field Office for the conducting of surveys required by this part. The operator shall assist the representative of the Ship Repair and Maintenance Field Office, and shall permit access to all parts of the vessel, its log books and official records.

#### § 272.4 Execution of subsidy condition survey reports.

All survey reports are to be signed by the operator's authorized representative for the vessel involved, if such representative was in attendance, and the Superintendent Engineer or equivalent, as well as by the Marine Surveyor who conducted the survey, and by the appropriate representative of the Region Ship Repair and Maintenance Office under whose jurisdiction the survey was conducted.

#### § 272.5 Distribution.

It shall be the responsibility of the respective Maritime Administration Region Office to compile sufficient copies of the subsidy surveys in order to make distribution as follows:

(a) One copy to the Division of Ship Repair and Maintenance, Washington, D.C.

(b) One copy to the operator of the subsidized vessel involved.

(c) One copy to be retained in the files of the Region Ship Repair and Maintenance Office under whose jurisdiction the survey was conducted.

#### § 272.6 Subsidy maintenance and repair procedure.

(a) The preparation of specifications, the awarding of maintenance and repair contracts, the inspection and approval of maintenance and repairs as to workmanship, quality, materials, and satisfactory completion are all the responsibility of the subsidized operator.

(b) The repairing and maintenance upkeep of subsidized vessels by any subsidiary company, holding company, affiliate company, or associate company of the operator, as differentiated from directly hired shore gang labor, is subject to written approval by the Maritime Administration pursuant to section 803, Merchant Marine Act, 1936, as amended. Requests for such approval shall be addressed to the appropriate Region Director. When such work is performed on subsidized vessels by any subsidiary company, holding company, affiliate company, or associate company of the operator, the specifications shall be itemized in detail and item priced.

(c) Maintenance and repair specifications, including those covering work to be performed by operator's shore gang are to be prepared in sufficient detail to permit determination of the reasonableness of prices. Contractor's invoices shall con-

tain the starting and completion dates of each job, the contractor's price on each individual item contained in the specifications, and whenever applicable, the item numbers contained in the applicable subsidy survey shall be indicated against the respective corrective items in the maintenance and repair specifications. Itemized prices shall be furnished for work performed by shore gangs and such item prices shall be further segregated between labor and material charges.

(d) In all cases where the operator furnishes material to the contractor from (1) ship's stores, (2) operator's warehouse, or (3) direct purchase for a specified job, he shall note on the invoice, requisition slip, expenditure voucher, or other form of transfer memorandum, the contract number and item number on which said material was used. The following form is suggested:

Requisitioned Materials—Received and Installed in connection with: Voyage No. \_\_\_\_\_  
Order No. \_\_\_\_\_ Item No. \_\_\_\_\_

Operator's representative

(e) A priced copy of the certified invoice, requisition slip, expenditure voucher, property transfer notice, or other form of transfer memorandum shall be attached by operator to the contract referred to and submitted in support of the "Subsidy Repair Summary" (Form MA-140).

#### § 272.7 Subsidy repair summaries.

(a) The subsidized operators shall prepare a Subsidy Repair Summary (Form MA-140) for those vessels, including the voyages of vessels which have been temporarily withdrawn from subsidized service, whose voyages terminated in any one quarter of a year, January 1 through March 31, or April 1 through June 30, etc. This Summary must be carefully prepared and certified by the Superintendent Engineer or other responsible official of the company, as follows:

This is to certify that, to the best of my knowledge and belief, and based on recorded entries through \_\_\_\_\_, this is a true and correct statement of repair and maintenance expenditures for the period stated and that the repair and maintenance items indicated as eligible for subsidy participation are reasonably attributable to service subsequent to commencement of the first voyage under the Operating-Differential Subsidy Agreement and were necessary, satisfactorily completed, and the price is fair and reasonable (exceptions are listed on separate page).

The Subsidy Repair Summary (Form MA-140) must cover all expenditures both domestic and foreign made on requisitions for maintenance and repairs. On vessels which have been permanently withdrawn from the Operating-Differential Subsidy Contract, the operators shall submit repair summaries properly supported by the documents referred to in paragraph (b) of this section, covering only the correction of defects noted in off-subsidy survey reports. Each operator shall furnish his own required supply of this Form.

(b) The subsidized operator shall submit the Subsidy Repair Summary, as



well as supplements thereto, supported by copies of documents pertinent thereto, such as repair specifications, material requisitions or purchase orders, invoices, underwriters, and classification society surveys, property transfer notice, scrap credit or other forms of credit memoranda, etc. (if invoice is itemized and fully descriptive of work with item prices, then specifications or purchase order is not required), to the appropriate Region Ship Repair and Maintenance Office upon completion of repairs charged to the terminating voyage(s). In the case of a single voyage summary, the submission shall be within 120 days after the vessel involved has sailed from her last U.S. port of call on the next outward voyage, and in the case of a multi-voyage summary, within 120 days after the close of the quarter.

(c) The appropriate Region Ship Repair and Maintenance Office shall make a review of the repair summary for the purpose of ascertaining that all pertinent and required information and data are attached, and shall transmit the Subsidy Repair Summary with all supporting data to the Chief, Division of Ship Repair and Maintenance, Washington, D.C.

(d) After review of the Repair Summary and supporting papers, the Division of Ship Repair and Maintenance, Washington, D.C., shall furnish the operator with a letter (one copy of which shall be forwarded to the Region Finance Office), setting forth determinations as to eligibility of those costs for subsidy participation which are claimed in the "Subsidizable" total of the Form MA-140. This letter will also contain qualified approvals on Marine Loss items as outlined in paragraphs (e) and (f) of this section. The operator is to retain this letter with his copy of the repair summary for reference when audit is made of the repair accounts of the respective vessel. Such repair summary, together with the said letter, and documents pertinent thereto shall be retained for not less than 6 years after audit and approval by the Maritime Administration and Maritime Subsidy Board of a final accounting for the last year of a recapture period and settlement of such recapture period.

(e) To eliminate the necessity of the operators resubmitting domestic repair costs incident to marine losses for technical review and approval, such repair costs shall be listed on the Form MA-140 under a separate column headed "Marine Loss", and not included in either the "Subsidizable" or "Non-Subsidizable" totals. The letter referred to in paragraph (d) of this section will contain the determinations as to approval of such Marine Loss items for subsidy participation; such approvals will be qualified to cover the items providing they are not recoverable from insurance.

(f) Within 120 days after all damage applicable to the "policy voyage" as defined in the operator's insurance policy is repaired, in the case of franchise or deductible not being reached, or within 120 days from the date of Underwriters' rejection of insurance claim, the subsidi-

dized operator shall advise the respective Region Finance Officer, by letter, of those costs previously reported on Form MA-140 as Marine Losses which have been qualifiedly approved by the Division of Ship Repair and Maintenance and which are not recoverable from insurance. The respective Region Finance Officer will verify that such costs have not been recovered.

(g) Within 30 days from the date of the Division of Ship Repair and Maintenance letter mentioned in paragraph (d) of this section, the subsidized operator shall refer to the Chief, Division of Ship Repair and Maintenance, Washington, D.C., for reconsideration any and all cases in which he does not agree with the decisions that a particular maintenance or repair expense shall not participate in subsidy. All decisions, unless appealed to the Chief, Office of Ship Operations, Washington, D.C., within the prescribed 30 days, shall be final. In his response to such appeals the Chief, Office of Ship Operations, will indicate whether the decision rendered therein is final.

(h) The operator may appeal to the Maritime Subsidy Board pursuant to the provisions of section 6 of Administrator's Order No. 184, if after exercising the appeal provisions stipulated above he does not accept the final determination of the Chief, Office of Ship Operations.

#### § 272.3 Categorizing and allocating charges.

(a) The operator shall exercise due diligence and accuracy in categorizing and identifying, both in specifications and in Form MA-140 those items on which subsidy is requested. The categories of work listed on the Form MA-140 are as follows:

- (1) Claimed for subsidy;
- (i) M&R.
- (ii) Spare parts.
- (iii) Improvements.
- (2) Marine loss.
- (3) Not claimed for subsidy.
- (4) Grand total.

(b) In the event a vessel to which this part is applicable shall have terminated voyages during the calendar year which:

- (1) Were made in more than one subsidized service, or
- (2) Were made in subsidized service, as well as unsubsidized service while under the Operating Subsidy Agreement, or
- (3) Were made in services requiring a reduction of subsidy due to operations in domestic trades, or

(4) Were made in a subsidized service which was affected by subsidy rate changes, the operator shall be required to allocate the total maintenance and repair costs of the vessel which have been approved by the Division of Ship Repair and Maintenance to all voyages terminating during the calendar year on the ratio which the number of days in each such voyage (determined in accordance with Part 281 of this chapter) bears to the total of the voyage days of the vessel during the year.

(c) During any such year or shorter period, the operator shall be entitled to

receive payments on account of Operating-Differential Subsidy on repairs charged to each voyage at the rates determined by the Maritime Subsidy Board as applicable to the service and on the basis authorized by the Operating-Differential Subsidy Agreements; necessary adjustments shall be made following the close of the year or shorter period, after giving effect to the adjustments required by paragraph (b) of this section.

#### § 272.9 Modifications, alterations, additions, and betterments.

(a) Any modification, alteration, addition, or betterment (work of such nature being herein called "Improvements"), effected during any one or a series of repair periods, whether or not in conjunction with other repairs, the aggregate cost of which does not exceed \$100,000, if otherwise eligible, shall be considered for operating-differential subsidy participation, provided that the vessel is not permanently withdrawn from the subsidy contract (except under circumstances beyond the control of the operator) within a period of 3 years after completion of the work.

(b) Any improvement effected during any one or series of repair periods involving an aggregate cost in excess of \$100,000 shall ordinarily be considered capital expenditures; however, subject to findings in each instance that the work involved constitutes reconditioning or reconstruction, expenditures of this nature in excess of \$100,000 will be given consideration for construction-differential subsidy, if application is made to the Assistant Administrator for Maritime Aids for such subsidy under the provisions of title V, Merchant Marine Act, 1936, as amended, and the Maritime Subsidy Board grants such subsidy prior to the award of such work.

(c) When the operator desires to spread the work incident to any improvement over more than one repair period, he shall notify the Chief, Division of Ship Repair and Maintenance, in writing, as to the scope of work involved, expected benefits, number of voyages over which the work will be spread and the estimated total cost, and shall report the actual total cost of such work in the Subsidy Repair Summary, covering the repair period in which it is finally completed, and shall attach a copy of the acknowledgment of the above mentioned notification to the appropriate Subsidy Repair Summary (Form MA-140).

(d) The provisions of this section shall not be applicable to improvements required to alter, outfit, or otherwise equip a vessel for its intended subsidized service which in the opinion of the Administration should have been effected prior to the initial entry of the vessel into subsidized service.

(e) The procurement cost of furniture, furnishings, fixtures or any other item in the category of expendable or portable equipment utilized in connection with alterations or additions to a vessel is not eligible for subsidy participation at the maintenance and repair rate.



**§ 272.10 Maintenance and repairs; definition.**

(a) All costs not compensated by insurance, if deemed fair and reasonable by the Maritime Subsidy Board, and otherwise eligible under the provisions of this part, or as it may be subsequently amended, applicable to work performed by domestic ship repair yards or other domestic independent contractors, including work performed by shore gang labor to the extent set forth hereinafter under subparagraphs (2), (3), and (4) of this paragraph, which are necessary to the maintenance, repair or replacement by duplication of, or restoration to satisfactory condition of, damaged or worn parts of vessels, their machinery and equipment (including spare parts) installed as integral parts of vessels, as distinguished from items of a portable or removable nature, shall be eligible for subsidy at the maintenance and repair subsidy rate. (The word "domestic," as used herein, is defined as meaning within the continental limits of the United States and Hawaii and Alaska.)

(1) Spare propellers and tailshafts, self-contained operable units of machinery or equipment (integral parts of the vessel) as distinguished from portable, expendable, and/or consumable items, and spare parts purchased to be installed as integral parts of the vessel, shall be eligible for subsidy at the applicable maintenance and repair subsidy rate when placed aboard a subsidized vessel, provided reimbursement therefor be made by the operator to the Government in the event such items are not eventually utilized or installed in the subsidized vessel. Each invoice covering spare parts shall indicate the piece of equipment to which the spare's end use is related.

(2) Expenses eligible for subsidy under the maintenance and repair category for work performed by shore gang labor shall be limited to direct labor charges, spare parts, materials, and/or supplies as indicated in subparagraph (3) of this paragraph, and other costs incurred as the result of the payment of direct wages, such as payroll taxes and workmen's compensation insurance required by law, and welfare, pension, and vacation fund payments required as a result of collective bargaining, if deemed fair and reasonable by the Maritime Subsidy Board. Such expenses shall be limited to those directly attributable to items of work that would be eligible for subsidy at the maintenance and repair subsidy rate if performed by an independent contractor aboard or for the subsidized vessel(s).

(3) Materials and/or supplies issued by the operator from ship's inventory, warehouse, or direct purchase to domestic ship repair yards, other domestic independent contractors, or shore gangs which are necessary to the maintenance, repair or replacement by duplication of, or restoration to satisfactory condition of, damaged or worn parts of vessels, their machinery and equipment installed as integral parts of vessels, as distinguished from items of a portable, expend-

able or consumable nature, shall be eligible for subsidy.

(4) Spare parts issued by the operator from his warehouse or direct purchase to domestic ship repair yards, other domestic independent contractors or shore gangs, shall be eligible for subsidy.

**§ 272.11 Examples of expenses ineligible for subsidy participation at the maintenance and repair rate.**

The following are primary examples of expenses (but not limited to) which are ineligible for subsidy participation at the maintenance and repair rate:

(a) Repair items correcting conditions noted in "On-Subsidy Surveys" where repairs clearly should have been made prior to the departure from last U.S. continental port on the first voyage in subsidized service, or prior to the first voyage upon resumption of operation under the respective Operating-Differential Subsidy Agreement, are not eligible for participation in subsidy. The Chief, Division of Ship Repair and Maintenance, Washington, D.C., shall determine whether repairs performed in connection with an item unsighted in the initial "On-Subsidy Survey" are due to attrition after commencement of subsidized operation, or to prior non-subsidized operation, which determination shall be final. It is not the intent to prorate, between the periods before and after a vessel initially commences subsidized operation, the cost of individual repairs made or materials supplied.

(b) Overdue classification and inspection requirements: These are items required by the Classification Society or a Government Bureau which were due (grace periods not included) and not completed prior to the first voyage in subsidized service, or prior to the first voyage upon resumption of operation under the respective Operating-Differential Subsidy Agreement.

(c) Foreign repairs: Items of maintenance or repair of whatsoever nature, including insurance repairs, performed outside the continental limits of the United States.

(d) Marine loss: Repairs recoverable from insurance.

(e) Cargo expense: Special cargo fittings of a temporary nature (as differentiated from installations of a permanent nature), dunnage, ceiling, battens, cleaning cargo holds and tanks for cargo, reading and certification of temperatures for refrigerated cargoes, etc.

(f) Stevedore damage: Any damage to the vessel or cargo gear directly attributable to the stevedore proper. (Damage occurring during stevedoring operations, but due to ship's personnel or equipment for which the stevedore is not liable, will, if satisfactorily supported by documentary evidence and if otherwise acceptable, be considered for subsidy participation.)

(g) Special trade requirements: Initial installations of (other than replacement of existing worn or damaged) equipment necessary for the vessel's particular trade route, such as Suez Canal Davit, etc. New requirements coming

into effect after vessel's entry into the particular subsidized service, as differentiated from previously established requirements, shall be considered for subsidy participation.

(h) Procurement cost of any consumables, expendables or portable equipment when used or installed by crew, or furnished for inclusion in ship's inventory.

(i) Procurement costs, maintenance and repair costs, or replacement costs, incident to portable or expendable equipment.

(j) Apparent excessive maintenance and/or repair costs after operator has had an opportunity to present to the Administration all relevant facts pertinent thereto. Any such costs determined to be excessive shall not be taken into account for reserve fund or recapture purposes as provided in Part 286 of this chapter as amended from time to time.

(k) Costs included in shore gang labor charges which the Chief, Office of Finance, Maritime Administration, determines to be "overhead" as prescribed in § 282.900 of this chapter.

(l) Rental of equipment; e.g., compressors, paint floats, etc. for use by shore gangs or ship's crew in carrying out repairs or other work.

(m) Items included in repair summaries and/or supplements not submitted to Region Ship Repair and Maintenance Offices within 120 days after the end of the quarter in which the item occurred, unless such nonsubmittal can be shown by the operator to be due to circumstances beyond his control.

(n) Items included in appeals to an original determination not submitted by the operator to the Chief, Office of Ship Operations, within 30 days of the date of the original determination.

(o) Items included in appeals to the Maritime Subsidy Board which are not submitted by the operator within 60 days after the date of the "final determination" of the Chief, Office of Ship Operations.

(p) Operational: In general, the types of items disallowed from repair and maintenance subsidy participation under this classification are those where no actual maintenance or repairs in the literal sense of the word are involved, e.g., loading stores, landing and sorting laundry, pilot service, tug charges, removing surplus equipment to warehouses, etc.

(q) Builder's and/or Repair Contractor's liability: Those items adjudged or noted as being Builder's and/or Repair Contractor's Guarantee items.

(r) Items of repair that can be definitely and entirely attributed to non-subsidized operation.

(s) Work incident to an improvement spread over more than one repair period for which application to the Chief, Division of Ship Repair and Maintenance, was not submitted as required by paragraph (c) of § 272.9.

(t) Costs incident to Marine Loss not compensated by insurance which are not reported to the Region Finance Office in the manner and within the time specified in § 272.7(f).



**§ 272.12 Definition of "Consumables", "Expendables", and "Expendable Equipment".**

The words "consumables", "expendables", and/or "expendable equipment", as used in this part are defined in section 3, Part I of Maritime Administration Inventory Manual, Vessel Inventories (issued July-1957 under Authority Management Order No. 627) and as implemented by Maritime Administration Inventory Books—Deck Department Consumable Stores and Expendable Equipment (Form MA 4736A—March 1951), Engine Department Consumable Stores (Form MA 4736B—March 1951), Engine Department Expendable Equipment (Form MA 4736C—March 1951), Steward Department Consumable Stores and Expendable Equipment (Form MA 4736D—March 1951).

In case of any conflict between this definition and the other provisions of this part the other provisions shall control.

**§ 272.13 Effective date.**

The provisions of this part are applicable to all voyages of subsidized vessels terminating on or after March 4, 1970.

The reporting requirements of this part have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Dated: February 25, 1970.

By order of the Maritime Subsidy Board/Maritime Administrator.

JAMES S. DAWSON, Jr.,  
Secretary.

[F.R. Doc. 70-2580; Filed, Mar. 3, 1970;  
8:45 a.m.]

## Title 49—TRANSPORTATION

### Chapter X—Interstate Commerce Commission

#### SUBCHAPTER D—TARIFFS AND SCHEDULES

[Special Permission M-60161]

### PART 1307—FREIGHT RATE TARIFFS, SCHEDULES, AND CLASSIFICATIONS OF MOTOR CARRIERS

#### Emergency Transportation of Property

At a session of the Interstate Commerce Commission, Special Permission Board, held at its office in Washington, D.C., on the 25th day of February 1970.

It appearing, that Special Permission No. M-60161, revised June 14, 1967, prohibits the schedule from bearing a specific expiration date which will be later than the date upon which the emergency temporary authority expires;

And it further appearing, that the proposed rule making required by the Administrative Procedure Act (5 U.S.C. 553) is unnecessary inasmuch as the change in existing regulations to be effectuated by this order will permit motor contract carriers of property having emergency temporary operating authority to publish a "W" series schedule bear-

ing a specific expiration date which will be later than the date upon which the emergency temporary authority expires, thus constituting a relaxation of the regulations heretofore prescribed:

It is ordered, That 49 CFR Part 1307-101, be, and the same is hereby, revised to read:

**§ 1307.101 Motor contract carriers of property; establishment of actual or minimum rates, etc., covering emergency movements of property.**

(a) Subject to the limitations herein, motor contract carriers of property may establish rates and other schedule provisions covering emergency movements of property under section 210(a) of Part II of the Interstate Commerce Act, without further notice prior to acceptance of shipments for transportation other than posting of an individual schedule publication (not a loose-leaf page), containing such rates and other schedule provisions, and having four copies of the publication, with a letter of transmittal, filed with the Regional Director of the Bureau of Operations in whose region the carrier is domiciled or with the Supervisor designated by the Regional Director.

(b) Additional departure from the terms of Tariff Circular MF No. 4 (§ 1307.0-1307.13): Motor contract carriers of property may depart from the terms of Tariff Circular MF No. 4 (§ 1307.0-1307.13) to the extent necessary to permit the filing of schedules authorized in the foregoing paragraph hereof.

**(c) Limitations:**

(1) This permission does not authorize the cancellation of any actual or minimum charge or provisions on the same commodity between the same points and may not be used to establish actual or minimum charges or other provisions which will result in duplicating and/or conflicting actual or minimum charges, except as authorized in Limitation (5) below.

(2) Schedules filed hereunder must be consecutively numbered in the carrier's "W" series in the following manner:

MF-I.C.C. No. W-----

(3) Schedules filed hereunder may contain only the actual or minimum charges, rules and other provisions covering the movement of property under emergency temporary authority and may not contain other actual or minimum charges or provisions.

(4) All schedules filed hereunder must bear a specific expiration date which will not be later than 45 days after the effective date of the schedule.

(5) When it has been discovered that provisions of one "W" series schedule do not conform to emergency temporary authority actually granted, another schedule, in the carrier's "W" series, may be filed in accordance with paragraphs (a), (b), and (c) to cancel the first and conform schedule provisions to the operating authority.

(6) Supplements to "W" series schedules are permissible only for the purpose

of changing, specifically, the expiration date of the schedule to a date not later than the date upon which the emergency temporary authority, or an extension thereof, expires.

This permission does not modify any outstanding formal order of the Commission, nor waive any of the requirements of its published rules relative to the construction and filing of schedule publications, except as herein authorized, nor modify any of the provisions of Part II of the Interstate Commerce Act, except as to notice.

It is further ordered, That this revision shall become effective February 25, 1970.

(Sec. 204, 49 Stat. 546, as amended; 49 U.S.C. 304. Interpret or apply sec. 218(a), 49 Stat. 561, as amended; 49 U.S.C. 318(a))

And it is further ordered, That notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Special Permission Board.

[SEAL]

H. NEIL GARSON,  
Secretary.

[F.R. Doc. 70-2631; Filed, Mar. 3, 1970;  
8:49 a.m.]

## Title 50—WILDLIFE AND FISHERIES

### Chapter II—Bureau of Commercial Fisheries, Fish and Wildlife Service, Department of the Interior

#### SUBCHAPTER F—AID TO FISHERIES

### PART 258—FISHERMEN'S PROTECTIVE ACT PROCEDURES

#### Provision for Fees

FEBRUARY 26, 1970.

Section 7 of the Fishermen's Protective Act of 1967 (Public Law 90-482; 22 U.S.C. 1977), authorized the Secretary of the Interior to set fees to be charged for the furnishing of a Guarantee Agreement. The Fishermen's Protective Act Procedures, which became effective February 9, 1969, established fees, based on anticipated losses, to provide for payment of the administrative costs and one-third of the estimated claims to be paid for the Fishermen's Protective Fund. Experience to date in the payment of claims under this program indicates that a change in the fee schedule for the fiscal year ending June 30, 1970, is not warranted at this time.

It is now necessary to delete that paragraph relating to Guarantee Agreements covering fiscal year ending June 30, 1970, and to replace it with a paragraph setting fees for the fiscal year ending June 30, 1971. The amount of the fee will not be changed.



This amendment relates to matters which are exempt from the rule making requirements of the Administrative Procedures Act (5 U.S.C. 1003). Furthermore this amendment has the effect of continuing fees which were previously adopted and so makes no change in the conduct of the program. This amendment is hereby adopted and will become effective July 1, 1970.

Section 258.5 is hereby amended by changing paragraph (b) to read as follows:

**§ 258.5 Fees.**

(b) The fees to be paid by an applicant during the fiscal year ending June 30, 1971, shall be as follows: For each vessel \$60 plus \$1.80 per gross ton as listed on the vessel's documents. Fractions of a ton are not included.

PHILIP M. ROEDEL,  
Director,  
Bureau of Commercial Fisheries.

[F.R. Doc. 70-2603; Filed, Mar. 3, 1970;  
8:47 a.m.]

## Title 14—AERONAUTICS AND SPACE

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

[Airspace Docket No. 70-WA-9]

#### PART 73—SPECIAL USE AIRSPACE

##### Designation of Prohibited Area

On February 26, 1970, Federal Register Document 70-2464 was published in the FEDERAL REGISTER (35 F.R. 3755) effective on February 24, 1970.

This document amended Part 73 of the Federal Aviation Regulations by designating a prohibited area at Thurmont, Md.

Subsequent to the publication of this amendment, the geographical coordinates upon which this prohibited area was designated have been refined to lat. 39°38'53" N., long. 77°28'01" W., and the designated altitudes have been amended to include from the surface to and including 5,000 feet MSL. Accordingly, action is taken herein to reflect these amendments.

Since this amendment is minor in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary, and good cause exists for making this amendment effective on less than 30-days notice.

In consideration of the foregoing, effective immediately, Federal Register Document 70-2464 (35 F.R. 3755) is amended as hereinafter set forth.

Item 1 is amended as follows: "lat. 39°30'53" N., long. 77°28'01" W." is deleted and "lat. 39°38'53" N., long. 77°28'01" W." is substituted therefor, and "Surface to 5,000 feet MSL." is deleted and "Surface to and including 5,000 feet MSL." is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on March 2, 1970.

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

[F.R. Doc. 70-2714; Filed, Mar. 3, 1970;  
8:51 a.m.]



# Proposed Rule Making

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### [ 26 CFR Part 1 ]

### CAPITAL GAIN DISTRIBUTION DEFINED

#### Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC : LR : T, Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the *FEDERAL REGISTER*. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the *FEDERAL REGISTER*. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

RANDOLPH W. THROWER,  
Commissioner of Internal Revenue.

In order to provide regulations under section 665(g) of the Internal Revenue Code of 1954, as added thereto by section 331(a) of the Tax Reform Act of 1969 (83 Stat. 592), the Income Tax Regulations (26 CFR Part 1) are amended by inserting the following new sections immediately after § 1.665(e)-2:

§ 1.665(g) Statutory provisions; excess distributions by trusts; definition of capital gain distribution.

Sec. 665. Definitions applicable to Subpart D. . . .

(g) *Capital gain distribution.* For purposes of this subpart, the term "capital gain distribution" for any taxable year of the trust means, to the extent of undistributed capital gain for such taxable year, that portion of—

(1) The excess of the amounts specified in paragraph (2) of section 661(a) for such taxable year over distributable net income for such year reduced (but not below zero) by the amounts specified in paragraph (1) of section 661(a), over,

(2) The undistributed net income of the trust for all preceding taxable years.

(Sec. 665(g) as added by sec. 331(a), Tax Reform Act, 1969 (83 Stat. 592))

#### § 1.665(g)-1 Capital gain distribution.

For any taxable year of a trust beginning after December 31, 1969, the term "capital gain distribution" means, to the extent of the undistributed capital gain of the trust, that portion of (a) the excess of (1) the amounts properly paid or credited or required to be distributed within the meaning of section 661(a) (2) for such taxable year over (2) distributable net income for such year reduced (but not below zero) by the amount of income required to be distributed currently (including any amount required to be distributed which may be paid out of income or corpus to the extent such amount is paid out of income for such taxable year), over (b) the undistributed net income of the trust for all preceding taxable years. For such taxable year the undistributed capital gain includes the total undistributed capital gain for all years of the trust beginning after December 31, 1968, and ending before such taxable year.

[F.R. Doc. 70-2678; Filed, Mar. 2, 1970; 12:06 p.m.]

## POST OFFICE DEPARTMENT

### [ 39 CFR Part 155 ]

### REQUIREMENTS RELATING TO BUSINESS MAIL DELIVERY IN OFFICE BUILDINGS

#### Notice of Proposed Rule Making

The Department proposes to promulgate regulations relating to types of business mail delivery in office buildings, for the guidance of building owners and managers, architects, and equipment manufacturers. Specifically, the proposed regulations, set out below, formulate criteria and requirements for the establishment of vertical improved mail service (VIM) in office buildings; and prescribe procedures for Departmental approval of VIM equipment and systems.

Interested persons who desire to do so may submit written data, views, and arguments concerning the proposed regulations to the Director, Post Office and Delivery Services Division, Bureau of Operations, Post Office Department, Washington, D.C. 20260, at any time prior to the 30th day following the date of publication of this notice in the *FEDERAL REGISTER*.

Accordingly, the following amendment to title 39, Code of Federal Regulations, is proposed:

In Part 155 *City Delivery*, add new § 155.7 reading as follows:

#### § 155.7 Business mail delivery.

(a) *Vertical improved mail (VIM) lockbox service*—(1) *Conditions concerning installation of receptacles.* (i) VIM lockbox service may be provided in those office buildings which meet the criteria established by the Department and which install and maintain Department approved office building receptacles, one for each tenant.

(ii) The postmaster may approve, after receipt of a formal application, the installation of office building receptacles and a related VIM mailroom. The application must be accompanied by a tentative plan showing location in the building. If the postmaster approves the application, he will endorse his approval upon the application and return it to the applicant. The cost of receptacles and their installation is paid for by the owner, lessee, or manager of the building.

(2) *Installation.* (i) *Receptacles* should be located at sites reasonably near the entrance in vestibules, halls, lobbies, or mailrooms. Rear loading receptacles housed in a VIM mailroom should be provided wherever a building may have 11 or more tenants. The carrier must be able to serve the boxes without interference from swinging or opening doors. The area must be adequately lighted so as to afford the best protection to the mail and to enable carriers to read addresses on mail and names on boxes without strain on their eyes.

(ii) The distance from the finished floor to the tenant locks on the top tier of receptacles should be no more than 66 inches, and to the bottom of the lowest tier no less than 10 inches and preferably not lower than 30 inches.

(iii) Installation of boxes at two or more entrances to a building will not be approved.

(iv) Rear loading receptacles will be served from a mailroom behind the lockboxes. The mailroom should run the length of the bank of boxes and should have at least 3 feet of unobstructed work space from the rear of the units to the wall. Where one or more carriers will be based on site, an additional work area the equivalent of 80 square feet per carrier should be included in the mailroom.

(3) *Directories.* (i) In existing office buildings having 11 or more receptacles, a complete directory of all firms or persons receiving mail must be maintained.

(ii) Directories must be alphabetical by firm or surname and must be kept correct to date.

(iii) The directory must be legible and located where it can be read easily by the postal employee.

(4) *Maintenance and repair.* (i) The owners, lessees, or managers of buildings must keep receptacles in good repair. When an inside letterbox arrow lock is no longer needed, the owners, lessees, or managers must immediately notify the postmaster so that a postal employee can



be detailed to supervise removal of the lock from the master door for return to the post office.

(ii) Upon receiving a report of lack of repair or irregularity in the operation of office building receptacles, postmasters will cause a prompt investigation to be made and will specify repairs which must be made by and at the expense of the owners, lessees, or managers. Repairs must be made only when a representative of the post office is present. Persons other than postal employees may not open receptacles and expose mail.

(iii) Failure to keep boxes locked or in proper repair may result in withholding delivery of mail therein and requiring the tenants to call for their mail at the post office or carrier delivery unit serving the area. When such action is contemplated, a reasonable notice of approximately 30 days will be given in writing to the tenants and the owner, lessee, or manager.

(5) *Manufacturers and distributors.* The following is a list of manufacturers and distributors of one or more designs of horizontal type mail receptacles previously approved by the Post Office Department:

American Device Manufacturing Co., Steeleville, Ill. 62288.

Auth Electric Co., Inc., 34-20 45th Street, Long Island City, N.Y. 11101.

Corbin Wood Products, Division of Emhart Corp., New Britain, Conn. 06050.

Cutler Mail Chute Co., 76 Anderson Avenue, Rochester, N.Y. 14607.

Dura Steel Products Co., Post Office Box 54175, Los Angeles, Calif. 90054.

Florence Manufacturing Co., Inc., 848-864 North Larrabee Street, Chicago, Ill. 60610.

(6) *Obtaining approval for manufacture of receptacles.* Persons interested in manufacturing office building receptacles must submit a horizontal style, four gang unit (two over two) to the Post Office and Delivery Services Division, Bureau of Operations, Post Office Department, Washington, D.C. 20260, for approval. The unit must be complete with individual door locks and provide for an arrow lock in the master door. If rearloaded, a door or screen on the back of receptacles is not necessary.

(7) *Specifications for construction of receptacles.* (1) Specifications for construction of receptacles shall be identical to those for type II, horizontal apartment house receptacles as prescribed in § 155.6 (b) of this chapter, except as follows:

(i) *Inside dimensions.* Receptacles shall be a minimum 5¼ inches in height, 10½ inches in width, and 16 inches in depth.

(ii) *Color.* Color of the receptacles shall be that agreed to by the building owner and the manufacturer.

(b) *VIM call window service.* (1) *Eligibility requirements.* (i) VIM call window service may be extended to those office buildings which meet the criteria established herein; which provide mailroom space suitably equipped; and where carrier workload justifies basing a carrier on site.

(ii) The postmaster may approve, after receipt of a formal application, VIM call window service. The application must be accompanied by a tentative

plan showing the size and location of the mailroom, and the proximity to the loading-unloading area the carrier will use. If the postmaster approves the application, he will endorse his approval upon the application and return it to the applicant.

(iii) The mailroom space is provided by the owner, lessee, or manager of the building at no cost to the Department.

(2) *VIM mailroom.* (i) *Location.* Wherever possible the mailroom should be located at the building entrance level used by a majority of persons employed in the building, near the elevators and convenient to the building loading-unloading area. Mailroom space may be approved for use at other levels when not available at main entrance level or loading dock level.

(ii) *Space.* The minimum VIM call window space requirement for an existing building is 100 square feet if it requires the full time of one carrier, plus 100 square feet for each additional carrier that may be required. In planning for a new building, 100 square feet of mailroom space for each 100,000 square feet of office space up to 500,000, plus 100 square feet for each additional 200,000 square feet of office space; or 100 square feet for each 50 tenants, must be allowed, whichever is the lesser.

(iii) *Service window.* Provision shall be made for providing call window service through a service window, or a Dutch door with ledge, or by providing a portable desk or table that may be placed across the door opening.

(iv) *Environmental conditions.* Environmental conditions, such as heat, light and air conditioning in the mailroom must be equal to that provided tenants in the building, and must be furnished without cost to the Department.

(v) *Doors and locks.* A thirty-four inch (34") security type door should be provided. The door lock may be of matching hardware provided that tumblers are reset and the post office controls all keys.

(vi) *Maintenance and repair.* The owner, lessee, or manager of the building will be responsible for maintenance and repair of the mailroom, doors and environmental facilities without cost to the Department.

(vii) *Early access.* Provision shall be made for carrier to have access to the mailroom as early as 6 a.m.

(c) *VIM conveyor service.* (1) *Eligibility requirements.* (i) VIM conveyor service may be extended to those office buildings meeting the criteria established by the Department and which furnish a Department approved mechanical mail transport system and suitably equipped mailroom space.

(ii) The postmaster may approve, after receipt of a formal application, the installation of a VIM mechanical system. Application must be accompanied by a tentative plan showing proposed location of the mechanical system and the mailroom space which will be provided. If the postmaster approves the application he will endorse his approval upon the application and return it to the applicant.

(iii) The mechanical system and mailroom space shall be provided by the owner, lessee, or manager of the building without cost to the Department.

(2) *VIM mechanical system requirements.* (i) The mechanical system must have the capability of accepting locked containers at a rate of not less than eight per minute and of transporting them vertically at a rate of not less than 75 feet per minute.

(ii) The inside dimensions of containers shall not be less than 12" x 16" x 6" deep.

(iii) The mechanical system shall automatically accept and discharge containers without carrier or tenant effort other than placing containers in load position and actuating controls.

(iv) The mechanical system design may permit use of the system for purposes other than mail transportation.

(v) The mechanical system maintenance and repair is the responsibility of the owner, lessee, or manager of the building.

(vi) The system shall have either an accumulating device in the central mailroom that will accept and hold containers of outgoing mail dispatched by tenants, or an automatic dumping mechanism that will empty containers of mail into a wheeled canvas basket.

(vii) An accumulating device of sufficient size shall be provided in service mailrooms on multitenant floors to provide space for each tenant on the floor if containers are not conveyed to offices of individual tenants.

(3) *Central mailroom.* (i) Central mailroom requirements shall be listed in paragraph (b) (2) of this section except as described herein. A tentative plan for a central mailroom must be submitted to the postmaster for approval.

(ii) Minimum central mailroom space requirements shall be 400 square feet for the first 50 tenants, plus 135 square feet for each additional 50 tenants.

(4) *Service mailrooms.* (i) Service mailrooms shall be provided on multitenant floors wherever containers are not mechanically conveyed to tenants offices.

(ii) A 5' x 7' service mailroom is required for gravity conveyor runoff to accommodate five containers, whereas a 7' x 8' service mailroom with stacking mechanism will accommodate from 8 to 19 containers.

(5) *Mail security requirements.* (i) The containers shall be capable of being locked. Tenants will be assigned their own lids or locked containers and the carrier will be assigned a master key that will open all containers.

(ii) As an alternate arrangement mails may be dispatched in a closed container that will terminate in a locked case or cabinet in a service mailroom accessible only to the appropriate tenant.

(iii) As a second alternate mails may be dispatched in an unlocked container and transported both vertically and horizontally to a delivery position within the tenants' offices.

(6) *Obtaining approval for manufacture of VIM mechanical systems.* A firm interested in the manufacture of VIM mechanical systems must first submit to the Post Office and Delivery



Services Division, Bureau of Operations, Post Office Department, Washington, D.C. 20260, specifications and drawings for a system, containers and container accumulating device for use in the central mailroom. If the specifications and drawings appear to be satisfactory, the Bureau of Operations will request the firm to submit a \$10,000 bond as specified in subparagraph (7) (ii) of this paragraph. After the bond is examined and approved, the Bureau of Operations will authorize installation of not more than three VIM mechanical systems for a 90-day actual service test. If, at the end of the test period, the operation is found satisfactory, final approval for the manufacture of the equipment will be given.

(7) *Manufacturers' installation and performance bonds.* (i) Manufacturers must furnish evidence a surety bond in the sum of \$3,000 has been given to the purchaser guaranteeing the construction and installation of the VIM mechanical system equipment in accordance with the rules, regulations, and specifications of the Post Office Department, and that any defect arising within 1 year will be remedied by the manufacturer without expense to the purchaser or to the Post Office Department.

(ii) The contract must contain a full warranty by the manufacturer or company proposing to install the VIM mechanical system against claims on account of infringements of the patents of others. Before commencing use of the system for delivery and collection of mail by the post office, the postmaster must assure himself that a blanket bond in such form as may be prescribed by the Postmaster General has been filed with the Department providing that the obligor and his or its sureties shall and will protect and indemnify and save harmless the United States from any and all claims of patent infringement, accompanied by a written statement from such manufacturer or company that they have no claim of any kind against such VIM mechanical system. The bond must be for \$10,000 although a larger sum may be required if considered advisable by the Post Office Department.

NOTE: The corresponding Postal Manual section is 155.7.

(5 U.S.C. 301, 39 U.S.C. 501, 6001, 6003, 6105)

DAVID A. NELSON,  
General Counsel.

MARCH 2, 1970.

[F.R. Doc. 70-2657; Filed, Mar. 3, 1970;  
8:51 a.m.]

## ATOMIC ENERGY COMMISSION

### [10 CFR Part 3]

#### RULES OF PROCEDURE IN CONTRACT APPEALS

##### Correction of Notice of Rule Making

On February 12, 1970, F.R. Doc. 70-1729 was published in the *FEDERAL REGISTER* (35 F.R. 2862), proposing to

amend the Atomic Energy Commission's regulation, 10 CFR Part 3. An error appeared in paragraph 6 on page 2862, part of the last sentence of which presently reads, "emphasis is placed on the second administration of these rules in specific cases". Accordingly, the text of that sentence of F.R. Doc. 70-1729 is amended to read as follows: "Because it is impossible to articulate a rule to fit every circumstance which could be encountered, emphasis is placed on the sound administration of these rules in specific cases."

This correction substitutes the word "sound" for "second".

Dated at Washington, D.C., this 26th day of February 1970.

For the Atomic Energy Commission.

F. T. HOBBS,  
Assistant Secretary.

[F.R. Doc. 70-2602; Filed, Mar. 3, 1970;  
8:47 a.m.]

## DEPARTMENT OF AGRICULTURE

### Consumer and Marketing Service

#### [7 CFR Parts 1001, 1015]

[Dockets Nos. AO-14-A47, AO-305-A24]

### MILK IN MASSACHUSETTS-RHODE ISLAND-NEW HAMPSHIRE AND CONNECTICUT MARKETING AREAS

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

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Massachusetts-Rhode Island-New Hampshire and Connecticut marketing areas.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this decision in the *FEDERAL REGISTER*. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and opportunity to file exceptions thereto are issued 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).

#### PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as herein-after set forth, to the tentative market-

ing agreements and to the orders as amended, were formulated, was conducted at Sturbridge, Mass., on October 21-24, 1969, and at Boston, Mass., on October 28, 1969, pursuant to notice thereof which was issued on September 12, 1969 (34 F.R. 14475) and a supplemental notice which was issued on September 20, 1969 (34 F.R. 15362).

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

1. Extension of the marketing area under the Massachusetts-Rhode Island-New Hampshire order.
2. Modification of the diversion provisions under the Massachusetts-Rhode Island-New Hampshire order.
3. Increased performance standards for pooling plants under the respective orders.
4. Modification of the "dairy farmer for other markets" definition under the Massachusetts-Rhode Island-New Hampshire and Connecticut orders.
5. Modification of the assignment provisions under the Massachusetts-Rhode Island-New Hampshire order.
6. Modification of the producer-handler definition under the Massachusetts-Rhode Island-New Hampshire order.
7. Increase in interest obligation on overdue accounts under the respective orders.
8. Other miscellaneous changes.

#### FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Extension of the Massachusetts-Rhode Island-New Hampshire marketing area.* The Massachusetts-Rhode Island-New Hampshire marketing area should be expanded by inclusion of 48 additional Massachusetts towns. This additional territory encompasses all of the remaining portion of Middlesex County (15 towns); the towns of Blandford, Chester, Granville, Hampden, Holland, Montgomery, Russell, Southwick, and Tolland in Hampden County; the towns of Amherst, Belchertown, Chesterfield, Cummington, Goshen, Granby, Hadley, Hatfield, Huntington, Middlefield, Pelham, Plainfield, Southampton, Westhampton, Williamsburg, and Worthington in Hampshire County; and the towns of Ashburnham, Berlin, Bolton, Brookfield, Harvard, Hubbardstown, Oakham, and Sturbridge in Worcester County. Designation of the entire marketing area will remain the Massachusetts-Rhode Island-New Hampshire marketing area.

