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Part I

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Assistant Secretary for Labor-Management Relations Office
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Civil Aeronautics Board
Civil Service Commission
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Title 3—THE PRESIDENT

Proclamation 3976

NATIONAL MARITIME DAY, 1970

By the President of the United States of America

A Proclamation

The restoration of our merchant fleet to a position of leadership on the world's oceans is one of our most urgent tasks. Our merchant ships are essential parts of our economic and defense systems, and reminders to us and to the world of our heritage as a sea-going people.

In recognition of the importance of our Merchant Marine to our economy and our national security, the Congress in 1933 set aside May 22 of each year as National Maritime Day and requested the President to issue annually a proclamation calling for the observance of that day.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby urge the people of the United States to honor our American Merchant Marine on May 22, 1970, by displaying the flag of the United States at their homes and other suitable places, and I request that all ships sailing under the American flag dress ship on that day in tribute to the American Merchant Marine.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of April, in the year of our Lord nineteen hundred seventy and of the Independence of the United States of America the one hundred ninety-fourth.

Richard Nixon

[F.R. Doc. 70-4374; Filed, Apr. 7, 1970; 9:56 a.m.]

Executive Order 11522

ASSIGNING EMERGENCY PREPAREDNESS FUNCTIONS TO THE UNITED STATES INFORMATION AGENCY

By virtue of the authority vested in me as President of the United States, and pursuant to Reorganization Plan No. 1 of 1958 (72 Stat. 1799), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended, and the Federal Civil Defense Act, as amended, Executive Order No. 11490 of October 28, 1969, is amended by inserting immediately after Part 28 a new Part 28A, as follows:

"Part 28A. United States Information Agency

"SECTION 2850. *Functions.* (a) The Director of the United States Information Agency shall prepare national emergency plans and develop preparedness programs for the continuation of essential emergency foreign information activities. These plans and programs shall be designed to develop a state of readiness which will permit continuing necessary activities under all conditions of national emergency including attack upon the United States.

"(b) The Director shall (1) develop plans for the formulation and execution of foreign information programs utilizing the Agency's overseas posts and all media designed to promote an intelligent understanding abroad of the status of the emergency within the United States and the efforts, policies, activities, needs, and aims of the United States in dealing with the international situation then existing; (2) develop emergency plans and programs, and emergency organizational structures required thereby, as an integral part of the continuing activities of the United States Information Agency on the basis that it will have the responsibility for carrying on such programs during an emergency; (3) provide and maintain the capability necessary for simultaneous direct radio broadcasting in major world languages to all areas of the world and wireless teletype to all United States Embassies; (4) provide advice to the Executive Branch on foreign opinion, and its implications for United States policies, programs, and official statements; (5) maintain liaison with the information agencies of friendly nations for the purpose of relating the United States Government information programs and facilities to those of such nations; (6) participate in the development of policy with regard to the psychological aspects of defense and develop plans for assisting the appropriate agencies in the execution of psychological operations with special attention to overseas crises short of war; (7) maintain United States Information Service staffs abroad for the conduct of public information for all agencies of the Government, recognizing that in a theater of operations the United States Information Agency would make available to the appropriate Commander all United States citizen personnel on the staff of the Agency, who agree to remain, to serve in support of psychological operations; and (8) lend appropriate support in psychological warfare to the military command in the theater or theaters of active military operations, and provide daily guidance and basic informational materials.

"(c) The Director shall insure development of appropriate plans necessary under this Part and issue emergency instructions required to implement all appropriate plans developed under this Part."

Richard Nixon

THE WHITE HOUSE,
April 6, 1970.

[F.R. Doc. 70-4358; Filed, Apr. 6, 1970; 4:20 p.m.]

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 307—TRANSITIONAL AND VETERANS READJUSTMENT APPOINTMENTS

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

Miscellaneous Amendments

Part 307 is revised to regulate the veterans readjustment appointments authorized by Executive Order 11521 of March 26, 1970. In addition, § 315.703b is given a new heading and paragraph (a) thereof is amended to allow the conversion of persons serving under veterans readjustment appointments. Effective April 9, 1970, Parts 307 and 315 are amended as set out below.

Sec.
307.101 Definitions.
307.102 Basic eligibility.
307.103 Appointment authority.
307.104 Training or educational programs.
307.105 Conditions of employment.
307.106 Noncompetitive movement.

AUTHORITY: The provisions of this Part 307 issued under 5 U.S.C. 3301, 3302, E.O. 11521, 35 F.R. 5311.

§ 307.101 Definitions.

In this part:

(a) "Veteran" means veteran and disabled veteran as these terms are defined in section 2108(1), (2) of title 5, United States Code.

(b) "Vietnam era" is the period beginning August 5, 1964, and ending on a date to be determined by Presidential proclamation or concurrent resolution of the Congress.

(c) "Transitional appointment" is an excepted appointment made before April 9, 1970, under this part to a position otherwise in the competitive service of a veteran who served during the Vietnam era.

(d) "Veterans readjustment appointment" is an excepted appointment made after April 8, 1970, under this part to a position otherwise in the competitive service of a veteran who served during the Vietnam era.

§ 307.102 Basic eligibility.

(a) Subject to the limitation in paragraph (b) of this section, a veteran is eligible to receive a veterans readjustment appointment if he:

(1) Served on active duty in the armed forces of the United States during the Vietnam era;

(2) Has completed not more than 14 years of education; and

(3) Agrees in writing that during his employment under the appointment he will pursue training or educational program developed under § 307.104.

(b) A veteran may be given a veterans readjustment appointment only within the period ending (1) 1 year after either his separation from the armed forces or his release from hospitalization or treatment immediately following separation from the armed forces, (2) 1 year after involuntary separation without cause from (i) a veterans readjustment appointment or (ii) a transitional appointment, or (3) April 8, 1971, if he is serving under a transitional appointment.

§ 307.103 Appointment authority.

(a) An agency may appoint by veterans readjustment appointment to a position at GS–3, GS–4, or GS–5, or the equivalent in other pay systems (e.g., PFS, WG, etc.), any veteran eligible under § 307.102 who meets the qualification standards of the Commission for the position. On the basis of his total experience, including military experience, any veteran eligible under § 307.102 meets the qualification standards at the GS–3 or equivalent levels provided the agency considers him capable of performing the duties of the specific position.

(b) An appointment under this section is subject to investigation by the Commission. A law, Executive order, or regulations which disqualifies a person for appointment in the competitive service also disqualifies him for a veterans readjustment appointment.

§ 307.104 Training or educational programs.

(a) The agency shall develop a training or educational program for each employee given a veterans readjustment appointment. The program shall extend for not less than 1 year, and may include planned on-the-job training, classroom training, or a combination of the two.

(b) The Commission shall establish and publish in the Federal Personnel Manual guidelines for developing training or educational programs under this section.

§ 307.105 Conditions of employment.

An employee holding a transitional appointment serves subject to satisfactory performance of assigned duties and satisfactory progress in the program of education or training approved for him. An employee holding a veterans readjustment appointment serves subject to satisfactory performance of assigned duties and satisfactory participation in the training or educational program under which he was appointed. The agency shall separate an employee who does not meet these conditions, following the procedures in Part 752 of this chapter if the employee has completed 1 year of current continuous employment.

§ 307.106 Noncompetitive movement.

(a) An agency may reassign or transfer to any position at GS–3, or the equivalent, an employee serving under veterans readjustment appointment whom the agency considers capable of performing the duties of the position.

(b) Subject to § 335.103 of this chapter, an agency may reassign, promote, or transfer to any position at GS–4 or GS–5, or the equivalent, an employee serving under veterans readjustment appointment who meets the qualification standards of the Commission for the position.

(c) Noncompetitive movements under this section are subject to completion of applicable training or educational programs.

Part 315 of Title 5 is amended as follows:

Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

§ 315.703b Employees serving under transitional or veterans readjustment appointments.

(a) *Agency action.* (1) An agency shall convert the employment of an employee who has served continuously under a transitional appointment for at least 1 year to career or career-conditional employment within 90 calendar days after he completes the program of education or training approved for him.

(2) Within 30 calendar days after an employee completes (i) 2 years of substantially continuous service under a veterans readjustment appointment or under a combination of transitional and veterans readjustment appointments and (ii) his training or educational programs, the employing agency shall convert his appointment to career or career-conditional employment.

(b) *Tenure.* Upon conversion of his employment, the employee becomes:

(1) A career-conditional employee, except as provided in subparagraph (2) of this pargaraph;

(2) A career employee if he has completed the service requirement for career tenure or is excepted from it by § 315.201 (c).

(c) *Acquisition of competitive status.* An employee whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

(5 U.S.C. 1302, 3301, 3302, E.O. 10577; 3 CFR, 1954–1958 Comp., p. 218; E.O. 11521, 35 F.R. 5311)

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

[F.R. Doc. 70-4251; Filed, Apr. 7, 1970; 8:49 a.m.]

Title 7—AGRICULTURE

Chapter I—Consumer and Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

SUBCHAPTER C—REGULATIONS AND STANDARDS UNDER THE AGRICULTURAL MARKETING ACT OF 1946

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Subpart—U.S. Standards for Grades of Frozen Asparagus [1]

MISCELLANEOUS AMENDMENTS

On February 6, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 2668) concerning amendments proposed to the U.S. Standards for Grades of Frozen Asparagus (7 CFR 52.381—52.394) which became effective December 31, 1969. These grade standards are issued under authority of the Agricultural Marketing Act of 1946 (sec. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627) which provides for the issuance of official U.S. grades to designate different levels of quality for the voluntary use of producers, buyers, and consumers. Official grading services are also provided under this act upon request of the applicant and upon payment of a fee to cover the cost of such services.

Statement of consideration leading to these amendments. The standards now being amended, were revised by publication in the FEDERAL REGISTER of March 13, 1969 (34 F.R. 5151), to become effective 30 days thereafter. Subsequently, by a notice in the FEDERAL REGISTER of April 12, 1969 (34 F.R. 6437), a change in the effective date was delayed to December 31, 1969.

The proposed amendments of February 6, 1970, were initiated on behalf of the National Association of Frozen Food Packers to provide some relaxation of requirements. The principal changes proposed were: (1) An increase in tolerances for compliance as to a single size or blends of sizes; (2) provision for definite amounts of loose material; (3) modification of uniformity of length classifications for cut style; and (4) a slight increase in the total number of defects permitted in U.S. Grade A. Interested persons were given 45 days in which to comment on that proposal.

There have been no adverse comments received from the freezers of asparagus concerning the proposed amendments, per se. Formal and informal views were presented, however, by two freezers of asparagus and two nationwide distributors of frozen foods. One respondent objected to the basic concept of grading asparagus under the statistical approach, commonly known as "attribute approach." The other respondents suggested use of the former USDA grade standards in case of dispute or as an alternative to, or in combination with, the 1969 revised attribute grade standards.

The Department holds that a superseded USDA grade standard may not be used in combination with, or in lieu of, a currently effective standard in determining official grades. The Department further concludes that over 4 years have been provided to acquaint interested persons with the concepts of the attribute approach. The majority of freezers of asparagus and many buyers favor this concept in the current USDA grade standards for frozen asparagus.

It is hereby found that it is impracticable and contrary to the public interest to postpone the effective date beyond the date of publication hereof in the FEDERAL REGISTER (5 U.S.C. 553(d)) in that:

(1) The comments which have been received are irrelevant to the proposed amendments;

(2) The processing industry affected by the amended grade standards has been aware of the basic provisions of the grade standards since March, 1969;

(3) The processing of asparagus in the major area of production is now underway;

(4) The major provisions of the amendments are in the nature of a slight relaxation of requirements for U.S. Grade A, and, therefore, no additional time will be needed for the industry to make preparations for compliance with these standards;

(5) It is in the interest of the public and the industry affected that these standards be made effective at the earliest possible date.