The maximum area of extension as set forth in the proposals contained in the hearing notice, in addition to the above described territory, included 47 additional towns, all of the remaining territory in the Commonwealth of Massachusetts except Berkshire and Nantucket Counties. This proposal was made on behalf of 15 principal cooperatives representing members delivering milk to presently regulated handlers in the market.

Proponents' support for their proposed extension of the marketing area emanates from three primary facets:



1. The distribution of milk in the proposed area of expansion from unregulated plants outside the Commonwealth of Massachusetts and the inability of the Massachusetts Milk Control Commission to effectively regulate such milk.

2. The fact that presently regulated handlers have the preponderance of fluid milk sales in the total proposed area of expansion.

3. The fact that regulated handlers are meeting competition from unregulated handlers throughout the area proposed for inclusion.

The immediate situation prompting proponents to seek extension of the marketing area was the increasing distribution from an unregulated distributing plant located in Portsmouth, N.H., operated by one of the largest handlers serving the marketing area. This handler also operates regulated plants at Canton, Mass., and Meriden, Conn., under Orders 1 and 15, respectively. The Portsmouth plant, although physically located within the currently defined marketing area, supplies a chain of retail stores in nonfederally regulated areas of the northeast (28 of which are located throughout the proposed area of extension), all established by this handler. This handler's regulated plants at Canton, Mass., and Meriden, Conn., supply his similar retail outlets which are located within the present marketing area.

Official notice was taken at the hearing of the October 13, 1967, decision of the Deputy Assistant Secretary (32 F.R. 14502) in which it was concluded that the extension of regulation into New Hampshire and in Essex County, Mass., would bring this handler's Portsmouth plant under full regulation. In fact, however, the Portsmouth plant has continued its unregulated status and generally supplies the handler's retail outlets which are external to the defined marketing area.

Estimated current annual Class I distribution of the Portsmouth plant in the total proposed area of extension is 9 million pounds. The rate of growth of this operation is evidenced by the recent addition of approximately 10 new dairy store outlets in Massachusetts.

The milk supply for the Portsmouth plant is provided by approximately 40 southern Maine dairymen. These dairy farmers, who are members of one of the proponent cooperatives, receive for such milk the Order 1 city zone blended price less a hauling charge of 51.6 cents per hundredweight. For the year ended August 1969, the advantage to this handler in his procurement of milk for Class I use for the Portsmouth plant averaged approximately \$1.20 per hundredweight when compared to the order Class I price paid by regulated handlers.

Insofar as this situation contains elements conducive to market disorder, marketing conditions in any portion of the area here under consideration do not differ markedly from those in any other part of the area where this handler operates retail outlets serviced by the Portsmouth plant.

In June 1969, subsequent to the proponents' request for hearing, a substantial unregulated dealer operating a plant in Greenfield (Franklin County, Mass.) sold controlling interest in his fluid milk operation to a handler operating a "partially regulated distributing plant for unregulated markets" at Springfield, Vt.

Prior to the sale of his fluid milk business, this dealer received milk from 27 local Massachusetts producers whose production was fully subject to the classified pricing regulations of the Massachusetts Milk Control Commission. Subsequent to the merger, packaged fluid milk products for distribution from the Greenfield facility have been supplied from the Springfield, Vt., plant.

The 27 Massachusetts dairy farmers who were shipping to the Greenfield dealer were dropped in May and June 1969, essentially concurrently with the procurement of the business by the Springfield handler. These dairy farmers then secured an outlet with a federally regulated handler, thus adding to the supply of the market without any corresponding increase in Class I sales.

Annual Class I sales of the Greenfield operation are estimated at about 11 million pounds.

The Springfield handler also has substantial sales in portions of the regulated area in New Hampshire. The preponderance of his sales, however, are in southwestern Vermont and the unregulated area of southwestern New Hampshire.

Prior to acquisition of the Greenfield operation, this handler had been making substantial purchases of packaged Class I milk from regulated handlers which are delivered directly to his wholesale and/or retail outlets in the New Hampshire portions of the marketing area. This procedure was followed in order that the plant would have less than the prescribed 10 percent of fluid milk product receipts as Class I disposition in the marketing area which would result in full regulation of such plant. Quantitatively, such purchases from pool plants have approximated an average of 500,000 pounds per month.

The current supply of milk for the fluid distribution from the Greenfield operation is believed to originate primarily from Maine sources. Prior to the merger, the basic supply of milk for the Springfield operation originated from approximately 34 dairy farmers, two located in New Hampshire and the remainder in Vermont. Hence, the handler's unregulated milk supply now is procured from three States.

This handler has an obvious procurement advantage over regulated handlers regardless of the origin of his milk supply. However, returns to dairy farmers supplying such milk vary among the States.

Under the regulations of the Maine Milk Control Commission, milk which moves to plants out of State from plants within the State is classified and priced as Class II milk. Hence, the estimated competitive advantage in procurement accruing to the Springfield handler for milk purchased from Maine plants could

be as much as \$2 per hundredweight as compared to the cost of Class I milk to a fully regulated handler. Under any circumstance, it would not reasonably be less than the \$1.20 advantage previously indicated as accruing to the Portsmouth handler on his Maine purchases.

A competitive advantage also exists in purchases of unregulated milk from dairy farmers in New Hampshire. The prices paid for such unregulated milk are based on the Order 1 blended prices in the same zone.

To the extent that this handler receives milk from Vermont dairymen, he also has a competitive procurement advantage over Federally-regulated handlers. The Vermont Milk Control Board prices milk to the handler at the Order 1 Zone 21 blended price plus 47 cents. Since his utilization is essentially only Class I, his advantage on this milk is about 35 cents per hundredweight.

Proponents were particularly disturbed by the fact that the contract for the dining commons at the University of Massachusetts (Amherst) was awarded to the Springfield handler for the current school year. They contended that the success of this handler in securing this substantial contract, generally held in previous years by regulated handlers, was a clear substantiation of current market disorder in the proposed area of extension. They further held that the continuing increase in the number of retail store outlets in the proposed area of extension serviced by the Portsmouth plant was further substantiation of loss of sales by regulated handlers and hence increasing market disorder. In this connection, they pointed out that the present situation, including the recent sale of the Greenfield operation, was a clear manifestation of the expectations they expressed at the 1966 extension hearing on which record the Department denied extension of regulation to the area here under consideration.

Notwithstanding proponents' position, it is not clear that the procurement advantage of unregulated handlers is specifically manifesting itself in disorderly marketing practices in the proposed area of extension at this time. Clearly, the elements of disorderly marketing are prevalent by virtue of the procurement advantage of the Springfield and Portsmouth handlers. Except for the extenuating circumstances hereinafter discussed, regulation of the entire proposed area would be appropriate as the most effective means of insuring continued orderly marketing. Conditions in the several segments of the proposed area of extension are varied and the impact of regulation would not have equal application throughout. Accordingly, the several segments must be examined separately.

Franklin County, except for the towns of Warwick, Orange, and New Salem, is served essentially by regulated handlers and the presently unregulated plants at Springfield, Vt., and Portsmouth, N.H. Only an estimated 20 percent of the Class I sales in the county are made by regulated handlers, the lowest proportion of



regulated sales in any part of the proposed area of extension.

The Springfield handler's Greenfield operation, hereinbefore discussed, has the preponderance of the Class I sales in this county. Notwithstanding, Franklin County is, in fact, only a secondary area of distribution for such handler since his principal area of sales is the southeastern section of Vermont and the southwestern section of New Hampshire.

Expansion of the marketing area to include Franklin County would almost certainly result in full regulation of this handler. While it might be possible for him to retain unregulated status through additional purchases of packaged pool milk in a manner similar to that which he has employed to avoid full regulation on the basis of his New Hampshire market area sales, this seems unlikely.

The handler asserted that full regulation would place him at such a financial disadvantage in his primary area of competition that he would be forced out of business. This was substantiated by the proponents of area expansion who conceded that regulation of Franklin County would confront this handler with an extremely difficult situation. Proponents conceded that the handler's only logical remedy, if Franklin County were included, would be an immediate request for another hearing to consider further extension of the marketing area to include also his primary area of distribution.

It is concluded that full regulation of the Springfield handler through the inclusion of Franklin County in the marketing area at this time is not warranted, notwithstanding the fact that potentially the situation here is the least stable of any portion of the proposed area of extension due to the procurement practices of, and volume of fluid sales by, the two unregulated handlers. If the situation in Franklin County requires regulation, the matter should appropriately be considered at a further hearing in which there would be opportunity to adjust the marketing area boundaries to more closely reflect the primary sales areas of the handlers to be regulated.

The only portions of the proposed area of extension considered at the hearing which are served by local, nonfederally regulated dealers buying milk from Massachusetts dairy farmers are a 21-town corridor which straddles the western boundary of Worcester County and the three-town area of Douglas, Uxbridge, and Northbridge in south central Worcester County.

The corridor includes 13 towns in Worcester County, the towns of Warwick, Orange, and New Salem in Franklin County, the town of Ware in Hampshire County and the towns of Palmer, Monson, Brimfield, and Wales in Hampden County. The area is serviced variously by about five local dealers, regulated handlers, the Portsmouth unregulated plant and to a minor degree by the Springfield unregulated plant and a few raw milk distributors.

The area is relatively sparsely populated, the 21 towns having an estimated

combined population of only about 85,000. The local nonfederally regulated dealers purchasing milk from Massachusetts dairy farmers are fully regulated by the Massachusetts Milk Control Commission. The Class I price under the State regulation is 8.2 cents above the Federal order Class I price. Since such dealers have essentially only Class I operations, their dairy farmer suppliers receive essentially a Class I price for such milk, while their neighbors, whose milk is delivered as producer milk to federally regulated handlers, receive the lower blend price under the Federal order. To a considerable degree these local dealers depend on the Federal order pool for balancing supplies or on Federal order manufacturing facilities as an outlet for their reserve supply, if any.

The roughly 30 dairy farmers delivering to these local dealers have a preferential market. This situation is one of long standing, however, and it is significant that an extension of the marketing area to require pooling of their milk at this time would be of no significant benefit either to them or to producers whose milk is now priced under the order. There is no indication that local dealers have any competitive advantage over regulated handlers. To the contrary, there has been a steady decline in local handler operations, of which the Greenfield plant is the most recent casualty.

As has been previously indicated, the distribution of unregulated milk from the Springfield, Vt., and Portsmouth, N.H., plants is not only a source of potential market disorder but also a situation in which the dealers involved have some buying advantage over regulated handlers. Nevertheless, there is no indication at this time that such advantage is currently causing market disorder. The volume of such unregulated distribution is not substantial at this time and, in consideration of the impact that regulation would have on the dairy farmers supplying the local handlers without perceptible benefit to the pool, it is concluded that regulation of this 21-town area is not necessary at this time.

The three-town area of Douglas, Uxbridge, and Northbridge is variously served by regulated handlers, local producer distributors, a producer-handler under Order 1, and by the Portsmouth plant through two retail stores. The several producer distributors are the remainder of a much larger number which over the years have operated exclusively in this small community.

The area has been considered for regulation on several previous occasions. Official notice is taken of the fact that the town of Northbridge was included in the Worcester marketing area effective January 1, 1950, on the basis of a 1949 hearing and was subsequently removed on the basis of a hearing held in April 1951. Official notice is also taken of the fact that a proposal to add the three-town area to the Worcester marketing area, considered at a 1959 hearing, and a proposal to add such area to the Massachusetts-Rhode Island marketing area,

considered at a 1963 hearing, were each denied in the decisions issued covering the issues considered at such hearings.

Regulated handlers, over the years, have substantially increased their distribution in the area. While the distribution from the unregulated Portsmouth plant is a potential source of market disorder, the situation is presently not such as to require regulation in consideration of the impact such regulation would necessarily have on the operations on the several small local producer distributors without significant benefit to the regulated market. It is concluded, therefore, that this three-town area should not be added to the marketing area on the basis of this record.

The remainder of the proposed area of extension (the 48 towns herein adopted as the appropriate area of extension) is served almost exclusively by regulated handlers, the Portsmouth unregulated plant, and in the case of the University of Massachusetts in the town of Amherst (Hampshire County) by the Springfield, Vt., unregulated plant. Regulated handlers have the preponderance of Class I sales throughout this area. The retail store outlets of the handler operating the Portsmouth plant obviously can be served through such handler's regulated plants at Canton and Meriden in the same manner as are his stores in the adjacent regulated areas. The decision to serve these outlets from the Portsmouth plant reflects the price advantage inherent in the use of non-regulated Maine milk.

While the Springfield handler may find it necessary to make some supply adjustment to facilitate completion of his contract with the University of Massachusetts, the possibility of regulation of this area was known at the time the contract was up for bid. Accordingly, this handler was well aware of his possible obligation under the order with respect to milk so disposed of and there is no basis for special consideration for this current contract. In any event, the contract year could have but a short time to run following the effective date of any order amendment.

To maintain orderly marketing and competitive equity among handlers operating in this area which is currently preponderantly served by regulated handlers, it is concluded that the marketing area should be extended to regulate all milk therein distributed.

After a careful review of the order and the evidence adduced at the hearing, it is concluded that the provisions of the present order, subject only to the changes hereinafter discussed, are equally applicable to the extended area for the identical reasons set forth in the decisions under which such provisions were adopted.

2. *Diverted milk.* The provisions of the Massachusetts-Rhode Island-New Hampshire order with respect to diverted milk should be revised to permit unlimited diversions between pool plants and to permit limited diversions to non-pool plants.

The order presently provides that a handler may divert milk directly from a



producer's farm to a plant (pool or non-pool) other than his pool plant of normal receipt if milk from the same farm was received at the pool plant on a majority of the days during the preceding 12 months ending with the current month in which such handler caused milk to be moved from the farm as producer milk. A cooperative in its capacity as a handler of farm bulk tank milk may divert producer milk directly from the farm to nonpool plants if such cooperative caused milk from the same farm to be moved to pool plants on a majority of the delivery days during the preceding 12 months ending with the current month in which such cooperative caused milk to be moved from the farm as producer milk. Milk of individual dairy farmers not otherwise eligible for diversion nevertheless may be pooled when such milk is commingled in a tank truck with milk being diverted from other farms, the majority of which farms have met the regular requirements for diversion privileges.

A proposal to modify the diversion provisions was made on behalf of six cooperative associations. Under the proposal, diversions by any handler during the months of December through July would be limited to an amount not in excess of 50 percent of the total volume of producer milk to be accounted for by such handler at his pool plant(s) during the month. Not more than 25 percent of such volume of receipts could be diverted to nonpool plants, however. In any month of August through November, diversion of milk from individual farms would be limited to not more than 14 days, 7 days in the case of every-other-day delivery.

In support of their proposal, proponents stated that the present provisions require an undue amount of record-keeping to insure that milk of any individual producer is not overdiverted. Further, they testified that the intent of the provisions is being circumvented through the movement of token quantities of milk from individual farms to pool plants on the majority of days while the preponderance of the milk is diverted on a regular basis.

In the 12 months ended with August 1969, handlers diverted a total of 230 million pounds, or 6.5 percent of the 3.5 billion pounds of producer milk pooled under the Massachusetts-Rhode Island-New Hampshire order. Seventy-two percent of the diversions were to pool plants while 28 were to nonpool plants.

The diversions varied monthly from a low of 3.9 percent of pool receipts in January to a high of 10.1 percent in June 1969. Several handlers, however, diverted in excess of 50 percent of their total producer receipts in each month except January 1969. In July 1969, five handlers diverted more than 50 percent of their respective producer receipts.

Only one handler diverted in excess of 25 percent of his total producer milk to nonpool plants in any month. This occurred in six of the months in the 12-month period and the total milk so diverted was slightly in excess of 1.7

million pounds. However, most of this diversion (1.1 million pounds) occurred in June 1969.

Under the present order provisions, milk diverted from a plant in Zone 14 or nearer to a plant more distant than the 14th zone is priced at the location of the plant of physical receipt. No change was proposed in this procedure. When milk is overdiverted, the overdiverted milk is treated as a direct receipt at the plant of physical receipt and the operator of such plant is held the accountable handler.

In this market, each proprietary handler in substantial measure controls his own milk supply, dealing directly with individual producers in procurement and payment for milk even though most producers are cooperative members. When a handler has excess milk as a result of loss of Class I sales or because of seasonal variations in production, he customarily does not relinquish control of such milk but moves it through other handlers, either by transfer or diversion. In light of this situation, the order has accommodated the efficient movement of milk between handlers by diversion.

The immediate problem from which proponents seek relief is the undue amount of recordkeeping necessary to support diversions under the present provisions and the ease with which the intent of such provisions are being circumvented. The limited nature of the diversion proposals considered at the hearing precludes any exploration in depth of diversions generally. However, it is clear that the present provisions cannot be effectively administered. In many circumstances, it is likely that an overdiversion between pool plants is not discovered until audit and the producer(s) involved would already have been paid by the diverting handler. Since the milk involved would have pooling rights regardless of whether the diverting or receiving handler was held responsible, and the pool obligation as well as the required payment to the producer(s) would, for all practical purposes, be the same in either circumstance, no useful purpose could be served by requiring an adjustment of obligation as between handlers. Under such circumstances, it is not apparent that a limitation on diversions as between pool plants is necessary or desirable.

When the overdiversion is to a non-pool plant, the overdiverted milk cannot be pooled and there must be an adjustment on the diverting handler's pool obligation.

There are adequate manufacturing facilities associated with the pool to generally handle the market's reserve supplies. As previously indicated, diversions to nonpool plants have not been substantial. Based on past market experience, it is unnecessary to provide for diversions to nonpool plants in any month of more than 25 percent of a handler's producer receipts. This diversion percentage is sufficient to assure the orderly disposition of all pool milk for which no convenient outlet is available at pool plants.

Under the revised diversion provisions, some basis must be established to insure that dairy farmers whose milk is reported as diverted producer milk do, in fact, have a bona fide association with the diverting plant. It is provided, therefore, in order to qualify for diversion in any month milk from the same farm must have been received at the handler's pool plant (or another of his pool plants which is no longer operated as a plant) on more than half of the delivery days during any 2 previous months subsequent to July of the preceding year, or on more than half of such days during the current month. This condition will insure that milk has a bona fide association with the diverting plant and at the same time will provide maximum flexibility for the most economical diversion of milk.

Under the present order, provision is made whereby milk of a producer which is added to a route may be diverted without ever having established its association with the market or the diverting plant if it is picked up and commingled with other producer milk in a tank truckload which is being diverted under diversion privileges established for the majority of the producers whose milk is on such load. This provision is referred to by the industry as the "banana clause" and was adopted to implement orderly extension of bulk tank routes. Proponents requested that this principle be retained to continue efficient milk handling.

Without some appropriate limits the "banana clause" could be the means by which the intent of the diversion limitation could be averted. It is desirable to enable producers to be added on routes even though the route is being currently diverted for nonpool plants. However, continuing diversion on this basis would be inappropriate. It is provided, therefore, that such diversions will be permitted from any particular farm only if the responsible handler had not received or diverted milk from such farm in more than 2 other months subsequent to July of the preceding year.

For any circumstance in which a handler overdiverts to a nonpool plant(s) there must be a procedure for determining what milk was overdiverted and hence ineligible for pooling. It is provided that the handler in such case may designate the producers whose milk was overdiverted. If he fails to make such designation, the entire quantity of milk which the handler caused to be moved from dairy farmers' farms directly to nonpool plants will be excluded as producer milk.

Without some modification of the "dairy farmer for other markets" definition, such exclusion in any month of July through November would prevent any milk from the same farm from acquiring producer milk status in any succeeding month of December through June in which it was controlled by the same handler and overdiversion in any month would prevent pooling of any milk from such farm in such month of overdiversion.



Essentially all of the milk in New England is associated with one or another of the federally regulated markets except that milk which has a preferential Class I outlet in some local market. The "dairy farmer for other markets" definition was adopted in recognition of the fact that there could be an incentive for a handler to remove milk from the pool to serve a local Class I outlet and return such milk to the pool whenever the out-of-area outlet was lost.

Producers whose milk is inadvertently overdiverted therefore should not be included within the definition of "dairy farmer for other markets". The consequence of such status would be an unreasonable treatment for an unintended act on the part of the handler over which the producer has no control.

3. *Change in pool plant performance standards.* No change should be made in the present standards for qualifying distributing plants and supply plants for pooling under either the Massachusetts-Rhode Island-New Hampshire or the Connecticut orders.

The Springfield, Vt., handler presently operating as a partially regulated handler proposed revision of the Massachusetts-Rhode Island-New Hampshire pool distributing plant qualification requirements from the present minimum of 10 percent of total receipts of fluid milk products disposed of as marketing area route disposition to a minimum of 40 percent, and in the alternative proposed that Class I milk sold outside the marketing area be priced at the blend price. In conjunction with the latter alternative, the handler further proposed that a percentage of Class II milk reflecting the ratio of the handler's out-of-area sales to the total fluid milk products receipts at his plant be exempted from pooling.

A cooperative association representing essentially only Massachusetts producers and operating no plant proposed that the pool plant shipping requirements for supply plants under both the Massachusetts-Rhode Island-New Hampshire and the Connecticut orders be increased. Under its proposal, the shipping requirement for the month of July would be increased from the present 15 percent to 25 percent and for the months of August-November would be increased from the present 25 percent to 35 percent.

The cooperative also proposed that the standards for pooling supply plants as a group, or on a system basis, be set at a level 5 percent above those which would otherwise be applicable. It further proposed that in order to qualify as a pool plant in November on a system basis, each plant to be included be required to meet the shipping requirements independently in at least two of the preceding months of July through October.

The proposal to increase the performance requirements for pool distributing plants under the Massachusetts-Rhode Island-New Hampshire order as well as the alternative proposals for out-of-area pricing were made by the Springfield, Vt., handler to preserve his current partially regulated status in event that the decision with respect to the issue of mar-

ket area extension would otherwise result in his full regulation. Since the area extension herein adopted will not additionally involve this handler at this time and there was no other support for his proposal, it is unnecessary to deal extensively with such proposal.

The present pool distributing plant performance standards were adopted on the basis of the evidence adduced at a hearing held in August 1962 following the Supreme Court's decision in the Lehigh case striking down certain compensatory payment provisions of the New York-New Jersey order. The principal issue at the hearing was the matter of "the scope of class pricing and pooling under each of the respective [New England] orders and the appropriate basis under each order for integrating into the regulatory plan milk sources other than producers."

These standards insure that each distributing-type plant, substantially engaged in the fluid milk business, which has packaging facilities and from which a significant volume and portion of its milk receipts are distributed on routes in the area in the form of fluid milk products is fully regulated. The provisions have accommodated the circumstances existing in the present area and are equally appropriate for the area as herein proposed to be extended. Proponent handler's problem emanated from market area considerations and appropriately must be resolved through an appropriate marketing area delineation and not by arbitrary revision of pooling standards which would necessarily weaken the effectiveness of the order in promoting the expressed purposes of the Act.

The matter of out-of-area pricing was most recently considered and denied in conjunction with the 1967 area extension hearing. The findings and conclusions of the Deputy Assistant Secretary in his October 17, 1967, decision (32 F.R. 15402) were officially noticed at the hearing and all of such findings and conclusions with respect to the matter of out-of-area pricing are herewith reaffirmed and adopted as a part of this decision as if set forth in full herein.

For all of the above reasons the proposals for revision of the distributing plant pool requirements and out-of-area pricing provisions are denied.

The current pooling standards for supply plants under the two respective orders were adopted on the basis of the evidence adduced at the above-mentioned 1967 hearing. A proposal considered at that hearing would have provided essentially the same higher supply plant pooling requirements here being considered. In adopting the present standards the Deputy Assistant Secretary concluded: "While proponents suggested even higher shipping requirements (as much as 40 percent), it must be recognized that the need for country plant milk varies from month to month and from year to year. Too high a requirement might well result in uneconomic milk shipments solely for the purpose of maintaining pooling status."

There is no basis on this hearing record for concluding that the present shipping requirements have not been fully effective in insuring the full availability in the central market of all needed milk supplies, or that higher requirements would be more effective in furtherance of this end. Accordingly, the proposal for increased shipping requirements is denied.

4. *Dairy farmer for other markets.* The "dairy farmer for other markets" definition under the Massachusetts-Rhode Island-New Hampshire order should be extended to include in this category, and hence to deny producer status to, a dairy farmer in any month in which milk is delivered from his farm to a pool handler(s) if in the same month milk is also delivered from such farm as base milk under another order with a base-excess payment plan, or if milk from another farm is delivered under such other order as base milk by virtue of a transfer of all or part of the base otherwise applicable to such farm under such other order for the current base-operating period, and if such base was established on the basis of milk received by or moved from such farm, at the direction of the same handler and/or cooperative association directing the movement of milk from such farm to plants under this order during the month.

A modification of the dairy farmer for other markets definition was proposed by the cooperative proponents of Proposal 1 to remove an apparent advantage which now accrues to a handler and/or his producer suppliers by virtue of market shifts solely for the purpose of exploiting the differences in seasonal pricing plans as between the Massachusetts-Rhode Island-New Hampshire and the three mid-Atlantic orders. The latter orders employ a "base-excess" plan for payment of producers whereas the former employs a Louisville seasonal incentive plan.

Under the three mid-Atlantic orders, producers earn bases based on their deliveries of milk to pool handlers during the short production months and during the flush production months receive an "excess" price (Class II) for their deliveries in excess of their established bases and a substantially higher price for their base deliveries. Under the Massachusetts-Rhode Island-New Hampshire order, prescribed amounts per hundred-weight from the current pool proceeds are held in the producer-settlement fund in paying producers during the flush production months and such monies are added to the current pool proceeds in making payments to producers in certain short production months.

Under circumstances where a handler operates a pool plant under the Massachusetts-Rhode Island order and also operates a pool plant under one of the mid-Atlantic orders, it is possible for his producer suppliers in such latter market to split their deliveries during the base-operating months, delivering only base milk to their normal market and their excess milk as producer milk under the Massachusetts-Rhode Island-New Hampshire order. In this manner, such



dairy farmers would receive the blended price under this order for milk for which they would otherwise receive only the excess (Class II) price under the other order.

If the handler involved is a cooperative association or is working with a cooperative association representing his producers, it is also possible to arrange transfer of bases among such handler's producers to the end that certain members' milk is delivered only as base milk under the other order and the milk of other members is pooled at the uniform price under this order. The entire sales proceeds may then be "reblended" as among all of such producer members. In either of these circumstances, proponents conclude, the dairy farmers involved receive a higher share of the Class I proceeds under the two orders than is appropriate or equitable.

The record is clear that the situations proponents advance in support of their proposal are factual and not fictional. The producers involved in these transactions receive a disproportionate share of the pool proceeds of the orders involved.

The two pricing plans which make these transactions possible each have an identical purpose; i.e., the encouragement of a seasonal pattern of milk deliveries consistent with the pattern of demand for fluid milk and hence insurance of an adequate year-round milk supply at economical cost. The fact that producers in these respective markets do not agree on a common pricing scheme to accomplish a similar end should not be the means whereby certain handlers and/or producer groups can exploit for their own personal gain, and render ineffective, the respective pricing plans to the detriment of all other handlers and producers in these markets. The amendments to the "dairy farmer for other markets" definition under the Massachusetts-Rhode Island-New Hampshire order as hereinafter set forth will not inhibit legitimate individual dairy farmer shifts between markets but will prevent handlers from shifting supplies for the obvious purpose of exploiting differences in pricing plans.

The adoption of a "dairy farmer for other markets" definition under the Connecticut order was also proposed and supported in the hearing to deter similar shifting of milk between that market and the mid-Atlantic markets for the identical purpose of exploiting differences in pricing plans. In this connection, there is no indication that any such transactions are prospective. Further, official notice is taken of the fact that the hearing notice calling the merger hearing under the Washington, D.C., Delaware Valley, and Upper Chesapeake Bay orders (34 F.R. 11364) beginning August 4, 1969, set forth a proposal for a substantially different base plan for the proposed merged order. It cannot be known at this time what new terms and provisions may be adopted for those markets. Since there is no immediate problem involving the Connecticut order in this regard, no action need be taken

at this time on this record. Accordingly, the proposal for a dairy farmer for other markets definition under that order is denied.

#### 5. Modification of the assignment provisions.

No change should be made in the Class I assignment provisions of the Massachusetts-Rhode Island-New Hampshire order on the basis of this record.

A proposal made on behalf of the six member cooperatives of Cooperative Dairy Economics Service would modify the assignment provisions of § 1001.57 by reversing the order of paragraphs (c) and (d) to permit a multiple-plant handler to assign to Class I milk, bulk receipts at his city plant from his country plant(s) before the assignment of direct receipts from producers at his city plant.

Under the existing assignment provisions, receipts from other pool plants and direct producer receipts (including receipts from a cooperative association in its capacity as a handler pursuant to § 1001.9(d)) are assigned following the assignment of other types of receipts. Under these provisions, multiple-plant handlers operating more than one plant in the nearby zone and handlers purchasing milk through plants of other handlers have considerably more flexibility for assigning country plant receipts to Class I than do handlers transferring milk only from their own country plants. The latter handler must assign direct producer receipts to Class I prior to the assignment of receipts from its other plants while the former may assign receipts from other specified plants first to Class I.

This procedure, proponent contends, provides other handlers full opportunity to have all, or nearly all, of their Class II requirements delivered to city plants at producers' expense. United Farmers, however, which essentially relies exclusively on its own members for a milk supply does not have the same flexibility. While such cooperative, by directing movements of milk through other handler plants, has alleviated the situation, the result of such transactions, proponent alleges, has clearly not been compatible with the intent of the order and such movements have been at considerable and unnecessary costs to the cooperative.

The effect of the adoption of proponents' proposal would be to provide all handlers the opportunity to move almost unlimited quantities of milk to city plants for Class II use with assurance that producers would bear the full transportation cost on such movements. An appropriate solution to the problem lies in amendment of the order in a manner which would relieve the pool (and hence producers) of the burden of transporting excessive quantities of milk to city plants for Class II use.

Proponent has long complained of the excessive transport costs which the pool has borne by virtue of unwarranted movements to city plants of milk above the Class I requirements. In an effort to ameliorate the situation, the location differentials have been significantly re-

duced on two occasions in the past few years. Official notice is taken of the October 13, 1967, decision of the Deputy Assistant Secretary (32 F.R. 14502) specifically with respect to conclusions relating to a reduction in the Class I and blend price location differentials and to the pricing of diverted milk.

These changes apparently have not been effective in deterring the association of some unnecessary quantities of milk with city plants. Notwithstanding, it cannot now be concluded that the order should be modified to allow all handlers full opportunity to move milk unnecessarily to city plants for Class II at cost to the pool.

The record of this hearing did not explore, to the extent necessary, possible alternative means of ameliorating the problem. Accordingly, no action is being taken on this issue on the basis of this record.

#### 6. Modification of the producer-handler definition under Order 1. The producer-handler definition as contained in the Massachusetts-Rhode Island-New Hampshire order should not be modified on the basis of this record.

A proposal to modify the producer-handler definition, to allow individuals who process and distribute their own farm production to purchase fluid milk products from other similar individuals and still preserve status as producer-handlers, was made by Massachusetts Cooperative Milk Producers Federation, Inc., a cooperative association, with membership among producers as well as other Massachusetts dairy farmers. Such proposal was conditioned on a decision to extend the marketing area to include the towns of Douglas, Uxbridge, and Northbridge. The intent of the proposal was to insure that the supply balancing arrangements of local producer-distributors in that area would be undisturbed in the event of Federal regulation. A similar proposal heard at a previous hearing was denied in the decision issued on October 13, 1967, on the basis of that record (32 F.R. 14502).

The proposal was generally opposed by other interested parties at the hearing. Since the area extension into the three aforementioned towns is not herein adopted, it is unnecessary to further consider the proposal on the basis of this record.

#### 7. Increase in interest obligation on overdue accounts. The present one-half of 1 percent per month interest charge prescribed under the Massachusetts-Rhode Island-New Hampshire and Connecticut orders on specified overdue obligations should be increased to 1 percent per month.

Proponent cooperatives pointed out that an interest charge of only one-half of 1 percent per month is totally unrealistic in light of present-day commercial interest rates and that, accordingly, producers' monies from handlers in payment for milk received represents the most economical source of credit for handlers. They suggested that the low interest charge could be encouraging delinquency in payment of settlement



fund obligations on the part of certain handlers. In support of this position, they pointed out that each month in announcing the blended prices the market administrator lists handlers who are not included in the computations either because of failure to report or failure to pay pool obligations. Certain handlers are frequently late with payments.

The purpose of the interest provision is to remove an otherwise obvious incentive on the part of handlers to use producer monies as short-term credit. If all handlers availed themselves of the existing opportunity to use producer money as a cheap source of short-term credit, the producer-settlement fund would fast become insolvent, the Department would be burdened with enforcement actions, and there would be insufficient money to pay producers.

Clearly, handlers who now use producer monies because of the advantageous interest charge have an unwarranted advantage over other handlers who fully comply with the payment provisions. The situation can be corrected only through the adoption of a more realistic interest charge. In this regard, proponent's proposal of 1 percent per month is reasonable in light of current commercial interest charges and accordingly is adopted.

The present provision of the Connecticut order which requires interest payment by handlers on overdue payments to the marketing service and administrative funds should be deleted. The proposal for a change in interest rates as set forth in the hearing notice did not cover consideration of these accounts. Clearly, the existing rate is equally as inappropriate on overdue payments to these funds as to the producer-settlement fund. Hence, the existing provision can have little effect in insuring prompt payment under existing circumstances. More fundamental, however, is the fact that obligations to these funds in any month on the part of individual handlers are not substantial. At best an interest obligation would be de minimus and hence should be deleted at this time to avoid unreasonable administrative expense and inconvenience in keeping account of it.

8. *Other miscellaneous order changes.* Order changes not hereinbefore discussed are (1) necessary conforming changes to implement the intent of the substantive changes previously discussed, (2) deletions of obsolete language, (3) corrections of references necessitated by virtue of the termination of the nearby differential provisions (35 F.R. 353), (4) an updating of the mileage guide reference to the current guide, or (5) corrections of obvious errors in references and punctuation.

None of these changes are intended to be substantive in nature. They are being made at this time to implement other changes in the orders and to enhance readability and hence understanding of the respective orders.

Included in the second category is the deletion of paragraph (f) of section 25

of the respective orders and certain provisions of section 7 of the Massachusetts-Rhode Island-New Hampshire order which have been under suspension since January 1, 1968 (33 F.R. 65). Termination of the suspension action with respect to the latter provisions could not appropriately be accomplished without a public hearing. Hence, the provisions serve no useful purpose and should be deleted. Paragraph (f) of section 25 was initially adopted in these orders in recognition of the fact that distribution of unpriced fluid milk products into these markets could be made through Order 2 pool plants by virtue of the so-called "pass through" provisions in the New York-New Jersey order. That order was amended effective June 1, 1968 (33 F.R. 8201), and it is no longer possible for milk to be moved through regulated plants under that order to regulated plants under these orders or as route disposition in these marketing areas without first having been classified and fully priced under the provision of that order. The provision, therefore, now serves no useful purpose and is therefore revoked. This deletion was proposed at the hearing and was unopposed.

It was also proposed that paragraphs (c) and (d) of section 25 of the respective orders be deleted as obsolete language. These provisions, however, deal with the treatment of milk received from individual-handler pool orders. While there currently are no individual-handler pool orders from which milk likely would move to these markets, we conclude that such provisions cannot be considered obsolete and hence may not appropriately be removed on the basis of this record.

#### RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

#### GENERAL FINDINGS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein. The following findings are hereby made with respect to each of the aforesaid orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and

conditions thereof, will tend to effectuate the declared policy of the Act;

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

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

#### RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDERS

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Massachusetts-Rhode Island-New Hampshire and Connecticut marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

#### PART 1001—MILK IN MASSACHUSETTS-RHODE ISLAND-NEW HAMPSHIRE MARKETING AREA

1. Section 1001.2 is revised to read as follows:

##### § 1001.2 Massachusetts-Rhode Island-New Hampshire marketing area.

"Massachusetts-Rhode Island-New Hampshire marketing area", referred to in this part as the "marketing area", means all territory within the boundaries of the places set forth below, all waterfront facilities connected therewith and craft moored thereat, and all territory therein occupied by any governmental installation, institution, or other similar establishment:

#### MASSACHUSETTS COUNTIES

Barnstable.  
Bristol.  
Dukes.  
Essex.  
Hampden (except the towns of Brimfield, Monson, Palmer, and Wales).  
Hampshire (except the town of Ware).  
Middlesex.  
Norfolk.  
Plymouth.  
Suffolk.  
Worcester (except the towns of Athol, Barre, Douglas, East Brookfield, Hardwick, New Braintree, Northbridge, North Brookfield, Petersham, Phillipston, Royalston, Templeton, Uxbridge, Warren, West Brookfield, and Winchendon).



NEW HAMPSHIRE COUNTIES

Belknap.  
Cheshire (the cities and towns of Dublin, Harrisville, Jaffrey, Keene, Marlborough, Nelson, Roxbury, and Sullivan only).  
Grafton (the towns of Ashland, Bridgewater, Bristol, Holderness, and Plymouth only).  
Hillsborough.  
Merrimack.  
Rockingham.  
Strafford.

RHODE ISLAND

All cities and towns except New Shoreham (Block Island).

2. Section 1001.7 is revised to read as follows:

§ 1001.7 Producer.

"Producer" means a dairy farmer who produces milk which is moved, other than in packaged form, from his farm to a pool plant, or to any other plant as diverted milk. However, the term shall not include:

(a) A producer-handler under any Federal order;

(b) A dairy farmer with respect to milk caused to be moved from his farm to a pool plant under this order by a handler under another Federal order if all of the dairy farmer's milk so received is considered as a receipt from a producer under the provisions of the other Federal order;

(c) A dairy farmer for other markets;

(d) A dairy farmer who is a local or state government and has nonproducer status for the month under § 1001.26(c);

(e) A dairy farmer with respect to salvage product assigned under § 1001.55(e); or

(f) A dairy farmer with respect to milk which is excluded from producer milk under § 1001.27.

3. In § 1001.11, the text immediately preceding paragraph (a) is revised to read as follows:

§ 1001.11 Dairy farmer for other markets.

"Dairy farmer for other markets" means any dairy farmer described in this section. For the purposes of this section, the acts of any person who is an affiliate of, or who controls or is controlled by, a handler or dealer shall be considered as having been performed by the handler or dealer. Receipts from a "dairy farmer for other markets" under paragraphs (a), (b), and (c) of this section shall be considered as receipts from the unregulated plant at which the greatest quantity of his milk was received in the most recent month.

§ 1001.11 [Amendment]

4. In paragraph (b) of § 1001.11, the period is deleted and the following is added to the final sentence: "or if all the nonpool milk is excluded from producer milk under § 1001.27."

§ 1001.11 [Amendment]

5. In paragraph (c) of § 1001.11, the period is deleted and the following is added to the final sentence: "or was excluded from producer milk under § 1001.27."

6. In § 1001.11, a new paragraph (d) is added to read as follows:

§ 1001.11 Dairy farmer for other markets.

(d) Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section, the term shall apply to any dairy farmer with respect to milk moved from his farm to a handler's pool plant or purchased from him by a cooperative association in its capacity as a handler under § 1001.9(d) during any month in which:

(1) Milk from that farm was received as base milk under another Federal order; or

(2) Milk was received as base milk under another Federal order as the result of the transfer of part or all of the base otherwise applicable to that farm for the current base-operating period under the other order, if such base was established on the basis of milk received by, or moved from that farm at the direction of, the handler or cooperative association which, except for the provisions of this paragraph, would have caused milk from that farm to be pooled under this order in the current month.

§ 1001.25 [Revocation]

7. In § 1001.25, the provision at the end of paragraph (e) "and" is deleted and replaced with a period; and paragraph (f) is revoked in its entirety.

8. Section 1001.27 is revised to read as follows:

§ 1001.27 Diverted milk.

"Diverted milk" means milk, other than that excluded under § 1001.7 from being considered as received from a producer, which meets the conditions set forth in paragraph (a) or (b) of this section and is not excluded from diverted milk under paragraph (c) of this section.

(a) Milk which a handler in his capacity as the operator of a pool plant reports as having been moved from a dairy farmer's farm to the pool plant, but which he caused to be moved from the farm to another plant, if the handler specifically reports such movement to the other plant as a movement of diverted milk, and the conditions of subparagraph (1) or (2) of this paragraph have been met. Milk which is diverted milk under this paragraph shall be considered to have been received at the pool plant from which it was diverted, but for pricing purposes the differentials for the zone location specified in § 1001.63 shall be used.

(1) During any 2 months subsequent to July of the preceding calendar year, or during the current month, on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm during the month, all of the milk which the handler caused to be moved from that farm was physically received as producer milk at the handler's pool plant or at another of the handler's pool plants which is no longer operated as a plant.

(2) During the current month and not more than two other months subsequent

to July of the preceding calendar year, milk from the dairy farmer's farm was received at or diverted from the handler's pool plant as producer milk; and during the current month all of the milk from that farm which the handler reported as diverted milk was moved from the farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted from the same pool plant in accordance with the preceding provisions of this paragraph.

(b) Milk which a cooperative association in its capacity as a handler under § 1001.9(d) caused to be moved from a dairy farmer's farm to a nonpool plant if the association specifically reports the movement to such plant as a movement of diverted milk, and the conditions of subparagraph (1) or (2) of this paragraph have been met. Milk which is diverted under this paragraph shall be considered to have been received by the cooperative association in its capacity as a handler under § 1001.9(d), but for pricing purposes the differentials for the zone location specified in § 1001.63 shall be used.

(1) During any 2 months subsequent to July of the preceding calendar year, or during the current month, on more than half of the days on which the cooperative association in its capacity as a handler under § 1001.9(d) caused milk to be moved from the farm as producer milk during the month, all of the milk which the association caused to be moved from the farm was physically received at a pool plant.

(2) During the current month and not more than two other months subsequent to July of the preceding calendar year, the cooperative association in its capacity as a handler under § 1001.9(d) caused milk to be moved from the dairy farmer's farm as producer milk; and during the current month all of the milk from that farm which the cooperative association in its capacity as a handler under § 1001.9(d) reported as diverted milk was moved from the farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted by the association in accordance with the preceding provisions of this paragraph.

(c) Milk moved, as described in paragraphs (a) and (b) of this section, from dairy farmers' farms to nonpool plants in excess of 25 percent of the total quantity of producer milk received (including diversions) by the handler during the month shall not be diverted milk. Such milk, and any other milk reported as diverted milk which fails to meet the requirements set forth in this section shall be considered as having been moved directly from the dairy farmers' farms to the plant of physical receipt, and if that plant is a nonpool plant the milk shall be excluded from producer milk. If the handler fails to designate the dairy farmers whose milk is to be so excluded, the entire quantity of milk which the handler caused to be moved from dairy farmers' farms directly to nonpool plants during the month shall be excluded from producer milk.