Accordingly, the amendments to the U.S. Standards for Grades of Frozen Asparagus as set forth herein shall become effective upon publication in the FEDERAL REGISTER.

After consideration of all relevant matter presented by interested persons, the amendment as so proposed is hereby adopted, subject to the following rearrangement and corrections:

1. In Table III, reverse the order of the entire third column and the entire fourth column under the headings of "10 [over] Major" and "5 [over] Severe";

2. In Table VII, seventh column of figures, under the heading of "In the total sample", the third numeral is changed from "2" to "3".

3. In Table VII, the 10th column of figures, under the heading of "In the total sample", the 10th numeral is changed from "165" to "159".

(Sec. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627)

Dated: April 2, 1970.

JOHN C. BLUM,
Acting Deputy Administrator, Marketing Services.

1. In § 52.384, add the following new paragraphs:

§ 52.384 Definitions of terms.

* * * * *

(f) *Unit.* The term "unit", not otherwise qualified, means any individual portion of an asparagus shoot three-eighths inch of more in length.

(g) *Loose material.* "Loose material" means any loose or shattered asparagus material and cut or broken pieces that are less than three-eighths inch in length.

§ 52.386 [Amended]

2. In § 52.386, change the last word, "stalk", in the first sentence to read "unit".

3. Replace Table III in its entirety with the table III which follows:

TABLE III

Tolerances for size compliance		Single sizes		Blends of sizes	
		Maximum defects permitted			
In any sample unit (AL) [1]		5	10	15	10
Number of sample units	Number of spears or tips	Severe	Major	Total [2]	Minor or Total [3]
		In the total sample			*In the total sample*
1	50	3	7	12	7
2	100	5	13	21	13
3	150	7	18	30	18
4	200	9	22	39	22
5	250	10	27	47	27
6	300	12	32	55	32
7	350	14	36	63	36
8	400	15	41	72	41
9	450	17	45	80	45
10	500	18	50	90	50
11	550	20	54	96	54
12	600	21	59	104	59
13	650	23	63	112	63
14	700	24	68	121	68
15	750	26	72	129	72
16	800	27	76	140	76
17	850	29	81	145	81
18	900	30	85	153	85
19	950	32	90	161	90
20	1,000	33	94	169	94
21	1,050	35	98	177	98

[1] In any sample unit, except the first one of 50 spears or tips.
[2] "Total"—the sum of "Severe", "Major", and "Minor" defects, as applicable.
[3] In "Blends of Sizes", "Minor" and "Total" defects are the same.

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.

4. In § 52.388, revise paragraphs (a) and (b) in their entirety to read as follows:

§ 52.388 Grades.

(a) "U.S. Grade A" (or "U.S. Fancy") is the quality of frozen asparagus that is of similar varietal characteristics; that has a good flavor and odor; that has no grit or silt present that affects the appearance or edibility of the product; in which no more than 5 percent, by weight, of loose material may be present; and that has an attractive appearance and eating quality within the limits specified for the various quality factors.

(b) "U.S. Grade B" or ("U.S. Extra Standard") is the quality of frozen asparagus that is of similar varietal characteristics; that has a good flavor and odor; that has no more than a trace of grit or silt present that slightly affects the appearance or edibility of the product; in which no more than 10 percent, by weight, of loose material may be present; and that has a reasonably attractive appearance and eating quality within the limits specified for the various quality factors.

* * * * *

5. In table IV, change the last four lines to read as follows:

Any unit of cut asparagus less than ½ inch in length (excluding head material or loose material)	X [Under Minor]
Any unit of cut asparagus, more than 2 inches in length	X [Under Major]

6. In Table V, delete the first five lines which follow the caption "Character ------" and substitute the following:

Spears and Tips styles:	
In Grade A only—	
Reasonably well developed (worse than Plate 1 but not worse than Plate 2 or 3)	X [Under Minor]
In all grades—	
Poorly developed (worse than Plate 2 or 3):	
Seedy	X [Under Major]
Flowered	X [Under Severe]
Cut spears or Cuts and Tips style:	
In all grades—	
Poorly developed (worse than Plate 2 or 3):	
Seedy	X [Under Minor]
Flowered	X [Under Major]

7. Replace Table VII and Table VIII in their entirety with the Table VII and VIII which follow:

TABLE VII

Grade compliance Spears; and Tips		U.S. Grade A				U.S. Grade B			
		Maximum defects permitted							
In any sample unit (AL) [1]		0	5	8	15	2	8	13	25
Number of sample units	Number of spears or tips	Critical	Severe	Major	Total [2]	Critical	Severe	Major	Total [2]
		In the total sample				*In the total sample*			
1	50	0	3	6	12	1	6	10	20
2	100	0	5	11	21	2	11	18	37
3	150	0	7	15	30	3	15	25	53
4	200	0	9	19	39	3	19	33	68
5	250	0	10	23	47	4	23	40	84
6	300	0	12	27	55	4	27	47	99
7	350	0	14	30	63	5	30	54	114
8	400	0	15	34	72	5	34	61	130
9	450	0	17	38	80	6	38	68	145
10	500	0	18	42	90	6	42	76	159
11	550	0	20	45	96	7	45	81	175
12	600	0	21	49	104	7	49	88	190
13	650	0	23	53	112	8	53	95	204
14	700	0	24	56	121	8	56	102	219
15	750	0	26	60	129	9	60	108	234
16	800	0	27	64	140	9	64	117	249
17	850	0	29	67	145	9	67	122	264
18	900	0	30	71	153	10	71	129	278
19	950	0	32	74	161	10	74	136	293
20	1000	0	33	78	169	11	78	142	308
21	1050	0	35	81	177	11	81	149	322

[1] In any sample unit, except the first one of 50 spears or tips.
[2] "Total"—the sum of "Critical", "Severe", "Major", and "Minor" defects, as applicable.

TABLE VIII

Grade Compliance Cut Spears; and Cuts		U.S. Grade A				U.S. Grade B			
		Maximum defects permitted							
In any sample unit (AL) [1]		0	7	14	25	3	14	22	44
Number of sample units	Number of cuts	Critical	Severe	Major	Total [2]	Critical	Severe	Major	Total [2]
		In the total sample				*In the total sample*			
1	100	0	5	11	21	2	11	18	37
2	200	0	9	19	39	3	19	33	68
3	300	0	12	27	55	4	27	47	99
4	400	0	15	34	72	5	34	61	130
5	500	0	18	42	90	6	42	76	160
6	600	0	21	49	104	7	49	88	190
7	700	0	24	56	121	8	56	102	219
8	800	0	27	64	140	9	64	117	249
9	900	0	30	71	153	10	71	129	278
10	1,000	0	33	78	169	11	78	142	308
11	1,100	0	36	85	185	12	85	156	337
12	1,200	0	39	92	200	12	92	169	366
13	1,300	0	42	99	216	13	99	182	396
14	1,400	0	45	106	232	14	106	195	425
15	1,500	0	47	113	248	15	113	209	454
16	1,600	0	50	120	264	16	120	222	483
17	1,700	0	53	127	279	17	127	235	512
18	1,800	0	56	134	295	17	134	248	541
19	1,900	0	59	141	311	18	141	261	570
20	2,000	0	62	148	326	19	148	274	599
21	2,100	0	64	155	342	20	155	287	628

[1] In any sample unit, except the first one of 100 cuts.
[2] "Total"—the sum of "Critical", "Severe", "Major", and "Minor" defects, as applicable.

§§ 52.394, 52.395 [Redesignated]

8. Renumber § 52.393 to 52.394 and § 52.394 to 52.395, and add a new § 52.393 as follows:

§ 52.393 Lot acceptance for "Percent loose material".

The percent of loose material, by weight, is determined by averaging the percentage by weight of loose material in the total weight of all of the sample units comprising the sample.

9. In § 52.393, now renumbered 52.394, revise paragraph (b), redesignate existing paragraph (c) as (d), and add a new paragraph (c) as follows:

§ 52.394 Lot acceptance for quality.

* * * * *

(b) The product is free of grit or silt that affects the appearance or edibility within the limits specified for either U.S. Grade A or U.S. Grade B; and

(c) The product complies with the limits specified for loose material for either U.S. Grade A or U.S. Grade B; and

* * * * *

[F.R. Doc. 70-4218; Filed, Apr. 7, 1970; 8:46 a.m.]

PART 56—GRADING OF SHELL EGGS AND UNITED STATES STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

Miscellaneous Amendments

Under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.), the U.S. Department of Agriculture hereby amends the Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs (7 CFR Part 56) as set forth below:

Statement of considerations. The amendments provide for one simplified method to replace the previously required lot marking system for officially identified cartons of shell eggs, raise the maximum permitted temperature of shell eggs at the time of official grading from 70° F. to 80° F. and make some minor changes for the sake of clarity.

A rulemaking proposal was published in the FEDERAL REGISTER, 35 F.R. 775, January 20, 1970. Five comments were received on the proposal. After careful consideration of the comments, the Department has decided to promulgate the amendments as proposed.

The amendments are as follows:

§ 56.7 [Deleted]

1. Section 56.7 is deleted.

2. Preceding § 56.31, a new title is added and in § 56.31, paragraph (b) is deleted, and the title of the section, the introductory text in paragraph (a) and paragraph (a)(1)(i) are amended to read:

DENIAL OF SERVICE

§ 56.31 Debarment.

(a) The following acts or practices or the causing thereof may be deemed sufficient cause for the debarment by the Administrator, of any person, including any agents, officers, subsidiaries or affiliates of such person, from all benefits of the act for a specific period. The rules of practice governing withdrawal of grading services set forth in Part 50 of this chapter shall be applicable to such debarment action.

(1) * * *

(i) The making or filing of an application for any grading service, sampling service, or appeal service;

* * * * *

(b) [Deleted]

3. A new § 56.32 is added to read:

§ 56.32 Retention authorities.

A grader may use retention tags or other devices and methods as approved by the Administrator for the identification and control of shell eggs which are not in compliance with the regulations or are held for further examination and for any equipment, utensils, rooms or compartments which are found unclean or otherwise in violation of the regulations. Any such item shall not be released until in compliance with the regulations and retention identification shall not be removed by anyone other than a grader.

4. Section 56.37 is amended to read:

§ 56.37 Lot marking of officially identified product.

Each carton identified with the grade marks shown in Figures 2, 3, or 6 of § 56.36 shall be legibly lot numbered on either the carton or the tape used to seal the carton. The lot number shall be the consecutive day of the year on which the eggs were packed (e.g., 132), except other lot numbering systems may be used when submitted in writing and approved by the Administrator.

5. A new § 56.41 is added to read:

§ 56.41 Check grading officially identified product.

Officially identified shell eggs packed or received in an official plant may be subject to final check grading prior to their shipment. Such product found not to be in compliance with the assigned official grade shall be placed under a retention tag until it is regraded to comply with the grade assigned or until the official identification is removed.

6. Section 56.76(f)(1) is revised to read:

§ 56.76 Minimum facility and operating requirements for shell egg grading and packing plants.

* * * * *

(f) *Requirements for eggs which are to be marked with official U.S. identification mark.* (1) Shell eggs, except as otherwise provided for in §§ 56.42 and 56.43, shall not exceed an internal temperature of 80° F. at the time of official grading. Shell eggs held in the official plant shall be placed under refrigeration of 60° F. or lower promptly after packaging. Officially identified shell eggs with an internal temperature of 70° F. or higher when shipped from the official plant should be transported at a temperature of 60° F. or less.

* * * * *

Signed at Washington, D.C., this 30th day of March 1970, to become effective July 1, 1970.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 70-4273; Filed, Apr. 7, 1970; 8:50 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:

In § 76.2, in paragraph (e)(19) relating to the State of Virginia, a new subdivision (xii) relating to Rockbridge County is added to read:

(19) *Virginia.* * * *

(xii) That portion of Rockbridge County bounded by a line beginning at the junction of Secondary Road 608 and Secondary Road 714; thence, following Secondary Road 714 in a northwesterly direction to Secondary Road 713; thence, following Secondary Road 713 in a generally northerly direction to Secondary Road 706; thence, following Secondary Road 706 in a northeasterly direction to Secondary Road 712; thence, following Secondary Road 712 in a northwesterly direction to U.S. Highway 11; thence, following U.S. Highway 11 in a northeasterly direction to Secondary Road 706; thence, following Secondary Road 706 in a southerly direction to Secondary Road 707; thence, following Secondary Road 707 in a generally easterly direction to Secondary Road 608; thence, following Secondary Road 608 in a southwesterly direction to its junction with Secondary Road 714.

(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 amendment shall become effective upon issuance.

The amendment quarantines a portion of Rockbridge County in Virginia 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 area designated herein.

The amendment imposes certain further restrictions necessary to prevent the interstate spread of hog cholera and must be made effective immediately to accomplish its 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 amendment are impracticable and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 2d day of April 1970.

GEORGE W. IRVING, Jr.,
Administrator,
Agricultural Research Service.

[F.R. Doc. 70-4217; Filed, Apr. 7, 1970; 8:46 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 9079; Amdt. Nos. 1-16, 25-23]

PART 1—DEFINITIONS AND ABBREVIATIONS

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

Transport Category Airplane Type Certification Standards

The purpose of these amendments is to improve the airworthiness requirements applicable to the type certification of transport category airplanes.

These amendments are based on, and reflect comments from interested persons concerning the notice of proposed rule making published in the FEDERAL REGISTER (33 F.R. 11913) on August 22, 1968, and circulated as Notice 68-18.

Notice 68-18 contained over 100 proposed amendments to Parts 1 and 25, and approximately 300 comments were received in response to the notice. Based upon these comments and upon further review within the FAA, a number of substantive changes have been made to the proposed rules and these changes are discussed hereinafter. In addition, a number of the proposals have been withdrawn for further study and future rulemaking action. Editorial revisions have also been made to more clearly state the intent of the requirements as expressed in the explanation. A number of comments recommended changes which went beyond the scope of Notice 68-18. These comments are appreciated and consideration will be given to them in connection with future rulemaking actions. Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all matters presented; however, in view of the number of comments received only the most pertinent ones are discussed herein. Except as modified by the following discussion, the reasons for these amendments are those contained in the notice.

The notice proposed to amend the control system requirements set forth in §§ 25.21, 25.671, 25.677, 25.695, and 25.701. One comment suggested that the proposed amendment to § 25.21(e) should be revised to delete the introductory clause so that compliance with the proposed requirements would be required whether or not a stability augmentation device is needed in showing compliance with the flight requirements. While this appears to have merit, it goes beyond the scope of the notice and requires further evaluation. However, it will be considered in future rulemaking action. On the other hand, the FAA agrees that the detailed and complex design requirements proposed in § 25.21(e) (1) through (3) should be transferred to a new section in Subpart D which deals specifically with matters concerning design and construction, and these requirements have been set forth in a new § 25.672. Several comments pointed out that the pilot alerting type of warning proposed in § 25.21(e)(1) would be needed only for those failures of the stability augmentation system or any other automatic or power-operated system that could result in an unsafe condition if the pilot were not aware of this failure. The FAA agrees and the proposal as now set forth in new § 25.672 has been revised accordingly. The proposal would have required that the pilot be able to deactivate or override the stability augmentation device or any other automatic or power-operated device by means of normal movement of the flight controls without exerting excessive strength. However, as noted by commentators, the proposal does not take into consideration the new airplanes with fully power operated redundant systems in which it is not feasible to deactivate or override the entire system. Therefore, the proposal has been changed to require the deactivation of the system, or the failed portion thereof, or the overriding of the failure by movement of the flight controls. In addition, the FAA agrees with a further comment that it should be possible to deactivate the system, or to override the system by movement of the flight controls in the normal sense, without requiring exceptional piloting skill or strength, and the proposal has been changed accordingly. In response to several comments, the FAA agrees that the proposed change to § 25.701 is not necessary in its entirety since the requirements set forth in § 25.671(c), as amended herein, are appropriate to cover the lift and drag control systems other than flaps. Therefore, the current provisions of § 25.701 are retained with the exception of the requirements of current paragraph (b) which have been deleted and a new paragraph has been added based on paragraph (b)(3) of the proposal to provide for unsymmetrical load conditions resulting from jamming of the flap surfaces on one side of the airplane.

The notice proposed to amend the requirements of § 25.145(c) concerning longitudinal control during flap retraction. Several comments stated that the proposal to limit the application of power to "maximum continuous power" is unduly restrictive and that there is no need to reserve the additional power between maximum continuous power and takeoff power for contingencies since the proposal requires compliance at critical combination of weights and altitudes. The FAA agrees and the proposal has been changed to provide for the application of takeoff power, taking into account the critical engine operating conditions. In this connection, it should be noted that from a controllability standpoint (i.e., pitch-up) takeoff power could be more critical. Other comments point out that the proposal would allow partial retraction of high-lift devices to be any amount of retraction that could be normally controlled by the pilot regardless of gate or detent position. This was not the intent of the proposal and it has been changed to make it clear that partial retraction of the high-lift devices is to the gated control position which has a design feature to prevent inadvertent operation beyond that position. In this connection the word "detent(s)" has been deleted since it could be interpreted to permit a simple notch in the control quadrant rather than a more sophisticated control (generally referred to as a gated position) having a rather complex notching or channeling provision through which the control lever must move. The word "pilot" has also been deleted so that the design motion criteria of the gated control position will be applicable to all high-lift device controls. Another comment expressed concern that the explanation in Notice 68-18 implies that the speed $1.2V_s$ would become a new lower limit speed for go-around. No such implication was intended. The intent of the rule is to assure that the minimum inflight go-around speed for turbojet powered airplanes is related to realistic landing touchdown speeds.

The proposed amendment to § 25.161 (c)(2) to require the longitudinal trim requirements of that subparagraph to be met at the "most critical" center of gravity has been changed to the "most unfavorable" center of gravity since the latter term is generally used in other flight requirements with respect to the center of gravity position. It should also be noted that while Notice 68-18 referred to § 25.161(c)(2)(ii), the requirement applies to all of paragraph (c)(2).

One commentator objected to the proposed amendment to § 25.251(c) stating that the term "perceptible" was not discussed in the explanation in Notice 68-18 and that it is a meaningless term. The FAA does not agree. Perceptible buffeting means any buffeting which comes within the range of human senses. The FAA considers that continuous perceptible buffeting should not be permitted for cruise flight since pilots use buffeting as a warning means. The proposal has been changed, however, in view of other comments received and upon further consideration by the FAA, to limit the proposed requirement to the cruise configuration. The requirements of current paragraph (c) for normal flight conditions other than for straight flight in the cruise configuration are retained. Proposed paragraph (d) is renumbered as paragraph (e) and the phrase "except that load factors greater than the structural limitation need not be investigated" has been deleted as superfluous and to eliminate any suggestion that it is necessary to investigate aircraft characteristics up to limit load factors to determine buffet boundaries.

The notice proposed to amend § 25.253 to cover upsets caused by activation of the longitudinal trim surfaces due to a malfunction in the trim control system or to improper use of the trim control by the pilot in turbulence. A number of comments were received on this proposal, including comments which raised issues which are beyond the scope of the notice. Upon further consideration of the proposal and in view of the comments

received, it is withdrawn for further study and future rulemaking action.

One comment stated that the proposed amendment to § 25.301(b) should be withdrawn and that the need for flight load measurements on a particular airplane design be established by special requirements during the type board meetings. In response to these comments it should be noted that the proposed amendment permits this procedure to be used to determine when flight load measurements are necessary. The amendment is adopted as proposed.

One comment suggested that the words "external loads" in proposed § 25.303 should be replaced with the words "internal loads" to be consistent with § 25.301(a). The FAA disagrees since § 25.301 as well as all of the other structural requirements are expressed in terms of external loads. The amendment is adopted as proposed.

With respect to proposed § 25.305(b), one commentator stated that to include the effects of ultimate deformations in static tests to ultimate loads is not consistent with industry practice and that this requirement should be deleted. The FAA disagrees, since it would be unrealistic to hold the structure to its limit deformation while the load is increased from limit load up to ultimate load. The commentator also stated that proposed § 25.305(b)(2) is covered by paragraph (b)(3), and that paragraph (b)(2) should be deleted because it involves complex analysis procedures. However, since paragraph (b)(2) is merely one of three alternative procedures available to the applicant, it is being retained for those who may choose to employ precise in lieu of conservative procedures. Another commentator questioned whether the continuous turbulence analysis proposed under § 25.305 (d) applies only to flight structure. The proposal applies not only to flight structure, but also to seat strength or to mass items which could cause injury to occupants. Several additional commentators contend that the method for evaluating dynamic response of an aircraft to continuous gusts is well known, while the continuous gust model of turbulence is not. It was also contended that the gust model is probably not reliable enough to make positive design decisions. Thus, these commentators consider it premature to make the continuous turbulence method a mandatory requirement. The FAA disagrees. The addition of a continuous turbulence analysis to the already required static discrete gust analysis is a necessary step forward in flight structure safety. Although this type of analysis is still developing, the technique has been and is presently being applied to the design of transport airplanes. As more knowledge becomes available, the analysis techniques can be refined, but in the meantime, the maximum degree of safety available within the state-of-the-art should be designed into airplanes. Accordingly, § 25.305(d) is adopted as proposed.

The notice proposed to add a new paragraph (d) to § 25.307 to require that appropriate material correction factors be applied to test results when static or dynamic tests are used to show compliance with § 25.305(b). However, these factors do not have to be applied if the structure or part thereof has fail-safe features. One commentator noted that the term "fail-safe" has a special meaning within the context of structural fatigue and is directly related to the crack propagation and residual strength characteristics of a structure. Thus, with the use of particular materials, a single element could constitute a "fail-safe" structure. The FAA agrees with this comment and has clarified the final rule accordingly.

It was suggested that the proposed amendment to § 25.331(a)(3) does not cover manually operated control systems and does not consider that pilot effort governs the rate of control displacement. The intent of the revision to § 25.331(a)(3) is to consider in the design of the aircraft the maximum rate of control displacement which is consistent with normal pilot effort and normal control system function. The limits of pilot effort are contained in § 25.397. The proposed requirement applies to all types of control systems (from manual to fully powered) and is consistent with the present industry practice of designing to the actually available rates of control surface displacement. This has been made clear in the final rule. In addition, the FAA has withdrawn its proposed amendment to paragraph (a)(4) concerning maneuvers for out-of-trim conditions since the related proposal set forth in § 25.253 has been withdrawn.

The proposed amendment to § 25.351 (a)(1) has been changed to make it clear that the control stop is the stop located at the control surface and that the maximum rudder deflection is limited by the control surface stop or by a 300-pound rudder pedal force, whichever is less, as specified in the explanation in the notice.

The notice proposed to transfer the same design dive speed requirements now contained in § 25.1505 (b) and (c) to § 25.335(b) in order that these requirements would be set forth in the appropriate subpart of the regulations. However, a number of comments recommended substantive changes to the proposal. Since these changes are outside the scope of the notice, they will be considered in connection with future rulemaking. The amendment is adopted as proposed.

The proposed amendment to § 25.427 has been revised, in response to a comment, to make it clear that it is necessary to design the specified empennage arrangements to both the lateral and vertical gust flight conditions, not in combination, but considered separately. Moreover, this also applies to the prescribed maneuver conditions.