9. In § 1001.55, paragraph (c) is revised to read as follows:

**§ 1001.55 Initial assignments to Class II milk.**

(c) Assign to Class II milk the quantities in fluid milk products (other than exempt milk) received from a local or State government which has elected non-producer status for the month under § 1001.26(c) and in receipts from dairy farmers for other markets under § 1001.11(d).

**§ 1001.62 [Amendment]**

10. In § 1001.62, paragraph (b), reference to "Mileage Guide No. 8", is deleted and "Mileage Guide No. 9" is inserted therefor.

11. Section 1001.65 is revised to read as follows:

**§ 1001.65 Basic blended price.**

(b) Deduct the amount of the plus differentials, and add the amount of the minus differentials, which are applicable under §§ 1001.62 and 1001.63.

12. Section 1001.81 is revised to read as follows:

**§ 1001.81 Handlers' producer-settlement fund debits and credits.**

On or before the 15th day after the end of the month, the market administrator shall render a statement to each handler showing the amount of the handler's producer-settlement fund debit or credit, as calculated in this section.

(a) The producer-settlement fund debit or credit for each plant and each cooperative association in its capacity as a handler under § 1001.9(d) shall be computed as specified in this paragraph.

(1) Multiply the quantities of pool milk and the quantities of fluid milk products received at the pool plant from cooperative associations in their capacity as handlers under § 1001.9(d) by the basic blended price computed under § 1001.65 adjusted by any zone differentials applicable under §§ 1001.62 and 1001.63.

(2) For any cooperative association in its capacity as a handler under § 1001.9(d), multiply the quantities of milk moved to each pool plant by the basic blended price computed under § 1001.65 adjusted by any zone differentials applicable under §§ 1001.62 and 1001.63; and to the result add the value determined under § 1001.64.

(3) If the value of fluid milk products, as determined under § 1001.64 for any plant, or as determined under subparagraph (2) of this paragraph for any cooperative association in its capacity as a handler under § 1001.9(d), is greater than the credit as determined under subparagraph (1) of this paragraph, the difference shall be the producer-settlement fund debit for the plant or the cooperative association in its capacity as a handler under § 1001.9(d).

(4) If the value of fluid milk products, as determined under § 1001.64 for any plant, or as determined under subpara-

graph (2) of this paragraph for any cooperative association in its capacity as a handler under § 1001.9(d), is less than the credit as determined under subparagraph (1) of this paragraph, the difference shall be the producer-settlement fund credit for the plant or the cooperative association in its capacity as a handler under § 1001.9(d).

(b) The producer-settlement fund debit or credit of any handler shall be the net of the producer-settlement fund debits and credits as computed for all of its operations under paragraph (a) of this section.

13. Section 1001.84 is revised to read as follows:

**§ 1001.84 Adjustment of overdue producer-settlement fund accounts.**

Any producer-settlement fund account balance due from or to a handler under § 1001.82, 1001.83, or 1001.84, for which remittance has not been received in or paid from the market administrator's office by the close of business on the 20th day of any month, shall be increased one percent effective the following day. Any remittance received by the market administrator after the 20th day of any month in an envelope which is postmarked not later than the 18th day of the month shall be considered to have been received by the 20th day of that month.

**PART 1015—MILK IN CONNECTICUT MARKETING AREA**

**§ 1015.25 [Revocation]**

1. In § 1015.25, the provision at the end of paragraph (e) "and" is deleted and replaced with a period; and paragraph (f) is revoked in its entirety.

**§ 1015.55 [Amendment]**

2. In § 1015.55(c) (2) (i), reference to "§ 1015.32(g) (5)" is deleted and "§ 1015.32(g)" is inserted therefor.

**§ 1015.62 [Amendment]**

3. In § 1015.62, paragraph (b), reference to "Mileage Guide No. 8", is deleted and "Mileage Guide No. 9" is inserted therefor.

**§ 1015.88 [Amendment]**

4. In § 1015.88 a final sentence is added to read as follows:

"Payments of interest on amounts due under this section shall apply only to those amounts accruing pursuant to § 1015.81."

5. Section 1015.89 is revised to read as follows:

**§ 1015.89 Adjustments of overdue accounts.**

Any unpaid obligation of a handler under §§ 1015.81 and 1015.88 shall be increased 1 percent effective the 22d day of such month and on the 22d day of each month thereafter until the obligation is paid.

Signed at Washington, D.C., on February 26, 1970.

JOHN C. BLUM,  
Deputy Administrator,  
Regulatory Programs.

[F.R. Doc. 70-2584; Filed, Mar. 3, 1970; 8:46 a.m.]

**[ 7 CFR Part 1030 ]**

[Docket No. AO-361-A2]

**MILK IN CHICAGO REGIONAL MARKETING AREA**

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

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Chicago Regional marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 20th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and opportunity to file exceptions thereto are issued 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).

**PRELIMINARY STATEMENT**

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Chicago, Ill., on August 20-22, 1969, with additional sessions at Oshkosh, Wis., on August 25-27, 1969, pursuant to notice thereof which was issued July 25, 1969 (34 F.R. 12529).

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

1. Marketing area expansion;
2. Individual handler pooling proposals;
3. Pool plant performance requirements for supply plants and reload point facilities;
4. Producer milk definition;
5. Location adjustments to Class I and uniform prices;
6. Class II milk price; and
7. Seasonal incentive payment plan of uniform prices to producers.

**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. *Marketing area expansion.* The marketing area should be expanded to include Adams, Green Lake, Marquette, Menominee and Waushara Counties in the State of Wisconsin. It should also include all the territory within the boundaries of the specified counties that



is occupied by a Government (municipal, State, or Federal) reservation, installation, institution, or other establishment.

The proposed expansion of the marketing area to include other additional territory in Wisconsin and Illinois should not be adopted on the basis of this record.

A cooperative association which represents a large number of the producers supplying the Chicago Regional market proposed enlarging the marketing area to include all of the territory within the following Wisconsin counties: Adams, Chippewa, Clark, Eau Claire, Green Lake, Jackson, Marathon, Marquette, Menominee, Waushara, and Wood.

The five counties of Adams, Green Lake, Marquette, Menominee, and Waushara are encircled by the present Chicago Regional marketing area. Menominee County in northeast Wisconsin was an Indian reservation at the time of promulgation of the former Northeastern Wisconsin order but since 1961 has been established as a regular Wisconsin County. Proponent urged the inclusion of these five counties to provide contiguity to an area primarily served by Chicago regulated handlers.

Chicago Regional handlers now have a preponderance of the fluid milk sales in these counties. Except for Adams County, Chicago Regional handlers distribute all of the milk sold in each county. In Adams County, Chicago Regional handlers distribute 51 percent of the milk while a handler regulated under the Minneapolis-St. Paul order distributes 30 percent and a handler through his partially regulated plant in Eau Claire, Wis., distributes the remaining 19 percent of the milk sold in the county.

The inclusion of these counties will achieve another purpose cited by proponent, i.e., to reduce an undue expense on handlers. Presently, handlers who distribute milk in these counties must maintain separate records of these sales and report them as out-of-area sales. The addition of these counties will eliminate the necessity that handlers maintain separate records insofar as these sales are concerned.

The other Wisconsin counties proposed to be added to the marketing area are part of the unregulated territory, of about 20 counties, in northwest Wisconsin which borders on five Federal order marketing areas, namely, the Chicago Regional, Southeastern Minnesota-Northern Iowa, Minneapolis-St. Paul, Duluth-Superior, and Michigan Upper Peninsula. Specifically, the portion of this territory included in the proposal consists of the counties of Chippewa, Clark, Eau Claire, and Jackson plus the unregulated area in Marathon and Wood Counties.

In regard to the inclusion of the above northwest Wisconsin counties in the marketing area, the proponent cooperative stated that this part of the proposal was prompted in the interest of two regulated handlers located in this area who receive milk produced by its members. One of these regulated handlers has his plant located in Marshfield, Wis., in northwest Wood County, abutting

Marathon County. This handler's plant is pooled as a supply plant under the order but, in addition, he packages and distributes about 10 percent of the milk received at this plant on routes throughout the unregulated portions of both Marathon and Wood Counties.

The other handler is located in Black River Falls, Jackson County, Wis. This handler operates a distributing plant with route disposition in the marketing area in an amount slightly over 10 percent of his total sales. Most of the route sales from this plant are made in Jackson County.

Neither one of these regulated handlers presented testimony in support of this proposal. The Marshfield handler stated that he could see no need to extend the marketing area. The Black River Falls handler did not make an appearance. Proponent cooperative offered in support for the proposal the fact that the Black River Falls handler's sales into the Chicago Regional marketing area have not been sufficient to provide a comfortable assurance of continuous regulation if he were to enlarge his sales in Jackson County. Proponent contended further that these handlers must compete in their home counties with unregulated milk distributed by the operator of the Eau Claire plant. There was no indication, however, such competition has resulted in disorderly marketing.

The difficulties of such two handlers with full regulation are not so much related to competition for sales in this unregulated area as to achieving order changes which will make it easier for them to retain their regulated status. The Marshfield handler supported an amendment to the pool plant qualification provisions which would add his route sales to the shipments from his supply plant to determine the pool status of the plant.

At the hearing the representative of proponent stated that its producer members do not have any direct interest in the marketing of milk within Chippewa, Clark, and Eau Claire counties, but included them in the proposal in the event that the Eau Claire distributor desired to present evidence supporting their inclusion in the marketing area.

The operator of the Eau Claire plant, however, opposed the addition of any Wisconsin territory to the marketing area. He presented data showing the percent of his total sales in each of several counties. In the present marketing area he has 8.2 percent of his total sales, in Adams County 3.5 percent, Chippewa 7.5, Clark 6.5, Eau Claire 24, Jackson 5, Marathon (unregulated) 0.5 and Wood (unregulated) 1.5 percent. Thus, he contended that if Adams County were added, total distribution within the expanded marketing area from this plant might exceed the minimum 10 percent in-area sales specified in the pool distributing plant provisions for full regulation.

This operator testified further that if the marketing area is expanded so that his plant becomes fully regulated under the order then all the Wisconsin counties contained in the proposal should be added to the marketing area. In the

event of their inclusion, he requested that another hearing be called to consider regulation of all the remaining territory in northwest Wisconsin under either the Chicago Regional or the Minneapolis-St. Paul order, since about 42 percent of his sales are in these remaining northwest Wisconsin counties and are in competition with several distributors who still would not be regulated under a Federal order.

A cooperative association which operates an unregulated distributing plant located at Chippewa Falls in Chippewa County, opposed the addition of Chippewa and Eau Claire counties to the Chicago Regional marketing area. A majority of the sales from its plant are made in Chippewa and Eau Claire counties but about 30 percent of the distribution from the plant is in counties not here considered for regulation.

This cooperative was one of the proponents in 1968 to have these two counties, plus additional territory in Wisconsin and Minnesota, added to the Minneapolis-St. Paul marketing area. The proposed addition of these two counties to the Minneapolis-St. Paul marketing area was denied on the ground that sales in these counties by regulated handlers were negligible. The cooperative's representative stated that similar conditions exist with respect to sales by Chicago Regional handlers in Chippewa and Eau Claire counties. As in the case of the Eau Claire distributor, the cooperative's witness urged that these two counties should not be brought under Federal regulation in the absence of regulating the remainder of the unregulated territory in northwest Wisconsin.

At the present time less than 6 percent of the milk sold in Chippewa and Eau Claire counties is from plants regulated under a Federal order. If the Eau Claire distributor were fully regulated these percentages would increase considerably, but this would leave him in competition with at least six unregulated distributors in his remaining distribution area.

Full regulation of the Eau Claire plant would likely result if Jackson, Wood, and Marathon counties were added along with the five counties now encircled by the marketing area, as urged by proponent cooperative, since this would include within the marketing area about 19 percent of the plant's present sales area. However, this handler probably could adjust his total sales operations slightly to maintain the partially regulated status of his Eau Claire plant if only the five counties now encircled by the marketing area were added. This opportunity is available to him since he also operates distributing plants regulated under nearby Federal orders from which he can serve part of the accounts in the marketing area now being served out of the Eau Claire plant.

It was concluded earlier in this decision that Adams, Green Lake, Marquette, Menominee, and Waushara counties should be added to the marketing area since they are clearly part of the principal distribution area of presently regulated handlers. However, the additional



Wisconsin territory should not be included. It would not be feasible to include these counties without the opportunity to consider regulation under some Federal order of the remaining unregulated territory in northwest Wisconsin because the proportion of the milk sold by regulated handlers in these northwestern Wisconsin counties depends significantly upon regulation of particular plants.

A handler who operates two pool distributing plants proposed the addition of Grundy, Kankakee, and La Salle counties, Ill., to the marketing area. At the hearing, however, this handler supported only the addition of Kankakee County. No testimony was presented in support of adding Grundy and La Salle counties, consequently no further consideration is given in this decision to their inclusion.

Proponent cited several fluid milk sales accounts in Kankakee County, previously served by the company's distributing plant under the Southern Illinois order, which were lost over the past few years to an unregulated distributor located in the city of Kankakee. The reason given for the loss of these accounts was that the Kankakee distributor offered milk at a lower price. Proponent believed the Kankakee dealer could do this because his unregulated status permitted him to purchase milk for fluid uses at a lower price than provided by the order.

The operator of the Kankakee plant testified in opposition to including that county in the Chicago Regional marketing area. He stated that since the producer blend price under the Chicago Regional order is low relative to the Southern Illinois order he would lose his 18 producers if he became regulated under Chicago. He also stated that if he lost his local producers it would be very costly for him to get an alternative supply of milk from Wisconsin plants since he handles only about 20,000 pounds of milk per day, which is about one-half of an "over-the-road" tank truck load.

The Kankakee distributor stated that he would prefer to be regulated under the Central or Southern Illinois order, if regulation were necessary. He maintained that he should receive the same treatment as several other small plants located within the unregulated territory between the Chicago Regional and Central Illinois marketing areas.

An association of Chicago milk dealers who account for more than 50 percent of the milk distributed under the order, and some of whose members distribute milk in Kankakee County, stated in their brief that this county should not be added to the Chicago Regional marketing area. They claim the addition of this county could cause difficult procurement problems for the Kankakee dairy because of its proximity to the Central Illinois marketing area. Thus, they stated that it would be more appropriate to add this county to the Central Illinois marketing area. A similar view was expressed in the brief filed by an association of cooperatives that represents a majority of the producers on the Chicago market.

There is substantial overlapping of the distribution routes in Kankakee County

of Chicago Regional handlers and of the unregulated Kankakee distributor. Milk regulated under the Chicago Regional order accounts for about 53 percent of the total milk sold in the county. The Kankakee distributor's sales account for about 19 percent while proponent's distribution, which is from his Southern Illinois regulated plant in Champaign, accounts for 24 percent. The remaining four percent of the sales in the county is from Central Illinois handlers and an unregulated distributor located in Streator (La Salle County), Ill.

Kankakee County is located about 60 miles directly south of the city of Chicago, Ill. It abuts the Chicago Regional marketing area on the north, the Indiana marketing area on the east and the Central Illinois marketing area on the west. To the south, only the unregulated county of Iroquois separates it from the Southern Illinois marketing area. Kankakee County producers therefore are located relatively close to several alternative Federal order marketing areas, each one having a somewhat higher Class I price in Kankakee County and most having higher producer blend prices than does the Chicago Regional order.

Even though the Kankakee distributor competes more with Chicago Regional handlers for fluid milk outlets, his competition for sources of supply are the other nearby markets most of which have higher blend prices in Kankakee County. For example, producer blend prices f.o.b. the city of Kankakee under the Southern Illinois order during the period July 1968 through June 1969 averaged \$5.20 per hundredweight while the comparable Chicago Regional blend price was \$5, or 20 cents less. Regulating this handler under the Chicago Regional order could cause him undue hardship in milk procurement.

For the reasons set forth above it is hereby concluded that the proposal to add Kankakee County, Ill., to the marketing area should not be adopted.

Although some of the route disposition of regulated handlers extends beyond the boundaries of the Chicago Regional marketing area, it is neither practical nor reasonable to stretch the regulated area to cover all areas where a handler has or might develop some route disposition. Nor is it necessary to do so to accomplish effective regulation under the order. The marketing area herein proposed is a practicable one in that it encompasses the great bulk of the fluid milk sales area of regulated handlers.

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

If only a pool handler's "in-area" sales were subject to classification, pricing and pooling, a regulated handler with Class I sales both inside and outside the marketing area could assign any value he chose to his outside sales. He thereby could reduce the average cost of all his Class I

milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area.

Unless all milk of such a handler were fully regulated under the order, he in effect would not be subject to effective price regulation. The absence of effective classification, pricing and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and could lead to a complete breakdown of the order. If a pool handler were free to value a portion of his milk at any price he chooses, it would be impossible to enforce uniform prices to all fully regulated handlers or a uniform basis of payment to the producers who supply the market.

It is essential, therefore, that the order price all the producer milk received at a pool plant regardless of the point of disposition.

2. *Individual handler pooling proposals.* The proposals to adopt individual handler pooling within the Chicago Regional marketing area, including that to reinstate the Milwaukee, Wis., Federal order (No. 39) with its individual handler pooling, should be denied.

There were two proposals for individual handler pooling. One would adopt such pooling for the entire Chicago Regional market. The other would remove from the Chicago Regional market that territory formerly under the Milwaukee order so as to reinstate such order with its individual handler pooling of producer returns. The first proposal was offered by a regulated handler. The latter proposal was made by a dairy farmer and three cooperative associations serving Milwaukee-based handlers and was supported by several handlers who were regulated under the former Milwaukee order.

Under individual handler pooling, each handler pays his producers a uniform price based on his utilization of their milk at the applicable class prices. Producers supplying different handlers in an individual handler pool market receive different uniform prices because of the varying proportions of milk utilized in Class I by handlers. Such pooling arrangement yields the highest prices to those producers fortunate enough to deliver to plants with a high percentage of Class I utilization.

Under marketwide pooling, a producer supplying the regulated market is assured a return based on his pro rata share of the total Class I sales of the market. The blend price that each producer receives each month depends on the overall utilization of producer milk received at the pool plants of all regulated handlers. Although each handler is required to pay classified prices for producer milk in accordance with his utilization of such milk, the blended prices to producers will be the same for all producers under the order irrespective of the uses made of such milk by the individual handler.

Instituting individual handler pooling for the entire Chicago Regional marketing area would disrupt the efficient channels of marketing milk which have been



established over the years and undoubtedly lead to destructive competition among producers for the Class I market. This is precisely a marketing condition which the Congress sought to correct or prevent by the use of orders with provision for the marketwide pooling of producer returns.

The present Chicago Regional marketing area, which includes all of northern Illinois and virtually all of eastern and southern portions of Wisconsin, is essentially coextensive with the production area for the market. About 85 percent of the market's milk supply comes from Wisconsin dairy farms. Based on June 1969 data, the market's supply is assembled at 171 plants, of which 106 are distributing plants and 65 are supply plants. About 20 percent of the market's supply is received directly from farms at the 106 distributing plants. The 65 supply plants receive about 80 percent of the milk associated with the market and ship about 25 percent of such milk for Class I uses by distributing plants. The remaining 75 percent of the milk at supply plants represents the reserve supplies on the market.

If individual handler pooling were instituted in this market, the producers of about 80 percent of the market's supply (i.e., those delivering to supply plants) would be burdened with carrying virtually all of the market's lower-valued reserve. Milk from these producers, nevertheless, is equally eligible quality-wise with milk in other plants now serving the market, and is essential to meeting the daily and weekly variations in the Class I requirements of the market. Thus, to provide individual handler pooling would assign, in effect, the preferential (higher-valued) Class I market to relatively few of the eligible producers, i.e., those who happen to be delivering to distributing plants (about 20 percent of the market's supply), while burdening the remaining 80 percent of the producers with the market's surplus milk, which is priced \$1.20 per hundredweight below that milk used for Class I purposes.

This situation could be expected to provide the incentive for producers and their cooperatives associated with supply plants to enter into various arrangements with the handlers who operate distributing plants to gain a larger share of the Class I market. Being left with a small, or perhaps no, share of the Class I market, such producers and cooperatives could only gain a place in the fluid market by compromising the minimum Class I price through rebates and other inducements favorable to the handler.

Distributing plant handlers would have a great incentive to enter into such arrangements so as to lower Class I milk cost and to gain procurement advantage over their competitors. This type of activity, in turn, would place pressure also on the other 20 percent of the producers to compromise on the Class I price in order to retain their Class I outlet. This could only lead to cut-throat competition and market chaos.

Marketing circumstances very similar to those present in the Chicago Regional market existed at the inception of the

New York market order and prompted the Supreme Court of the United States to make the following finding (see decision in *United States et al. vs. Rock Royal Cooperative, Inc., et al.*): "It is generally recognized that the chief cause of fluctuating prices and supplies is the existence of a normal surplus which is necessary to furnish an adequate amount for peak periods of consumption" \* \* \* "Since these producers are numerous enough to keep up a volume of fluid milk for New York distribution beyond ordinary requirements, cut-throat competition even among them would threaten the quality and in the end the quantity of fluid milk deemed suitable for New York consumption. Students of the problem generally have apparently recognized a fair division among producers of the fluid milk market and utilization of the rest of the available supply in other dairy staples as an appropriate method of attack for its solution."

The Supreme Court concluded further that marketwide pooling " \* \* \* is ancillary to the price regulation, designed, as is the price provision, to foster, protect and encourage interstate commerce by smoothing out the difficulties of the surplus and cut-throat competition which burdened this marketing." Thus, marketwide pooling not only was found to be constitutional but also was found to complement the class price provisions in situations where there is an unequal distribution of the reserve milk supply among various handlers and producers.

A more recent example of problems arising under individual handler pooling in very similar circumstances involved the Delaware Valley order resulting in the need to change from individual handler pooling to a marketwide pool under such order. In the Assistant Secretary's April 1967 decision in this matter (32 F.R. 5876) official notice of which is taken, it was concluded that " \* \* \* the basic problem under the Delaware Valley order stems from the disparity of returns which exists among producers in this and adjacent Federal order markets \* \* \* Such problem can be resolved most effectively by providing a marketwide pool arrangement in lieu of existing handler pooling provisions. This change will eliminate or substantially reduce the financial incentive which is the basic cause of the disruptive marketing arrangements contrived to avoid and thereby compromise the minimum order prices for the Delaware Valley market. Short of such a change, there is no effective means, under existing statutory authority, of insuring the integrity of the regulation, and the prompt, effective and uniform application of pricing provisions to all handlers."

The Department may not ignore these kinds of experiences. The success of the milk order program over the years in furthering the aims of the statute in large measure has been the assurance of uniform and impartial application of the regulation to all handlers and equitable and full distribution of proceeds among producers, particularly where the burden of the reserve milk is not handled proportionately by all plants. Marketwide

pooling has constantly demonstrated its ability to stabilize marketing conditions and insure the orderly marketing of the total volume of milk associated with a market under such circumstances.

The application of marketwide pooling under the Chicago Regional order has promoted a higher degree of market stability than existed prior to its promulgation by insuring that all producers supplying the entire market share on a uniform basis the Class I and Class II utilization of the market and thus has assisted in the handling of milk supplies in an economical manner. Under such pooling, producers and their cooperatives throughout the common supply area have tended to market their milk to those outlets which represent the least cost to them, normally the plants located nearest to their farms. Moreover, milk tends to move to distributing plants only in the amount needed for Class I uses, while the reserve supply is processed at manufacturing plants located near the farms.

Prior to the promulgation of the Chicago Regional order on July 1, 1968, nine counties and a portion of another, all in the State of Wisconsin, were regulated under the Milwaukee order. As previously stated, that order provided for the individual handler pooling of producer returns. On the basis of the Assistant Secretary's May 15, 1968, decision on the Chicago Regional order, the territory then regulated under the Milwaukee order plus territory regulated under the Madison, Wis., Northeastern Wisconsin, Rock River Valley, and Northwestern Indiana orders were combined with the territory formerly regulated under the Chicago, Ill., order plus the remaining portions of five Illinois counties adjacent to the former Chicago marketing area into the Chicago Regional marketing area. On January 1, 1969, the Northwestern Indiana territory was deleted from the Chicago Regional marketing area and combined with two other Indiana markets to form the Indiana marketing area.

Milwaukee is an integral part of the Chicago Regional marketing area. It lies close to the center of the supply area for the entire market. Handlers with plants located in Milwaukee compete extensively throughout the marketing area with other handlers both for milk supplies and in the route disposition of fluid milk products. To carve out of the overall marketing area this small segment, thereby giving preferential price treatment through individual handler pooling to those producers who deliver to Milwaukee handlers, would encourage and abet the kind of market conditions cited above which must be avoided if orderly marketing is to prevail.

If the Milwaukee order were reinstated the difference in producer prices between Chicago and Milwaukee which existed previously when Milwaukee had an individual handler pool could be expected to be much greater now. This results mainly because the present Class I differential at Milwaukee of \$1.20 is 31 cents higher in relation to the basic formula price than it was under the former Milwaukee order.



During 1965 (the last calendar year in which the former Chicago order was in effect) the annual average Chicago blend price was \$3.70. This was 21 cents below the Milwaukee Class I price of \$3.91. Thus, a producer under the Milwaukee order delivering to a handler who had 100 percent of his producer receipts utilized as Class I milk received 21 cents more than a Chicago producer who received the announced blend price.

Class I prices at Milwaukee under the Chicago Regional order during the 12-month period ending in June 1969 averaged \$5.53 while the announced blend price averaged \$5. Thus, this 53-cent spread between the Class I and blend price is 32 cents greater than it was in 1965.

If the Milwaukee individual handler pool had been in effect during the more recent 12-month period, some Milwaukee producers might have received as much as the \$5.53 Class I price as their blend price. On the other hand, the Chicago Regional order blend price would not have been higher than the \$5 average. Consequently, the difference in blend prices to neighboring producers could have been as great as 53 cents per hundredweight.

The assurance that all producers serving the Chicago Regional market will receive a pro rata share of the Class I sales is even more acute now than when the decision was made to establish a Chicago Regional order, including Milwaukee. In the Assistant Secretary's May 15, 1968, decision on the Chicago Regional order (33 F.R. 7516), official notice is hereby taken, it was concluded that marketwide pooling was "necessary to prevent unequal allocation of the burden of market reserves on certain groups of producers." Obviously, from the foregoing such conclusion continues to be applicable. The price difference between the Milwaukee area and the remainder of the Chicago market averaged 9 cents higher in favor of Milwaukee at the time of the hearing on the Chicago Regional order. Such price difference at this time would be, as above indicated, much greater in favor of Milwaukee.

Except for the representatives of about 1,500 producers who deliver their milk to handlers who were regulated under the former Milwaukee order, the proposal to return to the former Milwaukee order received no support from any other group. A witness representing more than half of the 16,700 producers supplying the Chicago Regional market expressed strong opposition to the proposal on the part of the producers he represented and indicated the likelihood that such producers would prefer no order than to return to the conditions of widely varying differences in blend prices among neighboring producers that existed prior to July 1968.

On the basis of the above considerations, both the suggestion to adopt individual handler pooling throughout the entire Chicago Regional market and the proposal to reinstate the former Milwaukee order are hereby denied.

3. *Pool plant performance requirements for supply plants and reload point.*

The standards required to qualify a supply plant for pool status should be revised. The requirements for a reload operation that would qualify as a supply plant also should be revised.

A group of operating cooperative associations proposed several changes in the pooling requirements for supply plants. These changes would require shipments during each month of the year and would include the following as qualifying shipments: bulk milk moved to other order plants and as Class I milk to unregulated plants; condensed skim milk moved to distributing plants if allocated to Class I milk; and dispositions of packaged fluid milk products.

A large Wisconsin bargaining cooperative proposed that the disposition of packaged fluid milk products from supply plants should be included toward qualifying such plants as pool plants.

Two Wisconsin bargaining cooperatives would delete the unit pooling provision from the order or as an alternative disqualify any unit during August-December that dropped a plant from the unit.

An organization representing Wisconsin cheesemakers opposed any change in the supply plant shipping requirements for pool plant status. This organization maintained that any such changes would tend to exclude small cheese plants from qualifying as pool plants while permitting the larger manufacturing plants already associated with the market to take producers away from these small cheese plants.

Presently, a supply plant is a pool plant in any month it ships as fluid milk products (except filled milk) to pool distributing plants, producer-handlers, and any partially regulated distributing plant to the extent of its distribution of packaged Class I products in the marketing area, 40 percent of its Grade A receipts, including diversions, during each of the months September-November, or 30 percent of such receipts during each of the other 9 months of the year. Under certain conditions the Director of the Dairy Division may adjust these percentages during August-December up to 10 units higher or lower. Also supply plants which qualify as pool plants during each month of August-December retain their pooling status during the next 7 months regardless of their shipments.

A reloading facility serving as an assembly point where milk from smaller tank trucks is pumped over into larger over-the-road tankers also may qualify as a pool supply plant. Presently, however, there are no requirements as to the type of facilities that are recognized as "reload points".

Two or more supply plants currently are considered a unit for the purpose of meeting the shipping requirements under specified conditions. The handler or cooperatives establishing a unit must notify the market administrator by August 1 of each year of the plants to be included in the unit and no additional plants may be added prior to August 1 of the following year.

*Monthly shipping percentages.* The supply plant shipping requirements

should specify that supply plants which qualify as pool plants during August-December on the basis of the present shipping requirements should retain their pool status during the next following January-July period if they ship as fluid milk products (except filled milk) to distributing plants 10 percent of their Grade A receipts each month. Any such plant not meeting the 10 percent shipping requirement in any month during the January-July period would not be a pool plant in that month and all of the remaining months of the period that it did not meet the 10 percent shipping requirement.

The shipping performance requirements for supply plants are established to identify those plants engaged primarily in supplying the market and to aid the assurance of an adequate supply of milk for the market. All supply plants or units of supply plants which share in the marketwide pooling of producer returns should be expected to perform on an equitable basis in meeting the demands of the fluid market. Under the present provisions, which require supply plants to ship milk only during August-December, a few supply plants or units of supply plants are not serving the market on a year-round basis while most supply plants are making shipments during each month of the year. To assure that all of the milk that shares in the marketwide pool is made available in all months of the year it is necessary to require some shipment from each supply plant in each month.

Even if all the producer milk associated with distributing plants were used as Class I milk, distributing plant handlers would still need to receive at least 35 percent of their Class I requirements from supply plants each month of the year. However, handlers' daily requirements during each week vary considerably. The group of operating cooperatives stated that their shipments vary from a high of 5 million pounds on 1 day during the week to 800,000 pounds on Saturdays. Thus, the need for milk from supply plants to fulfill the Class I needs of handlers each month greatly exceeds the bare minimum of 35 percent.

During the months of March-June 1969 there were from three to nine supply plants and units out of a total of 31 to 39 supply plants and units that shipped less than 10 percent of their receipts to distributing plants. The remaining 28 to 30 supply plants and units each shipped more than 10 percent of their receipts each month during this period. Plants in the latter group received more than 70 percent of all the milk received at pool supply plants during this 4-month period and more than one-half of all the pool supply plants and units shipped in excess of 30 percent of their receipts during each of these months. While the majority of the supply plants and units associated with the market are making their milk available for use in the fluid market during all months of the year, a small group of supply plants and units are not participating in this necessary function.



The shipping requirement of 10 percent during all the months January-July should be adequate to encourage supply plants to serve fluid milk outlets on a continuing basis. The proposed higher shipping requirement of 20 percent during the months January-March and July might encourage the uneconomic movement of milk to distributing plants merely for the purpose of meeting the supply plant pooling requirements. If situations should arise where additional milk supplies are needed during any of these seven months, the Director of the Dairy Division is given authority by this decision to increase the shipping requirement during this period to 20 percent. This flexibility in requirements should assure that adequate, but not excessive, supplies of supply plant milk will be available at all times to fulfill the fluid needs of the market.

During the months January-July any pool supply plant that does not meet the 10 percent shipping requirement should not be a pool plant in that month and in all remaining months of the period that it does not meet the 10 percent shipping requirement. It is not necessary to require a supply plant which fails to qualify during one of these 7 months to meet the higher 30 percent shipping requirement. The 30 percent requirement is to assure that any supply plant coming on the market during these 7 months which was not a pool plant during the previous fall is substantially associated with this market before it can share in the marketwide pooling of producer returns.

**Unit pooling of supply plants.** Any proprietary handler that operates a pool distributing plant and qualifies two or more of its supply plants on the unit basis should be required to receive bulk fluid milk products (except filled milk) at its pool distributing plant during the January-July period only from pool supply plants in its own unit system unless the total shipments from the unit to the handler's pool distributing plant during the month amount to at least 30 percent of the total receipts at the supply plants in the unit. If the handler does receive fluid milk products at his pool distributing plant from pool supply plants outside his unit under the conditions specified above, then the handler's unit would be disqualified and the pool status of each plant in the unit would be determined separately.

Some pool distributing plant handlers qualify several supply plants on a unit basis. During the 7 months each year of automatic pool plant status these handlers purchase milk from pool supply plants outside their unit system for use at their distributing plants even though they have milk available in their own units. To assure this milk in the unit system is made available for use in the fluid market at all times, the unit should be dissolved if, during any of the months January-July, the operator of a pool distributing plant which also has a supply plant unit purchases any milk from pool supply plants of others. An exception would be when the amount shipped

from the unit is equivalent to that which qualifies any new plant that first becomes associated with the market during these 7 months.

To prevent a handler from circumventing these requirements by establishing two separate corporations, one for his distributing plant and the other for his unit of supply plants, the provisions should specify that the acts of any person who is an affiliate of, or who controls or is controlled by, a handler shall be considered as having been performed by the handler.

If a unit is dissolved the pooling qualifications of each plant within the unit would be determined upon the basis of its individual shipments. This would recognize the shipments of individual plants within the unit system and would not disqualify those plants within the unit which have shipped sufficient quantities of fluid milk products to be pool plants.

Two Wisconsin bargaining cooperatives proposed to delete the unit pooling provisions entirely or, as an alternative, to dissolve the unit if there were any change in the number of plants associated with the unit during the period August-January. Unit pooling has been found practicable in this market since it promotes the economic movement of milk to the market. Excessive cost to the pool in the form of location credits is avoided by unit pooling since shipments of milk to distributing plants from distant plants solely for the purpose of qualifying such plants when milk of the handler is available at nearer plants are made unnecessary. Thus, the provisions for unit pooling of supply plants should be retained.

The purpose of the above proposals was to limit the unit pooling privilege to assure that each unit would fulfill the shipping requirements for a specified period of time. The changes adopted herein with respect to the unit pooling provisions offer reasonable assurance that units of supply plants will fulfill their obligations to supply the fluid market when milk is needed.

**Packaged dispositions from supply plants.** In determining the percentages set forth as the minimum shipping requirements, the receipts of milk at the supply plant would be reduced by the amount of any packaged fluid milk products (except filled milk) processed and packaged in the plant which are both disposed of on routes and shipped to nonpool plants for distribution outside the marketing area.

The dispositions of packaged products described above should be deducted from the plant's receipts rather than included in its qualifying shipments to prevent a distributing plant from increasing its milk supply and qualifying as a supply plant. Including such shipments in qualifying the supply plant would reduce, of course, the amount of the remaining receipts at the plant that must be available for fluid use in the marketing area.

The pooling requirements for distributing plants include shipments of packaged fluid milk products to other

plants as a qualifying disposition. To afford comparable treatment to supply plants such shipments, if to nonpool plants for distribution outside the marketing area, should be deducted from the plant's receipts. Any shipment of packaged fluid milk products to pool plants, producer-handlers or to partially regulated distributing plants for distribution inside the marketing area should count as a qualifying shipment as at present.

A pool supply plant located outside the marketing area in Marshfield, Wis., distributes milk on routes in the unregulated portions of Marathon and Wood counties. The operator of this plant testified that less than 10 percent of his total receipts are distributed on routes in the Marshfield area. His plant qualifies as a pool plant based on his shipments of fluid milk products to a distributing plant located in Madison.

The route sales from a supply plant should be deducted from the total receipts at the supply plant in determining its pool plant status because they represent a dependable and continuing market for a portion of the fluid milk products received at the plant. Permitting this handler to deduct his route sales from his total receipts will distinguish those receipts at his plant which are needed for his out-of-area routes and those which are continuously available for shipment to meet the fluid milk requirements of distributing plants. This will allow him the needed flexibility to continue his outside route business without it affecting his pool supply plant status under the order.

Shipments of bulk fluid milk products from supply plants to nonpool plants should not be included in determining the supply plant pooling qualifications. Such shipments do not demonstrate a supply plant's association with this market. Generally, they are made on an opportunity basis and represent supplemental fluid milk needs of other markets. The minimum performance requirements are established to distinguish between those plants substantially engaged in serving the fluid needs of this market and those plants which do not serve this market. This is essential for the order to aid in the assurance of a supply of milk for the market and to provide an equitable sharing of the burden of the reserve milk supply.

**Shipments of condensed skim milk.** The product pounds of condensed skim milk shipped from a supply plant to a distributing plant should be considered a qualifying shipment to the extent it is reused and classified as Class I milk.

The order presently does not include the shipments of condensed skim milk as a qualifying shipment since such condensed skim milk is not a fluid milk product. In the Assistant Secretary's May 15, 1968, decision he stated that "Class II milk would include all skim milk and butterfat used to produce any product other than a fluid milk product. It thus would include milk used in manufactured products such as \* \* \* evaporated and condensed milk \* \* \*"



Condensed skim milk is used to fortify some fluid milk products to make them more palatable. Proponents contended that to the extent such condensed skim milk is used to fortify fluid milk products the shipment of such skim milk should count toward qualifying the shipping plant as a pool plant. A large Wisconsin bargaining cooperative supported this proposal; however, they would give the supply plant credit at the fluid milk equivalent for such shipments.

Proponents' representative stated that there are some distributing plants that make their own cottage cheese (a Class II disposition) which might have as much as 25 percent of their receipts utilized as Class II milk. Presently, if such plant purchased fluid skim milk from a supply plant to make this cottage cheese, the shipment of the fluid skim milk would be considered a qualifying shipment. Since these shipments of fluid skim milk for Class II uses are included in qualifying the supply plant, it is equally logical to also include shipments of condensed skim milk as qualifying supply plants, especially when to be a qualifying shipment the condensed skim milk must be used in a fluid milk product and classified as Class I milk. Further, it is a customary practice in this market to use condensed skim milk in fortifying fluid milk products.

Only the product pounds of condensed skim milk that are shipped and classified as Class I milk should be considered in determining a supply plant's pooling qualifications. In the classification provisions of the order, only the actual pounds of nonfat milk added to a fluid milk product are classified and priced as Class I milk. The difference between the actual pounds used and the fluid milk equivalent is classified as Class II milk.

*Authority of Director of Dairy Division.* The Director of the Dairy Division should be permitted to increase or decrease the shipping requirements by up to 10 percentage points during any month of the year. The present provisions specify that the Director may alter these requirements only for the months August-December. These are the 5 months that supply plants must qualify presently if they are to achieve automatic pool plant status during the next January-July period. Since the amendments adopted herein would require some shipping requirement each month, the authority for the Director of the Dairy Division to alter the shipping requirements should be extended to include all months of the year.

*Reload operations.* The requirements for a reload operation under the order that may qualify as a pool plant should specify that it be a building with adequate facilities for cleansing tank trucks and at which milk is transferred from one tank truck to another where it is commingled with other milk for re-shipment to another plant. Such an operation would be considered a supply plant and subject to the same pool plant requirements as supply plants.

Presently, the facility at which producer milk is transferred from one tank

truck to another truck is considered a supply plant under the order and the producer milk is priced at that location. In some instances reloading operations have taken place at one producer's farm one day and at some other producer's farm another day. Under such circumstances the market administrator is placed in the difficult position of determining the proper location at which to verify the receipt of such producer's milk or to price the milk. Conceivably, during the same delivery period the milk might be subject to pricing at several locations.

A group of operating cooperatives proposed that the definition of a reload point should be limited to a building designed for reloading operations and should be treated under the order as a supply plant. Any other type of reloading operation would not be a pricing point and the milk would be priced at the pool plant where the milk is received.

In most instances, the health authorities associated with the Chicago Regional marketing area require that reloading operations must take place inside a building that has adequate facilities for the cleansing of tank trucks.

Amending the order to provide that the pool supply plant definition shall include only buildings with milk handling facilities will result in more equitable distribution of returns to producers by establishing a fixed point at which their milk is priced. Accordingly, the pool supply plant requirements should include a building with adequate facilities for cleansing tank trucks at which milk moved from the farm in a tank truck is transferred and commingled in another tank truck with other milk for re-shipment to another plant.

A handler who operates a large distributing plant in Milwaukee favored defining reload points under the order but proposed that a reload point not be a pricing point. He stated that several nearby orders had provisions similar to the one he suggested. Reload operations in this market, however, serve as assembly points for milk supplies received from producers that are reshipped to other plants. Many of the pool supply plants associated with this market are only Grade A receiving stations and thus serve this same function. All pool supply plants serve as assembling points for milk shipped to distributing plants. Since both types of operations serve as assembling points, they should receive equal treatment under the order. Accordingly, reload operations, as defined previously, should meet the same pooling requirements as pool supply plants and be considered as pricing points.

*Miscellaneous.* A question arose at the hearing whether or not the present order precludes the operation, as a separate plant, of supply plant facilities which are located in a pool distributing plant. In setting forth the provisions presently in the order with respect to distributing plants and supply plants it was intended that all of the land, buildings and other facilities which constitute a single operating unit be considered part of the dis-

tributing or supply plant. The only exception is that portion of a plant which does not have Grade A approval for the receiving, processing or packaging of fluid milk and which is physically separated from the Grade A portion. Thus, the present provisions do not recognize as a separate operation supply plant facilities located in a pool distributing plant.

The group of operating cooperatives also proposed that in the pool plant and producer milk definitions the words "received by" be replaced with "physically received in." They stated that some handlers are associating truck loads of milk with their plants by unloading only a small portion of it at their plant and unloading the remainder at another plant. The proposal was to prevent this type of receipt to assure the handler's accountability for all of the producer milk in the tank truck. However, there are a substantial number of small volume handlers in the market whose daily plant operations amount to less than a tank truckload of milk. Consequently, in the interest of efficient handling of the milk supply for such plants, there is a need to accommodate such split-load operations. Additional findings and conclusions on this matter are incorporated with the proposed revisions of the producer milk definition.

4. *Producer milk definition.* The provisions for the diversion of producer milk should be revised.