It was proposed to amend paragraph (b) of § 25.471 by adding a new sentence to provide that lateral displacements of the c.g. from the airplane centerline resulting from passenger or cargo disposition which would not cause more than a 3 percent increase of the ground loads under symmetrical loading conditions need not be considered in determining the data required by this section. However, § 25.471(b) has been changed consistent with the explanation in the notice to make it clear that the 3 percent increase may be allowed only in those cases where the increase is the result of variations in lateral c.g. locations resulting from random type loadings.

The notice proposed to amend the hull and main float landing conditions specified in § 25.529(a)(1) to require only a single step limit water reaction, and to amend the related provisions of § 37.192 (TSO C27). Upon further consideration of the proposal and in view of comments received it appears that the manner of applying the load to the hull bottom was not completely defined in the proposal and could produce step load locations unreasonably forward of the step location. The proposal is therefore withdrawn for further study and future rulemaking action.

The notice proposed to amend § 25.571 to provide an adequate margin for the fatigue evaluation of flight structures. One commentator stated it assumed that the 1.15 factor would also apply to pressurized structures and that it considered this to be too severe an overall factor and should be applied only to discrete load members. The FAA does not agree that the 1.15 factor is excessive for dynamic effects, especially as the manufacturer has the option to make a dynamic test in lieu of using the 1.15 factor. The proposal has been changed to make it clear that the 1.15 factor applies to pressurized as well as unpressurized structures. The FAA does not agree with the statement of other commentators that the 1.33 factor is too high or that proposed § 25.571 (e)(2) is inconsistent with the ultimate static strength requirement in § 25.365 (d). A factor of 1.33 applied to the normal operating (internal plus external) pressure (not maximum relief valve setting) is necessary to account for variation in cabin pressure and strength, and to provide a margin over the normal operating loads in the partially failed condition. The FAA never intended that fail-safe loads would be the normal operating loads as reflected by the current requirements of § 25.571(c). Furthermore, the FAA does not agree that the proposed additional residual static strength margin would have no effect on failure of the pressure shell or that proposed § 25.571 (e)(2) is inconsistent with current § 25.-365(d). Proposed § 25.571(e)(2) covers ultimate loads in the damaged condition while § 25.365(d) covers limit loads in the undamaged conditions and proposed § 25.571(e) has been changed to make this clear.

The notice proposed to add a new § 25.581 to require lightning protection of the airplane structures. The suggestion of one commentator that the rule should require compliance with both subparagraphs (1) and (2) of paragraph (b) in all cases cannot be adopted since, for some purposes, it is necessary to electrically isolate some exposed parts to enable them to function. One commentator

expressed concern as to the adequacy of the proposed protection against high induced current from a lightning strike causing arcing within the airplane which could result in loss of essential systems, and also suggested the word "catastrophic" be changed to "hazardous". On the other hand another commentator suggested that the proposal was too strict in that it did not take into account lesser protection requirements for components located in areas with low probability of strike attachment such as classification zone three in Advisory Circular 20-53. AC 20-53 is concerned with fuel system lightning protection and the zone classifications in that Advisory Circular are not considered generally applicable to airframe components when the hazard may be due to a high current flow in a zone even though the point of stroke attachment may be in another zone. The FAA believes that the proposed rule will provide the desired protection insofar as it is possible within the present state-of-the-art. The rule is adopted as proposed, except that the title has been changed to read "Lightning Protection" since the requirement covers more than structures.

The proposal to amend § 25.607 has been changed to make it clear that it applies only to "removable" fasteners; that the "primary control system" is the "yaw, pitch, and roll control systems"; and that the control capability requirement is limited to those fasteners whose failure could result in a reduction in control capability below that required by Subpart B of Part 25. The FAA does not agree with the statement of one commentator that the proposal is redundant with the proposed amendment to § 25.671, since a reduction in control capability would be permitted under § 25.671.

The notice proposed to amend § 25.611 to require accessibility for the inspections and maintenance necessary for continued airworthiness. Commentators recommended that the proposal be changed to make it clear that the inspections are not limited to visual means, that nondestructive inspection aids should be permitted, and that accessibility should be further defined. The intent of the proposal is to require means (primarily access) adequate to insure that it will be practical to carry out the necessary inspections. Furthermore, the inspection means or access provided should be practical for the inspection interval required for the particular item involved, and easy access for direct visual inspections of critical structures is necessary for an adequate inspection program. The use of nondestructive inspection aids such as X-ray, eddy current, and ultrasonic is considered acceptable where it is impractical to provide means for direct visual inspection if adequate procedures are developed, and it is shown that the inspection is effective. The proposal has been changed accordingly.

A suggestion was made that proposed § 25.615 should cover materials other than those listed in MIL-HDBK-5. However, it should be pointed out that this is unnecessary, since § 25.613 (a) and (b) cover the strength properties and design values for materials other than those listed in the military specifications. The amendment is adopted as proposed.

With respect to the proposed change to § 25.629, one commentator expressed concern that the proposal would omit the effects of Mach numbers greater than one when M_D is less than one. However, the proposed flutter instability margin is based on damping criteria when M_D is less than one and when 1.2 M_D is greater than one as set forth in proposed paragraphs (b)(1) (i) and (ii). The FAA considers that this criteria ensures an adequate level of safety and the added burden of considering the effects of supersonic flight Mach numbers is not justified for airplanes which fly at subsonic speeds. It was also recommended that V_D/M_D in proposed paragraph (a) of § 25.629 should be changed to "V_{DF}/M_{DF}" to make it consistent with the speed definition and to require flight flutter tests up to the maximum demonstrated flight speed. The FAA agrees, since V_{DF}/M_{DF} can be less than $V_D M_D$ and by definition it is the highest demonstrated flight speed for the type design. This change has been incorporated into the final rule. Another comment concluded that while the proposed revision to § 25.629 is an improvement, it is more arbitrary than the current rule. The FAA does not agree that this proposal is more arbitrary than the current rule. Under the proposal, airplanes which have an M_D near Mach one are treated as a special case based on compliance with damping criteria, instead of a specified speed margin. In addition, § 25.629(a)(3) has been revised to make it clear that full scale flight flutter tests are required for a modification to the type design on the same basis as for a new type design.

One of the comments recommended that both the windshield and the wing should be included in the bird strike damage criteria of § 25.631. Moreover, it was suggested that the use of an 8-pound bird in this requirement may not be realistic and that a larger sized bird should be considered. Other comments suggested that only smaller sized birds be considered. The FAA does not agree that the wing and windshield should be included in this proposal. Service experience has not shown that the current windshield strength requirements for bird strikes in § 25.775 are inadequate or that a special investigation of wing structures for resistence to bird strikes is necessary. Moreover, the bird strike records indicate that encounters with birds weighing more than 8 pounds are a rarity and that on the basis of probability, 8 pounds is a reasonable value. In response to another comment, however, § 25.631 has been changed to make it clear that compliance with this requirement by providing redundant structure and protected location of control system elements or protective devices is acceptable. Moreover, the use of data on airplanes having similar structural design is permitted in showing compliance with this requirement.

One of the comments noted that the proposed change to § 25.683 does not indicate whether the 80 percent of the limit load on the control system is a dynamic load or takes into account the additional control system loads due to structural deflection or whether this includes the powered portion of a powered control system. However, other provisions in Part 25, namely, §§ 25.301 and 25.305, do require that the determination of design limit loads include consideration of dynamic effects and structural deflections. Moreover, the amendment to § 25.671 requires that adequate proof be provided to show that the control system can be operated sufficiently for continued safe flight and landing after any single failure in the control system. This will include the effects of the loads resulting from the failure. An additional comment stated that the wings and empenage should be subject to limit loads during the control system operation tests. The FAA does not agree that such a requirement is necessary because under § 25.305 (a) it must be shown that the structure deflections under limit loads will not interfere with safe operation of the airplane. The amendment is adopted as proposed.

The notice proposed to amend § 25.699 (a) to require a means to indicate to the pilots the positions of the lift or drag devices on each side of the airplane or to indicate any unsymmetrical system operation to the pilots. Numerous comments were received questioning the intent of the proposal and as to when position indicators for the left or drag devices are required. The rule as adopted requires an indicator for each lift or drag device having a separate control in the cockpit. An indication of unsymmetrical operation or other malfunction in the lift or drag device systems must be provided when such indication is necessary to enable the pilots to prevent or counteract an unsafe flight or ground condition.

It was recommended that the proposed § 25.721 be revised to cover failure modes of the landing gear in all directions and ground operating conditions as well as takeoff and landings. This rule is based on the operating history of transport category airplanes which shows that the predominant failure modes act vertically or fore and aft. Insofar as the recommendation covers other failure modes it is beyond the scope of this notice. However, the FAA will study the matter further in connection with Notice 69-33 and the amendment is adopted as proposed.

In response to a comment, proposed § 25.723(b) now refers to "airplane lift" rather than "wing lift".

Concerning proposed § 25.729, it was asserted that there are no gyroscopic loads induced when the wheels stop rotating prior to gear retraction; consequently, the commentator suggested that the proposal include a statement that gyroscopic loads need not be considered when the design incorporates devices to stop wheel rotation prior to gear retraction. While the FAA agrees with this statement, the proposal need not be changed since it is inherent in the proposal that any particular load which

becomes zero or insignificant during any portion of the retraction or extension cycle need not be considered during that portion.

It was recommended that the proposed amendment to § 25.733(a) should be changed to delete the words "critical condition" to avoid the interpretation that the tire placard speed could not be exceeded for an emergency condition such as a high weight, flaps-up landing. The FAA does not agree. A tire speed rating should not be exceeded under any conditions considered critical regardless of operational envelope. Another comment recommended that in addition to tire speed rating, the design skid depth must also be met to provide proper tire installation. The addition of a skid depth requirement in § 25.733 would require further study and is beyond the scope of this notice. However, it will be evaluated in future rulemaking actions. After further consideration, the FAA considers that reference to the "Tire and Rim Association" in § 25.733(a) is not appropriate since it implies that no further tire qualification beyond assignment by the "Tire and Rim Association" is required. This, of course, is not the case and the proposal has been changed to refer only to approval by the Administrator. In addition, the proposal has been changed to make it clear that a "suitable tire" means a tire of "proper fit".

The notice proposed to add a new § 25.773(c) to require a means to prevent internal windshield fogging in the pilot compartment. One comment pointed out that the use of the words "windshield fogging" in the proposal could be interpreted as requiring only forward visibility, whereas "paragraph (a)" provides for pilot compartment visibility. The FAA agrees and the proposal has been changed to make it clear that it includes windows as well as windshields and covers fogging from all internal and external ambient conditions, including precipitation conditions, in which the airplane is intended to be operated. Another commentator urged that the proposed rule should not require defogging means for inherently fog-free panes or for transparent areas not needed in the conduct of certain operations. Areas which are shown to be inherently fog-free comply with the proposed rule. Furthermore, the FAA does not consider it practical to establish boundaries of visibility for the different stages of flight and ground operations.

In response to numerous comments, the proposed amendment to § 25.863 has been substantially revised. A number of comments objected to the proposed paragraph (a) which would require fire or overheat detectors and fire extinguishing means in specified areas of the airplane. A study of the research conducted on this matter and subsequent service experience has shown that other methods of fire protection may be equally or more effective and that each area should be carefully examined with respect to the potential sources of combustible materials and ignition and appropriate fire protection means provided to prevent the occurrence of a catastrophic fire. Therefore, the proposal has been relaxed by withdrawing paragraph (a). However, proposed paragraph (b) of the notice has been retained as the new paragraph (a); stating the basic objectives of (1) preventing the ignition of flammable fluids and (2), minimizing the hazards in the event an ignition does occur. In addition, a new paragraph has been added which lists those factors (among others) that the applicant must consider in showing compliance with these objectives. A requirement for a means to alert the crew when an action by the crew is necessary to counteract or prevent a fire has been incorporated in a new paragraph (c) in view of the withdrawal of the proposed paragraph (a). A comment was also received stating that the proposal to require fire detectors and extinguishers be extended to include Class "D" cargo compartments. The FAA is not in a position to respond to this comment since the research program referred to in Notice 68-18 is still being evaluated. However, it should be noted that Notice 69-33 includes a proposal to require cargo compartment linings to have improved fire resistance characteristics.

In response to comments received, the proposed requirement of § 25.865 has been changed to make it clear that it is only those flight controls, engine mounts, and other flight structures which would be damaged by the "effects of fire" that need be constructed of fireproof material or shielded. In response to another comment, § 25.865 has been changed to make it clear that it is the "essential" flight controls with which the regulation is concerned.

One comment objected to the proposal to add a new § 25.901(c) to require a powerplant installation fault analysis on the basis that the requirement is covered in the proposed amendment to § 25.1309. The FAA agrees that the requirement is adequately covered in § 25.1309 and the proposal has been changed to make it clear that compliance with § 25.1309 is required.

The purpose of the proposed amendment to § 25.903(d) is to ensure that, for turbine engine installations, design precautions are taken to minimize the hazards to the airplane in the event of an engine rotor failure or of a fire originating in the engine which burns through the engine case. Comments were received objecting to the proposed words "design precautions to minimize hazards to the airplane" in that they would be subject to interpretation. However, this wording is contained in the current regulations and no change to these words or their meaning is intended. Another comment stated that containment precautions and engine integrity should be the engine manufacturer's responsibility and covered under Part 33. The FAA does not agree. Service experience has shown that additional safeguards in the installation of the engine is necessary over and above those provided by Part 33 to minimize hazards resulting from engine rotor failure or engine case burn through. The amendment is adopted as proposed.

The notice proposed to amend § 25.951(b) to require the fuel system to be arranged so that hazardous amounts of air cannot be introduced into the system by any fuel pump. Several comments were received questioning the meaning of the word "hazardous". The FAA agrees that the word "hazardous" with respect to air in the fuel system is not sufficiently clear. In order to provide the necessary clarification, the word "hazardous" has been deleted and the rule now specifies that any air which is introduced into the system may not result in engine flameout or power interruption for more than 20 seconds.

The notice proposed to amend § 25.959 to require that a determination be made of the unusable fuel quantity for each fuel tank and its fuel system components at which the first evidence of engine malfunction occurs under certain conditions. One comment suggested that the proposal should be based on system malfunctioning rather than engine malfunctioning. The FAA disagrees. The important factor in determining unusable fuel is the time at which the engine malfunctions and present day aircraft have been type certificated on this basis. The amendment is adopted as proposed.

The notice proposed to amend the fuel system hot weather test requirements of § 25.961(a)(5) to require the fuel temperature for the climb test to be accomplished at the highest temperature selected by the applicant for the operation of the airplane, but not less than 110° F. Upon further consideration of the proposal in the light of comments received, the FAA has determined that the current requirement that the fuel temperature may not be less than 110° F. is adequate and the proposal is withdrawn. Furthermore, the proposed amendment to clarify the requirement of § 25.961(a) concerning the critical pump inoperative condition has been withdrawn for further study and future rulemaking action.

There was an objection to proposed new § 25.994 which would require fuel system components in an engine nacelle or in the fuselage to be protected from damage which could cause the release of fuel as a result of a wheels-up landing. One commentator stated that the proposal is unreasonable for airplanes that do not have aft mounted engines and that the proper use of the fuel shutoff valves required by § 25.1189 would be a more rational method of achieving the intent of the proposal. The FAA disagrees. The criteria in § 25.1189, applicable to a fuel shutoff valve is inadequate to achieve the purpose intended by proposed § 25.994. Furthermore, the use of fuel shutoff valves in lieu of protective structural design would not provide an adequate level of safety. The amendment is adopted as proposed.

The notice proposed to amend § 25.997(a)(1) to require a fuel strainer or filter only between the tank outlet and the engine-driven positive displacement pump inlet when an engine-driven positive displacement pump is used. One commentator stated that a requirement for a strainer to protect all types of positive displacement pumps appears to be

extreme. The FAA does not agree. The proposal merely relaxes the present requirement by eliminating the requirement for a filter between the tank and the pump when the pump is other than a positive displacement type. Service experience has not shown that further relaxation is warranted and the amendment is adopted as proposed.

It was proposed to amend § 25.1091 (d)(2) to require in part that airplanes be designed to prevent water or slush on the runway and any other airport operating surface from being directed into the engine air inlet ducts in hazardous quantities. One comment stated that the proposal could have a restrictive effect on the designer's freedom of choice of aircraft layout without increasing safety. Another comment suggested that the proposal be revised to give the applicant the alternative of establishing operating limitations setting forth the depth of water or slush in which the airplane could be operated and a limitation on the speed range in which it would be permissible to operate thrust reversers. The FAA considers that in this case the suggested operating procedures or limitations would not compensate for a lack of the proposed design requirements. Experience has shown that it is possible to design and prevent such ingestion and the amendment is adopted as proposed.

The notice proposed to amend § 25.1093 to cover turbine engine ice protection. Upon further consideration of the proposal and in view of comments received, the FAA has determined that the proposal should be withdrawn for further study.

The notice proposed to add a new § 25.1103(d) applicable to induction system ducts. The proposal would require that, for turbine engine bleed air systems, no hazard may result if a duct rupture or failure occurs at any point between the engine port and the airplane unit served by the bleed air. One comment considered the use of the words "no hazard" as unrealistic and an oversimplification of a complex situation. Commentator suggested that the proposal should be revised to specify acceptable limits on heat exposure in the various areas of the airplane where duct rupture or leakage could occur. The FAA does not consider it practicable to establish numerical limits or a specific number for temperature and pressure because of the numerous variable factors involved. Each airplane must be evaluated on an individual basis. Furthermore, the proposal has been applied as a special condition with no apparent difficulty. The amendment is adopted as proposed.

The notice proposed to amend § 25.-1143(e) to require each power or thrust control to have a means to prevent inadvertent movement of that control into any position that will reduce the fuel flow to the engine(s) below the fuel flow necessary for normal flight idle operations. The proposal would also require a positive lock or stop at the flight idle position. Several commentators objected to the use of the words "flight idle" and contended that they are improper in that they could lead persons to believe that any position below the flight idle position results in a fuel cutoff. The FAA agrees. The intent of the proposal is to preclude inadvertent movement of the control into the cutoff position and to require a separate and distinct motion on the part of the crew to shut down the engine, which may be accomplished by means of shutoff levers. The proposal has been revised accordingly.

Proposed § 25.1189(a)(2) has been changed to make it clear that a shutoff means is not required for oil systems for turbine engine installations in which all external components of the oil system, including the oil tanks, are fireproof.

The notice proposed to add a new § 25.1189(g) to require each flammable fluid shutoff valve and control to be fireproof or to be located so that exposure to fire will not affect its operation. In response to comments received and consistent with the intent of the notice, the proposal has been changed to make it clear that it applies only to flammable fluid shutoff means and controls located in a fire zone or that would affected by a fire in a fire zone. The proposal as revised is adopted as an amendment to current paragraph (d).

The notice proposed to add a new § 25.1192 to require an engine accessory section diaphragm for reciprocating engines. As a result of this amendment, § 25.1181(a)(3) is amended to except reciprocating engines from the requirements of § 25.1181(a)(3).

The proposed amendment to § 25.1195 (b) has been changed to make it clear that each of the two discharges of the fire extinguisher system must produce adequate agent concentrations to extinguish fires.

The amendment to § 25.1203 changes the words "fire detector" to "fire or overheat detector". It should be noted that while TSO C–11(d) is titled "fire detectors", it is equally applicable to overheat detectors.

The notice proposed to amend the flight and navigation instruments requirements of § 25.1303. Upon further consideration, the FAA considers that proposed paragraph (b)(1) should refer to an "airspeed indicator" rather than an "airspeed indicating system" as proposed. Since this requirement is concerned with flight and navigation instruments, the FAA agrees that the term "airspeed indicator" is more appropriate here. One comment contended that the requirement in proposed paragraph (b)(4) for a rate-of-turn indicator should be deleted because the state-of-the-art in modern aircraft instrument systems has negated the need for a rate-of-turn indicator. The FAA agrees that the rate-of-turn indicator may be omitted if the airplane has a third attitude indicator. This change has been incorporated by a recent amendment to Part 25 (Amendment 25–22, 35 F.R. 304). It was also recommended that if the rate-of-turn is not deleted, the requirement should be transferred to proposed paragraph (a) so that it need only be visible from each pilot station but not installed at each pilot station. The FAA does not agree. Gyroscopic rate-of-turn instruments are still used occasionally as direct flight instruments in the sense that information displayed is used in a positive feedback manner by whichever pilot is manipulating the controls. For this reason, this instrument should be installed at each pilot station. The amendment is adopted as proposed except that subparagraph (b)(1) has been changed to refer to an "airspeed indicator".

A number of comments suggested that several of the required powerplant instruments set forth in the proposal to amend § 25.1305 be specified in more detail. However, the instruments are defined in objective terms in order to avoid unnecessary restrictions on design, and the amendment is adopted as proposed.

With respect to the proposed amendment to § 25.1307, it was recommended that certain items listed in the proposal should be deleted on the basis that they are covered in other sections of Part 25. The FAA does not agree with this comment. While equipment listed in § 25.1307 may be referred to in other sections of Part 25, the listing of such equipment in § 25.1307 is necessary since it is only there that the equipment is required. The other sections generally treat the equipment from the standpoint of performance, reliability, and installation. It was contended by one commentator that the duplication of communication and navigation radio equipment required by § 25.1307 imposes type certification rules more stringent than § 91.33 or § 121.345. While the FAA agrees that under Parts 91 and 121 there are situations in which an airplane can be operated without two communication and navigation systems, there are always operations in which a transport category airplane would be involved which do require dual systems. Therefore, the FAA considers it necessary to make this a design requirement for all future transport category airplanes. In response to another comment, § 25.1307 has been amended to make it clear that some interconnection or component sharing is permissible if system reliability is not impaired. In this connection, the word "independent" has been removed and the regulation now requires that there be two systems for two-way radio communications designed and installed so that failure of one system will not preclude operation of the other system. In addition, the use of a common antenna is acceptable if adequate reliability is shown.

The notice also proposed to amend the equipment systems and installation requirements of § 25.1309. In response to a comment, the words "and installed" have been deleted from paragraph (a) of § 25.1309 to make it consistent with the remaining provisions of that section. Numerous and detailed changes have been made to paragraph (b) of § 25.1309 in response to various comments received. Several comments concerned the flush paragraph following proposed paragraph (b)(2) which states that failure condition means a single

failure or malfunction or damage from external sources, and any combination of failures, malfunctions and damage from external sources. The commentators contended that this provision would require protection against any number of improbable conditions involving any combination of system failure and damage from external sources. This was not the intent, since other provisions of the proposal would limit the failure combinations to those that would preclude safe flight and are not extremely improbable. The proposal has been clarified in this respect by deleting the paragraph in question, and adding another requirement which states that the failure analysis must include consideration of the probability of multiple failures and undetected failures. However, the FAA does not agree that the proposal should be changed to require that multiple failures of airplane systems and associated components be considered only when the first malfunction would not be detected during normal operation of the system or when the first failure would inevitably lead to other failures. Existing transports exceed such a requirement in critical systems, and service experience has shown that these additional backup provisions are necessary for safety. With further reference to paragraph (b) the FAA has determined that the phrase "without exceptional skill or strength on the part of the crew" is redundant and that the word "minimized" should be replaced by the word "improbable". Moreover, while the term "marginal physiological condition" would generally include oxygen depletion, depressurization, and other similar conditions, it was the intent of the proposal to cover only these occurrences that could cause injury to an occupant. For this reason, the final rule has been changed to require that airplane systems and components be designed so that the occurrence of a failure condition which would result in injury to the occupants is improbable. Finally, the FAA does not agree that the requirements of proposed § 25.1309 (c) and (d) are repetitious or too detailed. The provisions of paragraphs (c) and (d) were proposed to introduce monitoring and failure warning requirements and failure analysis criteria which do not exist in the current regulations.