Presently, producer milk may be diverted from a pool plant to a nonpool plant during the months August-December to the extent the quantity diverted does not exceed the quantity of such producer's milk received at the pool plant. During the remaining months of the year unlimited diversions are permitted. The pricing of the first 6 days' production that is diverted each month is at the location of the plant from which diverted. All milk diverted in excess of 6 days' production each month is priced at the location of the plant of actual receipt. The order does not allow for diversions between pool plants.

There were numerous proposals to amend these provisions. One group of cooperative associations would reduce allowable diversions to nonpool plants each month to 3 days from supply plants and 8 days from distributing plants. This proposal was opposed by a cheesemaker's association. A Wisconsin bargaining association would keep the present diversion provisions and, in addition, allow handlers the alternative of diverting, on an unlimited basis, the milk of any producer to the extent the total amount diverted did not exceed 35 percent of the handler's total pooled receipts. A Rockford based cooperative would allow cooperative associations to establish, for diversion purposes, a diversion qualifying unit. Such unit, on a 12-month basis, would be permitted to divert up to 40 percent of the milk in the unit, provided that at least 60 percent of the milk was received at pool distributing plants. In addition, there were several other proposals to allow diversions between pool plants.



Diverted milk, as used in the following findings with respect to this issue, means producer milk not needed at a pool plant, and instead of being physically received at the pool plant, is hauled directly from the farms to a nonpool plant. Producer milk associated with a pool plant that is moved in a bulk tank truck directly from farms to another pool plant will, under certain conditions set forth below, be considered as a transfer between pool plants.

**Diversion of producer milk.** The diversion privilege is primarily intended to obtain efficiency in the marketing of the milk not needed at a pool plant. Only milk of dairy farmers whose status as producers is established and which is handled in such a manner that it is available for use in the fluid market, if needed at any time, should be considered as producer milk when it is diverted.

The identification of a dairy farmer as a "producer" under the order is established primarily on the basis of receipt of his Grade A milk at a pool plant. Moreover, if the order is to function to assure an adequate supply of milk for the market, it is necessary that each producer's milk be delivered regularly in a manner that demonstrates its availability at any time for use in the fluid market. A problem in formulating appropriate standards which affect performance is the fact that nonpool manufacturing plants are the outlets for about one-half of the market's reserve milk supply.

Many of the pool plants on the market do not have manufacturing facilities. Such plants include both distributing plants and supply plants. Some of the supply plants are simply receiving stations or reload points at which milk is assembled from farms for transshipment to distributing plants.

There is a substantial variation in the daily fluid milk needs of individual distributing plants. Most distributing plants do not process and package milk on Sundays. On the days that they do operate their processing and packaging schedule is generally varied in accordance with their sales volumes. The daily sales volumes of distributing plants are very uneven because the purchases of milk by consumers at stores tend to be greater during the latter part of the week and the home delivery route volume is greater on Fridays and Saturdays than during the remaining weekdays. The operators of distributing plants typically associate a sufficient supply of milk with their operation to cover their requirements on peak bottling days during the period of seasonally low production. Consequently, there are substantial quantities of milk produced on the other days of the week during the short production season as well as throughout the period of seasonally high production that is moved to plants where it can be utilized in manufactured dairy products. In many instances such plants are nonpool plants engaged primarily in processing manufacturing grade milk.

Virtually all of the milk supply for the market is hauled from the farm to plants in bulk tank trucks. On days when the

milk is not needed at distributing plants it is usually more economical to move the milk directly from the farm to nonpool manufacturing plants than to first assemble it at pool receiving stations, reload points and distributing plants for transshipment to such manufacturing plants. Because of this circumstance it would not be appropriate to curtail this practice significantly by adopting the proposal which would limit such diversion of milk to manufacturing plants on only three days per month from supply plants and 8 days from distributing plants.

Some modification of the present provision for unlimited diversion during 7 months of the year is necessary, nevertheless, to assure that the milk pooled under the order is available for fluid uses throughout the year. The manufacturing plants which handle the market's reserve supplies have the capacity to process such supplies on days when they are at peak levels. Consequently, there is an incentive to utilize such plant capacity on a continuing basis. Some such plants have taken the initiative to associate former manufacturing milk supplies with pool plants by obtaining Grade A approval for the milk of their producers. In some instances such milk is picked up at the farm in tank trucks which carry manufacturing grade milk. It is clear that the milk of such Grade A producers is not handled in a manner which makes it available for fluid use.

To assure its availability, producer milk delivered in bulk tank trucks either to a pool plant or diverted to a nonpool plant must be commingled on the truck only with milk from other dairy farmers that is in compliance with the Grade A inspection requirements of a duly constituted health authority.

In addition to the above requirement, milk of a producer eligible for diversion to a nonpool plant should be received at a pool plant each month in an amount representing not less than 4 days' production. These two requirements will insure that milk remains qualified for and available to the market. Moreover, such delivery requirement for an individual producer complements the minimum 10 percent shipping requirement for a pool supply plant.

The proposal under which both proprietary handlers and cooperative handlers could divert producer receipts on a percentage basis should be adopted. This would be in addition to the present basis which relates allowable diversions to the number of days the production of the individual producer is received at a pool plant.

Specifically, for each of the months August through December a cooperative association could divert to nonpool plants an aggregate quantity not exceeding 50 percent of the milk of its producer members that is received at all pool plants during the month. A proprietary handler could divert for such period an aggregate quantity not exceeding 50 percent of the total producer milk received at all his pool plants during the month, exclusive of milk of producer members

of a cooperative which also is diverting milk during the month.

The addition of the percentage basis for diversions will add needed flexibility in diversions by handlers and cooperatives in the market. Such provision will assist cooperatives and handlers to achieve maximum use of available producer milk in Class I through economical handling practices.

The need to divert milk varies considerably between different handlers. Since January through July are generally the months of greatest need for diversion to nonpool plants, it is appropriate to allow unlimited diversions during these months, except with respect to the requirements set forth previously to insure that milk remains qualified for and available to the market.

During the other 5 months an additional basis for diversion is appropriate. For those handlers desiring to divert on a percentage basis, the percentage allowance should be higher than just sufficient to handle weekend reserves but lower than the allowance on individual producers. Allowing handlers to divert a quantity of milk equivalent to 50 percent of their receipts at pool plants will enable about one-third of the milk to be diverted each month during the 5 months of relatively short production. Any higher percentage than this would not assure that on peak bottling days milk would be available for the fluid market. If the percentage were lower, it could result in forcing the uneconomic movement of milk to a pool plant necessitating the transfer of the milk to a nonpool plant.

The diversion allowance established herein for handlers desiring to divert on a percentage basis yields essentially the same diversion allowance as the proposed 35 percent. Increasing the percentage and calculating the allowance in terms of receipts at pool plants will provide that diversions are based on a known quantity of pooled milk each month.

The changes set forth above in the diversion provisions are not as restrictive as some interested parties proposed but perhaps are more stringent than others desire. However, these changes should provide the needed flexibility in the handling of the market's reserve supplies.

A corporate or proprietary handler diverting milk in excess of the percentage limit would be required to designate those producers whose milk must be excluded from the pool. If the handler fails to designate those producers whose milk is thus ineligible, making it infeasible for the market administrator to determine which milk was overdiverted, all milk diverted to nonpool plants by such handler during the month should be excluded as producer milk.

All producer milk diverted should be priced at the location of the plant of actual receipt. The present provisions which price the first 6 days' production each month at the plant from which it is diverted is no longer appropriate in view of the provisions adopted herein under which handlers and cooperative associations may divert to nonpool plants a quantity representing 50 percent of its



receipts at pool plants. The new diversion provisions permit virtually unlimited diversion (except that 4 days' production each month must be delivered to a pool plant) of the milk of certain groups of their producers. Generally, it may be expected these producers will be located in the distant zones. Under such conditions, it is no longer desirable to have a portion of the diverted producer milk priced at the plant from which diverted. None of this diverted milk would represent the weekend reserve supplies moved from pool distributing plants.

The proposal of the market administrator's office to require handlers who divert milk to nonpool plants to report additional information thereon should be adopted. This proposal would require the diverting handler to maintain and submit to the market administrator's office a summary of the quantity of milk on each load diverted which would show the date the milk was picked up, the name and amount of milk received at each producer's farm and the location of the nonpool plant. Presently, the market administrator's office must devote a considerable amount of time verifying reports on diverted milk.

One handler presently is voluntarily submitting the additional information. Clerical verification of his claimed diverted milk is checked in the market administrator's office rather than in the handler's plant. This results in a savings in administrative costs.

In view of the changes made by this decision with respect to diverted milk, the additional information to be filed by diverting handlers also should assist the market administrator in verifying handlers' reports. Such information will aid him in determining that diverted producer milk is on a tank truck that contains only Grade A milk and whether the quantity of diverted milk exceeds the limits established herein.

For these reasons, plus the savings in administrative costs, this order should provide for the reporting of this additional information. These reports should be made up daily and submitted to the market administrator at the time handlers monthly reports are filed, which is the 10th day of the following month. Any handler failing to report the additional information would have any claimed diverted milk disallowed as such.

*Interhandler transfers of producer milk.* A proprietary handler operating a pool plant should be the handler accountable to the pool on producer milk he delivers to other pool plants. Prior to the first month he becomes the handler on such milk he must notify the market administrator in writing of his intention in this regard and of the plants at which the milk will be received. The milk would be considered a transfer. If all milk on the load is removed at the plant of the transferee handler it will be priced at the location of his plant. In the case of a split load some of the milk must be received at the transferor's plant and in such situation all of the milk would be priced at the transferor handler's plant.

For example, a Milwaukee handler

who receives milk from about 50 producers supplies a small handler with partial loads of bulk tank milk. The quantity varies between 7,000 and 9,000 pounds per delivery depending upon the day of the week. Since this small handler's plant is located between the 50 producers' farms and his Milwaukee plant, it will be more economical for the Milwaukee handler to deliver the partial load of milk at the other plant while the truck is on its way to his Milwaukee plant. Since the small handler only needs part of the load, the remainder is delivered to Milwaukee and the entire load would be priced at the Milwaukee location. This provision will assist relatively small handlers who have essentially Class I operations but do not have plant capacity to handle a full bulk tank load of milk.

*Government producer exemption.* The producer milk definition should provide for the exemption of a Government institution which has its milk custom packaged at a pool plant.

One handler stated that he receives about 4,000 pounds of milk per day from a State prison farm which he processes and packages. This milk is then returned to the State prison farm for consumption on the premises. This is a custom bottling type operation for the State agency and does not involve the sale of milk in commercial channels in competition with other proprietary handlers and producers.

Under the present order provisions the handler receiving the milk from such an institution is required to pay the institution at least as much as the minimum order blend price for all deliveries. The milk returned to the institution is accounted for by the handler to the pool at the Class I price. Thus, the handler incurs an obligation under the order of the difference between the Class I and blend price on the milk so returned. This order obligation customarily is passed on to the institution as part of the cost of processing the milk.

The opportunity should be provided for complete exemption from the "producer" definition and pooling provisions of the order for milk produced by an institution operated under public authority. As a matter of public policy, the operation of a dairy farm by a State institution for the purpose of carrying out a sovereign, public function of the State need not meet interference from this Federal regulation designed to regularize commercial transactions. It is proposed, therefore, that governmental bodies which operate dairy farms be provided the option of pooling, as a producer, their entire deliveries of dairy farm production to a handler or having such milk exempt from the order. This comports with the intent of the present order provisions which exempt from the pooling and pricing provisions a distributing plant operated by a governmental agency.

The alternative of complete exemption of a dairy farm operated by a Government institution must be accompanied by appropriate procedures for eliminating any order pricing requirement as to such

operations. Complete exemption would provide that any milk producer in excess of such institution's requirement and retained by the pool handler would be paid for by negotiation between the institution and the handler. The receiving handler would not be required to pay the institution the minimum blend price for such milk as announced under the order.

If an exemption were taken by the governmental body, the effect would be to eliminate the pooling of the milk retained by the handler as well as that returned to the institution for consumption. The surplus over the fluid needs of the market thus would not be increased by any excess of milk produced by the institution over its own fluid requirements. Milk that is received, processed and returned by the regulated handler to the institution would be designated "exempt milk" and any milk retained by the handler would receive credit only at the Class II price. Any such milk allocated to Class I by the handler would be subject to an equalization payment at the difference between the Class I and Class II prices.

The institution may at times purchase supplemental supplies of packaged fluid milk products from pool plants. The handler selling these supplemental supplies to the institution would include such sales with other disposition of fluid milk products which are classified and priced as Class I milk.

Because of the seasonal aspects of milk production the alternative of complete exemption should apply for not less than 12 consecutive months. If a governmental body elects the exemption, written notification to that effect should be given to the market administrator, and to the handler to which it delivers, on or before the last day of the first month for which the exemption would be applicable.

5. *Location adjustments.* The order should be amended to provide for three new zones within the present Zone I. Location differentials on Class I and producer milk would be applicable beyond 40 miles from the city hall in Chicago. To retain the present Class I prices beyond 70 miles of Chicago, the Class I differential applicable at Chicago, Illinois, should be increased from \$1.20 to \$1.26. The provisions for plus differential zones in the State of Indiana should be deleted.

Zone I, for which no location adjustment would apply, should include the city of Chicago, Ill., plus the territory within 40 miles of the Chicago city hall. Zone 2, in which an adjustment rate of minus 2 cents would apply, should be the territory beyond Zone I but within 55 miles of the city hall in Chicago. Except with respect to Zone 4, each additional 15 miles should be designated another zone with the minus adjustment rate increasing 2 cents for each such zone. Zone 4, with a minus 6-cent rate, should be that territory beyond 70 miles but within 85 miles of the city hall in Chicago plus Milwaukee County, Wis., and Winnebago County, Ill.



These changes would increase minimum Class I prices 6 cents in Zone 1, 4 cents in Zone 2 and 2 cents in Zone 3 but would not change Class I prices within the remaining zones. Minimum blend prices to producers delivering to plants located in Zone 1, Zone 2, and Zone 3 would be increased an equivalent amount.

The presently defined Zone 1 consists of all territory outside the State of Indiana within 85 miles of the city hall in Chicago plus Milwaukee County, Wis., and Winnebago County, Ill. No location adjustment applies in such zone. Each area outside the State of Indiana within an additional 15-mile radius from Chicago is another zone with the minus adjustment rate of two cents for each additional zone. In the State of Indiana the location adjustment rate is plus 2 cents for each 15-mile distance, or fraction thereof, that such plant is from the city hall in Chicago.

A group of cooperative associations proposed changing the zoning structure within the present Zone 1 because of the additional cost involved in transporting milk from the major sources of supply in Wisconsin to Chicago handlers as compared to Milwaukee handlers. An association of Chicago milk dealers supported this proposal.

Several cooperatives whose members deliver their milk to Milwaukee handlers or to handlers who have their plants located in the more distant zones under the Chicago Regional order opposed the proposal on the ground it would reduce returns to producers who deliver milk to plants located more than 70 miles from Chicago.

A cooperative association whose members supply Rockford handlers also opposed this proposal because of its possible future implications with respect to the price alignment between the Rockford location and four nearby Federal order markets. The representative of this cooperative stated that the present Class I price in the Chicago Regional market at Rockford is in reasonable alignment with the Central and Southern Illinois, St. Louis and Quad Cities-Dubuque markets. All these markets receive part of their milk from producers located in northern Illinois. He maintained that if Class I prices are raised at Chicago, then at some future date, Class I prices in these four other markets might have to be increased to retain their price relationship with Chicago. If Class I prices are not raised accordingly at Rockford, then its Class I and producer prices will be low relative to such prices in these four competing markets. This, he claimed, would cause Rockford handlers to lose their supply of milk to these other markets.

The proposed changes would cause a one-cent reduction in the blend price of all producers about once every 6 months. This reduction in pool value results from the difference in the total Class I location differential value and the total producer location differential value.

The location differentials are established herein to achieve uniform prices

to all handlers f.o.b. the market for milk which is received from producers at plants outlying from the principal consumption area by taking account of relative costs of supplying milk from varying distances. To achieve uniform prices for handlers and producers in similar circumstances, it is necessary to apply the location differentials to both the Class I price and the blend price.

More than 50 percent of the total population in the Chicago Regional marketing area is located in metropolitan Chicago and its suburbs, most of which are within 40 miles of the city hall in Chicago. This is the portion of the marketing area that is located the greatest distance from the Wisconsin supply area. More than 80 percent of the milk needed to supply metropolitan Chicago is received through a system of country supply plants, most of which are located in Wisconsin. The road systems in northern Illinois and Wisconsin are such that a substantial quantity of this milk passes near the city of Milwaukee, Wis., on its way to Chicago plants.

The May 15, 1968, decision established the present zone structure under the order. That decision found that handlers operating plants in Chicago, Milwaukee, and Rockford have extensive overlapping distribution in the portion of the marketing area intervening these three cities. Even though handlers operating plants in these three cities have overlapping distribution, the actual cost of moving milk to Chicago handlers is higher than to handlers located in these two other cities.

The average of the rates from 30 supply plant locations by one trucker for delivering milk to Milwaukee is 6 cents less than the average rate to Chicago. Since the receiving handler pays the cost of hauling milk from supply plants, the cost of supply plant milk to Chicago handlers is 6 cents more than the cost to Milwaukee handlers.

The cost of hauling milk from the farm to the plant of first receipt is generally paid by the producer. In areas where Chicago and Milwaukee handlers are procuring milk from producers the net farm price will be practically the same. If it cost 6 cents more to haul the milk to Chicago than to Milwaukee, the Chicago handler must pay the extra 6 cents or the producers will have their milk delivered to Milwaukee handlers. Whether a Chicago handler purchases his milk from Wisconsin producers or from supply plants his costs will be 6 cents greater than a Milwaukee handler. Thus, a nearby Illinois producer delivering his milk to a Chicago handler can negotiate a 6-cent higher price at his farm than a Wisconsin producer delivering his milk to a Milwaukee handler or to a Chicago handler. The cost of the milk to the Chicago handler will be the same whether it comes from an Illinois producer or a Wisconsin producer.

Handlers operating plants in the newly defined Zones 1 through 3 presently are paying the extra amounts here established for the nearby zones and producers delivering to these plants are now receiving the correspondingly higher

blend prices. This decision does not increase total costs to handlers or result in any appreciable increase in returns to nearby producers but only makes payments more uniform in the near-in zones. To retain the same Class I prices and the same general level of producer prices in all zones it is appropriate, in changing the location of price announcement, to increase the Class I and blend prices at plants located in the recommended Zone 1 by 6 cents, in Zone 2 by 4 cents and in Zone 3 by 2 cents. Consequently, the Class I and blend prices as announced would be 6 cents higher than on the present basis. Beyond 70 miles such prices would be subject to a correspondingly higher location adjustment so that the price level applicable in those parts of the milkshed where the major portion of the milk is produced would remain unchanged.

As earlier indicated, the location differential structure in the Chicago Regional market reflects differences in the cost of transporting milk to Chicago from one supply plant as compared to another. This difference in costs is reflected in the 2-cent allowance for each 15 miles. Projecting these costs to the newly defined zones, Class I and producer prices in the new Zone 2 should be 2 cents less than in the new Zone 1 while in the new Zone 3 the prices would be 4 cents lower. The minus adjustment rate should increase 2 cents for each additional zone.

The representative of the Rockford cooperative proposed at the hearing that all of northern Illinois should be in Zone 1. He stated that milk supplies in the northwest counties of Illinois are being attracted to other Federal order markets because of higher blend prices. Most producer members of this cooperative supply milk to Chicago Regional pool distributing plants in Rockford and Freeport, Ill.

There are several pool supply plants in southwestern Wisconsin at which prices will be 16 cents or more below the city of Chicago. These plants are located close enough to pool distributing plants in the Rockford area that they can supply milk to the latter plants at prices below the f.o.b. Chicago price. Also, the Rockford cooperative diverts its reserve milk supplies to a manufacturing plant located in an area of heavy milk production in Jo Daviess County, Ill. The inclusion of all northwestern Illinois in the newly defined Zone 1 undoubtedly would encourage producers in the vicinity of this manufacturing plant to deliver their milk to it rather than pay the extra hauling costs to have the milk delivered to distributing plants where it could be used in fluid outlets. Thus, it is appropriate to have northwestern Illinois fitted into the schedule of location differentials.

Class I and producer blend prices in the Illinois counties of Carroll, Jo Daviess, and Stephenson under the Chicago Regional order presently are about equal to the prices under the Central and Southern Illinois, St. Louis, and Quad Cities-Dubuque orders in these counties. The competitive price relationships are such that the present price levels under



the Chicago Regional order in these counties should be maintained.

Proponent proposing to include all of northern Illinois in Zone I stated that there is no reason to have prices in Freeport (Stephenson County) 4 cents lower than the prices in Rockford (Winnebago County). Freeport is west of Rockford and about 30 miles closer to the milk supplies in northwestern Illinois. At the transportation rate used in this order of 2 cents per 15 miles, prices in Freeport should be 4 cents less than in Rockford. Thus, the 4-cent difference in prices due to zoning accurately reflects the additional cost of transporting milk from northwestern Illinois farms to Rockford as compared to Freeport and no change in this relationship should be made on the basis of this record.

The provisions for plus location adjustments in the State of Indiana should be deleted from the order. Those provisions were incorporated at the time the order included Northwestern Indiana as part of the marketing area. On January 1, 1969, the Indiana portion of the Chicago Regional marketing area was deleted and added to the Indiana marketing area. Since that time the plus location adjustments have not been applicable at any pool plant. It would be inappropriate to establish a higher price at a pool plant located far outside the city of Chicago that might distribute milk in the city than is paid by handlers who operate plants within the city. Thus, these provisions are not needed in the order and should be removed.

Two Wisconsin based bargaining cooperatives proposed adopting three large zones that would encompass all the territory within 220 miles of Chicago. Zone 1 would include the territory within 100 miles of Chicago, Zone 2 would include the territory 100-160 miles from Chicago and Zone 3, 160-220 miles from Chicago. The Class I price in Zone 2 would be 8 cents higher than the Zone 3 price and in Zone 1 it would be 12 cents higher.

The monthly blend price would be announced for Zone 3. Monthly blend prices in Zone 1 would be the Zone 3 blend price plus an amount determined by multiplying the percentage of producer milk utilized in Class I in Zone 1 by 12 cents. The monthly blend prices in Zone 2 would be computed in the same manner except the percentage Class I utilization in Zone 2 would be multiplied by 8 cents.

This proposal was not supported by any other interested party. The group of cooperative associations who were proponents of dividing present Zone 1 into four zones and a handler located in Milwaukee, Wis., opposed this proposal.

It is not feasible in a market as large as this one where nearly 80 percent of its milk supply is received at supply plants to have location differentials which do not reflect varying transportation costs on a more refined basis. Further, the proposal would not contribute to the orderly marketing of milk as it would give some handlers an advantage over their competitors due to their source of supply and relative location to Chicago.

A 12-cent spread in the price of Class I milk would be established between Chicago city plants and supply plants located anywhere between 160-220 miles from Chicago. Under the present zoning structure, which fairly accurately reflects the variable costs of hauling milk, the price spread is 12 cents at 160 miles and 18 cents at 220 miles. A Chicago city handler buying milk from supply plants under the present location differential structure has no economic incentive insofar as location adjustments are concerned to buy milk from plants located 160 as compared to plants 220 miles from Chicago. Under the proposed zoning structure the Chicago handler would have an incentive to purchase his milk from the plant located 160 miles, since he would receive only a 12-cent location differential credit regardless of the supply plant's location in the 160-220-mile zone.

The prices received by neighboring producers could vary up to 8 cents per hundredweight depending upon the zone location of the plant to which they deliver milk. Between Zones 2 and 3 an 8-cent spread in Class I prices would occur. Fond du Lac, Wis., is just under 160 miles from Chicago and thus would be in Zone 2. Oshkosh, Wis., about 20 miles north of Fond du Lac, is just over 160 miles from Chicago and thus would be in Zone 3. Neighboring producers located equidistant from these two cities would have the same hauling costs if one producer delivered his milk to Fond du Lac while the other delivered to Oshkosh. Presently, the producer delivering to Fond du Lac receives 2 cents more for his milk because Fond du Lac is in a higher priced zone. Under the proposal this difference in prices probably would increase to around 5-7 cents. Differences in net farm prices of this magnitude could cause dissatisfaction among producers and lead to disorderly marketing conditions. Also, since the plant at Fond du Lac is a supply plant and at Oshkosh it is a distributing plant, this could cause a distortion in the allocation of milk supplies since producers would have an incentive to deliver to the supply plant rather than the distributing plant.

There are no distributing plants located in Fond du Lac. The nearest distributing plants to Fond du Lac are located in Oshkosh and in Waupun. Both of these plants are about 20 miles from Fond du Lac. However, Oshkosh would be in proposed Zone 3 and Waupun would be in Zone 2. The Waupun handler would have an 8-cent higher Class I price than the Oshkosh handler. This would give the Oshkosh handler a price advantage of nearly one-fourth cent per quart in competing for sales in Fond du Lac.

Since this proposal would not contribute to the orderly marketing of milk and would not assure uniform prices to producers and handlers, it should not be incorporated into the order. Accordingly, it is denied.

6. *Class II milk price.* No change should be made in the computation of the monthly Class II milk price.

The Class II price is the basic formula price for the month. Such basic formula price is the average of prices paid for manufacturing grade milk at plants in Minnesota and Wisconsin, as reported by the Department, adjusted to a 3.5 percent butterfat basis by applying a butterfat differential determined by multiplying the Chicago butter price by 0.12.

The reported price, commonly called the Minnesota-Wisconsin price, is used in many Federal order markets to determine the value of milk used in manufacturing. It is used in most of the nearby markets which compete with Chicago Regional handlers for the Grade A milk supply in the region, namely the Iowa markets, St. Louis-Ozarks, Central and Southern Illinois, Michigan Upper Peninsula, Minneapolis-St. Paul, and Southeastern Minnesota-Northern Iowa.

The Minnesota-Wisconsin price was not opposed as the basic formula price for pricing Class II milk. However, two cooperatives (Manitowoc Milk Producers Cooperative and Milwaukee Cooperative Milk Producers) proposed that the Class II price should be 10 cents more than the Minnesota-Wisconsin price. A group of operating cooperatives, on the other hand, proposed, at the hearing, an alternative formula based on the market values of butter and nonfat dry milk which, if it were lower than the Minnesota-Wisconsin price, would become the effective Class II price.

Proponents for an increase in the Class II price urged that their proposal be adopted to discourage handlers from associating additional supplies of milk with the pool for manufacturing uses.

Some manufacturing plants in the milkshed are currently paying their bulk tank producers prices which exceed the Class II price under the order. At manufacturing plants in Wisconsin prices to bulk tank producers average about 20 cents per hundredweight above prices paid to can producers. To the extent that there are a significant number of can producers at manufacturing plants in the area it can be expected that the average of the prices paid at all manufacturing plants will be slightly below the prices paid at plants receiving milk from only bulk tank producers.

This may now be significant enough for some pool manufacturing plants to seek additional milk supplies. However, as the trend to bulk tank handling progresses this disparity in prices will continue to decline since more than one-half of the manufacturing milk in the area is now handled in bulk tanks.

Proponents for an alternative Class II price formula which would limit such price in relation to the market value of butter and nonfat dry milk urged that their proposal be adopted because of the cost of idle capacity in their manufacturing plants when their milk is shipped to distributing plants.

In the Assistant Secretary's May 15, 1968, decision (official notice of which has previously been taken) he rejected a similar alternative formula which could cause the effective Class II price to be lower than the Minnesota-Wisconsin



price. That formula was proposed by the same group of operating cooperatives. In that decision he found that in view of the strong demand for milk to be used in manufacturing as demonstrated by the prices paid for ungraded milk and premiums paid for Grade A milk there was no basis for concluding that a Class II price as much as 16 cents less than the Minnesota-Wisconsin manufacturing milk price was needed to assure the orderly marketing of surplus Grade A milk.

The findings contained in that decision are equally applicable at this time. At the time of the hearing, the alternative formula would have yielded Class II prices about 15 cents less than the Minnesota-Wisconsin price. At the same time handlers were paying prices to producers which were in excess of the Class I prices established under the order. Prices paid for manufacturing grade milk were averaging about 20 cents per hundredweight more than they were a year earlier. No new reasons were given at this hearing for adopting a formula which would lower the Class II price relative to the Minnesota-Wisconsin price. Further, proponents offered no testimony to indicate that conditions have changed since the May 15, 1968, decision was issued with respect to the Class II price levels.

The Class II price level should be high enough to reflect the full value of producer milk disposed of in manufacturing uses yet not exceed the level at which the market's reserve milk can be moved to manufacturing outlets in an orderly fashion. Too high a Class II price will result in handlers' unwillingness to accept quantities of milk in excess of their Class I needs. Too low a Class II price on the other hand will encourage handlers to seek milk supplies solely for the purpose of converting them into Class II products.

The Minnesota-Wisconsin price adjusted to a 3.5 percent butterfat content should continue to be the Class II price. The Minnesota-Wisconsin price series reflects a price level determined by competitive conditions which are affected by demand in all of the major uses of manufactured dairy products. Further, it reflects the supply and demand of manufactured dairy products within a highly coordinated marketing system which is national in scale. Any higher Class II price may cause producers under the order to encounter difficulties in marketing reserve supplies, while a lower price would tend to encourage manufacturers supply plants to be less willing to supply fluid milk outlets.

For the reasons set forth above, it would not be appropriate to increase or reduce the Class II price under this order and, accordingly, those proposals are denied.

7. *Seasonal incentive plan.* The proposals to provide a plan which would seasonally adjust the blend price computations under the order should be denied on the basis of this record.

An association of milk dealers in Chicago and a handler who operates a distributing plant located in Milwaukee

proposed a seasonal incentive plan of payments to producers (commonly referred to as "Louisville plan"). Although their proposals differed in details, they both would have the same effect, a wider seasonal swing in prices to be paid to producers. Proponents maintained that such a plan is necessary in the Chicago Regional market to encourage producers to even out the seasonal swings in milk production and to align blend prices to producers under the Chicago Regional order with nearby markets that have Louisville plans and which compete with Chicago Regional handlers for milk supplies. These proposals were supported by two cooperative associations whose members are located generally within the direct delivery area for handlers in Chicago and Milwaukee.

A group of operating cooperatives, a bargaining cooperative and a Wisconsin handler opposed the adoption of a Louisville plan. Members of these cooperatives are located generally in the more distant areas of Wisconsin where substantial volumes of milk are produced for manufacturing purposes. Representatives of the cooperatives and handler stated that such a plan would cause the producer prices under the order to be lower than the prices paid for manufacturing grade milk in the farther out zones during the "take out" months. This would cause pool producers to switch from delivering to pool plants to delivering their milk to manufacturing plants during those months.

Louisville or seasonal incentive plans cause the blend prices computed under the order to vary seasonally. Money is deducted from the pool fund at a certain rate per 100 pounds of producer milk received during each of the months of seasonally highest production. The total amount of money accumulated from these deductions is then paid to producers by adding a certain proportion of the total deductions to the producer settlement fund during each of the months of seasonally lowest production. Through this adjustment of the monthly blend prices producers are encouraged to level out their seasonal milk production pattern. Such plans are used in many Federal order markets.

The operation of Louisville plans does not affect the obligations of handlers since such plans do not alter the class prices which handlers must pay. Thus, handlers do not have a direct monetary interest in the operation of Louisville plans.

Sufficient milk is available to meet handlers' needs at all times during the year. There was no contention that any handler has been short of milk at any time since the promulgation of the Chicago Regional order.

During the proposed take out month of June 1969 the order blend prices beyond Zone 8 would have been lower than the prices actually paid by some manufacturing plants for manufacturing grade milk. Under such conditions producers in the more distant territory would have had an incentive to shift their milk deliveries to nonpool manufacturing plants during the take out months and then to

shift to pool plants during the pay back months. In this circumstance pool handlers in this distant area would likely be forced to pay higher than order prices to be assured a milk supply for fluid use during the period of peak production. This condition should not be encouraged.

Proponents stated that dairy farmers in southern Wisconsin and in Illinois supply milk to the Indiana, Central Illinois, Southern Illinois, and St. Louis, Mo., markets. The farms of these dairy farmers, they said, are generally interspersed with Chicago Regional producers. Although there are some Chicago Regional order producers with farms located among those of producers supplying these other markets, nearly 80 percent of the milk regulated under the Chicago Regional order is received first at supply plants in Wisconsin. Most of those plants are located beyond the area from which these other markets draw milk and consequently the main supplies of milk are not influenced to any great extent by the Louisville plans.

The record does not reveal any clear need to provide an incentive for more uniform production pattern in this market in order to assure an adequate supply. The proposals are denied at this time.

#### RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

#### GENERAL FINDINGS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

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

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



wholesome milk, and be in the public interest; and

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

#### RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

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

#### 1. Section 1030.6 is revised as follows:

##### § 1030.6 Chicago Regional marketing area.

"Chicago Regional marketing area", hereinafter called the "marketing area", means the territory within the boundaries of the following places including piers, docks, and wharves and territory wholly or partly within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

#### (a) In the State of Illinois:

##### (1) The counties of:

Boone.	Kendall.
Carroll.	Lake.
Cook.	Lee.
De Kalb.	McHenry.
Du Page.	Ogle.
Jo Daviess (except the city of East Dubuque).	Stephenson.
Kane.	Will.
	Winnebago.

#### (2) In Whiteside County:

##### (i) The townships of:

Caloma.	Jordan.
Hahnman.	Montmorency.
Hopkins.	Sterling.
Hume.	Tampico.

#### (b) [Reserved]

#### (c) In the State of Wisconsin:

##### (1) The counties of:

Adams.	Menominee.
Brown.	Milwaukee.
Calumet.	Monroe.
Columbia.	Oconto.
Crawford.	Oneida.
Dane.	Outagamie.
Dodge.	Ozaukee.
Fond du Lac.	Portage.
Forest.	Racine.
Grant.	Richland.
Green.	Rock.
Green Lake.	Sauk.
Iowa.	Shawano.
Jefferson.	Sheboygan.
Juneau.	Vernon.
Kenosha.	Vilas.
Kewaunee.	Walworth.
La Crosse.	Washington.
Lafayette.	Waukesha.
Langlade.	Waupaca.
Lincoln.	Waushara.
Manitowoc.	Winnebago.
Marquette.	

#### (2) In Door County the city of Sturgeon Bay;

#### (3) In Marathon County:

##### (i) The towns of:

Bergen.	Marathon.
Berlin.	Mosinee.
Beyant.	Norrie.
Easton.	Plover.
Elderon.	Reid.
Franzen.	Rib Mountain.
Guenther.	Ringle.
Harrison.	Stettin.
Hewitt.	Texas.
Knowlton.	Wausau.
Kronenwetter.	Weston.
Maine.	

##### (ii) The villages of:

Brokaw.	Marathon.
Elderon.	Rothschild.
Hatley.	

##### (iii) The cities of:

Mosinee.	Wausau.
Schofield.	

#### (4) In Wood County:

##### (i) The towns of:

Cranmoor.	Rudolph.
Grand Rapids.	Saratoga.
Port Edwards.	Seneca.

##### (ii) The villages of:

Biron.	Port Edwards.
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##### (iii) The cities of:

Nekoosa.	Wisconsin Rapids.
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#### 2. Section 1030.11 is revised as follows:

##### § 1030.11 Pool plant.

"Pool plant" means a plant at which milk is received from dairy farmers, a building with adequate facilities for cleansing tank trucks and at which milk moved from the farm is transferred and commingled in another tank truck with other milk for further shipment, or a plant at which milk is processed and packaged or manufactured, which plant or building is described in paragraph (a), (b), or (c) of this section (except an other order plant or the plant of a producer-handler or an exempt distributing plant). If a portion of the plant is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition and is physically separated from the Grade A portion, such unapproved portion shall not be considered a part of the pool plant. In determining the pool plant qualifications of plants pursuant to this section on milk subject to the conditions specified in § 1030.13(h) the receipts and disposition of the plant operated by the transferor handler shall exclude the milk described in § 1030.13(h)(3) but shall include the milk described in § 1030.13(h)(4).

(a) A distributing plant from which there is disposed of during the month not less than the percentages set forth in subparagraphs (2) and (3) of this paragraph of the receipts specified in subparagraph (1). Two or more distributing plants of a handler shall be considered a unit for the purpose of subparagraph (3) of this paragraph in any month if the handler operating such plants has filed a written request with the market administrator prior to such month requesting that they be considered a unit.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted under § 1030.16, and milk received from a handler pursuant to § 1030.13(h), but excluding receipts of fluid milk products in exempt milk and from other pool distributing plants and receipts from other order plants and unregulated supply plants which are assigned pursuant to § 1030.46(a)(4) (i) (a) and (ii) and the corresponding step of § 1030.46(b).

(2) Not less than 10 percent of such receipts is disposed of from such plant in the marketing area in the form of packaged fluid milk products, except filled milk, either on routes or moved to other plants from which it is disposed of in the marketing area on routes. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Not less than 45 percent of such receipts is disposed of in the form of packaged fluid milk products, except filled milk, either on routes or moved to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(b) A supply plant, or a building with adequate facilities for cleansing tank trucks and at which milk moved from the farm in a tank truck is transferred and commingled in another tank truck with other milk for reshipment to another plant, from which the quantity of fluid milk products, except filled milk, moved during the month in accordance with subparagraphs (1) and (2) of this paragraph is not less than the percentages specified in subparagraph (4) of this paragraph subject to subparagraphs (6), (7) and (8) of this paragraph of the volume of Grade A milk received from dairy farmers and from a handler pursuant to § 1030.13(h) at such plant or building, including producer milk diverted under § 1030.16. Such receipts shall be reduced by the disposition of packaged fluid milk products described in subparagraph (3) of this paragraph.

(1) Moved as fluid milk products to:

(i) Pool plants pursuant to paragraph (a) of this section;

(ii) Plants of producer handlers; and

(iii) Partially regulated distributing plants and assigned to Class I milk disposed of in the marketing area from such plants pursuant to § 1030.44(d)(3) (i);

(2) Moved as condensed skim milk to pool plants pursuant to paragraph (a) of this section to the extent it is used in a fluid milk product (except filled milk) and is classified as Class I milk pursuant to § 1030.41(a);

(3) The receipts of Grade A milk required to be included pursuant to this paragraph shall be reduced by the amount of packaged fluid milk products (except filled milk) that are disposed of from such plant on routes or moved to a nonpool plant from which they are disposed of on routes outside the marketing area;

(4) Such percentages shall be not less than 40 percent in each of the months of September, October, and November and



30 percent in all other months, except that a plant which is a pool plant pursuant to this paragraph during each of the months of August through December shall be a pool plant for each of the following months of January through July if such percentage each month is maintained at or above 10 percent. Any plant that was a pool plant during each of the months August through December that does not meet the 10 percent requirement during any of the following months of January through July shall not be a pool plant in that month and in all of the remaining months of the January through July period that it does not meet the 10 percent requirement;

(5) [Reserved]

(6) The percentages specified in subparagraph (4) of this paragraph shall be increased or decreased by up to 10 percentage points by the Director of the Dairy Division if he finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding the Director shall investigate the need for revision either on his own initiative or at the request of interested persons and if his investigation shows that a revision might be appropriate he shall issue a notice stating that revision is being considered and inviting data, views, and arguments with respect to the proposed revision: *Provided*, That if a plant which would not otherwise qualify as a pool plant during the month pursuant to subparagraph (4) of this paragraph would qualify as a pool plant as a result of this subparagraph, such plant shall be a nonpool plant for such month upon filing by the operator of such plant a written request for nonpool status with the market administrator;

(7) Two or more plants shall be considered a unit for the purpose of this paragraph if the following conditions are met:

(i) The plants included in a unit are owned or fully leased and operated by the handler establishing the unit. In the case of plants operated by cooperative associations two or more cooperative associations may establish a unit of designated plants by filing with the market administrator a written contractual agreement obligating each plant of the unit to ship milk as directed by such cooperatives;

(ii) The handler or cooperatives establishing a unit notify the market administrator in writing of the plants to be included therein prior to August 1 of each year and no additional plants shall be added to the unit prior to August 1 of the following year;

(iii) The notification pursuant to subdivision (ii) of this subparagraph shall list the plants in the order in which they shall be excluded from the unit if the minimum shipping requirements are not met, such exclusion to be in sequence beginning with the first plant on the list and continuing until the remaining plants as a unit have met the minimum requirements; and

(iv) If the handler establishing a unit operates a pool distributing plant pursuant to paragraph (a) of this section

the unit shall be dissolved in any of the months January through July and for all remaining months of that period if the handler receives any bulk fluid milk product from an other handler's pool supply plant unless the shipments from the unit to the handler's pool distributing plant(s) during the month amount to at least 30 percent of the total receipts specified in this paragraph at all of the supply plants in the unit. Upon dissolution of the unit the pooling qualifications as set forth in this paragraph of each individual plant within the previous unit shall be determined upon the basis of its shipments. The acts of any person who is an affiliate of, or who controls or is controlled by, a handler shall be considered as having been performed by the handler;

(8) If a handler notifies the market administrator in writing that a plant is unable to meet the requirements set forth herein because of a work stoppage due to a labor dispute between employer and employees, the market administrator, upon verification of the handler's claim, shall not include the receipts and utilization of skim milk and butterfat at such plant for those days from the date of notification through the last day of the work stoppage in determining the percentage of skim milk and butterfat shipped pursuant to this paragraph. When the work stoppage includes an entire month, the plant shall be considered to have met the minimum percentage shipment requirements in that month for pool plant status pursuant to this paragraph, but such relief shall not be granted for more than 2 consecutive months.

(c) A plant which is operated by a cooperative association and which is not a pool plant pursuant to paragraph (a) or (b) of this section shall be a pool plant if at least 50 percent of the Grade A milk of producers of such cooperative association is received at pool distributing plants of other handlers during the month and written application for pool plant status is filed with the market administrator on or before the first day of such month.

(3) In § 1030.13 a new paragraph (h) is added as follows:

#### § 1030.13 Handler.

(h) Any person who is a handler pursuant to paragraph (a) of this section may be the handler on producer milk delivered to pool plants of other handlers, subject to the following conditions:

(1) Prior to the first month he becomes the handler pursuant to this paragraph such handler shall notify the market administrator in writing of his election to do so and he shall provide the name and address of each transferee pool plant receiving the milk that is subject to the conditions of this paragraph.

(2) All of the producer milk on which he is the handler pursuant to this paragraph shall be considered a transfer from such handler's pool plant to another pool plant for the purposes of classification pursuant to §§ 1030.40 through 1030.46;

(3) If an entire tank truck load of milk is delivered to the pool plant of another handler, it shall be considered a receipt by the transferor handler pursuant to this paragraph for pricing purposes pursuant to §§ 1030.50 through 1030.53 and 1030.70 through 1030.86 at the location of the transferee plant; and

(4) If less than an entire tank truck load of milk is delivered to the pool plant of another handler, a portion of the milk on the tank truck load must be physically received at the transferor handler's pool plant. Such split load shall be considered a receipt of producer milk at the transferor handler's plant for pricing purposes pursuant to §§ 1030.50 through 1030.53 and 1030.70 through 1030.86.

4. Section 1030.15 is revised as follows:

#### § 1030.15 Producer.

"Producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, which milk is received as producer milk at a pool plant or diverted pursuant to § 1030.16 from a pool plant to a nonpool plant. The term shall not include:

(a) A dairy farmer who is a government and has nonproducer status for the month pursuant to § 1030.16a; or

(b) A producer handler as defined in any order (including this part) issued pursuant to the Act.

5. Section 1030.16 is revised as follows:

#### § 1030.16 Producer milk.

"Producer milk" means the skim milk and butterfat in Grade A milk subject to the conditions set forth in this section. Unless milk received in a bulk tank truck from a producer's farm under the conditions set forth in this section is commingled on the truck only with milk in compliance with the Grade A inspection requirements of a duly constituted health authority such milk shall not be producer milk:

(a) Received at a pool plant directly from a dairy farmer except:

(1) A dairy farmer who is a government and has nonproducer status for the month pursuant to § 1030.16a; or

(2) That milk received by diversion from other order plants which is assigned pursuant to § 1030.46(a)(4)(ii) and the corresponding step of § 1030.46(b).

(a-1) Received by a handler pursuant to § 1030.13(h).

(b) Received at a pool plant from a cooperative association handler pursuant to § 1030.13(e).

(c) Received by a cooperative association as a handler pursuant to § 1030.13(e) to the extent of the shrinkage of skim milk and butterfat received from producers' farms which was not received at a pool plant under paragraph (b) of this section. In applying §§ 1030.53 and 1030.82 such skim milk and butterfat shall be deemed to be received at the location of the pool plant to which delivery is normally made.

(d) Diverted from a pool plant to a nonpool plant, except the milk of each producer must be physically received in a pool plant at least 4 days (2 days in the



case of every other day delivery) during the month and the milk of any dairy farmer who was not a producer during the immediately preceding month must be received at a pool plant at least 1 day before it may be diverted to a nonpool plant as producer milk pursuant to this paragraph. Milk so diverted shall be considered as received at the pool plant from which diverted in calculating the percentages specified in § 1030.11. The location price differentials pursuant to § 1030.82 shall be based on the zone location of the nonpool plant(s) where such milk is actually received:

(1) During January through July the operator of a pool plant or a cooperative association may divert the milk production of a producer without regard to the limits described in subparagraphs (2), (3), and (4) of this paragraph.

(2) During August through December the milk of a producer diverted by the operator of a pool plant or a cooperative association to a nonpool plant shall be limited to the amounts specified in subdivisions (i) and (ii) of this subparagraph:

(i) The operator of a pool plant may divert the milk of producers (except producer members of a cooperative association which is diverting milk under the percentage limit of subdivision (ii) of this subparagraph) for not more days of production of producer milk than is physically received at the diverting pool plant or he may divert an aggregate quantity not exceeding 50 percent of his producer milk receipts pursuant to paragraphs (a) and (a-1) of this section exclusive of such producer milk receipts from producer members of a cooperative association which is diverting milk under the percentage limit of subdivision (ii) of this subparagraph.

(ii) A cooperative association may divert the milk of its individual member producers for not more days of production of producer milk than is physically received at a pool plant or it may divert an aggregate quantity of the milk of member producers not exceeding 50 percent of all such milk caused to be delivered to pool plants by the cooperative association.

(3) When milk is diverted in excess of the limit by a handler who elects to divert on the basis of days of production, only that milk of the individual producer which was received at a pool plant or which was diverted to a nonpool plant for not more days of production than is physically received at a pool plant shall be considered producer milk.

(4) When milk is diverted to a nonpool plant in excess of the percentage limit by a handler who elects to divert on a percentage basis, eligibility as producer milk shall be forfeited on a quantity of milk equal to such excess. In such instances the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If the handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler.

(5) A cooperative association which diverted milk shall not be producer milk. handler shall specify the plant from which milk is diverted. To the extent that milk diverted by a cooperative association as a handler during any month would result in a plant failing to qualify as a pool plant under § 1030.11 such diverted milk shall not be producer milk.

(6) Milk diverted to an other order plant shall be producer milk pursuant to this section only if it is not producer milk under such other order.

6. A new § 1030.16a is added as follows:

#### § 1030.16a Exempt milk.

"Exempt milk" means milk received at a pool plant in bulk from the dairy farmer who produced it, to the extent of the quantity of any packaged fluid milk products returned to the dairy farmer if:

(a) The dairy farmer is a government which is not engaged in the route disposition of any of the returned products; and

(b) The dairy farmer has, by written notice to the market administrator and the receiving handler, elected nonproducer status for a period of not less than 12 months beginning with the month in which the election was made and continuing for each subsequent month until canceled in writing, and the election is in effect for the current month.

7. In § 1030.31 paragraph (b) is revised as follows:

#### § 1030.31 Other reports.

(b) Each handler pursuant to § 1030.13 (a), (c), (d), (e), and (h) shall report to the market administrator on or before the 10th day after the end of the month in detail and on forms prescribed by the market administrator as follows:

(1) Each handler pursuant to § 1030.13(c) shall report the quantities of skim milk and butterfat in fluid milk products moved for his account from each pool plant and received at each pool plant or partially regulated distributing plant during the month;

(2) Each cooperative association handler pursuant to § 1030.13(d) shall report the quantities of skim milk and butterfat in producer milk diverted for its account from each pool plant and the utilization of such skim milk and butterfat during the month;

(3) Each cooperative association handler pursuant to § 1030.13(e) shall report the quantities of skim milk and butterfat in its receipts of producer milk pursuant to § 1030.16(c) and producer milk delivered to each pool plant during the month;

(4) Each handler pursuant to § 1030.13 (a) and (d) shall report for each load of milk diverted for his account the quantity of each producer's milk included therein the date(s) and times of pickup and delivery to the nonpool plant, the name and location of that plant, and the plant from which diverted; and

(5) Each handler pursuant to § 1030.13(h) shall report for each load

of milk transferred for his account the quantity of each producer's milk included therein the dates and times of pickup and delivery to the transferee plant, the name and location of that plant and the plant from which transferred. Also, he shall report the quantities of skim milk and butterfat in his receipts of producer milk and delivery of such milk to each pool plant during the month;

8. In § 1030.46(a) a new subparagraph (1-a) is added and a new subsection (vi) is added to subparagraph (3) as follows:

#### § 1030.46 Allocation of skim milk and butterfat classified.

(a) \* \* \*

(1-a) Subtract from the total pounds of skim milk in Class I milk the pounds of skim milk in exempt milk;

(3) \* \* \*

(vi) Receipts of fluid milk products (other than exempt milk) from a government which has elected nonproducer status for the month pursuant to § 1030.16a;

9. In § 1030.41 paragraph (b) (7) (i) is revised as follows:

#### § 1030.41 Classes of utilization.

(b) \* \* \*

(7) \* \* \*

(i) Two percent of producer milk receipts described in §§ 1030.16(a) and 1030.16(a-1); plus

10. Section 1030.51(a) is revised as follows:

#### § 1030.51 Class prices.

(a) *Class I milk price.* The Class I milk price shall be the basic formula price for the preceding month plus \$1.26.

11. Section 1030.53 is revised as follows:

#### § 1030.53 Location adjustments to handlers.

A location adjustment for each handler who operates a pool plant shall be computed by the market administrator as follows:

(a) The market administrator shall determine the location adjustment rate for each plant at which milk is to be priced under this part on the following basis:

(1) Zone I—adjustment rate—none. Zone I shall consist of the territory within 40 miles of the city hall in Chicago.

(2) Zone 2—adjustment rate—minus 2 cents per hundredweight of milk. Zone 2 shall consist of the territory beyond Zone 1 but within 55 miles of the city hall in Chicago.

(3) Zone 3—adjustment rate—minus 4 cents per hundredweight of milk. Zone 3 shall consist of the territory beyond



Zone 2 but within 70 miles of the city hall in Chicago.

(4) Zone 4—adjustment rate—minus 6 cents per hundredweight of milk. Zone 4 shall consist of the territory beyond Zone 3 but within 85 miles of the city hall in Chicago, plus Milwaukee County, Wis., and Winnebago County, Ill.

(5) For plants located beyond Zone 4 the adjustment rate shall be an additional 2 cents per hundredweight of milk for each 15 miles or fraction thereof over 85 miles. The territory beyond 85 miles, but not to exceed 100 miles, shall be Zone 5 and each successive 15-mile area shall be an additional zone.

(b) (1) The mileages applicable pursuant to this section and § 1030.82 shall be determined by the market administrator on the basis of the shortest highway distance between the handler's plant and the city hall in Chicago.

(2) The market administrator shall notify each handler of the zone or mileage determination.

(3) Mileage shall be subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of his findings within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any period prior to the redetermination announced by the market administrator.

(c) A handler who operates a pool distributing plant (or plants) shall receive a location adjustment computed as follows:

(1) Determine the aggregate quantity of Class I milk at such plant (or all pool plants of such handler for which a single report is filed pursuant to § 1030.30 after eliminating duplication for transfer between such plants);

(2) Subtract the quantity of packaged fluid milk products received at the handler's pool plant(s) from the pool plants of other handlers (or other pool plants, if applicable) and from nonpool plants;

(3) Subtract the quantity of bulk fluid milk products shipped from the handler's pool plant(s) to pool plants of other handlers (or other pool plants, if applicable) and to nonpool plants that are classified as Class I;

(4) Subtract the Class I milk packaged by pool supply plants and disposed of on routes or to other plants;

(5) Subtract the quantity of bulk fluid milk products received at the handler's pool plant(s) from other order plants and unregulated supply plants that are assigned to Class I pursuant to § 1030.46;

(6) Assign the remaining quantity pro rata to receipts during the month from each source as specified in subdivisions (i) and (ii) of this subparagraph:

(i) Receipts at the handler's pool distributing plant(s) of producer milk, except that if the quantity prorated to any distributing plant exceeds the Class I disposition from such plant, such quantity shall be reduced to the amount of such Class I disposition and the quantity of milk represented in such reduction shall be prorated to receipts of producer milk at other distributing plants of the handler (limited in each instance to the amount of Class I disposition at each such plant) and receipts of bulk fluid milk products at such distributing plants from other pool plants; and

(ii) Receipts of bulk fluid milk products at such distributing plants from each other pool plant according to the quantity of such receipts from each such source;

(7) If receipts during the month at such distributing plants of producer milk and bulk fluid milk products from other pool plants are less than the quantity to be assigned pursuant to subparagraph (6) of this paragraph, prorate the amount of such excess in the same manner over such receipts in the next prior month in which there were receipts in excess of those assigned in that month pursuant to this subparagraph:

(8) Multiply by the location adjustment rates applicable at the transferor plants, the quantity assigned to receipts of producer milk at such distributing plants pursuant to subparagraph (6) (i) and (7) of this paragraph;

(9) Multiply by the location adjustment rates applicable at the transferor plants, the lesser of:

(i) 110 percent of the quantities assigned to receipts from each other pool plant pursuant to subparagraph (6) (ii) of this paragraph; or

(ii) Receipts specified in subparagraph (6) (ii) of this paragraph;

(10) Multiply by the location adjustment rates applicable at the transferor plants, the quantities assigned pursuant to subparagraph (7) of this paragraph to receipts from other pool plants in prior months;

(11) Multiply the quantity of bulk fluid milk products shipped from the handler's pool plant(s) to nonpool plants and classified as Class I by the location adjustment rates applicable at the shipping plant;

(12) Multiply the quantity of Class I milk packaged by pool supply plants and disposed of on routes or to other plants by the location adjustment rates applicable at the pool supply plants from which disposition is made; and

(13) Add together the minus amounts obtained pursuant to subparagraphs (8), (9), (10), (11), and (12) of this paragraph.

(d) A handler (other than one described in paragraph (c) of this section) who operates a pool supply plant shall receive a location adjustment credit on producer milk at such plant classified as Class I that is not shipped as a bulk fluid milk product to a pool distributing plant.

(12) In § 1030.70 paragraph (g) is revoked, paragraphs (e), (f), and the text preceding paragraph (a) are revised as follows:

(e) Add an amount equal to the value at the Class I milk price (after making the location adjustment rate for the nearest nonpool plant from which an equivalent volume was received) of the skim milk and butterfat subtracted from Class I pursuant to § 1030.46(a) (7) and the corresponding step of § 1030.46(b); and

(f) Subtract an amount equal to the minus location adjustment computed pursuant to § 1030.53 (c) (13) or (d).

13. In § 1030.71 paragraph (d) is revoked.

14. Section 1030.82 is revised as follows:

§ 1030.82 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk pursuant to § 1030.71 received at a pool plant or diverted from a pool plant shall be reduced according to the location of the plant of actual receipt at the rates set forth in § 1030.53(a).

(b) For the purpose of computation pursuant to § 1030.84(b) (2) the uniform price shall be adjusted at the rates set forth in § 1030.53(a) applicable at the location of the nonpool plant from which the milk was received.

15. Section 1030.85 is revised as follows:

§ 1030.85 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1030.84(b) exceeds the amount computed pursuant to § 1030.70:

*Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

Signed at Washington, D.C., on February 27, 1970.

JOHN C. BLUM,  
Deputy Administrator,  
Regulatory Programs.

[F.R. Doc. 70-2645; Filed, Mar. 3, 1970; 8:51 a.m.]

## FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 89]

[FCC 70-189]

### APPLICATIONS FOR RADIO CALL BOXES IN THE 72-76 MHz BAND

#### Interim Policy

FEBRUARY 19, 1970.

On August 8, 1969, the Commission issued a notice of proposed rule making



(FCC 69-853) in Docket 18627 proposing to establish new standards for the licensing of radio call box systems in the 72-76 MHz band in the Public Safety Radio Services. This band is between television channels 4 and 5 and radio systems, including call box systems, have been authorized there with certain restrictions to minimize interference and on the express condition that no harmful interference be caused to the reception of television signals.

Since release of the Notice, a number of applications have been filed for authorizations to operate radio call box systems under the existing provisions of the Commission's rules. The Commission considered whether such applications should be acted on while the rule making proceeding in Docket 18627 is pending and decided to authorize the staff to grant all pending applications which meet existing rules. However, no action will be taken on any application for call box systems in this band filed after February 18, 1970, until the conclusion of the rule making proceeding. Also, no action will be taken on any pending application which requires a waiver of the rules.

Action by the Commission February 18, 1970. Commissioners Burch (Chairman), Bartley, Cox, Johnson, H. Rex Lee and Wells, with Commissioner Robert E. Lee dissenting.

**FEDERAL COMMUNICATIONS  
COMMISSION,**

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

[F.R. Doc. 70-2633; Filed, Mar. 3, 1970;  
8:50 a.m.]

## FEDERAL RESERVE SYSTEM

[ 12 CFR Parts 204, 217 ]

[Regs. D, Q]

### COMMERCIAL PAPER OF BANK AFFILIATES

#### Notice of Proposed Rule Making

The Board of Governors of the Federal Reserve System announced today that it was deferring action on outstanding proposals to apply interest rate ceilings, reserve requirements, or both, to funds obtained by banks through issuance of commercial paper by their affiliates. These proposals were first published for public comment on October 29, 1969 (FEDERAL REGISTER of Nov. 5, 1969, 34 F.R. 17918), and January 20, 1970 (FEDERAL REGISTER of Jan. 29, 1970, 35 F.R. 1173). After reviewing both the comments received and the current business and financial situation, the Board decided to defer action on these proposals at this time in order to avoid additional stringency in money and credit conditions.

In keeping with this decision, the Board also agreed to extend (1) the suspension of the limitations on the rate of interest that may be specified in commercial paper with a maturity of 30 days or more issued by a subsidiary of a member bank, to the extent that the total amount of such obligations does not ex-

ceed the total amount of the subsidiary's commercial paper outstanding on October 29, and (2) the permission granted Reserve Banks to waive penalties in connection with the application of reserve requirements to such obligations. (See FEDERAL REGISTER of Jan. 23, 1970, 35 F.R. 990). The applicability of such regulations to bank subsidiaries was specifically affirmed by the Board on October 29, 1969 (34 F.R. 17918).

By order of the Board of Governors,  
February 24, 1970.

[SEAL] **KENNETH A. KENYON,**  
*Deputy Secretary.*

[F.R. Doc. 70-2573; Filed, Mar. 3, 1970;  
8:45 a.m.]

## FEDERAL POWER COMMISSION

[ 18 CFR Part 141 ]

[Docket No. R-382]

### COLLECTION OF STEAM-ELECTRIC GENERATING PLANT POLLUTION CONTROL DATA—FPC FORM NO. 67

#### Notice of Extension of Time

FEBRUARY 26, 1970.

Upon consideration of the request filed on February 19, 1970, by the Edison Electric Institute, notice is hereby given that the time is extended to and including April 1, 1970, within which any interested person may submit data, views, comments, and suggestions in writing to the Notice of Proposed Rule making issued January 29, 1970 in the above-designated matter.

**GORDON M. GRANT,**  
*Secretary.*

[F.R. Doc. 70-2586; Filed, Mar. 3, 1970;  
8:46 a.m.]

[ 18 CFR Part 157 ]

[Docket No. R-377]

### EXEMPTION OF CERTAIN TRANSPORT AND/OR SALES OF LIQUEFIED NAT- URAL GAS

#### Notice of Extension of Time

FEBRUARY 26, 1970.

On February 10, 1970, and February 17, 1970, the American Gas Association and the Independent Natural Gas Association of America, respectively, filed requests for an extension of time to and including June 2, 1970, within which to file comments in the above-designated matter.

Upon consideration, notice is hereby given that the time is extended to and including May 1, 1970, within which any interested person may submit data, views, and comments in writing to the Notice of Proposed Rule making issued January 15, 1970, in the above-designated matter.

**GORDON M. GRANT,**  
*Secretary.*

[F.R. Doc. 70-2587; Filed, Mar. 3, 1970;  
8:46 a.m.]

[ 18 CFR Parts 154, 201, 260 ]

[Docket No. R-380]

### ACCOUNTING AND RATE TREATMENT OF ADVANCE PAYMENTS TO SUP- PLIERS FOR GAS AND AMENDING PART 260 (FPC FORM 2)

#### Notice of Extension of Time

FEBRUARY 26, 1970.

Upon consideration of the requests for an extension of time, filed by the People of the State of California and the Public Utilities Commission of the State of California, The American Gas Association and the Independent Natural Gas Association of America, notice is hereby given that the time is extended to and including March 31, 1970, within which any interested person may file views and comments to the notice of proposed rule making issued January 23, 1970, in the above-designated matter.

**GORDON M. GRANT,**  
*Secretary.*

[F.R. Doc. 70-2588; Filed, Mar. 3, 1970;  
8:46 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[ 23 CFR Part 255 ]

[Docket No. 1-6]

### TIRES AND RIMS; MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, TRAILERS, BUSES AND MOTOR- CYCLES

#### Notice of Public Meeting

On October 14, 1967, the Federal Highway Administrator issued an advance notice of proposed rule making (32 F.R. 14278), establishing a docket to receive comments on Standards for tires and rims for use of multipurpose passenger vehicles, trucks, trailers, buses and motorcycles. On April 7 and 8, 1970, the National Highway Safety Bureau will hold a public meeting beginning at 9 a.m. in the Department of Commerce Auditorium, 14th and E Streets NW., Washington, D.C., to discuss these subjects. It is expected that the information presented at this meeting will aid in the development of a notice of proposed rule making and a final rule in this area.

In order to focus the issues as sharply as possible, the Bureau has drafted a discussion paper, in the form of motor vehicle safety standards, representing the Bureau's concept of the form and content of a final rule. Copies of the discussion paper may be obtained on request from Mr. Roger Compton, Director, Office of Standards on Accident Avoidance, National Highway Safety Bureau, Room 5301C, 400 Seventh Street SW., Washington, D.C. 20591.

Interested persons are invited to attend the meeting and present oral and



written comments on the subjects set forth in the discussion paper.

Any person planning to present prepared oral comments which will take longer than 5 minutes is requested to submit an outline and a time estimate of the materials to be presented to Mr. Roger Compton at the address given above, not later than March 27, 1970. Attempt will be made to honor requests for particular hours and dates for presentation of testimony. Requests for spe-

cial equipment, such as projectors and screens, should be made at the same time.

Written comments may be submitted at the meeting or to the National Highway Safety Bureau, Docket Room, Room 4223, 400 Seventh Street SW., Washington, D.C. 20591, not later than April 13, 1970. All comments not read at the meeting will be incorporated as an appendix to the meeting transcript.

An agenda will be available in the meeting room on the day of the meeting.

The meeting transcript will be available for examination in the Docket Room, Room 4223, 400 Seventh Street SW., Washington, D.C. 20591, approximately 3 days after the meeting.

Issued on February 25, 1970.

R. BRENNER,  
*Deputy Director,*

*National Highway Safety Bureau.*

[F.R. Doc. 70-2620; Filed, Mar. 3, 1970;  
8:48 a.m.]



# Notices

## ATOMIC ENERGY COMMISSION

[Docket No. 50-166]

### UNIVERSITY OF MARYLAND

#### Notice of Proposed Issuance of Construction Permit

The Atomic Energy Commission ("the Commission") is considering the issuance of a construction permit to the University of Maryland which would authorize the installation of a new reactor console and a TRIGA Mark III control and instrumentation (C&I) system as a replacement for the present reactor console and C&I system in the existing reactor located on the University's campus at College Park, Md.

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

For further details with respect to this proposed permit, see the application dated June 30, 1969, and amendment thereto, and proposed construction permit, which are available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 19th day of February 1970.

For the Atomic Energy Commission,

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

[F.R. Doc. 70-2601; Filed, Mar. 3, 1970; 8:47 a.m.]

## DEPARTMENT OF STATE

### Office of the Secretary

[Public Notice 322]

#### CERTAIN NONIMMIGRANT VISAS

##### Validity

Public Notice 312 of August 27, 1969, authorized consular officers to issue, in their discretion, nonimmigrant visas under section 101(a)(15)(B) of the Immigration and Nationality Act valid for an indefinite period of time to otherwise eligible nationals of certain countries

which offer reciprocal or more liberal treatment to nationals of the United States who are in a similar class. Lesotho and New Zealand are being added to the list of countries contained in that notice.

This notice amends Public Notice 312 of August 27, 1969 (34 F.R. 13705).

[SEAL] BARBARA M. WATSON,  
Administrator, Bureau of  
Security and Consular Affairs.

FEBRUARY 13, 1970.

[F.R. Doc. 70-2579; Filed, Mar. 3, 1970; 8:45 a.m.]

## DEPARTMENT OF THE TREASURY

### Bureau of Customs

[T.D. 70-56]

#### FISH

##### Tariff Rate Quota

FEBRUARY 26, 1970.

The tariff-rate quota for the calendar year 1970, on certain fish dutiable under item 110.50, Tariff Schedules of the United States.

In accordance with item 110.50 of part 3, schedule 1, Tariff Schedules of the United States, it has been ascertained that the average aggregate apparent annual consumption in the United States of fish, fresh, chilled, or frozen, fillets, steaks, and sticks, of cod, cusk, haddock, hake, pollock, and rosefish, in the 3 years preceding 1970, calculated in the manner provided for in headnote 1, part 3A, schedule 1, was 182,673,899 pounds. The quantity of such fish that may be imported for consumption during the calendar year 1970 at the reduced rate of duty under item 110.50 is, therefore, 27,401,085 pounds.

[SEAL] MYLES J. AMBROSE,  
Commissioner of Customs.

[F.R. Doc. 70-2637; Filed, Mar. 3, 1970; 8:50 a.m.]

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

JOHN S. ANDERSON

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of February 2, 1970.

JOHN S. ANDERSON.

[F.R. Doc. 70-2604; Filed, Mar. 3, 1970; 8:47 a.m.]

### CHARLES A. CAMPBELL

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of February 3, 1970.

Dated: February 3, 1970.

CHARLES A. CAMPBELL.

[F.R. Doc. 70-2605; Filed, Mar. 3, 1970; 8:47 a.m.]

### HUBBELL CARPENTER

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of February 4, 1970.

Dated, February 4, 1970.

HUBBELL CARPENTER.

[F.R. Doc. 70-2606; Filed, Mar. 3, 1970; 8:47 a.m.]

### PATRICK N. GRIFFIN

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No changes.
- (2) No changes.
- (3) No changes.
- (4) No changes.



This statement is made as of February 22, 1970.

Dated: February 23, 1970.

PATRICK N. GRIFFIN.

[F.R. Doc. 70-2616; Filed, Mar. 3, 1970; 8:48 a.m.]

### GLENN J. HALL

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) None.
- (2) FMC Corp., Howmet Corp., Morrison-Knudsen Co., General Electric Co., Amalgamated Sugar Co., Idaho Power Co., First Security Bank Corp., Union Carbide Corp., Air West Airlines, Pacific Power & Light Co., Utah Power & Light Co., Union Pacific Corp., Portland GE Co., Washington Water Power Co., Montana Power Co., Westinghouse Electric Co.
- (3) None.
- (4) None.

This statement is made as of February 2, 1970.

Dated: February 2, 1970.

GLENN J. HALL.

[F.R. Doc. 70-2607; Filed, Mar. 3, 1970; 8:47 a.m.]

### DAVID G. JETER

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of December 31, 1969.

Dated: February 11, 1970.

DAVID G. JETER.

[F.R. Doc. 70-2608; Filed, Mar. 3, 1970; 8:47 a.m.]

### J. W. KEPNER

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of February 9, 1970.

Dated: February 9, 1970.

J. W. KEPNER.

[F.R. Doc. 70-2609; Filed, Mar. 3, 1970; 8:47 a.m.]

### OWEN A. LENTZ

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) Michigan Abrasive as listed on report dated Sept. 12, 1968 is now known as Michigan General Corp.
- (3) No change.
- (4) No change.

This statement is made as of February 20, 1970.

Dated: February 20, 1970.

OWEN A. LENTZ.

[F.R. Doc. 70-2610; Filed, Mar. 3, 1970; 8:48 a.m.]

### ROBERT R. McLAGAN

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of February 1, 1970.

Dated: February 9, 1970.

ROBERT R. McLAGAN.

[F.R. Doc. 70-2611; Filed, Mar. 3, 1970; 8:48 a.m.]

### CHARLES S. McNEER

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.

- (3) No change.
- (4) No change.

This statement is made as of February 2, 1970.

Dated: February 2, 1970.

CHARLES S. McNEER.

[F.R. Doc. 70-2612; Filed, Mar. 3, 1970; 8:48 a.m.]

### W. I. MARTIN

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of February 22, 1970.

Dated: February 16, 1970.

W. I. MARTIN.

[F.R. Doc. 70-2617; Filed, Mar. 3, 1970; 8:48 a.m.]

### JULIO A. NEGRONI

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of February 1970.

Dated: February 3, 1970.

JULIO A. NEGRONI.

[F.R. Doc. 70-2613; Filed, Mar. 3, 1970; 8:48 a.m.]

### LEROY J. SCHULTZ

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) None.
- (2) None.
- (3) None.
- (4) None.



This statement is made as of February 2, 1970.

Dated: February 2, 1970.

LEROY J. SCHULTZ.

[F.R. Doc. 70-2614; Filed, Mar. 3, 1970;  
8:48 a.m.]

### CHARLES W. WATSON

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of February 2, 1970.

Dated: February 2, 1970.

CHARLES W. WATSON.

[F.R. Doc. 70-2615; Filed, Mar. 3, 1970;  
8:48 a.m.]

## DEPARTMENT OF COMMERCE

### Bureau of International Commerce

[Case No. 401]

#### KAZUO IIDA, ET AL.

#### Order Denying Export Privileges

In the matter of Kazuo Iida, 6-5 Shiba 4-chome, Minato-ku, Tokyo, Japan, Masaji Nagasaka, 6-5 Shiba 4-chome, Minato-ku, Tokyo, Japan, Masaaki Ono, and Nihon Tokushu Denki K.K., 23-16 Kichijoji Hon-cho 4-chome, Musashino City, Tokyo, Japan, Takeo Kawasaki, 28 Tstsumi-cho, Takasaka City, Gumma Prefecture, Japan, Isao Kanno, 5-2 Shinbashi 3-chome, Minato-ku, Tokyo, Japan, respondents, Shinwa Tsusho (Yungen Kaisha), 6-5 Shiba 4-chome, Minato-ku, Tokyo, Japan, Meikon Shokai K.K., 4-2 Shinbashi 3-chome, Minato-ku, Tokyo, Japan, Japan Holst K.K., 1-28 Kanda, Suda-cho, Chiyoda-ku, Tokyo, Japan, related parties.

On July 24, 1969, the Director, Investigations Division, Office of Export Control issued a charging letter against the above respondents charging violations of the Export Control Act of 1949,<sup>1</sup> and the regulations thereunder. The charging letter was duly served on respondents. The respondent Ono, for himself and for Nihon Tokushu Denki K.K. (herein-

after referred to as NTD) which he controls and of which he is representative managing director, filed an answer but did not request a hearing.<sup>2</sup> The other respondents failed to answer the charges and in accordance with section 388.4 of the Export Control Regulations were held in default. The Compliance Commissioner held an informal hearing on November 25, 1969, at which documentary evidence to support the charges was presented on behalf of the Investigations Division.

The charging letter contains two numbered charges. Charge I recites the facts regarding the issuance of an order denying export privileges for an indefinite period against respondent Iida on February 16, 1965 (30 F.R. 2414), and notice thereof to him and also regarding the determination by the Director, Office of Export Control, on March 3, 1965, that respondent Nagasaka was a related party to Iida and notice of such determination to Nagasaka. It was alleged that in 1965 and 1966 respondent Nagasaka in connection with six transactions, in violation of the prohibitions of the denial order, acting through a Japanese firm as an intermediary, negotiated with respect to, ordered, purchased, and in part received, U.S.-origin electronic commodities. It was also alleged that Nagasaka, in violation of the denial order, delivered certain of the commodities to Iida. It was further alleged that Iida, in violation of the denial order, participated in the financing of certain of the commodities.

Charge II alleges certain false and misleading representations and statements in the course of an investigation against Iida, Ono, Kawasaki, and Kanno.

The Compliance Commissioner has considered the charging letter, the answer of Ono, and the evidence in support of the charges. He has submitted to the undersigned his report which includes findings of fact and findings that violations have occurred and he has recommended that the sanctions hereinafter set forth be imposed against respondents. The Compliance Commissioner has submitted the record in the case including charging letter, answer of Ono, and exhibits.

After consideration of the record, I adopt as my own the following findings of fact of the Compliance Commissioner.

**Findings of fact.** 1. The individual respondents in this case are businessmen engaged in trade in Tokyo, Japan. Their connections are as follows: Iida is president of the firm Shinwa Tsusho (Yungen Kaisha), which is engaged in importing electrical and telecommunications equipment; Nagasaka deals in electronic equipment and maintains office space in Shinwa's premises; Ono controls and is the principal official of Nihon Tokushu Denki K.K. (NTD), a firm engaged in the manufacture of telecommunications

equipment and parts; Kawasaki was president and principal official of Toyo Machinery Trading Co., Ltd., a firm engaged in dealing in industrial chemical products. This company changed its name to Japan Holst K.K.; Kanno is president of Meikon Shokai K.K., a firm engaged in packing services and transportation and also as dealer in various types of commodities.

2. On February 16, 1965, the Director, Office of Export Control issued an order effective February 22, 1965, against respondent Iida denying export privileges for an indefinite period because of failure to furnish responsive answers to interrogatories. This order was published in the FEDERAL REGISTER (30 F.R. 2414, Feb. 24, 1965), and was served on said respondent.

3. On February 18, 1965, the Director, Office of Export Control made a determination (pursuant to § 388.1(b) of the Export Control Regulations) that the respondent Nagasaka was a related party to respondent Iida. On March 3, 1965, Nagasaka was informed of this determination and was advised that all of the restrictions and prohibitions of the aforesaid denial order against Iida were applicable to him.

4. By virtue of the foregoing denial order and related party determination, the respondents Iida and Nagasaka were prohibited from participating directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States. The restrictions included, among other things, ordering, receiving, delivering, and financing U.S.-origin commodities.

5. After Nagasaka was informed of the aforesaid restrictions against him and in order to evade them he obtained the services of respondent Ono, acting for the firm NTD, to order and procure for him (Nagasaka) electronic equipment manufactured in the United States.

6. Pursuant to these arrangements Ono placed orders for Nagasaka for U.S.-origin electronic equipment valued in excess of \$200,000. This equipment, all of strategic nature, included oscilloscopes, oscillators, power meters, and accessories for such equipment. Nagasaka participated in the financing of the purchase of said equipment.

7. Pursuant to the orders placed by Ono for Nagasaka, equipment and accessories valued in excess of \$80,000 were exported from the United States, were received by Ono, and were delivered to Nagasaka. With respect to additional equipment ordered by Ono for Nagasaka the latter's interest in obtaining said equipment came to the attention of the Office of Export Control before the exportations were made and the exportations were prevented.

8. The respondent Nagasaka caused to be delivered to respondent Iida two of the aforementioned oscillators, valued at approximately \$17,000, which Iida had reason to know were of U.S. origin.

9. The respondent Iida participated in the financing of the purchase of six of the aforesaid oscillators referred to in Finding 6 (other than those referred to

<sup>1</sup> This Act has been succeeded by the Export Administration Act of 1969, Public Law 91-184, approved Dec. 30, 1969, Section 13(b) of the new Act provides, "All outstanding delegations, rules, regulations, orders, licenses, or other forms of administrative action under the Export Control Act of 1949 \* \* \* shall, until amended or revoked, remain in full force and effect, the same as if promulgated under this Act".

<sup>2</sup> In the transactions in question Ono acted for NTD. Where the context so permits reference herein to Ono will also include NTD.

<sup>3</sup> Charges relating to eight transactions were alleged but charges with respect to two of them were withdrawn at the hearing.



in Finding 8) valued in excess of \$20,000, which he had reason to know were of U.S. origin.

10. Neither Nagasaka nor Iida obtained the authorization of the Office of Export Control to participate in the foregoing transactions.

11. During the course of the investigation to determine whether such of the aforesaid commodities as were exported from the United States were disposed of in accordance with the U.S. Export Control Regulations respondents Iida, Ono, Kawasaki, and Kanno made false and misleading representations and statements to officials of U.S. agencies acting on behalf of the Office of Export Control.

12. Respondent Iida falsely stated that he had no knowledge of any of the transactions relating to the equipment referred to in Finding 7, whereas in fact he knew of at least one of said transactions inasmuch as he participated in the financing of the purchase of oscillators as set forth in Finding 9.

13. Respondent Ono, acting individually and on behalf of his firm NTD, made false statements and representations as follows:

(a) He stated that 10 oscilloscopes which he ordered and received were for use in his factory for testing purposes, when in fact he knew that the oscilloscopes were to be turned over to Nagasaka.

(b) He stated that he was unable to use the said 10 oscilloscopes as originally planned and he turned them over to Kawasaki who handled the financial arrangements, when in fact he turned them over to Nagasaka who handled the financial arrangements.

(c) He stated that the equipment (other than the 10 oscilloscopes) was ordered for Kawasaki who handled the financial arrangements, when in fact he knew that the said equipment was ordered for Nagasaka who handled the financial arrangements.

(d) He stated that he learned in August 1966 that the U.S.-origin equipment he ordered was subject to international export controls, when in fact he knew or had reason to know as early as September 1965 that this equipment was subject to such controls.

14. Respondent Kawasaki falsely stated that certain of the equipment referred to in Finding 6 was ordered on his behalf, when in fact he knew that the equipment was ordered for Nagasaka.

15. The respondent Kanno falsely stated that he did not know the denied party Iida, when in fact he did know him since Iida was a director in Kanno's firm, Meikon Shokai K.K.

Based on the foregoing I have concluded as follows:

(a) The respondent Nagasaka violated §§ 387.4, 387.6, and 387.10 of the U.S. Export Control Regulations and the Office of Export Control denial order of February 16, 1965, which was applicable to him, in that without prior disclosure of the facts to, and specific authorization from, the Office of Export Control, he participated in the ordering, receiving, financing, and disposing of commodities

exported or to be exported from the United States with knowledge that such conduct was in violation of the U.S. Export Control Regulations and of the said denial order of February 16, 1965, and also causing the delivery of U.S.-origin commodities to a denied party.

(b) The respondent Iida violated §§ 387.4 and 387.6 of the U.S. Export Control Regulations and the Office of Export Control denial order of February 16, 1965, in that without prior disclosure of the facts to, and specific authorization from, the Office of Export Control, he received commodities exported from the United States and participated in the financing of the purchase of such commodities with knowledge that such conduct was in violation of the U.S. Export Control Regulations and of said denial order of February 16, 1965. Further, said respondent violated § 387.5 of said regulations in that he made false statements to an official of a U.S. Government agency in the course of an investigation instituted under authority of the U.S. Export Control Act.

(c) The respondents Ono and his firm Nihon Tokushu Denki K.K., Kawasaki, and Kanno violated § 387.5 of said regulations in that they made false statements to officials of a U.S. Government agency in the course of an investigation instituted under authority of the U.S. Export Control Act.

The matters set forth in the answer of respondent Ono have been considered and they do not constitute a defense to the charges of false statements made by him. Even if Nagasaka had misled Ono, used his seal without authority, prepared documents in the name of NTD without permission, and later apologized to Ono, it does not excuse Ono's conduct in making false statements.

By reason of the connection of the respondents Iida, Kawasaki, and Kanno with the respective firms, Shinwa Tsusho (Yungen Kaisha), Japan Holst K.K., and Meikon Shokai K.K., it is hereby determined that said firms are related parties to said respondents within the purview of § 388.1(b) of the Export Control Regulations and the prohibitions and restrictions applicable to said respondents are applicable to said respective firms.

I have considered the record in the case and the report and recommendations of the Compliance Commissioner, and being of the opinion that his recommendations as to the sanctions that should be imposed are fair and just, and calculated to achieve effective enforcement of the law; *It is hereby ordered:*

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

II. The respondents Kazuo Iida and Masaji Nagasaka for the duration of export controls, the respondents Masaaki Ono and Nihon Tokushu Denki K.K., for a period of 5 years, the respondents Takeo Kawasaki for the period of 5 years except as hereinafter qualified in Part IV(a) and the respondent Isao Kanno

for the period of 2 years except as hereinafter qualified in Part IV(b) are hereby denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction, involving commodities or technical data exported from the United States in whole or in part, or to be exported, or which are otherwise subject to the Export Control Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction either in the United States or abroad shall include participation: (a) As a party or as a representative of a party to any validated export license application; (b) in the preparation or filing or any export license application or reexportation authorization, or document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control documents; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data; (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondents, but also to their successors, agents, representatives, and employees, and to any person, firm, corporation, or other business organization with which they now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or services connected therewith, including the firm Shinwa Tsusho (Yungen Kaisha) as a related party to Kazuo Iida, the firm Japan Holst K.K. as a related party to Takeo Kawasaki, and the firm Meikon Shokai K.K., as a related party to Isao Kanno.

IV(a) Two years after the effective date of this order the respondent Kawasaki may apply to have the effective denial of his export privileges held in abeyance while he remains on probation. Such application as may be filed by said respondent shall be supported by evidence showing his compliance with the terms of this order and such disclosure of his import and export transactions as may be necessary to determine his compliance with this order. Such application will be considered on its merits and in the light of conditions and policies existing at that time. Said respondent's export privileges may be restored under such terms and conditions as appear to be appropriate.

(b) Six months after the effective date of this order, without further order of the Bureau of International Commerce, the respondent Kanno shall have his export privileges restored conditionally and thereafter for the remainder of the 2-year denial period he shall be on probation. The conditions of probation are that said respondent shall fully comply with all requirements of the Export Administration Act of 1969 and



all regulations, licenses, and orders issued thereunder and issued under the Export Control Act of 1949 as amended.

Upon a finding by the Director, Office of Export Control, or such other official as may be exercising the duties now exercised by him, that the respondent Kanno has knowingly failed to comply with the requirements and conditions of this order or with any of the conditions of probation, said official at any time, with or without prior notice to said respondent, by supplemental order, may revoke the probation of said respondent, revoke all outstanding validated export licenses to which said respondent may be a party and deny to said respondent all export privileges for a period up to 18 months. Such order shall not preclude the Bureau of International Commerce from taking further action against said respondent for any violation, as shall be warranted. On the entry of a supplemental order revoking said respondent's probation without notice, he may file objections and request that such order be set aside, and may request an oral hearing, as provided in § 388.16 of the Export Control Regulations, but pending such further proceedings, the order of revocation shall remain in effect.

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

Dated: February 24, 1970.

This order shall become effective on March 5, 1970.

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

[F.R. Doc. 70-2618; Filed, Mar. 3, 1970;  
8:48 a.m.]

### Maritime Administration ISTHMIAN LINES, INC. Notice of Application

Notice is hereby given that Isthmian Lines, Inc., by letter of January 15, 1970, has applied for operating-differential subsidy on two services on Trade Route No. 18, which services may also serve ports of Trade Route Nos. 10, 13, 15A, and 15B. The number of sailings and description of the services on which Isthmian Lines, Inc., has applied for operating-differential subsidy are as follows:

1. *India-Pakistan-Ceylon Service.* A minimum of 24 and a maximum of 36 sailings per year between U.S. Atlantic and gulf coast ports, on the one hand, and on the other hand, ports in the Eastern Mediterranean (Lebanon, Egypt), Red Sea ports, and ports in West India, West Pakistan, East India, East Pakistan, and Ceylon. Service will operate eastbound from the United States via the Suez Canal, or, as an alternative route when the Suez Canal is closed, via the Cape of Good Hope, with privilege of calling at Durban, Lorenzo Marques, Beira, and Mombasa.

2. *Persian Gulf Service.* A minimum of 18 and a maximum of 30 sailings per year from U.S. Atlantic and gulf ports to ports in the Eastern Mediterranean (Lebanon, Egypt), the Red Sea, and the Persian Gulf, returning via West Coast India, West Pakistan, Red Sea, and Eastern Mediterranean (Egypt, Lebanon) ports. Service will operate eastbound from the United States via the Suez Canal, or as an alternative route when the Suez Canal is closed, via the Cape of Good Hope with privilege of calling at Durban, Lorenzo Marques, Beira, and Mombasa.

Any person, firm, or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1175, should, by the close of business on March 17, 1970, notify the Secretary, Maritime Subsidy Board in writing in triplicate, and file petition for leave to intervene in accordance with the rules of practice and procedure of the Maritime Subsidy Board.

In the event a section 605(c) hearing is ordered to be held, the purpose thereof will be to receive evidence relevant to (1) whether the application is one with respect to a vessel to be operated on a service, route, or line served by citizens of the United States which would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of U.S. registry in such service, route, or line is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions for leave to intervene filed within the specified time do not demonstrate suf-

ficient interest to warrant a hearing, the Maritime Subsidy Board will take such action as may be deemed appropriate.