In response to a comment received, proposed § 25.1309(e)(4) has been clarified by replacing the words "two sources of power" with the words an "alternate source of power." This is necessary to remove the implication that "two sources of power" referred to systems which require two different forms of power such as AC and DC at different voltages.

The notice proposed to add a new § 25.1322 to standardize the color of warning, caution, and advisory lights. In view of the comments received, and the difference between the current standardization requirements in the corresponding provisions of Parts 27 and 29 and of those proposed in Notice 67-14 for Part 23 airplanes which were withdrawn for further study (34 F.R. 13085), this proposal is also withdrawn for further evaluation with a view to future rulemaking action designed to standardize the color of such lights for all aircraft.

The introductory statement to § 25.1333 has been revised to replace the words "at the first and second pilot's station" with the words at "each pilot's station." This is appropriate since not all airplanes have two pilot stations. In addition, paragraph (b) of § 25.1333 has been substantially changed in response to numerous comments. In this connection, paragraph (b) now refers to the "equipment, systems and installations" rather than systems only to make it consistent with other parts of the regulation. The FAA also agrees that the intent of § 25.1333(b) is that if one pilot's instrument fails, the failure should not cause failure of the other pilot's instrument. Moreover, the FAA agrees that to require information to be available separately to each pilot after multiple failures would not be reasonable. The final rule has been changed to make this clear. The FAA, however, does not agree with one commentator that the system may be designed based on the criteria that one display of information essential to the safety of flight which is provided by the instruments, must be available after only a single failure. The FAA considers the single failure criteria alone to be inadequate for airplanes currently being developed and anticipated in the future. Therefore, the final rule retains the requirement that combinations of failures that are not shown to be extremely remote must be considered. In connection with § 25.1333(c), one comment noted that the proposal is more severe than the current rule. It is the intent of the FAA to prohibit the connection of additional instruments to required instruments unless the continued operation of those required instruments can be assured following failure of the additional instruments. The proposal accomplishes this objective. Finally, § 25.1333 has been changed to assure that essential information will remain available to the pilots after certain failures without additional crewmember action.

In response to a comment, the proposed amendment to § 25.1355 has been changed by retaining current paragraph (c) of § 25.1355. However, the FAA does not agree that retention of current paragraph (b) is necessary since this material is adequately covered in the amendment to § 25.1309(e)(4).

The notice proposed to amend the ditching equipment requirements of § 25.1415(b) to permit airplanes certificated for the carriage of cargo only to either be equipped with enough rafts of sufficient buoyancy to accommodate the minimum flight crew, or to meet the current rule which requires all transport category airplanes to be equipped with rafts of sufficient buoyancy to accommodate all occupants of the airplane in event of loss of one raft of the largest rated capacity. One comment objected to the proposal on the grounds that it is not consistent with the fail-safe principle of transport category airplane design and discriminates against the flight crews of cargo only airplanes. The FAA agrees and the proposal has been withdrawn.

In a comment concerning the ice protection requirements of proposed § 25.1419, it was asserted that demonstration of the effectiveness of the airplane ice protection system by flight tests in natural icing conditions would deter the development of icing tanker airplanes for system testing and also will delay the large-scale use of anti-icing systems on general aviation airplanes. However, notwithstanding this comment, the proposed rule does provide for the use of icing tankers; thus, recognizing their usefulness and encouraging their development. Experience has shown that there is no means at hand to evaluate the complete airplane anti-icing system other than by exposing it to natural icing conditions. However, the proposed rule does not require the total anti-icing compliance to be substantiated solely by natural icing flight tests, and icing tankers are a primary means of obtaining data to enable the analytical substantiation. The amendment is adopted as proposed.

One comment indicated that the proposed change to § 25.1435(a)(4) could dictate design unrealistically for it does not allow for expected pressure transients that have been accounted for in the design of systems. The intent of the proposal is to limit transient pressures to relatively low specific values because service experience has shown that the current general requirements are too broad to ensure the necessary reliability in modern complex hydraulic systems. The change recommended by the foregoing comment would provide a level of safety below the current rule because it would permit transients of any magnitude and frequency based on structural analysis alone, without regard to system performance capability. Another comment indicated that § 25.1435 was inadequate in that it did not cover "pump ripple pressure." The FAA disagrees. The ±10 percent tolerance in the proposal is intended to take into account "pump ripple pressure" amplitude either at the outlet of the pump or at the pump transient pressure dampening device, if provided. A final comment regarding § 25.1435 stated that there is no reason to place arbitrary limits on transient pressures and stated that the manufacturer should be entitled to provide the necessary static and fatigue strength. The FAA does not agree. The reason for the limits, as confirmed by service experience, is that a dynamic system, such as a hydraulic power application system, is adversely affected by pulse loads which may fall within the static and fatigue "strength of materials" criteria of the components. This comment overlooks the synergism which is characteristic of any complex dynamic powered control system. The amendment is adopted as proposed.

Although the proposals to establish turbulence criteria for turbine-engine-powered airplanes in new § 25.255 and to define turbine penetration speed in § 1.1

have been withdrawn for further study, the FAA considers it appropriate, pending the adoption of such criteria, that the Airplane Flight Manual contain the applicant's recommended information regarding operating procedures in turbulence. New § 25.1585(a)(8) has been revised accordingly.

The notice proposed a clarifying amendment to the definition of "accelerate-stop distance" in § 1.1. However, in view of comments received, it appears that the definition should not be changed until consideration is given to the effect that changing the meaning of the term might have on the requirements of the other Federal Aviation Regulations in which this term is used. The proposal is therefore withdrawn for further study and future rulemaking action.

In consideration of the foregoing, Parts 1 and 25 of the Federal Aviation Regulations are amended effective May 8, 1970, as follows:

1. Section 1.1 is amended by amending the definitions of "fireproof," "fire resistant," and "standard atmosphere" to read as follows:

§ 1.1 General definitions.

* * * * *

"Fireproof"—

(1) With respect to materials and parts used to confine fire in a designated fire zone, means the capacity to withstand at least as well as steel in dimensions appropriate for the purpose for which they are used, the heat produced when there is a severe fire of extended duration in that zone; and

(2) With respect to other materials and parts, means the capacity to withstand the heat associated with fire at least as well as steel in dimensions appropriate for the purpose for which they are used.

"Fire resistant"—

(1) With respect to sheet or structural members means the capacity to withstand the heat associated with fire at least as well as aluminum alloy in dimensions appropriate for the purpose for which they are used; and

(2) With respect to fluid-carrying lines, fluid system parts, wiring, air ducts, fittings, and powerplant controls, means the capacity to perform the intended functions under the heat and other conditions likely to occur when there is a fire at the place concerned.

* * * * *

"Standard atmosphere" means the atmosphere defined in U.S. Standard Atmosphere, 1962 (Geopotential altitude tables).

* * * * *

2. Section 25.21 is amended by amending paragraph (e) to read as follows:

§ 25.21 Proof of compliance.

* * * * *

(e) If compliance with the flight characteristics requirements is dependent upon a stability augmentation system or upon any other automatic or power-operated system, compliance must be shown with §§ 25.671 and 25.672.

3. Section 25.25 is amended by amending paragraph (a) to read as follows:

§ 25.25 Weight limits.

(a) *Maximum weights.* Maximum weights corresponding to the airplane operating conditions (such as ramp, ground or water taxi, takeoff, en route, and landing), environmental conditions (such as altitude and temperature), and loading conditions (such as zero fuel weight, center of gravity position and weight distribution) must be established so that they are not more than—

(1) The highest weight selected by the applicant for the particular conditions; or

(2) The highest weight at which compliance with each applicable structural loading and flight requirement is shown, except that for airplanes equipped with standby power rocket engines the maximum weight must not be more than the highest weight established in accordance with Appendix E of this part.

* * * * *

§ 25.113 [Amended]

4. Section 25.113 is amended by amending paragraphs (a)(2) and (b)(2) by striking out the words "with the engines" and inserting the words "with all engines" in place thereof.

5. Section 25.145 is amended by amending paragraphs (b)(6) and (c) to read as follows:

§ 25.145 Longitudinal control.

* * * * *

(b) * * *

(6) With power off, flaps extended, and the airplane trimmed at 1.4 V_{s1}, obtain and maintain airspeeds between 1.1 V_{s1}, and either 1.7 V_{s1}, or V_{FE}, whichever is lower.

(c) It must be possible, without exceptional piloting skill, to prevent loss of altitude when complete retraction of the high lift devices from any position is begun during steady, straight, level flight at 1.1 V_{s1} for propeller powered airplanes or 1.2 V_{s1} for turbojet powered airplanes, with—

(1) Simultaneous application of not more than takeoff power taking into account the critical engine operating conditions;

(2) The landing gear extended; and

(3) The critical combinations of landing weights and altitudes.

If gated high-lift device control positions are provided, retraction must be shown from any position from the maximum landing position to the first gated position, between gated positions, and from the last gated position to the full retraction position. In addition, the first gated control position from the landing position must correspond with the high-lift devices configuration used to establish the go-around procedure from the landing configuration. Each gated control position must require a separate and distinct motion of the control to pass through the gated position and must have features to prevent inadvertent movement of the control through the gated position.

§ 25.161 [Amended]

6. Section 25.161 is amended by amending paragraph (c)(2) by striking out the words "most forward" and inserting the words "most unfavorable" in place thereof wherever they appear.

§ 25.233 [Amended]

7. Section 25.233 is amended by amending paragraph (a) by striking out the words "cross wind component" in the second sentence and inserting the words "90° cross component of wind" in place thereof.

8. Section 25.237 is amended by amending paragraphs (a) and (b)(1) to read as follows:

§ 25.237 Wind velocities.

(a) For landplanes, a 90° cross component of wind velocity, shown to be safe for takeoff and landing, must be established.

(b) * * *

(1) A 90° cross component of wind velocity, not less than 0.2 V_{s0}, up to which takeoff and landing is safe under any water condition that may reasonably be expected in normal operation.

* * * * *

9. Section 25.251 is amended by amending paragraph (c) and adding new paragraphs (d) and (e) to read as follows:

§ 25.251 Vibration and buffeting.

* * * * *

(c) Except as provided in paragraph (d) of this section, there may be no buffeting condition, in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the crew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to V_{MO}/M_{MO}, except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach Number, weight, and altitude for which the airplane is to be certificated. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

§ 25.253 [Amended]

10. Section 25.253 is amended by amending paragraph (a)(2) by striking out the word "altitude" and inserting the word "attitude" in place thereof.

11. Section 25.301 is amended by amending paragraph (b) by inserting at the end thereof a new sentence reading as follows:

§ 25.301 Loads.

* * * * *

(b) * * * Methods used to determine load intensities and distribution must be validated by flight load measurement unless the methods used for determining those loading conditions are shown to be reliable.

* * * * *

12. Section 25.303 is amended to read as follows:

§ 25.303 Factor of safety.

Unless otherwise specified, a factor of safety of 1.5 must be applied to the prescribed limit load which are considered external loads on the structure. When a loading condition is prescribed in terms of ultimate loads, a factor of safety need not be applied unless otherwise specified.

13. Section 25.305 is amended by amending paragraph (b) and adding a new paragraph (d) to read as follows:

§ 25.305 Strength and deformation.

* * * * *

(b) The structure must be able to support ultimate loads without failure for at least 3 seconds. However, when proof of strength is shown by dynamic tests simulating actual load conditions, the 3-second limit does not apply. Static tests conducted to ultimate load must include the ultimate deflections and ultimate deformation induced by the loading. When analytical methods are used to show compliance with the ultimate load strength requirements, it must be shown that—

(1) The effects of deformation are not significant;

(2) The deformations involved are fully accounted for in the analysis; or

(3) The methods and assumptions used are sufficient to cover the effects of these deformations.

* * * * *

(d) The dynamic response of the airplane to vertical and lateral continuous turbulence must be taken into account.

14. Section 25.307 is amended by adding a new paragraph (d) to read as follows:

§ 25.307 Proof of structure.

* * * * *

(d) When static or dynamic tests are used to show compliance with the requirements of § 25.305(b) for flight structures, appropriate material correction factors must be applied to the test results, unless the structure, or part thereof, being tested has features such that a number of elements contribute to the total strength of the structure and the failure of one element results in the redistribution of the load through alternate load paths.

§ 25.321 [Amended]

15. Section 25.321 is amended by amending paragraph (b)(2) by striking out the words "; and" and by inserting the words "appropriate to each particular flight load condition; and" in place thereof.

16. Section 25.331 is amended by amending paragraph (a) (2) and (3) to read as follows:

§ 25.331 General.

(a) *Procedure.* * * *

(2) The significant forces acting on the airplane must be placed in equilibrium in a rational or conservative manner. The linear inertia forces must be considered in equilibrium with thrust and all aerodynamic loads, while the angular (pitching) inertia forces must be considered in equilibrium with thrust and all aerodynamic moments, including moments due to loads on components such as tail surfaces and nacelles. Critical thrust values in the range from zero to maximum continuous thrust must be considered.

(3) Where sudden displacement of a control is specified, the assumed rate of control surface displacement may not be less than the rate that could be applied by the pilot through the control system.

* * * * *

17. Section 25.335 is amended by amending paragraph (b) and by adding a new paragraph (f) to read as follows:

§ 25.335 Design airspeeds.

* * * * *

(b) *Design dive speed,* V_D. V_D must be selected so that V_C/M_C is not greater than $0.8\ V_D/M_D$, or so that the minimum speed margin between V_C/M_C and V_D/M_D is the greater of the following values:

(1) From an initial condition of stabilized flight at V_C/M_C, the airplane is upset, flown for 20 seconds along a flight path 7.5° below the initial path, and then pulled up at a load factor of 1.5 g (0.5 g acceleration increment). The speed increase occurring in this maneuver may be calculated if reliable or conservative aerodynamic data is used. Power as specified in § 25.175(b)(1)(iv) is assumed until the pullup is initiated, at which time power reduction and the use of pilot controlled drag devices may be assumed;

(2) The minimum speed margin must be enough to provide for atmospheric variations (such as horizontal gusts, and penetration of jet streams and cold fronts) and for instrument errors and airframe production variations. These factors may be considered on a probability basis. However, the margin at altitude where M_C is limited by compressibility effects may not be less than 0.05 M.

* * * * *

(f) *Design drag device speeds,* V_{DD}. The selected design speed for each drag device must be sufficiently greater than the speed recommended for the operation of the device to allow for probable variations in speed control. For drag devices intended for use in high speed descents, V_{DD} may not be less than V_D. When an automatic drag device positioning or load limiting means is used, the speeds and corresponding drag device positions programmed or allowed by the automatic means must be used for design.

18. Section 25.337 is amended by amending paragraph (b) to read as follows:

§ 25.337 Limit maneuvering load factors.

* * * * *

(b) The positive limit maneuvering load factor "n" for any speed up to V_D may not be less than $2.1+\left(\frac{24{,}000}{W+10{,}000}\right)$ except that "n" may not be less than 2.5 and need not be greater than 3.8—where "W" is the design maximum takeoff weight.

* * * * *

§ 25.349 [Amended]

19. Section 25.349 is amended by amending paragraph (b) by striking out the words "greater load factor" and inserting the words "critical load" in place thereof.

20. Section 25.351 is amended by amending paragraph (a)(1) to read as follows:

§ 25.351 Yawing conditions.

(a) * * *

(1) With the airplane in unaccelerated flight at zero yaw, it is assumed that the rudder control is suddenly displaced to the maximum deflection, as limited by the control surface stops, or by a 300-pound rudder pedal force, whichever is less.

* * * * *

21. Section 25.361 is amended by amending paragraph (a)(3) to read as follows:

§ 25.361 Engine torque.

(a) * * *

(3) For turbopropeller installations, in addition to the conditions specified in subparagraphs (1) and (2) of this paragraph, the limit engine torque corresponding to takeoff power and propeller speed, multiplied by a factor accounting for propeller control system malfunction, including quick feathering, acting simultaneously with 1 g level flight loads. In the absence of a rational analysis, a factor of 1.6 must be used.

* * * * *

§ 25.363 [Amended]

22. Section 25.363 is amended by amending paragraph (a)(2) by inserting the words and reference "as prescribed in § 25.333(b)" at the end of the subparagraph.

23. Section 25.395 is amended by amending paragraph (a) by striking out the words "Elevator, aileron, and rudder" and inserting the words "Longitudinal, lateral, directional, and drag" in place thereof, and by amending paragraph (b) to read as follows:

§ 25.395 Control system.

* * * * *

(b) The system limit loads, except the loads resulting from ground gusts, need not exceed the loads that can be produced by the pilot (or pilots) and by automatic or power devices operating the controls. The loads must be great enough to provide a rugged system for service use.

24. Section 25.427 is amended by amending paragraph (b)(2) to read as follows:

§ 25.427 Unsymmetrical loads.

* * * * *

(b) * * *

(2) For empennage arrangements where the horizontal tail surfaces have appreciable dihedral or are supported by the vertical tail surfaces, the surfaces and supporting structure must be designed for the combined vertical and horizontal surface loads resulting from each prescribed flight load condition considered separately.

25. Section 25.471 is amended to read as follows:

§ 25.471 General.

(a) *Loads and equilibrium.* For limit ground loads—

(1) Limit ground loads obtained under this subpart are considered to be external forces applied to the airplane structure; and

(2) In each specified ground load condition, the external loads must be placed in equilibrium with the linear and angular inertia loads in a rational or conservative manner.

(b) *Critical centers of gravity.* The critical centers of gravity within the range for which certification is requested must be selected so that the maximum design loads are obtained in each landing gear element. Fore and aft, vertical, and lateral airplane centers of gravity must be considered. Lateral displacements of the c.g. from the airplane centerline which would result in main gear loads not greater than 103 percent of the critical design load for symmetrical loading conditions may be selected without considering the effects of these lateral c.g. displacements on the loading of the main gear elements, or on the airplane structure provided—

(1) The lateral displacement of the c.g. results from random passenger or cargo disposition within the fuselage or from random unsymmetrical fuel loading or fuel usage; and

(2) Appropriate loading instructions for random disposable loads are included under the provisions of § 25.1583(c)(1) to ensure that the lateral displacement of the center of gravity is maintained within these limits.

(c) *Landing gear dimension data.* Figure 1 of Appendix A contains the basic landing gear dimension data.

§ 25.473 [Amended]

26. Section 25.473 is amended by amending paragraph (a)(1)(iii) striking out the words "taxiing conditions and".

27. Section 25.473 is amended by amending paragraph (a)(2) by striking out the words "A wing" and inserting the word "Airplane" in place thereof.

§ 25.479 [Amended]

28. Section 25.479 is amended by amending paragraph (d) by striking out the reference "paragraph (a)" and inserting the reference "paragraphs (a) through (c)" in place thereof.

§ 25.489 [Amended]

29. Section 25.489 is amended by striking out the words "design takeoff weight" in the first sentence and inserting the words "design ramp weight (the maximum weight for ground handling conditions)" in place thereof.

§ 25.493 [Amended]

30. Section 25.493 is amended by amending paragraphs (a) and (b) by striking out the words "design takeoff weight" in the first sentence of each paragraph and inserting the words "design ramp weight" in place thereof.

§ 25.499 [Amended]

31. Section 25.499 is amended as follows:

a. By amending the lead-in sentence in paragraph (b) by inserting after the words "fuselage structure" the words "forward of the center of gravity".

b. By amending paragraph (c) by striking out the reference "paragraph (a)", and inserting the reference "paragraph (b)" in place thereof.

c. By amending paragraph (d) by striking out the phrase "for the landing gear and airplane structure" and inserting the phrase "For other than the nose gear, its attaching structure, and the forward fuselage structure" in place thereof.

§ 25.509 [Amended]

32. Section 25.509 is amended by amending paragraph (a)(3) by striking out the words "design maximum takeoff weight" in the lead-in sentence and inserting the words "design ramp weight" in place thereof.

§ 25.523 [Amended]

33. Section 25.523 is amended by amending paragraph (a) by striking out the words "the design takeoff weight" and inserting the words "the design water takeoff weight (the maximum weight for water taxi and takeoff run)" in place thereof.

§ 25.527 [Amended]

34. Section 25.527 is amended by amending paragraph (b)(3) by amending the value of "V_s" by adding the words "in knots" after the word "speed".

§ 25.531 [Amended]

35. Section 25.531 is amended by amending paragraph (b) by amending the definition of "V_{s1}" by adding the unit of measure "(knots)" after the word "speed"; and by amending the definition of "W" to read "design water takeoff weight in pounds".

§ 25.533 [Amended]

36. Section 25.533 is amended as follows:

a. By amending the definition of "P_s" in paragraph (b)(1) by inserting the unit of measure "(p.s.i.)" after the word "pressure";

b. By amending the definition of "V_{s1}" in paragraph (b)(1) and (2) by inserting the unit of measure "(Knots)" after the word "speed" and inserting the word "water" between the word "design" and the word "takeoff" in each of the definitions;

c. By amending the definition of "Pch" in paragraph (b)(2) by inserting the unit of measure "(p.s.i.)" after the word "pressure";

d. By amending the definition of "P" in paragraph (c)(1) by inserting the unit of measure "(p.s.i.)" after the word "pressure"; and

e. By amending the definition of "V_s" in paragraph (c)(1) by inserting the unit of measure "(Knots)" after the word "speed".

§ 25.535 [Amended]

37. Section 25.535 is amended as follows:

a. By amending the definition of "L" in paragraph (b) by adding the unit of measure "(lbs.)" after the word "load";

b. By amending the definition of "V_s" in paragraphs (b) and (f) by adding the unit of measure "(knots)" after the word "speed";

c. By amending the definition of "ρ" in paragraph (f) by adding the unit of measure "(slugs/ft.^{3})" after the word "water"; and

d. By amending the definition of "V" in paragraph (f) by adding the unit of measure "(ft.^{3})" after the word "float".

§ 25.535 [Amended]

38. Section 25.535 is amended by amending paragraph (g) by striking out the period at the end of the first sentence and inserting the phrase ", except that the value of K_z in the formulae may be taken as 1.0."

§ 25.561 [Amended]

39. Section 25.561 is amended by amending paragraph (b)(3) by inserting the words "acting separately", after the word "forces" in the lead-in sentence.

40. Section 25.571 is amended by striking out the flush paragraph following paragraph (c) and by adding a new paragraph (e) to read as follows:

§ 25.571 Fatigue evaluation of flight structure.

* * * * *

(e) The loads prescribed in this paragraph and paragraph (c) of this section must be multiplied by a factor of 1.15 unless the dynamic effects of failure under static load are otherwise considered. In addition, the following apply as ultimate loading conditions:

(1) For a pressurized cabin, the normal operating pressures combined with the expected external aerodynamic pressures must be applied simultaneously with the flight loading conditions specified in paragraph (c) of this section; and

(2) The combined pressures set forth in subparagraph (1) of this paragraph multiplied by a factor of 1.33 must be applied to the pressurized cabin without any other load.