By order of the Maritime Subsidy Board.

Dated: February 26, 1970.

JAMES S. DAWSON, JR.,  
Secretary.

[F.R. Doc. 70-2632; Filed, Mar. 3, 1970;  
8:49 a.m.]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration ANSUL CO.

#### Notice of Filing of Petition Regarding Pesticides

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d) (1), 68 Stat. 512; 21 U.S.C. 346a(d) (1)), notice is given that a petition (PP 0F0911) has been filed by The Ansul Co., Marinette, Wis. 54143, proposing establishment of a tolerance (21 CFR Part 120) of 2 parts per million for residues of elemental arsenic resulting from application of the defoliant cacodylic acid (dimethylarsinic acid) in or on the raw agricultural commodity cottonseed. The petitioner was notified of the recommendations of the Secretary's Commission on Pesticides and Their Relationship to Environmental Health and requested that the petition be filed.

The analytical method proposed in the petition for determining residues of arsenic involves digestion of the sample in a nitric-sulfuric acid mixture to destroy organic matter, reduction to arsine, and detection of the arsine by silver diethyldithiocarbamate solution.

Dated: February 20, 1970.

R. E. DUGGAN,  
Acting Associate Commissioner  
for Compliance.

[F.R. Doc. 70-2576; Filed, Mar. 3, 1970;  
8:45 a.m.]

### HOFFMANN-LA ROCHE, INC.

#### Notice of Filing of Petition for Food Additive Sulfadimethoxine

Pursuant to 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 (31-205V) has been filed by Hoffmann-La Roche, Inc., Nutley, N.J. 07110, proposing that § 121.311 *Sulfadimethoxine* (21 CFR 121.311) be amended to reduce the required preslaughter withdrawal period for sulfadimethoxine from 10 to 5 days regarding its use in the drinking-water treatment of turkeys.

Dated: February 18, 1970.

R. E. DUGGAN,  
Acting Associate Commissioner  
for Compliance.

[F.R. Doc. 70-2578; Filed, Mar. 3, 1970;  
8:45 a.m.]



## R. P. SCHERER CORP.

## Notice of Filing of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b) (5), 72 Stat. 1786; 21 U.S.C. 348(b) (5)), notice is given that a petition (FAP 0A2508) has been filed by R. P. Scherer Corp., 9425 Grinnell Avenue, Detroit, Mich. 48213, proposing that § 121.1058 Silicon dioxide (21 CFR 121.1058) be amended to provide for the safe use of silicon dioxide as a thickener, suspending agent, and dispersing agent in encapsulated foods.

Dated: February 20, 1970.

R. E. DUGGAN,  
Acting Associate Commissioner  
for Compliance.

[F.R. Doc. 70-2577; Filed, Mar. 3, 1970;  
8:45 a.m.]

## CIVIL AERONAUTICS BOARD

[Docket No. 21866, etc.; Order 70-2-121]

DOMESTIC PASSENGER-FARES,  
COACH AND ECONOMY SEATING,  
AND JOINT FARESOrder Defining Scope of Investigation  
and Order of Consolidation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of February 1970.

Domestic passenger-fare investigation, Docket 21866; Coach and economy seating configurations, Dockets 21798, 21868; and Joint fares, Docket 21867.

By Order 70-1-147, dated January 29, 1970, the Board instituted a general investigation of the level and structure of passenger fares in the scheduled services of the domestic trunkline and local-service air carriers within the 48 contiguous States and the District of Columbia. In that order we outlined in general terms the scope of the investigation and stated our intention that the investigation be expedited to the fullest extent possible consistent with the development of an adequate record. In order to accomplish these purposes, we determined that the conduct of separate and simultaneous proceedings would be necessary and that the policy issues involved in the various phases of the investigation would be submitted for Board decision as hearing or rulemaking procedures are completed.

The purpose of this order is to set forth the scope of the issues that we believe can be decided in separate proceedings before we make our final fare-level and fare-structure decisions in the case. We recognize that some of the issues we are setting for separate investigation are interrelated. However, we shall expect the parties and the examiners to make every effort to define subissues narrowly so that the principal issues in each proceeding can be decided by the Board before we decide the ultimate fare-level and fare-structure questions.

We have determined that nine separate proceedings shall be conducted as follows:

1. Aircraft Depreciation.
2. Leased Aircraft.
3. Deferred Federal Income Taxes.
4. Joint Fares.
5. Discount Fares.
6. Load Factor and Seating Configurations.
7. Fare Level.
8. Rate of Return.
9. Fare Structure.

We believe that the first three phases listed can be handled most expeditiously by rulemaking proceedings, and we will issue notices of proposed rulemaking with respect to these issues at an early date. The remaining six phases will be set for hearing promptly, and prehearing conferences on each of these phases will be convened in the next few weeks. In order to insure that there will be minimum duplication of evidence presented but that a full record will be made for decision of each issue, all evidence presented in any phase of the entire investigation will also be available in the docket for consideration and decision in all other phases. However, for convenience, documents pertaining to each phase of the proceedings in this docket will be physically separated by the Board's Docket Section. Therefore, parties will be expected to identify documents with the Docket No. 21866 followed by the phase number assigned. For example, that part of the investigation dealing principally with discount fares will be entitled "Domestic Passenger-Fare Investigation—Discount Fares," and documents filed therein should be numbered Docket 21866-5.

Finally, all parties should be on notice that, in the interest of expedition, we may subsequently order the record in any separate hearing phase of the investigation to be certified to the Board for decision rather than requiring the issuance of an examiner's initial decision.

We now proceed to a general outline of the issues we expect to be considered in each phase of the investigation. This outline does not, of course, preclude consideration of other issues that may be raised by the parties and found by the examiners to be necessary to decision during the course of the proceedings.

1. *Aircraft Depreciation.* As we noted in Order 70-1-147, the flight-equipment depreciation standards adopted in 1960 in the General Passenger-Fare Investigation<sup>1</sup> are obsolete. We intend by this

<sup>1</sup>In the interest of meeting the Board's objective that the fare level issues be submitted for decision within approximately 1 year of the inception of this investigation, it is suggested that the hearing examiners establish procedural dates which will tentatively provide for the hearing in the joint fare matter to begin early in June, in the load factor and seating configuration phase by mid-July, in the general fare level phase by early August, and, finally, with respect to rate of return issues by September 1. Prehearing conference in the discount fares phase has already been held and a date for hearing has been determined.

<sup>2</sup>32 CAB 291 (1960).

rulemaking phase to adopt new standards for the depreciation life and residual value of current aircraft types for ratemaking purposes. A notice of rulemaking proposing new standards will be issued in the near future for the consideration and comment of interested persons.

2. *Leased Aircraft.* The Board has not previously adopted a policy with respect to the appropriate treatment of leased aircraft for ratemaking purposes. However, because of the increasing use of the lease agreement as a method of obtaining flight equipment, we believe such a policy should be adopted as a part of this proceeding. The issue is whether actual rental charges should be permitted as an expense, or whether the value of such aircraft should be included in the investment base as a constructed figure and constructed depreciation expense allowed, or whether some other treatment is proper. An issue related to the constructed-investment approach involves constructed sources of funds, i.e., debt or equity, and related constructed interest expense applicable to the debt portion. In our opinion, this phase of the investigation can be handled by rulemaking proceedings, and a notice of rulemaking will be issued.

3. *Deferred Federal Income Taxes.* As we noted in Order 70-1-147, the treatment of deferred federal income taxes for ratemaking purposes has been the subject of a number of administrative and court decisions since we issued our opinion in the General Passenger-Fare Investigation in 1960, and we believe the matter should be reconsidered herein. We intend to determine whether accruals for deferred income taxes under accelerated depreciation should be included in the investment base and whether actual or normalized income taxes should be recognized as an expense. A notice of rulemaking will be issued inviting comments on this question.

4. *Joint Fares.* By Order 70-1-148, dated January 30, 1970, and further discussed in Order 70-1-159, dated January 31, 1970, we instituted an investigation of joint fares in Docket 21867. Since that investigation would proceed contemporaneously with this overall investigation of domestic passenger fares and certain issues will necessitate the gathering and consideration of duplicative data, we have determined in the interest of reducing the burden on all parties that the joint-fare case should be consolidated in this investigation and conducted as a separate phase. As we have stated previously, the issues in this phase of the investigation are whether existing and subsequently published joint fares may be unjust or unreasonable or unjustly discriminatory or unduly preferential or unduly prejudicial, and if found to be unlawful to prescribe lawful fares; whether the establishment of additional joint fares may be required by the public convenience and necessity; and whether the divisions of joint fares may be unjust or unreasonable or inequitable or unduly preferential or unduly prejudicial as between air carrier parties thereto, and if so, to prescribe the



just, reasonable, and equitable divisions to be received by the participating carriers. A further issue is the just, reasonable, and equitable date from which any adjustment of divisions between carriers should be required.

5. *Discount Fares.* In Order 70-1-147, we expanded the scope of the investigation of youth and family fares in Docket 18936 to include Discover America round-trip excursion fares and consolidated that investigation in this docket. In addition to the issues currently under investigation and specified in Order 70-1-147, we shall expect a sufficient record to be developed in this phase of the investigation to enable us to determine the appropriate relationships of the discount fares investigated here to normal fares in the Fare Level and Fare Structure phases and to give full consideration to the relative proportion of discount fares in various markets in the Load Factor phase.

6. *Load Factor and Seating Configurations.* One of the most difficult issues to be resolved in this investigation is whether and, if so, in what manner load-factor standards should be established for ratemaking purposes. We discussed this matter in some detail in Order 70-1-147, where we said that, "if load-factor standards, per se, are found to be in the public interest, we believe that the investigation should focus on the following factors, inter alia, for determining the actual standard or standards to be implemented: The degree, if any, to which load-factor standards should be related to percentage of discount traffic carried; the relationship, if any, of seating density to the proposed standard; the degree, if any, to which load-factor standards should be varied according to market size and/or the number of competitors in a market; whether there should be a variation in the standard or standards as among different carriers; and whether the standard or standards should be varied as among different types of aircraft. We do not intend the foregoing suggested issues to be in any way all-inclusive, and we urge all parties to the investigation to raise any and all issues they may consider pertinent." Analysis of extensive market-by-market or segment data should be included. We shall expect our staff and the other parties to develop a comprehensive record for decision and to propose standards and suggest methods or formulas for implementing them.

Because of the introduction of new types of aircraft, the issue of appropriate standards for seating configurations in ratemaking is one of the most pressing competitive factors facing the industry today. We therefore propose in this proceeding to establish seating-configuration standards for the various types of aircraft. In this connection, in Docket 21798 we have recently suspended and ordered investigated tariffs of Trans World Airlines, Inc., and United Air Lines, Inc., proposing 5-abreast seating in the coach compartments of B-707 and DC-8 aircraft.<sup>8</sup> United has filed a peti-

tion for reconsideration requesting expansion of the scope of that investigation to include other carriers and the overall question of proper seating density; TWA has filed a complaint requesting investigation and consolidation of tariffs of Continental Air Lines, Inc., and Northwest Airlines, Inc., providing for 5-abreast seating;<sup>9</sup> and Delta Airlines, Inc., has filed a petition to intervene. We have decided to grant these requests to the extent of expanding the scope of investigation in Docket 21798 to include the issue of the appropriate seating configurations in jet aircraft in service today and expected to be introduced in the near future by the truckline and local-service carriers, and to consolidate that investigation in this proceeding. The issues will include number of seats abreast and seat pitch in the several compartments of the aircraft.

Because of the interrelationship of seating configuration and load-factor standards, we have determined that these issues should be considered and decided in the same phase of the overall investigation.

7. *Fare Level.* In this phase of the investigation, we shall make our determination of the appropriate fare levels, giving consideration to the standards and policies developed in this and other phases of the investigation, and shall order or permit such changes in fare level as may be justified by the record. Historical and forecast costs, traffic, revenues, earnings, and investment will be considered for appropriate periods, as well as elasticity of demand and the effect of fare levels on the movement of traffic.

We also intend in this phase of the investigation to develop policies with respect to methods of allocating costs for ratemaking purposes. We expect to adopt methods of allocating capacity and non-capacity costs to scheduled services, between passenger and cargo services, and among classes of passengers. In addition, methods of allocating costs between the line-haul and terminal portions of flights will be established for use in the Fare Structure phase.

We shall also expect the parties to give consideration to setting other ratemaking standards, such as standards for various categories of expense, aircraft utilization, and investment items, not covered by other phases of the investigation. Finally, consideration should be given to the approach we should take toward any necessary change in fare levels; i.e., whether we should look at industry averages, individual carrier needs, specific markets, or other matters.

8. *Rate of Return.* We have determined that our previously announced policy with respect to allowable rate of return on investment should be reexamined. We will not review our previous determination that rate of return on investment is the appropriate measure of profit for air carriers, since this issue was carefully considered in our 1960 de-

cision and there have been no changes in the relevant circumstances that would warrant a review of this matter. Among the issues to be considered in this phase are costs of debt and equity capital and debt/equity ratio. Cost of debt will include consideration of historical and current costs. Cost of equity includes such factors as earnings/price ratio, the appropriate period to be considered, and the relation of market to book value. Both actual and hypothetical or optimum debt/equity ratios will be considered in light of the requirements of economical and efficient management.

9. *Fare Structure.* Issues in the Fare Structure phase will include, among other things, whether or not a uniform industrywide formula should be adopted; what should be the elements of any such formula; whether line-haul rates should be based upon mileage, hours, or some other basis; whether there should be a taper in line-haul rates; whether or not there should be a separate terminal charge and, if so, whether such charge should be uniform or variable, and what should be the basis for the charge; whether the fares in each market should be set so as to provide approximately the same relative profit contribution or whether different relative profit elements are required; in what way, if any, should value of service be considered in fare structure, and, in this connection, what is known or can be learned about comparative elasticities of demand in various types of markets; what are the appropriate bases for differentials among first-class fares, coach fares, other classes of normal fare, and discount fares; and what, if any, provision should be made for stopovers at the through fare. Since our determinations with respect to local fares will also affect joint fares, we anticipate that our order herein will also relate to the appropriate levels of joint fares.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 404, and 1002 thereof,

*It is ordered, That:*

1. The scope of the investigation in Docket 21798 is expanded to include the seating configurations of jet aircraft specified in tariffs of trunkline and local-service carriers for use in scheduled service within the 48 contiguous States and the District of Columbia, and subsequent revisions and reissues thereof;

2. The investigation ordered in Docket 21798, as expanded by ordering paragraph 1 of this order, is consolidated in the investigation in Docket 21866;

3. Except to the extent granted herein, the complaint of Trans World Airlines, Inc., in Docket 21868, and the petitions of Delta Airlines, Inc., and United Air Lines, Inc., in Docket 21798 are dismissed;

4. The investigation ordered in ordering paragraphs 2 and 3 of Order 70-1-148, dated January 30, 1970, in Docket 21867, is consolidated in the investigation in Docket 21866;

5. A copy of this order will be served upon all parties in Docket 21866 and dockets consolidated herein.

<sup>8</sup> Docket 21868. Northwest and Continental have filed answers to United's petition and TWA's complaint.

<sup>9</sup> Order 70-1-63, dated Jan. 13, 1970.



This order will be published in the **FEDERAL REGISTER**.

By the Civil Aeronautics Board.

[SEAL] **HARRY J. ZINK,**  
Secretary.

[F.R. Doc. 70-2622; Filed, Mar. 3, 1970;  
8:49 a.m.]

[Docket No. 21899; Order 70-2-100]

### **EASTERN AIR LINES, INC.**

#### **Order Dismissing Complaint Regarding Group Tour Excursion Fares to San Juan**

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 24th day of February 1970.

By tariff revisions filed January 27, 1970, and marked to become effective February 26, 1970.<sup>1</sup> Eastern Air Lines, Inc. (Eastern), proposes round-trip inclusive tour excursion fares for groups of 60 or more passengers, between Baltimore, New York, Newark, Philadelphia, and Washington, D.C., on the one hand, and San Juan, on the other. The proposed round-trip fares are \$114 for travel from Monday through Thursday, and \$122 for weekend travel.

Pan American World Airways, Inc. (Pan American), has filed a complaint against Eastern's proposal requesting its investigation and suspension. The principal thrust of Pan American's complaint relates to the conditions surrounding the application of the proposed fares. Pan American contends that these conditions are not adequate to differentiate the group fare travel from existing regular fare service. Pan American further contends that the conditions for an inclusive tour to Puerto Rico should at a minimum include the following: (1) A 7-day minimum stay; (2) hotel accommodations for the entire trip; (3) organized sightseeing on at least half of the days of the trip; and (4) all airport transfers.

Upon consideration of the complaint and other relevant matters, the Board finds that the complaint does not set forth sufficient facts to warrant investigation and the request therefor is hereby denied.

The travel conditions relating to the application of the proposed group tour excursion fares appear adequate to distinguish the proposed group fares from existing regular fares, and are in line with conditions on group inclusive tour travel which the Board recently permitted to become effective in the case of similar fares offered by Trans Caribbean Airways, Inc. (TCA). Pan American has raised no issues not previously considered by the Board in passing upon TCA's earlier proposal.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

*It is ordered, That:*

<sup>1</sup> Revisions to Eastern Air Lines, Inc., Tariff CAB No. 232.

The complaint of Pan American World Airways, Inc., in Docket 21899 be, and it hereby is, dismissed.

This order will be published in the **FEDERAL REGISTER**.

By the Civil Aeronautics Board.

[SEAL] **HARRY J. ZINK,**  
Secretary.

[F.R. Doc. 70-2623; Filed, Mar. 3, 1970;  
8:49 a.m.]

## **FARM CREDIT ADMINISTRATION**

[Farm Credit Administration Order 734]

### **FORMATION OF SEPARATE RESEARCH AND INFORMATION DIVISIONS IN FARM CREDIT ADMINISTRATION**

FEBRUARY 13, 1970.

1. Effective February 22, 1970, the Research and Information Division is abolished and two new divisions created to be known as the Economic Research Division and the Information Division.

2. The Economic Research Division will perform the functions of the former Research Section.

3. The Information Division will perform the functions of the Information Services Section and the Foreign Training Section.

4. Farm Credit Administration Order No. 618, dated March 9, 1955, is hereby revoked.

**E. A. JAECKE,**  
Governor,

*Farm Credit Administration.*

[F.R. Doc. 70-2619; Filed, Mar. 3, 1970;  
8:48 a.m.]

## **FEDERAL COMMUNICATIONS COMMISSION**

[Docket No. 18800; FCC 70-172]

**JOHN A. ABERNETHY**

### **Order Designating Applications for Hearing on Stated Issues**

In regard applications of John A. Abernethy, 501 Third Avenue NE., Hickory, N.C. 28601, for renewal of general class amateur radio license and for advanced amateur radio license.

The Commission has under consideration the above-entitled applications for a renewal of General Class Amateur radio license and for an Advanced Amateur radio license filed by John A. Abernethy, licensee of amateur radio station K4OKA.

There is a substantial question concerning the qualifications of the applicant to hold an amateur operator and station license arising from Communications he transmitted by his amateur radio station K4OKA on or about November 13, 1965; January 11, April 27, October 30, and November 4, 1967; January 14, 1968; and October 28 and 29

and December 14 and 26, 1969; and January 1, 1970.

The Commission is unable to find that a grant of the captioned applications would serve the public interest, convenience, and necessity and, must, therefore, designate the applications for hearing. Except for the issues specified herein, the applicant is otherwise qualified to hold an amateur radio operator and station license.

Accordingly, it is ordered, Pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 1.973(b) of the Commission's rules, that the captioned applications are designated for hearing, at a time and place to be specified by subsequent order upon the following issues:

1. To determine the facts concerning the communications transmitted by amateur radio station K4OKA by applicant on or about November 13, 1965; January 11, April 27, October 30, November 4, 1967; January 14, 1968; and October 28 and 29 and December 14 and 26, 1969; and January 1, 1970;

2. To determine whether the communications transmitted by applicant on the dates specified in Issue 1 were consistent with the basis and purpose of the Amateur Radio Service as outlined in § 97.1 of the rules;

3. To determine whether the communications transmitted by applicant on the dates specified in Issue 1 were contrary to the terms and conditions of applicant's license for station K4OKA and otherwise contrary to the public interest, convenience, and necessity;

4. To determine whether by means of the radio communications transmitted by applicant on the dates specified in Issue 1, John A. Abernethy transmitted unidentified signals and willfully or maliciously interfered with radio communications, in violation of §§ 97.123 and 97.125 of the Commission's rules, respectively;

5. To determine whether, in view of the evidence adduced in the above-specified issues, John A. Abernethy possesses the requisite qualifications to be a licensee of the Commission; and

6. To determine whether, in light of the evidence adduced with respect to the foregoing issues, the grant of the subject applications for General Class Amateur radio license and for Advanced Amateur radio license would serve the public interest, convenience and necessity.

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

It is further ordered, That the Chief, Safety and Special Radio Services Bureau, shall, within 10 days after the release of this order furnish a Bill of Particulars to the applicant herein setting forth the basis for the above issues.



Adopted: February 18, 1970.

Released: February 27, 1970.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Secretary.

[F.R. Doc. 70-2636; Filed, Mar. 3, 1970;  
8:50 a.m.]

[Docket No. 18529; FCC 70R-69]

**BRINSFIELD BROADCASTING CO.**

**Memorandum Opinion and Order  
Enlarging Issues**

In regard application of J. Stewart Brinsfield, Sr., and J. Stewart Brinsfield, Jr., doing business as Brinsfield Broadcasting Co., Raytown, Mo., for construction permit, Docket No. 18529, File No. BPH-6329.

1. By Commission Order, FCC 69-424, released April 28, 1969, the mutually exclusive applications of J. Stewart Brinsfield, Sr., and J. Stewart Brinsfield, Jr., doing business as Brinsfield Broadcasting Co. (Brinsfield), and of Cass County Broadcasting Co. (Cass County) for construction permits to establish new FM broadcast stations at Raytown and Harrisonville, Mo., respectively, were designated for consolidated hearing. Included among the issues specified in the designation order were financial and Suburban issues against Brinsfield, an areas and populations issue, a section 307(b) issue and a contingent comparative issue.<sup>1</sup> By Order, FCC 69M-728, released June 16, 1969, the Hearing Examiner dismissed, with prejudice, the Cass County application for failing to prosecute. Dismissal of that application, in effect, mooted all hearing issues except those concerned with the requisite qualifications of Brinsfield, noted above. On October 16, 1969, the Hearing Examiner released an initial decision (FCC 69D-52) in this proceeding which resolved those qualifications issues in favor of Brinsfield, and which proposed to grant the Brinsfield proposal for a new FM facility at Raytown, Mo. In his initial decision, the Hearing Examiner referred to the fact that, although the Broadcast Bureau had filed a petition to enlarge issues against Brinsfield, the Bureau, in its proposed findings and conclusions, had conceded that grant of the Brinsfield application based upon the record made under the specified issues would serve the public interest.<sup>2</sup> Presently before the Review Board is the Broadcast Bureau's petition, noted by the Examiner and filed on October 1, 1969, which requests the addition of an issue to this proceeding to determine whether Brinsfield's pro-

posal will realistically provide a local transmission facility for its specified station location or for another larger community, i.e., Kansas City, Mo.<sup>3</sup>

2. By way of introduction to its argument, the Broadcast Bureau recites certain factual allegations concerning the Commission's assignment of the frequency now sought by Brinsfield which according to the Bureau, were discovered in the course of its analysis of the applicant's efforts to ascertain the community needs and interests of the proposed service area. More specifically, the Bureau notes that the FM channel Brinsfield seeks is Channel 264 (100.7 mcs), a Class C facility presently assigned to Harrisonville, Mo., which was originally allocated by the Commission in a report and order in Docket No. 16947, 6 FCC 2d 239, 8 RR 2d 1724, released January 6, 1967. The Bureau specifically refers to paragraph 14 of the cited order, which reads as follows:

We are of the view that the proposal to assign Channel 264 to Harrisonville would serve the public interest and should be adopted. In view of the fact that no Class A channels are available for assignment to Harrisonville we are adopting the proposal in spite of our normal policy of assigning Class A channels to such small communities. We are, however, noting the representations of petitioner that he plans to provide a local service to Harrisonville, Cass County, and other small communities in the area and not to provide an additional service to Kansas City, where there are sufficient assignments, and that he plans to locate the site of the station in the vicinity of Harrisonville. It is expected that the site selected will be done so on the basis of providing the service promised.

While the Bureau recognizes that Brinsfield's specification of Raytown, rather than Harrisonville, as its station location was permissible under the "25 mile" provision then existing in § 73.203(b) of the rules,<sup>4</sup> it insists that the "underlying circumstances" of Brinsfield's transfer of the FM channel to Raytown be investigated to determine whether the Raytown application is, in actuality, another Kansas City proposal. If it is, the Bureau claims that the proposal would not only violate the Commission's express mandate in regard to this FM channel, as noted above, but would also, by the utilization of the Harrisonville allocation to serve Kansas City, contravene the provisions of § 73.203(b).

3. In further support of its request for a Suburban Community or Berwick<sup>5</sup> is-

<sup>3</sup> Also before the Board are: (a) Opposition, filed Nov. 17, 1969, by Brinsfield; (b) supplement to opposition, filed Nov. 25, 1969, by Brinsfield; (c) Broadcast Bureau's reply to opposition, filed Nov. 28, 1969; and (d) Broadcast Bureau's comments on supplement to opposition, filed Dec. 8, 1969.

<sup>4</sup> Effective June 4, 1968, § 73.203(b) was amended to provide that a channel assigned to a listed community is available upon application in any unlisted community located within 15 miles of the listed community if the channel is a Class B/C channel. Certain provisions for the removal of a channel from a listed community were also enunciated.

<sup>5</sup> Berwick Broadcasting Corporation, 12 FCC 2d 8, 12 RR 2d 665 (1968), application for review granted, FCC 69-1213, 20 FCC 2d 393.

sue, the Bureau recites certain factual allegations which, it claims, suggest that Brinsfield intends to serve Kansas City rather than Raytown. The Bureau notes that the Brinsfield application was filed on June 3, 1968, seeking a construction permit to operate an FM facility on Channel 264 at Raytown, approximately 25 miles from Harrisonville, with power to 100 kw, and antenna height of 459 feet. According to the Bureau, Raytown, with a 1960 U.S. Census population of 17,083, is contiguous to the southeastern section of Kansas City (population: 475,539) and, like Kansas City, is located within Jackson County (population: 622,732) and is within both the Kansas City Urbanized Area and the Kansas City Standard Metropolitan Statistical Area. Moreover, the Bureau alleges that the Brinsfield application proposes a facility with tower height and power far in excess of that needed to serve Raytown. In this regard, the Bureau points to the asserted fact that a comparison of Exhibit No. 2 of Brinsfield's application (sectional aeronautical charts) with the U.S. Census urbanized area map reveals that the applicant's proposed 3.16 mv/m contour (city grade) covers somewhat more than 50 percent of Kansas City and that Brinsfield's proposed 1 mv/m contour encompasses virtually all of the Kansas City Urbanized Area.<sup>6</sup> The Bureau also points out that, according to Commission records, Kansas City is served by the following broadcast facilities: Five AM stations (four unlimited-time; one daytime-only), 10 FM stations (seven commercial; three educational), and four television stations (three VHF; one UHF-C.P.). On this basis then, the Bureau argues that a Suburban Community inquiry is appropriately raised in this proceeding.<sup>7</sup>

4. Brinsfield's opposition to the Bureau's request initially raises certain procedural objections. The application claims "surprise" since the matter of the Commission's rule making was not previously raised by the Bureau or by any other party to the proceeding and since the "existence of the cited language was not easy to discover." Since it did not have notice of the Commission's language, Brinsfield asserts that it should not now be required to face a new issue never before raised in a proceeding which is essentially complete. Aside from questions of notice and timeliness, however, Brinsfield claims that its proposal is wholly consistent with the Commission's desire to have Channel 264 provide local service to the community of

<sup>6</sup> Again referring to the engineering portion of the Brinsfield application, the Bureau notes that the area within the 1 mv/m contour includes 4,115 square miles with a population of 902,657.

<sup>7</sup> The Bureau readily concedes that its petition is not timely filed and that avoidance of procedural delay is in the public interest. However, the Bureau points to the Commission's language in the Harrisonville rule making proceeding as a countervailing consideration which necessitates enlargement of the issues to safeguard the public interest. Furthermore, the Bureau claims that grant of its petition will work no prejudice since only one applicant remains in the proceeding.

<sup>1</sup> The Commission specified the contingent comparative issue after noting that the applicants' proposals, although for different communities, would serve substantial areas in common.

<sup>2</sup> The Board notes that, pursuant to the provisions of § 1.291(d) of the rules, the initial decision would not become effective until final disposition of outstanding interlocutory matters in this proceeding.



Harrisonville; in this regard, Brinsfield notes that an engineering study (to be filed as a supplement to its opposition) will show that its proposal will provide satisfactory service to Harrisonville and that, had it elected to apply for Harrisonville rather than Raytown, the service areas would still be essentially the same. Furthermore, the applicant states, it expects the study to show that its proposal will provide "new service to significant 'white area', not presently receiving any existing FM service." In its supplement to opposition, Brinsfield submits the aforementioned engineering report which certifies that Brinsfield's proposed facility will provide a 70 dbu (3.16 mv/m) signal over all of Harrisonville and that such signal is sufficient to meet the principal city coverage requirements of the Commission's rules. The report also demonstrates that the proposed station will bring a first FM service of 60 dbu (1 mv/m) or better to at least an area of 500 square miles with a population of 6,255.<sup>5</sup>

5. The Broadcast Bureau, in reply to Brinsfield's opposition, enters, in effect, a demurrer to Brinsfield's argument. The Bureau contends that a specific showing under the Suburban Community inquiry is required in light of the Commission's language in assigning the FM channel to Harrisonville. To Brinsfield's protests of lack of notice, the Bureau points out that the applicant has now been apprised of the Commission's views regarding the Channel 264 assignment and will have ample notice of the requested issue to prepare for hearing. In a similar vein, the Bureau argues that the applicant will have an opportunity to meet the engineering aspects of the requested issue. In its comments on Brinsfield's engineering supplement, the Bureau urges that two points are relevant: (1) The fact of Brinsfield's coverage of Harrisonville with a 3.16 mv/m signal has no relevance or materiality with respect to the matters to be developed under the requested issue; (2) Brinsfield's "white area" analysis is unpersuasive since the engineering report does not make a Cherokee showing<sup>6</sup> with respect to any primary service which may be provided to the asserted "white area" by standard broadcast stations.

6. The Review Board will grant the Broadcast Bureau's request. While initially we note that the petition which, in effect, also constitutes a request to reopen the record, is untimely—it comes to the Board more than 2 months after

the record in this proceeding was closed<sup>10</sup> and over 5 months since Brinsfield's application (along with the application of Cass County) was designated for hearing—the Bureau's allegations have convinced the Board that a substantial question exists as to whether Brinsfield intends to provide another transmission facility for Kansas City, Mo. (rather than Raytown, its specified location) and that inquiry into such a matter in this single-applicant proceeding clearly outweighs the public interest benefits inherent in an expeditious disposition of Commission business. West Central Broadcasters, Inc., 4 FCC 2d 934, 8 RR 2d 623 (1966); The Edgefield-Saluda Radio Company, 5 FCC 2d 148, 8 RR 2d 611 (1966). In its report and order of January 5, 1967, the Commission states specifically that, in assigning Channel 264 to Harrisonville, it had noted representations of petitioner to the effect that proposed service was to be directed to "Harrisonville, Cass County, and other small communities in the area" and that petitioner did not plan to provide additional service for "Kansas City, where there are sufficient assignments." 6 FCC 2d at 243, 8 RR 2d at 1729. Furthermore, the Commission indicated its expectation that selection of a station site would be based upon the representations concerning the service to be provided. As in Berwick Broadcasting Corporation, supra, petitioner here alleges undisputed facts which suffice to raise a substantial question as to whether Brinsfield intends to follow the Commission's above-stated policy for use of Channel 264, or, rather, whether Brinsfield plans to utilize the facility as a broadcast service for the larger community of Kansas City, Mo.<sup>11</sup> The respective sizes of Raytown (17,083) and Kansas City (475,539) are especially significant here in view of Raytown's location: the latter is not only contiguous to the southeastern section of the larger community but is apparently surrounded by that portion of Kansas City. Moreover, the Bureau's further uncontested allegation reveals that Brinsfield will place a 3.16 mv/m signal over more than 50 percent of Kansas City and a 1mv/m signal over virtually the entire Kansas City Urbanized Area (population: 921,121). Although Brinsfield will provide a 3.16 mv/m signal over all of Harrisonville, the listed community for Channel 264, that fact does not necessarily answer the question of whether Brinsfield in-

tends to provide an additional transmission facility for Kansas City. In a similar vein, the applicant's reliance on its asserted FM "white area" coverage (which showing is deficient, as the Bureau correctly notes), does not, for the determination required here, surmount the cumulative effect of the Bureau's factual allegations. Consequently, an evidentiary inquiry is necessary to determine whether Brinsfield proposes to provide a local transmission service for Raytown, its specified station location, or for some other larger community, i.e., Kansas City.

7. Accordingly, it is ordered, That the petition to enlarge issues, filed October 1, 1969, by the Broadcast Bureau, is granted; that this proceeding is remanded to the Hearing Examiner for further hearing and for the preparation of a supplemental initial decision consistent with this memorandum opinion and order; and that the issues in this proceeding are enlarged by the addition of the following issues:

To determine whether the proposal of Brinsfield Broadcasting Co. will realistically provide a local transmission facility for its specified station location or for another large community.

To determine, in the light of the evidence adduced pursuant to the foregoing issue, whether the application of Brinsfield Broadcasting Co. for a construction permit should be granted.

8. It is further ordered, That the burden of proceeding with the introduction of evidence and the burden of proof under the issues added herein will be on Brinsfield Broadcasting Co.

Adopted: February 25, 1970.

Released: February 26, 1970.

FEDERAL COMMUNICATIONS  
COMMISSION,<sup>12</sup>

[SEAL] BEN F. WAPLE,  
Secretary.

[F.R. Doc. 70-2634; Filed, Mar. 3, 1970;  
8:50 a.m.]

[Docket No. 18797; FCC 70-166]

## FRONTIER BROADCASTING CO.

### Memorandum Opinion and Order Designating Application for Hearing on Stated Issues

In regard application of Frontier Broadcasting Co., Cheyenne, Wyo., for renewal of license of Station KFBC-TV, Cheyenne, Wyo., Docket No. 18797, File No. BRCT-318.

1. The Commission has before it for consideration: (a) the above-captioned application of Frontier Broadcasting Co. (Frontier) for renewal of the license of Station KFBC-TV, Cheyenne, Wyo.; (b) a Petition to Deny the application filed on September 11, 1968 by Cheyenne Enterprises, Inc. (Enterprises), and pleadings related thereto,<sup>1</sup> and; (c) a "Petition

<sup>12</sup> Board members Nelson and Pincock dissenting with statement.

<sup>1</sup> Frontier filed its opposition to petition to deny on Nov. 15, 1968, and Enterprises filed a reply to opposition on Dec. 27, 1968.

<sup>10</sup> The record in this proceeding was closed by the Hearing Examiner on July 31, 1969. The record was subsequently reopened on Sept. 19, 1969, for the receipt of an affidavit of "no consideration" by Brinsfield in connection with the dismissal of the Cass County application and was simultaneously closed again. See FCC 69M-1203, released Sept. 22, 1969.

<sup>11</sup> Use of Channel 264 for Kansas City would not only contravene the Commission's policy and intent as regards that frequency (as enunciated in its rule making action), but since Kansas City is a listed community, would also violate § 73.203(b) of the Commission's rules which provides for use of the channel in an unlisted community.

<sup>5</sup> These figures contained in the engineering report are based on the potential effect of a Clinton, Mo., FM assignment which has not been applied for. If the future activation of the Clinton assignment is discounted, the asserted FM "white area" would include 540 square miles with a population of 7,011.

<sup>6</sup> See Cherokee Broadcasting Co., 17 FCC 2d 121, 15 RR 2d 1205 (1969).



for a Hearing" filed on December 30, 1968 by the U.S. Department of Justice (Justice), and pleadings related thereto.<sup>2</sup>

2. Frontier was initially authorized to operate Station KFBC-TV on December 3, 1953; it has since that time been the only television station in Cheyenne.<sup>3</sup> Frontier is also the licensee of standard broadcast station KFBC, an unlimited time, Class IV station, and of KFBC-FM. There are three other AM stations licensed to Cheyenne (two are daytime-only and the third has a construction permit for unlimited operation) and one other FM station. Frontier owns and operates a community antenna television system in Cheyenne, having been granted a nonexclusive franchise in August 1965, by the Cheyenne City Council. Finally, the principals of Frontier control Cheyenne Newspapers, Inc., publishers of Cheyenne's only newspapers, the morning Wyoming Eagle and the evening Wyoming State Tribune. The broadcast interests of Frontier in other cities are its construction permit for a VHF satellite station in Rawlins, Wyo., and its two television satellite stations in Scottsbluff, Nebr., and Sterling, Colo. Frontier's principals also have an ownership interest in Station KQRS, Rock Springs, Wyo. Other newspapers published by Frontier's principals are the Laramie Boomerang, the Rawlins Times, the Rock Springs Rocket-Miner and the Worland Northern Wyoming News.

3. With this background, we proceed to a discussion of the pleadings and the application. Enterprises, in its petition, states that it has standing to oppose the renewal application on the ground that it is willing and able to construct a CATV system that will render superior and prompt service to Cheyenne, that Frontier is a competitor, both present and potential, and that an unqualified grant of its application for renewal of license of television Station KFBC-TV would eliminate the possibility of competition for the distribution of news and information in Cheyenne, and would result in cessation of Enterprises' "business activity" there. Thus, it is averred, and unconditional grant of the Frontier application would result in a direct, tangible, and substantial injury to Enterprises, thereby making it a party in interest within the meaning of section 309 (d) of the Communications Act.

4. Frontier, in its opposition, contends that Enterprises' entire claim to standing is based on its being a former applicant for a CATV franchise in Cheyenne and its stated continuing desire to operate a CATV system in that community, and that these facts are not enough to give it standing. Citing cases, it states that there is a clear line of precedent that a would-be applicant for a broadcast station or a previously denied ap-

plicant for a facility has no standing to contest the grant of a license for the facility to another party. Thus, it is urged, a would-be or a denied applicant for a different kind of facility a fortiori has no standing to challenge a grant of the instant application.

5. In its reply, Enterprises argues that *Joseph v. FCC*, 404 F. 2d 207 (C.A.D.C. 1968), interpreting the expanded definition of standing as set forth in *Office of Communication of United Church of Christ v. FCC*, 359 F. 2d 994, 7 Pike & Fischer, R.R. 2d 2001 (C.A.D.C. 1966), requires that the Commission consider all legitimate protests that raise substantial public interest issues.

6. Joseph and Church of Christ confer standing on the viewing or listening audience or responsible groups representing them to oppose assignment/transfer and renewal applications, respectively. There have been no allegations by Enterprises that any of its principals qualify as members of the listening or viewing audience or as such a representative group. Since Enterprises cannot claim standing under those two cases, we may ask whether it qualifies under the historic test for standing under section 309 of the Communications Act as interpreted under the doctrine of *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940), namely, as a person aggrieved or one whose interests would be adversely affected by a grant of a license to another person.

7. The only color of a claim of standing by Enterprises is that it has been an applicant for a CATV franchise in Cheyenne which has been denied but that it still stands ready and willing to construct and operate such a CATV system. On this, and nothing more, it cannot be found that an unqualified grant of this renewal application would adversely affect the interests of Enterprises. It is well settled that a would-be applicant or a denied applicant even for a broadcast facility has never been found to be a "person aggrieved or one whose interests would be adversely affected" by a grant of a license to another person. See, e.g., the latest case on this point, *WGAL, Television, Inc., FCC 68-788*, 13 Pike & Fischer R.R. 2d 1131 (1968). In view of the foregoing, we find that Enterprises does not have standing to contest Frontier's application for renewal of license. Accordingly, its petition will be dismissed. However, the facts and claims set forth by Enterprises are also set forth in substantially the same manner in the petition of the Department of Justice.

8. The Department of Justice entered the proceeding because of its general obligation to protect the public interest in a competitive economy. Thus, we are of the opinion that its pleading must be considered on its merits because it specifically raises "public interest" questions. *FCC v. RCA Communications*, 346 U.S. 86 (1953).

9. Justice states its belief that Cheyenne is a market for mass media of communications separate from the Denver, Colo., market and that Frontier, in light

of the facts set forth above, exercises a concentration of control over mass media in the Cheyenne market. It does not contend that Frontier's position in the market consisting of local news and advertising is in violation of the antitrust laws. Instead, it contends that perpetuation of this power through renewal of the KFBC-TV license " \* \* \* raises serious questions under the public interest standard that governs the Commission's action in granting and reviewing broadcast licenses." Justice therefore requests that the Commission designate the KFBC-TV renewal application for hearing, and thereafter take appropriate action including, possibly, a qualified grant of the renewal application permitting Frontier to dispose of its television station at market value.

10. In response to the above allegations by Justice, Frontier has filed a number of pleadings<sup>4</sup> in which it contends that an adverse public interest question is not raised by its renewal application. It states that there is no undue media concentration in the Cheyenne area because of the reception of the Denver broadcast stations and the substantial circulation of Denver newspapers in Cheyenne. Frontier further alleges that there is now greater broadcast competition in Cheyenne than there was when KFBC-TV was initially licensed due to subsequent licensing of AM and FM stations. It states in considerable detail the steps which it took to construct the CATV system after receiving the franchise and maintains that its efforts were diligent and undertaken in good faith. Frontier contends that the Commission should not now take action on an ad hoc basis against it and its "pioneering efforts" to construct broadcast facilities in Cheyenne when it was unprofitable to do so. It states that the issues raised by Petitioners are more properly for consideration in the Commission's outstanding rule making proceedings in Docket No. 18110 (the "one to a customer" proceeding) and Docket No. 18397 (cross-ownership of CATV and television facilities). With respect to this last contention, Frontier filed a letter with the Commission on January 20, 1970, in which it states that the Commission's January 15, 1970, Policy Statement on Comparative Hearings Involving Regular Renewal Applicants (FCC 70-62) reaffirms the theory that media concentration issues should be decided by rule making proceedings and not by means of a renewal hearing.<sup>5</sup>

11. Section 309(e) of the Communications Act of 1934, as amended requires the Commission to designate an application for hearing if a substantial and material question of fact is presented or if the Commission is unable to make the

<sup>2</sup> Frontier filed its response on Feb. 7, 1969. Justice did not file any reply pleading.

<sup>3</sup> A construction permit for a television station on Channel 27 in Cheyenne was granted on May 24, 1966. An application to extend the completion date was designated for hearing on Sept. 24, 1969 (Docket No. 18679).

<sup>4</sup> Additional information with respect to the issues raised by Petitioners was filed in response to Commission letters dated Aug. 14 and Sept. 24, 1969.

<sup>5</sup> By letter of Jan. 28, 1970, Enterprises responded to Frontier's letter of Jan. 20, 1970, in which it set forth its views on the applicability of the Policy Statement to this matter.



required finding that a grant of the application would serve the public interest, convenience, and necessity. We are of the opinion that in light of the above, the Commission is presented with a substantial and material question as to whether a grant of the KFBC-TV renewal application would result in a continuing undue concentration of control of mass communications media in Cheyenne, Wyo. We cannot agree with Frontier that a hearing on its renewal of license application on the issue specified is contrary to the aforementioned Policy Statement. While we there set out our view that generally the broadcast industry cannot be appropriately restructured through a series of ad hoc renewal proceedings, we also specifically indicated our intention to institute "special hearings where particular facts concerning undue concentration \* \* \* are alleged" Policy Statement, supra. The concentration here involved, including the apparent lack of competition in Cheyenne (see par. 2, supra), does present such a case and is thus a matter which should be explored in hearing. It thus differs from prior actions such as the recent renewal of WTOP-AM-FM-TV (letter to Edwin F. Kilpatrick—FCC 69-1312), where the showing of the licensee as to the extent of concentration in the market rebutted the need for hearing and established that the matter came within our general policies in this area.

12. *Therefore, it is ordered*, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned renewal application is designated for hearing, at a time and place to be specified in a subsequent order, on the following issues:

(1) To determine whether the broadcast interests of Frontier Broadcasting Co. and the other media under common control result in an undue concentration of control of the media of mass communications in Cheyenne, Wyo.;

(2) To determine whether, in light of the evidence adduced pursuant to the foregoing issue, a grant of the above-captioned application would serve the public interest, convenience and necessity.

13. *It is further ordered*, That the examiner herein shall, if the foregoing issues are resolved against Frontier, grant the application on the condition that Frontier Broadcasting Co. be required to dispose of Station KFBC-TV at market value within a reasonable time.

14. *It is further ordered*, That, in any event, a grant of the application for renewal of the KFBC-TV license shall be conditioned upon the outcome of the Commission's pending rule making proceeding in Docket No. 18397.

15. *It is further ordered*, That the petition to deny filed by Cheyenne Enterprises, Inc. is dismissed, and the "Petition for a Hearing" filed by the U.S. Department of Justice is granted, and, the said Department of Justice is made a party to this proceeding.

16. *It is further ordered*, That to avail themselves of the opportunity to be heard, the licensee and Department of Justice, pursuant to § 1.221 of the Com-

mission's rules and regulations, in person or by attorney, shall within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intent to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

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

Adopted: February 11, 1970.

Released: February 26, 1970.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,

Secretary.

[F.R. Doc. 70-2635; Filed, Mar. 3, 1970; 8:50 a.m.]

## FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 516; Docket No. 70-9]

**BOLTON AND MITCHELL, INC.**

### Notice of Investigation and Hearing

Bolton & Mitchell, Inc. (BMI), 79 Wall Street, New York, N.Y. 10005, was issued Independent Ocean Freight Forwarder License No. 516 in October 1963. Its application for said license indicated that neither BMI nor any officer thereof was connected or associated with any shipper, consignee, seller or purchaser of shipments to foreign countries. Subsequent oral statements by a principal of BMI affirmed such written denial of shipper connections.

The Federal Maritime Commission has reason to believe that BMI willfully falsified its application for a license and willfully gave false oral answers regarding shipper connections for the purpose of continuing its license in effect. The Commission also has reason to believe that BMI has been operating as a shipper, seller and purchaser of shipments to foreign countries, and has had a beneficial interest in such shipments contrary to the provisions of section 1, Shipping Act, 1916 (46 U.S.C. 801).

It further appears that BMI may have been operating in violation of section 16, first paragraph, Shipping Act, 1916 (46 U.S.C. 815), by willfully obtaining transportation by water for property at less than the rates which would otherwise be applicable as a result of BMI's receiving ocean forwarding compensation on its own shipments.

Further, the Commission has reason to believe that BMI has violated § 510.5

\* Chairman Burch concurring and issuing a statement filed as part of the original document; Commissioners Robert E. Lee and Wells dissenting; Commissioner Johnson concurring in the result.

(e) of General Order 4 by not showing its license number on certain of its invoices and shipping documents; § 510.23 (d) by knowingly imparting false information to its principals through the use of falsified invoices or other documents; § 510.23(e) by withholding information as to correct charges relative to forwarding transactions from its principals; § 510.23(f) by failing to account to its principals for the overpayments of ocean freight and insurance charges; § 510.23 (h) by utilizing false documents relating to shipments handled; and § 510.23(j) by failing to use invoices which state the actual amount of ocean freight and insurance rates assessed.

Section 510.9 of Federal Maritime Commission General Order 4 provides for revocation of an independent ocean freight forwarder license after notice and hearing for violation of any provision of the Shipping Act, 1916; failure to comply with any lawful regulations of the Commission; making any willfully false statement to the Commission in connection with an application for a license or its continuance in effect; or for such conduct as the Commission shall find renders the licensee unfit to carry on the business of forwarding.

*Therefore it is ordered*, Pursuant to sections 22 and 44 of the Shipping Act, 1916 (46 U.S.C. 821, 841b), that a proceeding is hereby instituted to determine whether Bolton & Mitchell, Inc., continues to qualify as an independent ocean freight forwarder and whether its license should be continued in effect or be revoked pursuant to section 44 of the Shipping Act, 1916, and § 510.9 of Federal Maritime Commission General Order 4.

*It is further ordered*, That this ordered proceeding determine whether Bolton & Mitchell, Inc., is in fact independent of shipper connections as defined by section 1, of the Shipping Act, 1916, and whether it has been operating contrary to such definition.

*It is further ordered*, That this ordered proceeding determine whether Bolton & Mitchell, Inc., has willfully violated §§ 510.5(e), 510.23(d), 510.23 (e), 510.23(f), 510.23(h), and 510.23(j) of Federal Maritime Commission General Order 4.

*It is further ordered*, That this proceeding determine whether Bolton & Mitchell, Inc., did violate section 16, first paragraph, Shipping Act, 1916, by having willfully obtained directly or indirectly, transportation by water for property at less than the rates or charges which would otherwise be applicable.

*It is further ordered*, That this proceeding determine whether Bolton & Mitchell, Inc., falsified its application for license No. 516 and, subsequently gave willfully false oral answers in regard to shipper connections.

*It is further ordered*, That Bolton & Mitchell, Inc., be made respondent in this proceeding and that the matter be assigned for hearing before an examiner of the Commission's Office of Hearing Examiners at a date and place to be announced by the presiding examiner.



*It is further ordered,* That notice of this order be published in the *FEDERAL REGISTER* and a copy thereof and notice of hearing be served upon respondent.

*It is further ordered,* That any person, other than respondent, who desires to become a party to this proceeding and to participate therein shall file a petition to intervene with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, with copies to respondent.

*It is further ordered,* That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

[SEAL] FRANCIS C. HURNEY,  
Secretary.

[F.R. Doc. 70-2640; Filed, Mar. 3, 1970;  
8:50 a.m.]

[Docket No. 70-10]

### MATSON NAVIGATION CO.

#### General Increases in Breakbulk Rates in the U.S. Pacific/Hawaii Trade; Order of Investigation

There have been filed with the Federal Maritime Commission by Matson Navigation Company, to become effective February 16, 1970, the following revised pages to its Tariff FMC-F No. 141 which increase breakbulk rates on certain commodities in the subject trade:

Second revised page 24.  
First revised page 25.  
Sixth revised page 26.  
Second revised page 27.  
First revised page 28-A.  
First revised page 29.  
Second revised page 30.  
Fourth revised page 31.  
Seventh revised page 32-A.  
Third revised page 33.  
First revised page 35.  
First revised page 36.

Upon consideration of said increases, and protests thereto filed by the State of Hawaii and Kaiser Steel Corp., the Commission is of the opinion that the above-designated increased rates should be placed under investigation to determine whether they are unjust, unreasonable or otherwise unlawful under section 18(a) of the Shipping Act, 1916, and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933. It further appears that, rates on cargo not moving in containers or on container vessels or not moving on Matson's specialized car carriers, "Hawaiian Motorist" and "Hawaiian Legislator" and not included in the aforementioned tariff, should be placed under investigation to determine whether such rates produce a reasonable return to the carrier or are otherwise unjust, unreasonable or unlawful under section 18(a) of the Shipping Act, 1916 and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933, and good cause appearing therefor;

*It is ordered,* That pursuant to the authority of sections 18(a) and 22 of the Shipping Act, 1916, and sections 3 and 4 of the Intercoastal Shipping Act, 1933, an investigation is hereby instituted into

the lawfulness of the said increased rates; the lawfulness of the current rates on sugar not carried on container vessels (FMC-F No. 134); molasses not carried on container vessels (FMC-F No. 138); fuel and diesel oil not carried on container vessels (Item 100, FMC-F No. 141); automobiles not carried on Matson's specialized car carriers, "Hawaiian Motorist" and "Hawaiian Legislator" (FMC-F No. 143); and all other cargo moving in Matson's conventional service not in containers (FMC-F No. 137, rule 225, third revised page 58) to determine whether such rates produce a reasonable return to the carrier or are otherwise unjust, unreasonable or unlawful under section 18(a) of the Shipping Act, 1916, and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933. In the event any of the rates hereby placed under investigation are further changed, amended, or reissued, such changed, amended or reissued matter will be included in this investigation.

*It is further ordered,* That Matson Navigation Co. be named as respondent in this proceeding;

*It is further ordered,* That the State of Hawaii and Kaiser Steel Corp. be named as petitioners in accordance with the Commission's rules of practice and procedure;

*It is further ordered,* That this proceeding be assigned for public hearing before an examiner of the Commission's Office of Hearing Examiners and that the hearing be held at a date and a place to be determined and announced by the presiding examiner;

*It is further ordered,* That (I) a copy of this order be forthwith served upon the respondent and petitioners herein and published in the *FEDERAL REGISTER* and (II) the said respondent and petitioners be duly served with notice of time and place of hearing.

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

By the Commission.

[SEAL] FRANCIS C. HURNEY,  
Secretary.

[F.R. Doc. 70-2641; Filed, Mar. 3, 1970;  
8:50 a.m.]

[Docket No. 70-11]

### PACIFIC COAST EUROPEAN CONFERENCE

#### Order of Investigation

The member lines of the Pacific Coast European Conference (Agreement No. 5200) have amended rules 10 and 12 of their Freight Tariff No. FMC 14 to become effective on April 24, 1970.

On that date, rule 12, entitled "Port Equalization" will be deleted in its en-

tirety from the tariff and rule 10, which now reads:

10. *SHIFTING OF VESSELS.* Shifting of vessels is permitted within loading ports but, except as otherwise provided, there shall be no absorptions for bringing cargo to, from or within such ports. Vessels loading in the San Francisco Bay area shall be limited to two loading berths, except that vessels may shift to additional berths for military cargo and cargo loaded in bulk. Calls at additional berths may be made to load a minimum quantity of 750 short tons from one shipper.

The provisions of this rule apply separately to each call into the San Francisco Bay area from another port.

will read as follows:

10. *SHIFTING OF VESSELS.* Shifting of vessels is permitted within loading ports but, except as otherwise provided, there shall be no absorptions for bringing cargo to, from or within such ports. Each Member shall be limited to a single loading berth in the San Francisco Bay area, designated semi-annually, July through December and January through June, except that vessels may shift to additional berths for military cargo and cargo loaded in bulk. Calls at additional berths may be made to load a minimum quantity of 750 short tons from one shipper. For the purposes of this rule, Members participating in a joint service shall be treated as a single Member.

The provisions of this rule apply separately to each call into the San Francisco Bay area from another port, and for the purpose of this rule, the San Francisco Bay area includes all berths at Alameda, Oakland, Redwood City, Richmond, Sacramento, San Francisco and Stockton.

These changes will require each member line to select one loading berth in the entire San Francisco Bay area for a period of 6 months, but permit service at additional berths for military cargo, cargo loaded in bulk and for minimum quantities of 750 short tons from one shipper. The rule is unclear as to whether member lines may load at any berth other than a selected berth if they discharge cargo at the nonselected berth. The port equalization now allowed by rule 12 will not be permitted.

Numerous protests against the promulgation of the tariff revisions have been filed with the Commission by persons who allege that they will be adversely affected by the Conference's action. It has been alleged that the subject tariff revisions constitute a scheme of transportation practices which is not authorized by the Conference's approved agreement and thus is in violation of section 15 of the Shipping Act, 1916. It is also alleged that the practices established by these rules violate sections 16 First and 17 of the Act by creating undue or unreasonable prejudice or disadvantage and/or unjust prejudice or discrimination, constitute an unjust and unreasonable regulation and practice related to or connected with the receiving of freight, and violate section 205 of the Merchant Marine Act, 1936. The allegations of conduct unauthorized under the Conference's approved agreement and actions which are unreasonable or result in unlawful discrimination, disadvantage or prejudice appear to be equally applicable to the Conference's present manner of limiting vessel berths in the San Francisco Bay area.



On February 20, 1970, the Honorable Ronald Reagan, Governor of the State of California, under the authority provided by section 16 First of the Shipping Act, 1916 (46 U.S.C. 815), filed a protest with the Commission alleging that the amendments to rules 10 and 12 of the Conference tariff will unjustly discriminate against the State of California and its products moving in foreign commerce to Europe in violation of sections 15 and 17, Shipping Act, 1916, and section 205, Merchant Marine Act, 1936.

In consideration of the foregoing the Commission is of the opinion that an investigation should be initiated to determine the lawfulness of current tariff rules 10 and 12 and the changes in these rules referred to above.

Now therefore it is ordered, That, pursuant to sections 15 and 22 of the Shipping Act, 1916 (46 U.S.C. 814 and 821), an investigation shall be instituted to determine whether present rules 10 and 12 of Freight Tariff No. FMC 14 of the Pacific Coast European Conference and/or the changes in rules 10 and 12 to become effective April 24, 1970, (1) are authorized by Agreement No. 5200; (2) are unduly or unreasonably prejudicial or disadvantageous as between persons, localities or descriptions of traffic within the meaning of section 16 First, unjustly discriminatory between shippers or ports or unjustly prejudicial to exporters of the United States as compared with their foreign competitors within the meaning of the first paragraph of section 17 of the Shipping Act, 1916; (3) constitute an unreasonable practice with respect to the receiving, handling, storing or delivery of property within the meaning of the second paragraph of section 17 of the Shipping Act, 1916; and/or (4) are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers or ports, or between exporters from the United States and their foreign competitors, detrimental to the commerce of the United States, contrary to the public interest, or otherwise in violation of the Shipping Act, 1916, within the meaning of section 15 of that Act.

It is further ordered, That, pursuant to section 16 First of the Shipping Act, 1916, the Pacific Coast European Conference and its member lines are ordered to show cause why the amendments to presently effective rules 10 and 12 of Freight Tariff No. FMC 14 of the Pacific Coast European Conference now scheduled to become effective on April 24, 1970, should not be set aside for the reasons enumerated above as advanced in the protest of the Governor of the State of California.

It is further ordered, That the Pacific Coast European Conference and its member lines as listed in the appendix hereto are hereby named respondents and that the Governor of the State of California shall also be named a party in this proceeding; and

It is further ordered, That a public hearing be held before an examiner of the Commission's Office of Hearing Examiners at a date and place to be determined and announced by the chief examiner in accordance with this order

to receive evidence in this proceeding to provide an adequate record for proper disposition of the issues; and

It is further ordered, That the hearing shall be commenced as soon as possible and the examiner shall issue an initial decision at the earliest practicable date, in no event later than June 9, 1970. Exceptions to the examiner's initial decision shall be filed within 10 days following the date of service thereof with replies to exceptions to be filed within 10 days thereafter; and

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and that a copy thereof and notice of hearing be served upon all parties; and

It is further ordered, That any person other than those named as parties herein who desires to become a party to this proceeding and participate therein, shall file a petition to intervene in accordance with Rule 5(1) (46 CFR § 502.72) of the Commission's rules of practice and procedure; and

It is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY,  
Secretary.

#### APPENDIX

##### PACIFIC COAST EUROPEAN CONFERENCE

David Lindstedt, Chairman, 417 Montgomery Street, San Francisco, Calif. 94104.

##### MEMBER LINES

Anglo Canadian Shipping Co., Ltd./Anglo Canadian Shipping (Westship) Ltd., 837 West Hastings Street, Vancouver 1, British Columbia, Canada.

Blue Star Line, Blue Star Line, Ltd., Albion House, Leadenhall Street, London E.C. 3, England.

d'Amico Mediterranean Pacific Line, d'Amico Società di Navigazione per Azioni, Corso d'Italia 35/B, Rome, Italy.

East Asiatic Line, The East Asiatic Co., Ltd. (A/S Det Østasiatiske Kompagni), 2 Holbergsgade, Copenhagen, Denmark.

French Line, Compagnie Generale Transatlantique, 6 rue Auber, Paris 9e, France.

Furness Line, Furness, Withy & Co., Ltd., Furness House, Leadenhall Street, London E.C. 3, England.

Hamburg-American Line, Hamburg-Amerika Linie, Ballindamm 25, Hamburg 1, Germany.

Hanseatic-Vaasa-Line, Vaasa Line Oy, Arkadiankatu 21, Helsinki, Finland.

Holland-America Line, N. V. Nederlandsch-Amerikaansche Stoomvaart Maatschappij, Wilhelminakade 86, Rotterdam, Holland.

Interocean Line, Westfal-Larsen & Co., A/S, Olav Kyrresgate 11, Bergen, Norway.

Italian Line, "Italia" Società Per Azioni di Navigazione, Piazza de Ferrari 1, Genoa, Italy.

Italcaspian Line, 27 Boulevard d'Italie, Monte Carlo, Monaco.

Johnson Line, Rederiaktiebolaget Nordstjernan, Stureplan 3, Stockholm, 7, Sweden.

Lykes Lines, Lykes Bros. Steamship Co., Inc., 1300 Commerce Building, New Orleans, La.

North German Lloyd, Norddeutscher Lloyd, Gustav-Deetjen-Allee 2/6, Bremen, Germany.

Fred. Olsen Line, Fred. Olsen & Co., Fred. Olsens gt 2, Oslo, Norway.

Royal Mail Lines Ltd., 56 Leadenhall Street, London E.C. 3, England.

Weyerhaeuser Line, Division of Weyerhaeuser Co., Tacoma Building, Tacoma, Wash.

United Yugoslav Lines, Splosna Plovba, Zupanciceva 24, Piran, Yugoslavia.

Zim Israel Navigation Co., Ltd., Zim Israel Navigation Co., Ltd., 7/9 Ha'atzmaut Road, Haifa, Israel.

[F.R. Doc. 70-2642; Filed, Mar. 3, 1970; 8:50 a.m.]

## FEDERAL POWER COMMISSION

[Project No. 2306]

### CITIZENS UTILITY CO.

#### Notice of Application for Approval for Constructed Project

FEBRUARY 25, 1970.

Public notice is hereby given that application for approval of Exhibit R has been filed under the regulations under the Federal Power Act (16 U.S.C. 791a-825r) by Citizens Utility Co. (correspondence to: John C. Gibbs, Senior Vice President, Citizens Utility Co., Ridgeway Center, Stamford, Conn. 06905) as part of the license for the constructed Clyde River Project No. 2306, located on the Clyde River and a tributary, in Orleans County, Vt., in the vicinity of the city of Newport, and the towns of West Charleston, Morgan, East Charleston, Derby, Morgan Center, Holland, and Coventry.

According to the Exhibit R, the licensee has provided project lands under lease agreements for recreational development by Public Agencies. Under the agreements, (1) the Vermont Department of Fish and Game has provided: a boat ramp at Echo Dam; an access road, parking area and sanitation facilities at Echo Lake; a fish hatchery at Seymour Dam; a fishing pier, two boat ramps, access area, and sanitation facilities at Seymour Lake; a boat ramp at West Charleston Dam; and a parking area, access road, and sanitation facilities at Pensioner Pond; and (2) the town of Morgan has provided a swimming beach and parking area at Seymour Lake. While at present there are no recreational facilities at Newport Dam and Clyde Pond, the Vermont Department of Fish and Game plans to install a boat ramp at the former and an access area, parking area and sanitation facilities at the latter.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 22, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a



party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,  
Acting Secretary.

[F.R. Doc. 70-2590; Filed, Mar. 3, 1970;  
8:46 a.m.]

[Docket No. CP70-197]

## COLORADO INTERSTATE GAS CO.

### Notice of Application

FEBRUARY 25, 1970.

Take notice that on February 16, 1970, Colorado Interstate Gas Co., a division of Colorado Interstate Corp. (applicant), Post Office Box 1087, Colorado Springs, Colo. 80901, filed in Docket No. CP70-197 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the regulations thereunder for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing on April 1, 1970, and the operation of facilities to enable applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system additional supplies of natural gas in areas generally coextensive with said system.

The application states that the total cost of all facilities will not exceed \$1 million with no single project to exceed \$250,000. The proposed facilities will be financed from funds on hand, funds from operations, or from short-term bank loans.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 17, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if

the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

KENNETH F. PLUMB,  
Acting Secretary.

[F.R. Doc. 70-2591; Filed, Mar. 3, 1970;  
8:46 a.m.]

[Project No. 2312]

## DIAMOND INTERNATIONAL CORP.

### Notice of Application for Approval for Constructed Project

FEBRUARY 25, 1970.

Public notice is hereby given that application for approval of Exhibit R has been filed under the regulations under the Federal Power Act (16 U.S.C. 791a-825r) by Diamond International Corp. (correspondence to: Thomas M. Debevoise, Esquire, Debevoise, Liberman & Corben, Shoreham Building, Washington, D.C. 20005) as part of the license for the Great Works Project No. 2312, located on the Penobscot River in Penobscot County, Maine, in the city of Old Town and near the towns of Milford and Bradley.

According to Exhibit R, the licensee conducts guided tours of the dam and mills served by the project, and plans, in cooperation with the Maine Department of Inland Fisheries and Game, to improve the existing fishway at the project dam. Aside from the foregoing, any recreation development, now or in the future, is limited by such factors as the following: licensee owns only one-third of the 4-mile shoreline of the reservoir, the section of river involved is heavily polluted, a railroad right-of-way utilizes one side of the reservoir, and piles of logs and wood chips present a potential fire hazard.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 22, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,  
Acting Secretary.

[F.R. Doc. 70-2592; Filed, Mar. 3, 1970;  
8:46 a.m.]

[Docket No. CP70-97]

## MANUFACTURERS LIGHT AND HEAT CO. AND HOME GAS CO.

### Order Granting Interventions, Prescribing Procedures and Fixing Date of Prehearing Conference

FEBRUARY 24, 1970.

Manufacturers Light and Heat Co. (Manufacturers) and Home Gas Co. (Home) filed on October 14, 1969, a joint application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act. The application involves Manufacturers' and Home's joint proposal to expand operations to serve 1970-71 requirements. Notice of the filing has been issued.<sup>1</sup> Petitions to intervene were timely filed by Pennsylvania Gas and Water Co. (Penn Gas), Orange and Rockland Utilities, Inc., and UGI Corp. Penn Gas requested a formal hearing.

We are of the view that the petitioners have alleged sufficient interest in the joint application to warrant intervention.

A motion has been filed by Manufacturers and Home proposing that the proceeding be phased so that certain facilities can be considered after a Commission decision has been issued in the "Coordinated Operations" proceeding in Docket No. CP68-364. We direct the Presiding Examiner to act on the motion at the earliest possible time and if procedurally feasible, he shall define specific uncontested facilities and related service which may be made the subject of certification pursuant to the Commission's shortened hearing procedure.

Based on our experience in other similar proceedings, it is our belief that we should set forth the procedure to insure an expeditious and orderly hearing by providing for the filing of the applicants' direct presentation and for the submission of a statement of proposed issues by all parties.

The Commission finds:

(1) It is desirable and in the public interest to allow the above-named petitioners to intervene in this proceeding in order that the petitioners may establish the facts and the law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

(2) The expeditious disposition of this proceeding will be effectuated by providing for service of testimony by the applicants prior to the holding of a prehearing conference.

(3) The expeditious disposition of this proceeding will be effectuated by the filing of statements of proposed issues by the participants herein.

(4) The expeditious disposition of this proceeding will be effectuated by directing the Presiding Examiner to act on the applicants' motion for separating this proceeding into two phases.

<sup>1</sup> Notice was issued on Oct. 23, 1969, and was published in the FEDERAL REGISTER on Oct. 30, 1969 (34 F.R. 17544).



## The Commission orders:

(A) The above-named petitioners are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene: *And provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) Applicants and any intervenor in support of the applicants shall file with the Commission and serve on all parties and the Examiner on or before March 16, 1970, their direct testimony and exhibits.

(C) All parties to the proceeding shall file with the Commission and serve on all parties and the Examiner on or before March 23, 1970, a statement of the issues which they believe have been raised by the application and direct presentation. Said statement of issues shall relate the issues to specific facilities and/or services proposed in the application.

(D) The Presiding Examiner shall act on applicants' motion for an order to separate this proceeding into two phases.

(E) Pursuant to the provisions of § 1.18 of the Commission's rules of practice and procedure, a prehearing conference shall be held before a hearing examiner of the Commission to be designated by the Chief Examiner, in order to consider the means by which the conduct of this proceeding may be facilitated and in order to determine further procedures including the date for commencement of cross-examination. Such conference will be held in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., commencing at 10 a.m., E.S.T., on March 31, 1970.

By the Commission.

[SEAL] KENNETH F. PLUMB,  
Acting Secretary.

[F.R. Doc. 70-2597; Filed, Mar. 3, 1970;  
8:47 a.m.]

[Docket No. G-3891, etc.]

D. B. McCONNELL ET AL.

## Findings and Order

FEBRUARY 19, 1970.

In the 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 respondents, making successors co-respondents, redesignating proceeding, making rate change effective, accepting agreement and undertaking and surety bond for filing, requiring filing of agreements and undertakings, and accepting related rate schedules and supplements for filing, issued July 25, 1969, and published in the FEDERAL REGISTER August 2,

1969. 34 F.R. 12646, first paragraph: Change Docket No. "G-19516" to read Docket No. "G-11984" paragraph (5), change Docket No. "G-19516" to read Docket No. "G-11984", paragraph (K), change Docket No. "G-19516" to read Docket No. "G-11984", first column: Under Docket No. C169-860 change Docket No. "G-19516" to read "G-11984".

KENNETH F. PLUMB,  
Acting Secretary.

[F.R. Doc. 70-2589; Filed, Mar. 3, 1970;  
8:46 a.m.]

[Project No. 2187]

PUBLIC SERVICE COMPANY OF  
COLORADONotice of Application for Approval  
for Constructed Project

FEBRUARY 25, 1970.

Public notice is hereby given that application for approval of Exhibit R, as revised, has been filed under the regulations under the Federal Power Act (16 U.S.C. 791a-825r) by Public Service Company of Colorado (correspondence to: R. F. Walker, Vice President, Public Service Company of Colorado, Post Office Box 840, Denver, Colo. 80201) as part of the license for the Georgetown Hydro Project No. 2187, located on South Clear Creek, a tributary stream in the South Platte River Drainage Basin, in Clear Creek County, Colo., and affecting lands of the United States within the Arapahoe National Forest and other lands of the United States.

The filings comprising Exhibit R, as revised, reflect the fact that the project consists of two small storage reservoirs in the upper reach of the watershed, and two storage reservoirs and a forebay reservoir downstream—almost contiguous with the lower reservoir of the Licensee's Cabin Creek Project. According to the Exhibit, the two upper reservoirs, Murray Lake and Silver Dollar Lake, are above timberline and are accessible only by foot or horseback over existing trails. Fishing, camping, picnicking, hiking, and associated recreation activities are available to the public at these reservoirs. Of the lower reservoirs, only Clear Lake is suitable, at this time, for public fishing, picnicking, and other recreational purposes, and this lake will be made available for these purposes through a cooperative agreement with the U.S. Forest Service for recreation construction and maintenance. Clear Lake adjoins and has direct auto access from scenic Guanella Pass Road, which provides access to some of the most spectacular scenery in Colorado, including the Forest Service Abyss Scenic Area. The Forebay reservoir and Green Lake, the remaining lower reservoirs, constitute a source of the town of Georgetown's water supply, and both are otherwise unsuitable for the general public's recreational use because of size, terrain, and other natural features. The town of Georgetown has requested the Licensee to take whatever action is possible to prevent contamination of the water supply areas.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 22, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,  
Acting Secretary.

[F.R. Doc. 70-2593; Filed, Mar. 3, 1970;  
8:46 a.m.]

[Docket No. CP70-9]

WEST TENNESSEE PUBLIC UTILITY  
DISTRICT OF WEAKLEY TENN.,  
ET AL.Order Permitting Intervention and Setting  
Dates for the Filing of Testimony and for Hearing

FEBRUARY 25, 1970.

The West Tennessee Public Utility District of Weakley, Carroll, and Benton Counties, Tenn., applicant, Michigan Wisconsin Pipe Line Co., respondent.

In our notice of July 18, 1969, we more fully described applicant's proposal filed under section 7(a) of the Natural Gas Act. On August 19, 1969, Michigan Wisconsin Pipe Line Co. (Respondent) filed an answer stating a willingness to provide the service requested by applicant and an ability to do so from existing sources of gas supply and through use of existing facilities.

On August 18, 1969, Tennessee Gas Pipeline Co. (Tennessee) filed a petition to intervene in which it requests a formal hearing. As applicant's sole supplier of natural gas Tennessee contends that the grant of the instant application will result in a decrease of purchases by applicant from Tennessee in an amount equal to applicant's purchases from respondent. Tennessee does not set forth what, if any, will be the economic impact on its system in the event of that eventuality.

## The Commission orders:

(A) Tennessee Gas Pipeline Co., a division of Tenneco Inc., is hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of said intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in its petition for leave to intervene: *And provided further,* That the admission of said intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order or order



of the Commission entered in this proceeding.

(B) The following presentations are hereby ordered to be served by March 18, 1970, upon the Commission's Office of Hearing Examiners, the Commission's staff and all other parties:

(1) Applicant's direct presentation in support of its proposal to be relied upon at the hearing.

(2) Respondent's presentation relative to its ability to render the requested service through use of existing facilities and sources of gas supply.

(3) If Tennessee intends to allege that the grant of the instant application will result in an adverse economic impact to its system direct evidence in support thereof must be served on the above-stated date.

(C) Pursuant to the authority conferred on the Federal Power Commission by the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held on April 7, 1970, at 10 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., respecting the matters set forth in the instant order. Cross-examination of the presentations submitted pursuant to this order will commence on the above-stated hearing date.

By the Commission.

[SEAL] KENNETH F. PLUMB,  
Acting Secretary.

[F.R. Doc. 70-2598; Filed, Mar. 3, 1970;  
8:47 a.m.]

[Project No. 2357]

## WISCONSIN MICHIGAN POWER CO.

### Notice of Application for Approval for Constructed Project

FEBRUARY 26, 1970.

Public notice is hereby given that application for approval of Exhibit R has been filed under the regulations under the Federal Power Act (16 U.S.C. 791a-825r) by Wisconsin Michigan Power Co. (correspondence to: J. K. Babbitt, Vice President and General Manager, Wisconsin Michigan Power Co., 807 South Oneida Street, Appleton, Wis. 54911), as part of the license for the White Rapids Project No. 2357, located on the Menominee River in Menominee County, Mich., near the village of Stephenson, and in Marinette County, Wis., near the towns of Amberg and Beecher.

According to the Exhibit R, the licensee owns 1,300 acres of fee title land within the project boundary, all of which, except in the immediate vicinity of the power plant, is open to the public for hunting, fishing, boating, wilderness camping, ice fishing, and snowmobiling. Ten sites have been designated as public recreation sites and access to these sites is available through improved county roads. Licensee provides a canoe portage around the dam and maintains picnic and sanitary facilities at one of the public recreation sites. Land for a Girl Scout camp is provided under a nominal fee lease. Under a lease agreement, the town of Amberg provides

two parks which include boat launching, picnicking, camping, and sanitary facilities, with swimming permitted at one park. Eight acres of land have been reserved for a future campsite on the west bank of the reservoir in the vicinity of the Girl Scout camp. Licensee has entered into an agreement with the Michigan Department of Conservation and the Wisconsin Department of Natural Resources for cooperative planning for the management, development and use of company owned lands.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 22, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,  
Secretary.

[F.R. Doc. 70-2594; Filed, Mar. 3, 1970;  
8:46 a.m.]

[Project No. 2394]

## WISCONSIN MICHIGAN POWER CO.

### Notice of Application for Approval for Constructed Project

FEBRUARY 26, 1970.

Public notice is hereby given that application for approval of Exhibit R has been filed under the regulations under the Federal Power Act (16 U.S.C. 791a-825r) by Wisconsin Michigan Power Co. (correspondence to: J. K. Babbitt, Vice President and General Manager, Wisconsin Michigan Power Co., 807 South Oneida Street, Appleton, Wis. 54911), as a part of the license for the Chalk Hill Project No. 2394, located on the Menominee River, near the village of Stephenson, in Menominee County, Mich., and near the towns of Amberg and Beecher, in Marinette County, Wis.

According to the Exhibit R, the licensee owns 1,841 acres of fee title land within the project boundary, all of which, except in the immediate vicinity of the power plant, is open to the public for hunting, fishing, boating, wilderness camping, ice fishing, and snowmobiling. Ten sites have been designated as public recreation sites. Access to these sites is available through improved local roads. Licensee provides a canoe portage around the dam and maintains two of the recreation sites which include camping, picnicking, and boat launching facilities, with sanitation facilities at one of the sites. Under a lease arrangement, the town of Beecher maintains access roads to three of the

recreation sites and maintains limited picnic facilities at one of the sites. A commercial development on an island in the reservoir (over which licensee has flowage rights) provides a golf course, swimming pool, riding stable, tennis court, and boating facilities. Thirty acres of land have been reserved for future campsite development. Licensee has entered into an agreement with the Michigan Department of Conservation and the Wisconsin Department of Natural Resources for cooperative planning of the management, development and use of Company owned lands for recreation and other purposes.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 22, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,  
Secretary.

[F.R. Doc. 70-2595; Filed, Mar. 3, 1970;  
8:46 a.m.]

[Project No. 2523]

## WISCONSIN MICHIGAN POWER CO.

### Notice of Application for Approval for Constructed Project

FEBRUARY 26, 1970.

Public notice is hereby given that application for approval of Exhibit R has been filed under the regulations under the Federal Power Act (16 U.S.C. 791a-825r) by Wisconsin Michigan Power Co. (correspondence to: J. K. Babbitt, Vice President and General Manager, Wisconsin Michigan Power Co., 807 South Oneida Street, Appleton, Wis. 54911), as part of the license for the Oconto Falls Project No. 2523, located on the Oconto River in Oconto County, Wis., in the city of Oconto Falls and near the city of Green Bay.

According to the Exhibit R, all project lands owned by the licensee are open to the public for hunting, fishing, and boating. Licensee provides a canoe portage around the dam. Six sites have been designated as public recreation sites and access is easily available from modern highways. Under land easements and right-of-way grants, the city of Oconto Falls provides two boat launching ramps and parking area and two swimming beaches with lifeguards at both. A children's fishing pond (stocked annually by the Wisconsin Department of Natural Resources) which was developed by a



local sportsmen's club is located at one of the city operated sites. A snowmobile trail was developed by local citizens at no cost to the city or licensee. Licensee has reserved all lands owned in fee within the project boundary which are not required for project operations for future recreation use. Licensee has entered into an agreement with the Wisconsin Department of Natural Resources for cooperative planning of the management, development and use of company owned lands for recreation and other purposes.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 22, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,  
Secretary.

[F.R. Doc. 70-2596; Filed, Mar. 3, 1970;  
8:46 a.m.]

## FEDERAL RESERVE SYSTEM BANK OF NEW JERSEY

### Order Approving Merger of Banks

In the matter of the application of The Bank of New Jersey for approval of merger with Garden State Bank.

There has come before the Board of Governors, pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), an application by The Bank of New Jersey, Camden, N.J., a State member bank of the Federal Reserve System, for the Board's prior approval of the merger of that bank and Garden State Bank, Cinnaminson, N.J., under the charter and name of The Bank of New Jersey. As an incident to the merger, the four offices of Garden State Bank would become branches of the resulting bank. Notice of the proposed merger, in form approved by the Board, has been published pursuant to said Act.

Upon consideration of all relevant material in the light of the factors set forth in said Act, including reports furnished by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Attorney General on the competitive factors involved in the proposed merger,

*It is hereby ordered,* For the reasons set forth in the Board's statement<sup>1</sup> of this date, that said application be and hereby is approved: *Provided*, That said merger 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 Philadelphia pursuant to delegated authority.

Dated at Washington, D.C., this 26th day of February 1970.

By order of the Board of Governors.<sup>2</sup>

[SEAL] KENNETH A. KENYON,  
Deputy Secretary.

[F.R. Doc. 70-2575; Filed, Mar. 3, 1970;  
8:45 a.m.]

## BANK OF NEW JERSEY

### Order Approving Merger of Banks

In the matter of the application of The Bank of New Jersey for approval of merger with The Trademans Bank and Trust Co.

There has come before the Board of Governors, pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), an application by The Bank of New Jersey, Camden, N.J., a State member bank of the Federal Reserve System, for the Board's prior approval of the merger of that bank and The Trademans Bank and Trust Co. of Vineland, Vineland, N.J., under the charter and name of The Bank of New Jersey. As an incident to the merger, the six offices of The Trademans Bank and Trust Co. would become branches of the resulting bank. Notice of the proposed merger, in form approved by the Board, has been published pursuant to said Act.

Upon consideration of all relevant material in the light of the factors set forth in said Act, including reports furnished by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Attorney General on the competitive factors involved in the proposed merger,

*It is hereby ordered,* For the reasons set forth in the Board's statement<sup>1</sup> of this date, that said application be and hereby is approved: *Provided*, That said merger 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 un-

<sup>1</sup> 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 Philadelphia. Dissenting Statement of Governors Robertson and Brimmer also filed as part of the original document and available upon request.

<sup>2</sup> Voting for this action: Chairman Martin and Governors Daane, Maisel, and Sherrill. Voting against this action: Governors Robertson, Mitchell, and Brimmer. Chairman Burns was not a member of the Board at the time of its action on this application.

<sup>3</sup> 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 Philadelphia.

less such period is extended for good cause by the Board or by the Federal Reserve Bank of Philadelphia pursuant to delegated authority.

Dated at Washington, D.C., this 26th day of February 1970.

By order of the Board of Governors.<sup>3</sup>

[SEAL] KENNETH A. KENYON,  
Deputy Secretary.

[F.R. Doc. 70-2571; Filed, Mar. 3, 1970;  
8:45 a.m.]

## DENVER U.S. BANCORPORATION, INC.

### Order Approving Application Under Bank Holding Company Act

In the matter of the application of Denver U.S. Bancorporation, Inc., Denver, Colo., for approval of acquisition of 80 percent or more of the voting shares of the Villa National Bank, Lakewood, Colo.

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 § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Denver U.S. Bancorporation, Inc., Denver, Colo., a registered bank holding company, for the Board's prior approval of the acquisition of 80 percent or more of the voting shares of Villa National Bank, Lakewood, Colo.

As required by section 3(b) of the Act, the Board notified the Comptroller of the Currency of the application and requested his views and recommendation. The Comptroller recommended approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on November 27, 1969 (34 F.R. 18995), providing an opportunity for interested persons to submit comments and views with respect to the proposed transaction. A copy of the application was forwarded to the U.S. 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<sup>1</sup> of this date, that said application be and hereby is approved: *Provided*, That the application 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 Kansas City pursuant to delegated authority.

Dated at Washington, D.C., this 26th day of February 1970.

<sup>2</sup> Voting for this action: Chairman Martin and Governors Robertson, Mitchell, Daane, Maisel, Brimmer, and Sherrill.

<sup>3</sup> 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 Kansas City.



By order of the Board of Governors.\*

[SEAL] KENNETH A. KENYON,  
Deputy Secretary.

[F.R. Doc. 70-2572; Filed, Mar. 3, 1970;  
8:45 a.m.]

## TARIFF COMMISSION

[TEA-W-13 and TEA-W-14]

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

#### Notice of Investigation

On the basis of two petitions filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the production and maintenance workers and the salaried employees, respectively, of the Woonsocket Plant, Uniroyal, Inc., Woonsocket, R.I., the U.S. Tariff Commission, on the 26th day of February 1970, instituted an investigation under section 301(c)(2) of the said Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with plastic- or rubber-soled footwear with fabric uppers produced by the Uniroyal Rubber Footwear Plant are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such manufacturing company.

The petitioners have not requested a public hearing. A hearing will be held on request of any other party showing a proper interest in the subject matter of the investigation, provided such request is filed within 10 days after the notice is published in the FEDERAL REGISTER.

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

Issued February 27, 1970.

By order of the Commission.

[SEAL] KENNETH R. MASON,  
Secretary.

[F.R. Doc. 70-2600; Filed, Mar. 3, 1970;  
8:47 a.m.]

## INTERSTATE COMMERCE COMMISSION

[S.O. 994; ICC Order No. 40; Amdt. 2]

### CHESAPEAKE AND OHIO RAILWAY CO.

#### Rerouting or Diversion of Traffic

Upon further consideration of ICC Order No. 40 (The Chesapeake and Ohio

\* Voting for this action: Governors Mitchell, Maisel, Brimmer, and Sherrill. Absent and not voting: Chairman Burns and Governors Robertson and Daane.

Railway Co.), and good cause appearing therefor:

It is ordered, That:

ICC Order No. 40 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 15, 1970, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., February 28, 1970, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 26, 1970.

INTERSTATE COMMERCE COMMISSION  
R. D. PFAHLER,  
Agent.

[F.R. Doc. 70-2630; Filed, Mar. 3, 1970;  
8:49 a.m.]

### FOURTH SECTION APPLICATION FOR RELIEF

FEBRUARY 27, 1970.

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. 41908—Grain and grain products within the western district. Filed by Southwestern Freight Bureau, agent (No. B-139), for interested rail carriers. Rates on corn (not popcorn), barley, grain sorghums, and products thereof, in carloads, as described in the application, from, to and between points in southwestern and western trunk-line territories, including Memphis, Tenn.

Grounds for relief—Motor-truck competition and rate relationship.

Tariffs—Supplement 165 to Southwestern Freight Bureau, agent, tariff ICC 4495, and 5 other schedules named in the application.

By the Commission.

[SEAL] H. NEIL GARSON,  
Secretary.

[F.R. Doc. 70-2628; Filed, Mar. 3, 1970;  
8:49 a.m.]

[Notice 8]

### MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

FEBRUARY 27, 1970.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11))

and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

#### MOTOR CARRIERS OF PROPERTY

No. MC-1783 (Deviation No. 2), BLUE LINE EXPRESS, INC., Lowell Road, Nashua, N.H. 36, filed January 22, 1970, amended February 24, 1970. Carrier proposes to operate as a common carrier, by motor vehicle, of general commodities, with certain exceptions, over a deviation route as follows: Between Boston, Mass., and New York, N.Y., over Interstate Highway 95, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Lawrence, Mass., over Massachusetts Highway 110 to Worcester, Mass., thence over U.S. Highway 20 to junction Massachusetts Highway 15, thence over Massachusetts Highway 15 to the Massachusetts-Connecticut State line, thence over Connecticut Highway 15 to Hartford, Conn., thence over U.S. Highway 5 to New Haven, Conn., thence over U.S. Highway 1 to New York, N.Y., and (2) from Boston, Mass., over Massachusetts Highway 9 to junction U.S. Highway 20, thence over U.S. Highway 20 to Worcester, Mass., and return over the same routes.

No. MC 42487 (Deviation No. 80), CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif. 94025, filed February 24, 1970. Carrier's representative: V. R. Oldenburg, Post Office Box 5138, Chicago, Ill. 60680. Carrier proposes to operate as a common carrier, by motor vehicle, of general commodities, with certain exceptions, over a deviation route as follows: From junction U.S. Highway 24 and U.S. Highway 25 near Toledo, Ohio, over U.S. Highway 24 to junction U.S. Highway 30 approximately 5 miles east of Fort Wayne, Ind., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) from Canton, Ohio, over U.S. Highway 30 to Mansfield, Ohio, thence over U.S. Highway 30-N to Delphos, Ohio (also from Mansfield over U.S. Highway 30-S to Delphos), thence over U.S. Highway 30 to Cedar Rapids, Iowa, thence over U.S. Highway 218 to Owatonna, Minn., thence over unnumbered highway (formerly portion U.S. Highway 65) via



Medford, Minn., to junction U.S. Highway 65, thence over U.S. Highway 65 to junction Minnesota Highway 60 (formerly portion U.S. Highway 65), thence over Minnesota Highway 60 to Faribault, Minn., thence over Minnesota Highway 3 (formerly portion U.S. Highway 65) via Northfield, Minn., to Farmington, Minn., thence over Minnesota Highway 50 (formerly portion U.S. Highway 65) via Lakeville, Minn., to junction U.S. Highway 65, thence over U.S. Highway 65 to Minneapolis, Minn., (2) from Akron, Ohio, over U.S. Highway 224 to junction U.S. Highway 24, thence over U.S. Highway 24 to Peoria, Ill., thence over U.S. Highway 150 to Davenport, Iowa, thence over U.S. Highway 61 to Dubuque, Iowa, thence over U.S. Highway 52 to Akoka, Minn., and (3) from Springfield, Ohio, over U.S. Highway 68 to Findlay, Ohio, thence over unnumbered highway (formerly portion U.S. Highway 25) via North Findlay and Van Buren, Ohio, to junction U.S. Highway 25, thence over U.S. Highway 25 to Toledo, Ohio, and return over the same routes.

No. MC 110683 (Deviation No. 3), SMITH'S TRANSFER CORPORATION, Post Office Box 1000, Staunton, Va. 24401, filed February 24, 1970. Carrier proposes to operate as a common carrier, by motor vehicle, of general commodities, with certain exceptions, over a deviation route as follows: From Charleston, W. Va., over U.S. Highway 35 to junction Interstate Highway 71 at or near West Lancaster, Ohio, thence over Interstate Highway 71 to Cincinnati, Ohio, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Huntington, W. Va., over U.S. Highway 60 via Charleston, W. Va., to junction U.S. Highway 19, thence over U.S. Highway 19 to Beckley (also from Charleston, W. Va., over U.S. Highway 119 to Racine, W. Va., thence over West Virginia Highway 3 to Beckley), and (2) from Cincinnati, Ohio, over U.S. Highway 52 via Aberdeen and Coal Grove, Ohio, to Huntington, W. Va. (also from Cincinnati to Coal Grove as specified above, thence over U.S. Highway 52 and the Ohio River Bridge to Ashland, Ky., thence over U.S. Highway 23 to junction U.S. Highway 60, thence over U.S. Highway 60 to Huntington), and return over the same routes.

By the Commission.

[SEAL]

H. NEIL GARSON,  
Secretary.

[F.R. Doc. No. 2626; Filed, Mar. 3, 1970;  
8:49 a.m.]

[Notice 19]

## MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

FEBRUARY 27, 1970.

The following publications are governed by the new Special Rule 247 of the Commission's rules of practice, published

in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

### APPLICATIONS ASSIGNED FOR ORAL HEARING

#### MOTOR CARRIERS OF PROPERTY

No. MC 109637 (Sub-No. 366), filed February 9, 1970. Applicant: SOUTHERN TANK LINES INC., Post Office Box 1047 (4107 Bells Lane), Louisville, Ky. 40201. Applicant's representatives: George R. Thim (same address as applicant), and John E. Nelson, Matlack, Inc., 10 West Baltimore Avenue, Lansdowne, Pa. 19050. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Animal and vegetable oils, and blends and products thereof*, in bulk, in tank vehicles, between points in Will County, Ill., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). Note: Applicant states that the requested authority cannot be tacked with its existing authority.

HEARING: March 18, 1970, in Room 2302-C, U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Ill., before Examiner Donald R. Sutherland.

No. MC 57941 (Sub-No. 4) (Republication), filed May 19, 1969, published in the FEDERAL REGISTER issue of July 25, 1969, and republished this issue. Applicant: CITY TRANSFER COMPANY, a corporation, 2045 West Buckeye Road, Phoenix, Ariz. 85009. Applicant's representative: Donald E. Fernaays, 4114-A North 20th Street, Phoenix, Ariz. 85016. By application filed May 19, 1969, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of (1) general commodities (with exceptions) between three Counties in Arizona, (2) fertilizer and insecticides between points in Arizona and (3) boxes, fibreboard, and pulpboard, between points in Arizona, to named Counties in California, Colorado, New Mexico, and Texas. An order of the Commission, Review Board Number 3, decided February 5, 1970, and served February 17, 1970, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes (1) of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Maricopa, Pinal, and

Pima Counties, Ariz. (except Tucson, Ariz., and points in its commercial zone), (2) of fertilizer and insecticides between points in Arizona, (3) of fibreboard containers from Glendale, Ariz., to points in Imperial County, Calif., Delta, Montezuma, and Mesa Counties, Colo., Dona Ana, Lincoln, Luna, San Juan, and Torrance Counties, N. Mex., and El Paso and Deaf Smith Counties, Tex., and (4) fibreboard from El Paso, Tex., to Glendale, Ariz.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 69116 (Sub-No. 127) (Republication), filed October 1, 1969, published in the FEDERAL REGISTER issue of October 30, 1970, and republished this issue. Applicant: SPECTOR FREIGHT SYSTEM, INC., 205 West Wacker Drive, Chicago, Ill. 60606. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, Ill. 60603. By application filed October 1, 1969, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, of the commodities indicated below, serving the Avon Yards of the Penn Central Transportation Co., at Avon, Ind., as an off-route point in connection with applicant's presently authorized regular-route operations. An order of the Commission, Operating Rights Board, dated January 30, 1970, and served February 18, 1970, finds that the present and future public convenience and necessity require operation by applicant in interstate or foreign commerce, as a common carrier by motor vehicle, of general commodities (except classes A and B explosives, commodities in bulk, household goods as defined by the Commission, commodities of unusual value, and those requiring the use of special equipment), serving Avon, Ind., as an off-route point in connection with applicant's presently authorized regular-route operation, restricted to the transportation of traffic having an immediately prior or subsequent movement by rail; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons who have relied upon the



notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the finding in this order, a notice of the authority actually granted will be published in the *FEDERAL REGISTER* and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 113267 (Sub-No. 218) (Republication), filed May 29, 1969, published in *FEDERAL REGISTER* issue of July 10, 1969, and republished this issue. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 312 West Morris Street, Caseyville, Ill. 62232. Applicant's representative: Lawrence A. Fischer (same address as above). By application filed May 29, 1969, as amended, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *Bags*, from the plantsite or storage facilities of the Chase Bag Co., at St. Louis and Kansas City, Mo., to points in Iowa and Minnesota. Restriction: Shipments from St. Louis and Kansas City, Mo., must be combined with shipments originating at Crossett, Ark., for delivery in Iowa and Minnesota. An order of the Commission, Operating Rights Board, dated February 6, 1970, and served February 17, 1970, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting of bags, from the plantsite or storage facilities of Chase Bag Co., at St. Louis and Kansas City, Mo., to points in Iowa and Minnesota; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the *FEDERAL REGISTER* and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication during which period any proper party in interest may, file a petition to reopen or for other appropriate relief setting forth detail the precise manner in which it has been so prejudiced.

No. MC 119493 (Sub-No. 51) (Republication), filed September 2, 1969, published in *FEDERAL REGISTER* issue of October 2, 1969, and republished this issue. Applicant: MONKEM COMPANY, INC., West 20th Street Road (Post Office Box 1196), Joplin, Mo. 64801. Applicant's representative: Ray F. Kempt, Post Of-

fice Box 1196, Joplin, Mo. 64801. By application filed September 2, 1969, as amended, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of the commodity, and from and to the points indicated below. An order of the Commission, Operating Rights Board, dated January 30, 1970, and served February 18, 1970, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *canned goods and dog food*, from the plantsites of Allen Canning Co., at Gentry and Siloam Springs, Ark., at a point approximately 10 miles east of Siloam Springs, Ark., and at Kansas and Proctor, Okla., to points in Tennessee, Louisiana, Mississippi, Arkansas, and Oklahoma, restricted to the transportation of traffic originating at said plantsites; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the *FEDERAL REGISTER* and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 133739 (Sub-No. 1) (Republication), filed June 9, 1969, published in the *FEDERAL REGISTER* issue of July 10, 1969, and republished this issue. Applicant: KINGSVILLE MOVING & STORAGE, INC., 517 South Sixth Street, Post Office Box 448, Kingsville, Tex. 78363. Applicant's representative: Merv Starnes, The 904 Lavaca Building, Austin, Tex. 78701. By application filed June 9, 1969, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of containerized used household goods, between Kingsville, Tex., and points within 25 miles of Kingsville, Tex., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic. An order of the Commission, Review Board No. 1, decided February 4, 1970, and served February 9, 1970, finds that the present and future public convenience and necessity require operation by applicant in interstate or

foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *used household goods* between points in Kleberg, Kenedy, Nueces, and Jim Wells Counties, Tex.; restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic; that applicant is fit, willing and able properly to perform the operation described in this order, and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority actually granted will be published in the *FEDERAL REGISTER* and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 133815 (Sub-No. 1) (Republication), filed July 24, 1969, published in *FEDERAL REGISTER* issue of August 14, 1969, and republished this issue. Applicant: ERWIN D. PETET AND DAVID G. PETET, a partnership, Doing business as PETET TRUCKING COMPANY, Route 6, Box 610, Nampa, Idaho 83651. Applicant's representative: Dennis J. Sallaz, 817 West Franklin Street, Boise, Idaho 83702. By application filed July 24, 1969, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *Beet pulp, and pellet, and ensilage* in bulk, from points in Malheur County, Oreg., to points in Ada, Canyon, Gem, Payette and Owyhee Counties, Idaho. An order of the Commission, Operating Rights Board, dated January 30, 1970, and served February 17, 1970, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicles, over irregular routes, transporting of beet pulp, beet pulp pellets, and ensilage, in bulk, from Nyssa, Oreg., to points in Ada, Canyon, Gem, Payette, and Owyhee Counties, Idaho; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulation thereunder; Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the *FEDERAL REGISTER* and issuance of a certificate in this proceeding



will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 133950 (Republication), filed July 30, 1969, published in the FEDERAL REGISTER issue of August 28, 1969, and republished this issue. Applicant: PORTABLE STORAGE OFFICE & EQUIPMENT COMPANY, A DIVISION OF OLAF ANDERSON & SON CONSTRUCTION CO., INC., 2502 First Avenue North, Fargo, N. Dak. 58102. Applicant's representative: Alan Foss, 502 First National Bank Building, Fargo, N. Dak. 58102. By application filed July 30, 1969, as amended, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of shop trailers, shed trailers, and special purpose trailers, except trailers designed to be drawn by passenger automobiles between points in Minnesota, North Dakota, and South Dakota; An order of the Commission, Operating Rights Board, dated January 30, 1970, and served February 17, 1970, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of mobile offices, mobile shops, mobile storage units, and mobile display facilities, between points in Minnesota, North Dakota, and South Dakota; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder and that an appropriate certificate should be issued; subject to the conditions (1) that applicant shall conduct separately its common carrier operation and its other business activities, (2) that applicant shall maintain separate accounts and records therefor and (3) that it shall not transport property as both a private and common carrier in the same vehicle at the same time. Because it is possible that other persons who have relied upon the notice of the publication as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

#### NOTICE OF FILING OF PETITION

No. W-1126, Notice of Filing of Petition GRACE LINE, INC., Exemption Application, filed February 19, 1970. Petitioners: GRACE LINE, INC., 3 Hanover Square, New York, N.Y. 10004, and PRUDENTIAL-GRACE LINES, INC., 3 Han-

over Square, New York, N.Y. 10004. Petitioners' representative: Arthur C. Novacek (same address as above). By petition filed February 19, 1970, petitioners request that the exemption order entered April 16, 1959, in the above-entitled proceeding, under section 302(e) (1) of Part III of the Interstate Commerce Act, in the name of Grace Line, Inc., be canceled and reissued in the name of Prudential-Grace Lines, Inc. Said order exempts from the provisions of part III of the act the transportation of passengers by Grace Line, Inc., from New York, N.Y., to Port Everglades, Fla., on voyages made by way of one or more ports on islands in the Caribbean Sea or on the north coast of South America.

Any interested person desiring to participate may file an original and six copies of his written representations, views or argument in support of, or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

#### APPLICATIONS FOR CERTIFICATES OF PERMITS ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 48441 (Sub-No. 7), filed January 19, 1970. Applicant: CITY EXPRESS, INC., 2006 North Bloomington Street, Streator, Ill. 61364. Applicant's representative: Robert H. Levy, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: General commodities (except those of unusual value, classes A and B explosives, household goods, commodities requiring special equipment, and those injurious or contaminating to other lading), between points in Illinois. NOTE: Common control may be involved. This application is directly related to MC-F-10727, published FEDERAL REGISTER issue of January 28, 1970. Applicant states that it intends to tack with MC 48441 to serve St. Louis, Mo. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 99833 (Sub-No. 3), filed February 17, 1970, by Pacific Express Transportation. The purpose is to request the Commission to substitute it as applicant in lieu of Lee Way Motor Freight, Inc., original applicant in No. MC 61440 (Sub-No. 113), which was filed August 9, 1968, and published in the FEDERAL REGISTER, issue of October 19, 1968, as a matter directly related to MC-F-10213. The reason for the present application is set forth below. Applicant/petitioner: PACIFIC EXPRESS TRANSPORTATION, 8548 Unsworth Avenue, Route 2, Sacramento, Calif. 95828. Applicant/petitioners representatives: Bertram S. Silver, 140 Montgomery Street, San Francisco, Calif. 94104; Roland Rice, Suite 619 Perpetual Building, Washington, D.C. 20004; Richard H. Champlin, Post Office Box 82488, Oklahoma City, Okla. 73108. By Application filed August 9, 1968, published at pages 15960 and 15961 in the FEDERAL REGISTER of October 19, 1968,

Lee Way Motor Freight, Inc. (Lee Way), Oklahoma City, Okla., applied under section 5 of the Act in MC-F-10213, to purchase, and under section 207 of the Act in a directly related application to convert the certificate of registration of vendor, Pacific Express Transportation (PET), in MC 99833 (Sub 2) into a certificate of public convenience and necessity. The operating authority sought by Lee Way in MC 61440 (Sub 113) and MC-F-10213 generally corresponded to the authority held by PET in its certificate of registration in No. MC 99833 (Sub-No. 2). By order dated September 23, 1969, and two supplemental orders dated December 16, 1969, and January 30, 1970, the latter generally extending the consummation date of the Commission, Review Board No. 5, Lee Way was authorized to acquire control through purchase of capital stock the operating rights and property of PET were authorized to be merged into Lee Way for ownership, management, and operation, and by the same application, R. E. Lee and M. S. Lee, were authorized to acquire control of the said operating rights and property through the transaction. Thereafter, by the supplemental order of December 16, 1969, the order of September 23, 1969, was modified to exclude therefrom the requirement that the operating rights and properties of PET be merged into Lee Way for ownership, management, and operation, and to authorize only the acquisition by Lee Way of control of PET through purchase of outstanding capital stock, subject to the condition that when certain tax benefits had been exhausted, estimated at 2 years, a new application for merger of PET into Lee Way be submitted.

By application on Form OP-OR-9, filed February 17, 1970, and handled herein as a petition, petitioner, Pacific Express Transportation requests that it be substituted as applicant in lieu of Lee Way Motor Freight, Inc., for the authority granted Lee Way, pursuant to the findings in MC-F-10213 in MC 61440 (Sub-113), as supplemented by orders of December 16, 1969, and January 30, 1970. No additional authority is sought by PET over that granted Lee Way by the order of September 23, 1969, as supplemented. During the interim period, prior to the consummation as above noted, PET requests authority to remain as a separate corporation under control of Lee Way and with merger occurring not prior to September 23, 1971. NOTE: The substituted applicant considers the matter as still directly related to MC-F-10213. If the operating authority sought by the substituted applicant is granted it would revert to Lee Way after consummation and merger in accordance with the finding in MC-F-10213, as supplemented.

#### APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other



proceedings with respect thereto. (49 CFR 1.240).

#### MOTOR CARRIERS OF PROPERTY

No. MC-F-10233 (Corrected Amendment) (FOX TRANSPORT SYSTEM—Control—PRIDE TRANSPORT CO.), published in the September 5, 1968, issue of the FEDERAL REGISTER, on page 12604, and amendment in the January 21, 1970, issue of the FEDERAL REGISTER, on page 840. By amended application filed January 8, 1970, applicants seek to merge PRIDE TRANSPORT CO., into FOX TRANSPORT SYSTEM. This corrected notice to show correct italicized year dates, in lieu of prior notice year dates.

No. MC-F-10765. Authority sought for control and merger by THE GRAY LINE, INC., 25 Webber Street, Roxbury, Mass. 02119, of the operating rights and property of L. C. CORP., doing business as GREY LINES, 25 Webber Street, Roxbury, Mass. 02119, and for acquisition by ABRAHAM S. CAPLAN, 5 Bartlett Street, Marblehead, Mass., and LEONARD CAPLAN, 7 Chilton Street, Brookline, Mass., of control of such rights and property through the transaction. Applicants' attorney: Charles W. Singer, 33 North Dearborn Street, Chicago, Ill. 60602. Operating rights sought to be controlled and merged: *Magazines as a common carrier*, over irregular routes, between Boston, Mass., and Old Saybrook, Conn., on the one hand, and, on the other, points in Rhode Island, that part of Connecticut east of Alternate U.S. Highway 5, certain specified points in Massachusetts, points in New Hampshire on U.S. Highway 202 south of East Jaffrey, N.H., and those in New Hampshire on and within 15 miles of U.S. Highway 3 south of Laconia, N.H., from Boston, Mass., to points in Maine, and certain specified points in New Hampshire; *newspapers, newspaper inserts and supplements*, between Boston, Mass., on the one hand, and, on the other, points in Rhode Island, that part of Connecticut east of Alternate U.S. Highway 5, and certain specified points in Massachusetts, points in New Hampshire on U.S. Highway 202 south of East Jaffrey, N.H. and Highway 3 south of Laconia, N.H., between Boston, Mass., on the one hand, and, on the other, certain specified points in Maine and New Hampshire; *printed matter*, from Lowell, Mass., to points in Rhode Island, Maine, New Hampshire, and Vermont; from Boston, Mass., to points in Rhode Island, Maine, New Hampshire, and Vermont, with restriction; *groceries, meat, fish, and produce*, from Boston, Mass., to Providence and Pawtucket, R.I.;

*Sugar*, from Charlestown, Mass., to Portland, Maine; *steel*, between Cambridge, Mass., on the one hand, and, on the other, Providence, R.I., and Dover, N.H.; *lubricating oil and empty oil drums*, between Boston, Mass., on the one hand, and, on the other, Providence, R.I., and Keene, N.H.; *wool and mohair*, between Boston, Mass., on the one hand, and, on the other, Sanford, Maine, and Bristol, R.I.; *alcoholic beverages*, between Boston, Mass., on the one hand, and, on the other, Brooklyn, N.Y., and Hartford, Conn.; *magazines, and newspapers and*

*newspaper inserts and supplements*, when transported in the same vehicle and at the same time with magazines, from New York, N.Y., and Jersey City and South Kearny, N.J., to Norwich and Putnam, Conn., and Westerly and Woonsocket, R.I., between New York and Long Island City, N.Y., Jersey City and South Kearny, N.J., on the one hand, and, on the other, points in New London and Middlesex Counties, Conn.; (1) *magazines and inserts, supplements, and parts of magazines*, and (2) *newspapers, and inserts, supplements, and parts of newspapers*, when transported in the same vehicle and at the same time as the commodities in (1) above, between Albany, N.Y., and Pittsfield, Mass.; *parts of magazines*, between Boston, Mass., and Old Saybrook, Conn., on the one hand, and, on the other, points in Rhode Island, that part of Connecticut east of Alternate U.S. Highway 5, certain specified points in Massachusetts, points in New Jersey on U.S. Highway 202, south of East Jaffrey, N.H., and those in New Hampshire on and within 15 miles of U.S. Highway 3 south of Laconia, N.H., from Boston, Mass., to points in Maine, and certain specified points in New Hampshire, from New York, N.Y., and Jersey City and South Kearny, N.J., to Norwich and Putnam, Conn., and Westerly and Woonsocket, R.I., between New York and Long Island City, N.Y., Jersey City and South Kearny, N.J., on the one hand, and, on the other, points in New London and Middlesex Counties, Conn.;

*Parts of newspapers, and newspaper inserts and supplements*, between Boston, Mass., on the one hand, and, on the other, points in Rhode Island, that part of Connecticut east of Alternate U.S. Highway 5, certain specified points in Massachusetts, points in New Hampshire on U.S. Highway 202 south of East Jaffrey, N.H., and those in New Hampshire on and within 15 miles of U.S. Highway 3 south of Laconia, N.H., between Boston, Mass., on the one hand, and, on the other, certain specified points in Maine, and New Hampshire, from New York, N.Y., and Jersey City and South Kearny, N.J., to Norwich and Putnam, Conn., and Westerly and Woonsocket, R.I., between New York and Long Island City, N.Y., Jersey City and South Kearny, N.J., on the one hand, and, on the other, points in New London and Middlesex Counties; *magazines and parts of magazines*, from Springfield, Mass., to points in Rhode Island, Maine, Vermont, New Hampshire, certain specified points in Connecticut, and Massachusetts, with restriction; and *books*, when moving in the same vehicle and at the same time as newspapers, newspaper inserts and supplements, magazines and inserts, supplements and parts of magazines (otherwise authorized), from Boston, Mass., to points in that part of Connecticut east of Alternate U.S. Highway 5, with restriction. THE GRAY LINE, INC., is authorized to operate as a *common carrier* in Massachusetts, Maine, New Hampshire, Vermont, New York, Rhode Island, Connecticut, Pennsylvania, Delaware, Maryland, New Jersey, Virginia, and the District of Columbia. Application has not

been filed for temporary authority under section 210a(b).

No. MC-F-10766. Authority sought for purchase by HANNIBAL QUINCY TRUCK LINES, INC., 2816 Market Street, Hannibal, Mo. 63401, of the operating rights and certain property of BURLINGTON CHICAGO CARTAGE, INC., 604 North Tremont, Kewanee, Ill. 61443, and for acquisition by WILLIAM M. GULLY, also of Hannibal, Mo., of control of such rights and property through the purchase. Applicants' attorney: Donald L. Stern, 630 City National Bank Building, Omaha, Nebr. 68102. Operating rights sought to be transferred: *General commodities*, excepting, among others, classes A and B explosives, household goods, and commodities in bulk, as a *common carrier*, over regular routes, between Keokuk, Iowa, and Chicago, Ill., serving certain intermediate and off-route points; *wire, wire products, and iron and steel fence posts*, over irregular routes, from Peoria, Ill., to Burlington, Iowa; *burial vaults*, from Burlington, Iowa, to certain specified points in Nebraska; *livestock*, between certain specified points in Iowa, on the one hand, and, on the other, certain specified points in Illinois; and *general commodities*, excepting, among others, classes A and B explosives, household goods, and commodities in bulk, between Burlington, Iowa, on the one hand, and, on the other, The Iowa Ordnance Plant near West Burlington, Iowa, between Galesburg and Kewanee, Ill., on the one hand, and, on the other, certain specified points in Illinois. Vendee is authorized to operate as a *common carrier* in Illinois, Iowa, Missouri, and Kansas. Application has been filed for temporary authority under section 210a(b).

No. MC-F-10767. Authority sought for control by DONALD L. WASHUM, 800 Pacific Avenue, Yuma, Ariz. 85364, of HAYWOOD WASHUM, doing business as LOS ANGELES-YUMA FREIGHT LINES, 800 Pacific Avenue, Yuma, Ariz. 85364. Applicants' attorneys: Robert E. Joyner, 2111 Sterick Building, Memphis, Tenn. 38103, and Harold G. Hernly, 711 14th Street NW., Washington, D.C. 20005. Operating rights sought to be controlled: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment, as a *common carrier*, over regular routes, between Los Angeles, Calif., and Yuma, Ariz., serving all intermediate points, and certain off-route points; and *general commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment, over irregular routes, between Yuma, Ariz., on the one hand, and, on the other, points in Arizona within 30 miles of Yuma. DONALD L. WASHUM, individually holds no authority from this Commission. However, he controls SVENSSON FREIGHT LINES, 800 Pacific Avenue, Post Office Box 530, Yuma, Ariz. 85364, which is authorized to operate as a *common carrier* in Arizona, and under a certificate of registration, within the



State of Arizona. Application has been filed for temporary authority under section 210a(b).

No. MC-F-10768. Authority sought for purchase by ECOFF TRUCKING, INC., 625 East Broadway, Fortville, Ind. 46040, of a portion of the operating rights and certain property of BULK TRANSPORT, INC., Post Office Box 89, Port Allen, La. 70767, and for acquisition by REX ECOFF, also of Fortville, Ind., of control of such rights and property through the purchase. Applicants' attorney: Robert C. Smith, 711 Chamber of Commerce Building, Indianapolis, Ind. 46204. Operating rights sought to be transferred: *Lime*, in bulk, as a common carrier, over irregular routes, from the plantsite of U.S. Gypsum Co., at Montevallo, Ala., to points in Mississippi; and *lime and limestone*, in bulk, from points in Shelby, St. Clair, and Jefferson Counties, Ala., to points in Mississippi, Tennessee, Florida, Georgia, Louisiana, Arkansas, North Carolina, and South Carolina, with restriction. Vendee is authorized to operate as a common carrier in Indiana, Missouri, Illinois, South Carolina, North Carolina, Wisconsin, Michigan, Ohio, Tennessee, Mississippi, North Dakota, Oklahoma, Arkansas, South Dakota, Virginia, Louisiana, New Jersey, Pennsylvania, Kentucky, Iowa, Nebraska, New York, Rhode Island, Massachusetts, Kansas, Alabama, Georgia, Florida, West Virginia, Minnesota, Delaware, New Hampshire, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-10769. Authority sought for purchase by BITER FREIGHT SYSTEM, INC., 1800 North Olden Avenue, Trenton, N.J. 08600, of the operating rights of MARTIN TRUCKING CO., INC., 33 Cadwell Drive, Springfield, Mass. 01100, and for acquisition by RUBERT BITER, SR., CHARLES BITER, and RUBERT BITER, JR., all also of Trenton, N.J., of control of such rights through the purchase. Applicants' attorney: Thomas W. Murrett, 342 North Main Street, West Hartford, Conn. 06117. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC-120848 Sub-1, covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of Massachusetts. Vendee is authorized to operate as a common carrier in Pennsylvania, New Jersey, and New York. Application has been filed for temporary authority under section 210a(b). NOTE: No. MC-27845 Sub-4 is a matter directly related.

No. MC-F-10770. Authority sought for purchase by CONTRACT FREIGHTERS, INC., 3105 East Seventh Street, Joplin, Mo. 64801, of a portion of the operating rights of BILYEU REFRIGERATED TRANSPORT CORPORATION, Post Office Box 688, Marshall, Mo. 65301. Applicants' attorney: Thomas F. Kilroy, 2111 Jefferson Davis Highway, Arlington, Va. 22202. Operating rights sought to be transferred: *Cheese*, as a common carrier, over irregular routes, from points in South Dakota to points in Newton, Jasper, and Greene Counties, Mo., with

restriction. Vendee is authorized to operate as a common carrier in Missouri, Nebraska, Oklahoma, Indiana, Iowa, Kansas, Minnesota, Wisconsin, Arkansas, Illinois, Tennessee, North Dakota, South Dakota, Colorado, and Texas. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL]

H. NEIL GARSON,  
Secretary.

[F.R. Doc. 70-2625; Filed, Mar. 3, 1970;  
8:49 a.m.]

## NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

FEBRUARY 27, 1970.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. OCC-MC-27210, filed January 16, 1970. Applicant: CADDO EXPRESS, INC., 1016 Southwest Second Street, Oklahoma City, Okla. Applicant's representative: Alfred Smith, 419 Northwest Sixth Street, Oklahoma City, Okla. 73102. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities*, between Oklahoma City, Okla., and Richards Spur, Okla., over the following route, to-wit: from Oklahoma City, Okla., south over U.S. Highway 62 and U.S. Highway 277 to Richards Spur, Okla., and thence north over U.S. Highway 62 and U.S. Highway 281, to its junction with Oklahoma State Highway 9, thence east over U.S. Highway 62 and Oklahoma State Highway 9 to its junction with U.S. Highway 62 and Oklahoma State Highway 9, thence north over U.S. Highway 62 to Oklahoma City, Okla. Further serving a route from the junction of U.S. Highway 281 and Oklahoma State Highway 19 from Apache, Okla., over Oklahoma State Highway 19 to its junction with Oklahoma State Highway 8 at Cyril, Okla., thence over Oklahoma State Highway 8 northerly to its junction with U.S. Highway 62 at Anadarko, Okla. Both intrastate and interstate authority sought.

HEARING: Friday, March 20, 1970, at Jim Thorpe Office Building, Oklahoma City, Okla. Requests for procedural in-

formation, including the time for filing protests, concerning this application should be addressed to the Oklahoma Corporation Commission, Jim Thorpe Building, Oklahoma City, Okla. 73105, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL]

H. NEIL GARSON,  
Secretary.

[F.R. Doc. 70-2627; Filed, Mar. 3, 1970;  
8:49 a.m.]

[Notice 501]

## MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 27, 1970.

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.

Finance Docket No. 25986. By order of February 18, 1970, the Motor Carrier Board approved the transfer to Guttman Towing, Inc., Speers, Pa.; of the amended certificate in No. W-373, issued August 6, 1968, to Mon River Towing, Inc., Speers, Pa., authorizing the performance of general towage between ports and points along the Allegheny, Monongahela, and Youghiogheny Rivers, and the Ohio River in Pennsylvania, Ohio, and West Virginia, north of and including New Martinsville, W. Va. John A. Vuono, 2310 Grant Building, Pittsburgh, Pa. 15219, attorney for applicants.

No. MC-FC-71835. By order of February 25, 1970, the Motor Carrier Board approved the transfer to Raymond E. Townsend, Jr., Dagsboro—Omar Road, Frankford, Del. 19945, of certificates Nos. MC-116442 (Sub-No. 1), MC-116442 (Sub-No. 4), MC-116442 (Sub-No. 6), MC-116442 (Sub-No. 8), MC-116442 (Sub-No. 10), and MC-116442 (Sub-No. 11) issued October 25, 1962, April 22, 1963, May 24, 1963, November 14, 1963, September 11, 1963, and July 28, 1964, respectively, to Baker's Express Co., Inc., Dagsboro, Del. 19939, authorizing the transportation of lime and limestone, in bulk, in dump vehicles, and in bags, from the site of the Warner Co. Plant at Devault, Pa., to points in Delaware, Maryland, and specified points in Virginia; dry feather meal from Salisbury, Md., to Baltimore, Md., Philadelphia and Fort Washington, Pa., New York, N.Y., Jersey City, N.J., and other points in New Jersey and New York; dry fish meal from New York, N.Y., and points in New



Jersey to points in Delaware and specified points in Maryland and Virginia, Philadelphia, Pa., to points in New Castle County, Del., and Cecil County, Md., points in Accomack and Northampton Counties, Va.; and from Baltimore, Md., to points in Kent and Sussex Counties, Del., New Castle, Del., and a specified part of Maryland; dry meat scrap and dry bone meal from Newark, Secaucus, Kearny, and Harrison, N.J., to points in Delaware and specified points in Maryland and Virginia; fertilizer from Chesapeake, Va., to points in Delaware and specified points in Maryland; and manufactured fertilizers, from Chesapeake, Va., to Windsor, N.C., and from Baltimore, Md., to points in Wicomico, Worcester, and Somerset Counties, Md.

No. MC-FC-71913. By order of February 24, 1970, the Motor Carrier Board approved the transfer to Ronald R. Barth, Post Office Box 424, Braymer, Mo. 64624, of certificate No. MC-1607 issued July 6, 1964, to Bruce L. Clevenger, doing business as Braymer Freight Service, Route 3, Braymer, Mo. 64624 authorizing the transportation of: General exceptions, with the usual exceptions, but including household goods, between specified points and areas in Missouri, Kansas, and Iowa.

No. MC-FC-71926. By order of February 24, 1970, the Motor Carrier Board approved the transfer to James J. Hockett, doing business as Hockett Trucking, Tennant, Iowa, of the operating rights in certificate No. MC-47548 issued May 11, 1949, to J. T. Hockett and J. J. Hockett, a partnership, doing business as J. T. Hockett & Son, Tennant, Iowa, authorizing the transportation of livestock, grain, feed, salt, seed, agricultural implements, petroleum products in containers, building materials, plumbing supplies, hardware, and binding twine, between Tennant, Iowa, and points within 10 miles thereof, on the one hand, and, on the other, Omaha, Nebr. A. R. Fowler, 2288 University Avenue, St. Paul, Minn. 55114, representative for applicants.

No. MC-FC-71927. By order of February 24, 1970, the Motor Carrier Board approved the transfer to Ben's Transfer

& Storage Co., Inc., Baker, Oreg., of the operating rights in certificates Nos. MC-42710, MC-42710 (Sub-No. 5), and MC-42710 (Sub-No. 9) (corrected), issued September 4, 1964, May 16, 1961, and December 6, 1967, respectively, to Benjamin A. Ryder, James B. Ryder, Joseph B. Ryder, and John H. Ryder, a partnership, doing business as Ben's Transfer & Storage, Baker, Oreg., authorizing the transportation of emigrant movables and general commodities, except liquids in bulk, between points in Ada, Adams, Boise, Canyon, Owyhee, Payette, Twin Falls, Valley, and Washington Counties, Idaho, and Baker, Grant, Harney, and Malheur Counties, Oreg.; building materials, between points in Baker County, Oreg., on the one hand, and, on the other, points in Grant, Lincoln, Franklin, Adams, and Benton Counties, Wash.; canned and preserved fruits and vegetables, from Portland, Oreg., to Ontario, Oreg.; shingles and lumber, from Portland, Oreg., to Fruitland, Idaho; lime, in bulk, from Wing, Oreg., to points in Asotin, Garfield, and Walla Walla Counties, Wash.; and industrial lime, dry, in bulk, from Wing, Oreg., to points in Washington, Idaho, and Montana, and points in that part of Nevada in and south of Douglas, Lyon, Churchill, Lander, Eureka, and White Pine Counties, Nev. Earle V. White, White & Southwell, 2400 Southwest Fourth Avenue, Portland, Oreg. 97201, attorney for applicants.

No. MC-FC-71928. By order of February 24, 1970, the Motor Carrier Board approved the transfer to Jack's List Service, Inc., Cliffside Park, N.J., of the operating rights in certificate No. MC-124222 issued June 1, 1966, to Avino Bros., Inc., New York, N.Y., authorizing the transportation of printed matter (not including newspapers and periodicals), printers' materials and supplies, and stationery, between New York, N.Y., on the one hand, and, on the other, points in Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset, and Union Counties, N.J. Arthur J. Piken, 160-16 Jamaica Avenue, Jamaica, N.Y. 11432, and William D. Traub, 10 East 40th Street,

New York, N.Y. 10016, attorneys for applicants.

No. MC-FC-71937. By order of February 24, 1970, the Motor Carrier Board approved the transfer to Cushing Trucking, Inc., Chicago, Ill., of certificate No. MC-48004 issued October 14, 1969, to John R. Pacella, doing business as John J. Cushing Trucking Co., Chicago, Ill., authorizing the transportation of: General commodities, usual exceptions, between points in the Chicago, Ill., commercial zone, as defined by the Interstate Commerce Commission. James R. Madler, 1255 North Sandburg, Terrace, Chicago, Ill. 60610, attorney for applicants.

No. MC-FC-71945. By order of February 25, 1970, the Motor Carrier Board approved the transfer to Richard Moseng and Darlene Moseng, a partnership, doing business as Lafferty Moving & Storage, Henderson, Colo., of the operating rights in Certificate No. MC-55194 issued October 28, 1960, to Howard J. Lafferty, doing business as Lafferty Moving & Storage, Greeley, Colo., authorizing the transportation of household goods, between points in Weld County, Colo., on the one hand, and, on the other, points in Wyoming, Kansas, and Nebraska. John P. Thompson, 450 Capitol Life Building, Denver, Colo. 80202, attorney for applicants.

No. MC-FC-71959. By order of February 24, 1970, the Motor Carrier Board approved the transfer to Amlin Cartage, Limited, Windsor, Ontario, Canada, of Certificate No. MC-110027, issued January 13, 1950, to Darrell Amlin and William Amlin, a partnership, doing business as Amlin Cartage, Windsor, Ontario, authorizing the transportation of: General commodities, except dangerous explosives, commodities of unusual value and those requiring special equipment, between Detroit, Mich., on the one hand, and, on the other, the boundary of the United States and Canada, at Detroit. Rex Eames, 900 Guardian Building, Detroit, Mich. 48226, attorney for applicants.

[SEAL]

H. NEIL GARSON,  
Secretary.

[F.R. Doc. 70-2629; Filed, Mar. 3, 1970;  
8:49 a.m.]



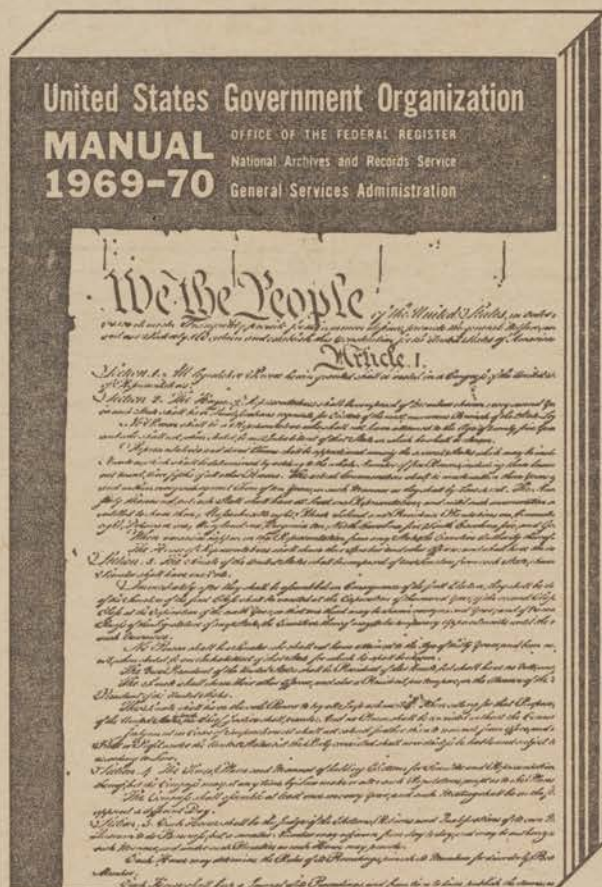
## CUMULATIVE LIST OF PARTS AFFECTED—MARCH

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during March.

3 CFR	Page	12 CFR	Page	28 CFR	Page
PROCLAMATIONS:		265-----	4044	0-----	3994
2761A (see Proc. 3967)-----	3975	544-----	4044		
2929 (see Proc. 3967)-----	3975	563-----	4044		
3140 (see Proc. 3967)-----	3975	PROPOSED RULES:		29 CFR	
3455 (see Proc. 3967)-----	3975	204-----	4080	PROPOSED RULES:	
3458 (see Proc. 3967)-----	3975	217-----	4080	204-----	3996
3548 (see Proc. 3967)-----	3975			1425-----	4007
3762 (see Proc. 3967)-----	3967	14 CFR			
3816 (see Proc. 3967)-----	3975	73-----	4053	31 CFR	
3951 (see Proc. 3967)-----	3975	95-----	3982	500-----	4045
3967-----	3975	97-----	3988		
EXECUTIVE ORDERS:		16 CFR		33 CFR	
11035 (superseded by EO		13-----	3993	25-----	4045
11512)-----	3979	15-----	3993		
11512-----	3979	18 CFR		39 CFR	
		2-----	3993	PROPOSED RULES:	
7 CFR		PROPOSED RULES:		155-----	4054
52-----	3981	141-----	4080		
601-----	4041	154-----	4008, 4080	41 CFR	
909-----	4041	157-----	4080	9-1-----	3994
910-----	3982	201-----	4008, 4080		
1016-----	4042	260-----	4008, 4080	46 CFR	
1034-----	4042			272-----	4048
1041-----	4043	21 CFR			
PROPOSED RULES:		PROPOSED RULES:		47 CFR	
1001-----	4056	191-----	4001	PROPOSED RULES:	
1015-----	4056			89-----	4079
1030-----	4064	23 CFR			
9 CFR		PROPOSED RULES:		49 CFR	
76-----	4043	255-----	4080	1307-----	4052
10 CFR		26 CFR		50 CFR	
30-----	3982	13-----	3995	33-----	3995
31-----	3982	PROPOSED RULES:		258-----	4052
PROPOSED RULES:		1-----	4054		
3-----	4056				



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