41. A new center heading entitled "Lightning Protection" is added following § 25.573.

42. A new § 25.581, following the above new center heading is added to read as follows:

§ 25.581 Lightning protection.

(a) The airplane must be protected against catastrophic effects from lightning.

(b) For metallic components, compliance with paragraph (a) of this section may be shown by—

(1) Bonding the components properly to the airframe; or

(2) Designing the components so that a strike will not endanger the airplane.

(c) For nonmetallic components, compliance with paragraph (a) of this section may be shown by—

(1) Designing the components to minimize the effect of a strike; or

(2) Incorporating acceptable means of diverting the resulting electrical current so as not to endanger the airplane.

43. Section 25.607 is amended to read as follows:

§ 25.607 Fasteners.

(a) Each removable bolt, screw, nut, pin, or other removable fastener must incorporate two separate locking devices if—

(1) Its loss could preclude continued flight and landing within the design limitations of the airplane using normal pilot skill and strength; or

(2) Its loss could result in reduction in pitch, yaw, or roll control capability or response below that required by Subpart B of this chapter.

(b) The fasteners specified in paragraph (a) of this section and their locking devices may not be adversely affected by the environmental conditions associated with the particular installation.

(c) No self-locking nut may be used on any bolt subject to rotation in operation unless a nonfriction locking device is used in addition to the self-locking device.

44. Section 25.611 is amended to read as follows:

§ 25.611 Accessibility provisions.

Means must be provided to allow inspection (including inspection of principal structural elements and control systems), replacement of parts normally requiring replacement, adjustment, and lubrication as necessary for continued airworthiness. The inspection means for each item must be practicable for the inspection interval for the item. Nondestructive inspection aids may be used to inspect structural elements where it is impracticable to provide means for direct visual inspection if it is shown that the inspection is effective and the inspection procedures are specified in the maintenance manual required by § 25.1529.

§ 25.615 [Amended]

45. Section 25.615 is amended by amending paragraph (a) by inserting the word "when" before the word "listed" in subparagraphs (1) and (2), respectively.

46. Section 25.619 is amended by amending the lead-in sentence to read as follows:

§ 25.619 Special factors.

The factor of safety prescribed in § 25.303 must be multiplied by the highest pertinent special factor of safety prescribed in §§ 25.621 through 25.625 for each part of the structure whose strength is—

* * * * *

47. Section 25.625 is amended by adding a new paragraph (d) to read as follows:

§ 25.625 Fitting factors.

* * * * *

(d) For each seat, berth, safety belt, and harness, the fitting factors specified in §§ 25.785(i)(3) and 25.1413(c) apply.

48. Section 25.629 is amended by amending paragraphs (a) and (b) to read as follows:

§ 25.629 Flutter, deformation, and fail-safe criteria.

(a) *General.* Compliance with this section must be shown by calculations, resonance tests, or other tests found necessary by the Administrator. Full scale flight flutter tests at speeds up to V_{DF}/M_{DF} for the critical airplane flutter modes must be conducted when—

(1) M_D is equal to or greater than $0.8M$;

(2) The adequacy of flutter analysis and wind tunnel tests have not been established by previous experience with aircraft having similar design features; or

(3) The conditions specified in subparagraph (1) or (2) of this paragraph exist, and modifications to the type design have a significant effect on the critical flutter modes.

(b) *Flutter and divergence prevention.* The dynamic evaluation of the airplane must include an investigation of the significant elastic, inertia, and aerodynamic forces associated with the rotations and displacements of the plane of the propeller. In addition, the following apply:

(1) The airplane must be designed to be free from flutter and divergence (unstable structural distortion due to aerodynamic loading) for all combinations of altitude and speed encompassed by the $V_D/_D$ versus altitude envelope enlarged at all points by an increase of 20 percent in equivalent airspeed at both constant Mach number and constant altitude, except that Mach effects for Mach numbers greater than 1.0 need not be included when M_D is less than 1.0 at all design altitudes and the following is established—

(i) A proper margin of damping exists at all speeds up to M_D; and

(ii) There is no large and rapid reduction in damping as M_D is approached.

(2) If concentrated balance weights are used on control surfaces, their effectiveness and strength, including supporting structure, must be substantiated.

* * * * *

49. A new § 25.631 is added to read as follows:

§ 25.631 Bird strike damage.

The empennage structure must be designed to assure capability of continued safe flight and landing of the airplane after impact with an 8-pound bird when the velocity of the airplane (relative to the bird along the airplane's flight path) is equal to V_C at sea level, selected under § 25.335(a). Compliance with this section by provision of redundant structure and protected location of control system elements or protective devices such as splitter plates or energy absorbing material is acceptable. Where compliance is shown by analysis, tests, or both, use of data on airplanes having similar structural design is acceptable.

50. Section 25.657 is amended to read as follows:

§ 25.657 Hinges.

(a) For control surface hinges, including ball, roller, and self-lubricated bearing hinges, the approved rating of the bearing may not be exceeded. For nonstandard bearing hinge configurations, the rating must be established on the basis of experience or tests and, in the absence of a rational investigation, a factor of safety of not less than 6.67 must be used with respect to the ultimate bearing strength of the softest material used as a bearing.

(b) Hinges must have enough strength and rigidity for loads parallel to the hinge line.

51. Section 25.671 is amended by amending paragraphs (c) and (d) to read as follows:

§ 25.671 General.

* * * * *

(c) The airplane must be shown by analysis, tests, or both, to be capable of continued safe flight and landing after any of the following failures or jamming in the flight control system and surfaces (including trim, lift, drag, and feel systems), within the normal flight envelope, without requiring exceptional piloting skill or strength. Probable malfunctions must have only minor effects on control system operation and must be capable of being readily counteracted by the pilot.

(1) Any single failure, excluding jamming (for example, disconnection or failure of mechanical elements, or structural failure of hydraulic components, such as actuators, control spool housing, and valves).

(2) Any combination of failures not shown to be extremely improbable, excluding jamming (for example, dual electrical or hydraulic system failures, or any single failure in combination with any probable hydraulic or electrical failure).

(3) Any jam in a control position normally encountered during takeoff, climb, cruise, normal turns, descent, and landing unless the jam is shown to be extremely improbable, or can be alleviated. A runaway of a flight control to an adverse position and jam must be accounted for if such runaway and subsequent jamming is not extremely improbable.

(d) The airplane must be designed so that it is controllable if all engines fail. Compliance with this requirement may be shown by analysis where that method has been shown to be reliable.

52. A new § 25.672 is added to read as follows:

§ 25.672 Stability augmentation and automatic and power-operated systems.

If the functioning of stability augmentation or other automatic or power-operated systems is necessary to show compliance with the flight characteristics requirements of this part, such systems must comply with § 25.671 and the following:

(a) A warning which is clearly distinguishable to the pilot under expected flight conditions without requiring his attention must be provided for any failure in the stability augmentation system or in any other automatic or power-operated system which could result in an unsafe condition if the pilot were not aware of the failure. Warning systems must not activate the control systems.

(b) The design of the stability augmentation system or of any other automatic or power-operated system must permit initial counteraction of failures of the type specified in § 25.671(c) without requiring exceptional pilot skill or strength, by either the deactivation of the system, or a failed portion thereof, or by overriding the failure by movement of the flight controls in the normal sense.

(c) It must be shown that after any single failure of the stability augmentation system or any other automatic or power-operated system—

(1) The airplane is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations that is critical for the type of failure being considered;

(2) The controllability and maneuverability requirements of this part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and airplane configurations) which is described in the Airplane Flight Manual; and

(3) The trim, stability, and stall characteristics are not impaired below a level needed to permit continued safe flight and landing.

§ 25.677 [Amended]

53. Section 25.677 is amended by striking out the first sentence of paragraph (c).

54. Section 25.683 is amended by amending the lead-in sentence to read as follows:

§ 25.683 Operation tests.

It must be shown by operation tests that when portions of the control system subject to pilot effort loads are loaded to 80 percent of the limit load specified for the system and the powered portions of the control system are loaded to the maximum load expected in normal operation, the system is free from—

* * * * *

§ 25.695 [Revoked]

55. Section 25.695 is revoked.

56. Section 25.697 is amended to read as follows:

§ 25.697 Lift and drag devices, controls.

(a) Each lift device control must be designed so that the pilots can place the device in any takeoff, en route, approach, or landing position established under § 25.47. Lift and drag devices must maintain the selected positions, except for movement produced by an automatic positioning or load limiting device, without further attention by the pilots.

(b) The lift and drag device controls must be designed and located to make inadvertent operation improbable.

(c) The rate of motion of the surfaces in response to the operation of the control and the characteristics of the automatic positioning or load limiting device must give satisfactory flight and performance characteristics under steady or changing conditions or airspeed, engine power, and airplane attitude.

(d) The lift device control must be designed to retract the surfaces from the fully extended position, during steady flight at maximum continuous engine power at any speed below $V_F+9.0$ (knots).

57. Section 25.699 is amended to read as follows:

§ 25.699 Lift and drag device indicator.

(a) There must be means to indicate to the pilots the position of each lift or drag device having a separate control in the cockpit to adjust its position. In addition, an indication of unsymmetrical operation or other malfunction in the lift or drag device systems must be provided when such indication is necessary to enable the pilots to prevent or counteract an unsafe flight or ground condition, considering the effects on flight characteristics and performance.

(b) There must be means to indicate to the pilots the takeoff, en route, approach, and landing lift device positions.

(c) If any extension of the lift and drag devices beyond the landing position is possible, the controls must be clearly marked to identify this range of extension.

58. Section 25.701 is amended to read as follows:

§ 25.701 Flap interconnection.

(a) The motion of flaps on opposite sides of the plane of symmetry must be synchronized by a mechanical interconnection unless the airplane has safe flight characteristics with the flaps retracted on one side and extended on the other.

(b) If a wing flap interconnection is used, it must be designed to account for the applicable unsymmetrical loads, including those resulting from flight with the engines on one side of the plane of symmetry inoperative and the remaining engines at takeoff power.

(c) For airplanes with flaps that are not subjected to slipstream conditions, the structure must be designed for the loads imposed when the wing flaps on one side are carrying the most severe load occurring in the prescribed symmetrical conditions and those on the other side are carrying not more than 80 percent of that load.

(d) The flap interconnection must be designed for the loads resulting when the flap surfaces on one side of the plane symmetry are jammed and immovable while the surfaces on the other side are free to move and the full power of the surface actuating system is applied.

59. Section 25.721 is amended to read as follows:

§ 25.721 General.

The main landing gear system must be designed so that if it fails due to overloads during takeoff and landing (assuming the overloads are in the vertical plane parallel to the longitudinal axis of the airplane), the failure mode is not likely to puncture any part of the fuel system in the fuselage.

60. Section 25.723 is amended to read as follows:

§ 25.723 Shock absorption tests.

(a) It must be shown by energy absorption tests that the limit load factors selected for design in accordance with § 25.473 for takeoff and landing weights, respectively, will not be exceeded.

(b) The landing gear may not fail in a test, demonstrating its reserve energy absorption capacity, simulating a descent velocity of 12 f.p.s. at design landing weight, assuming airplane lift not greater than the airplane weight acting during the landing impact.

61. Section 25.725 is amended by amending the lead-in sentence of paragraph (b), the definition of "L", and by amending paragraph (c) to read as follows:

§ 25.725 Limit drop tests.

* * * * *

(b) If airplane lift is simulated by air cylinders or by other mechanical means, the weight used for the drop must be equal to W. If the effect of airplane lift is represented in free drop tests by an equivalent reduced mass, the landing gear must be dropped with an effective mass equal to $W_e=W\left(\frac{h+(1-L)d}{h+d}\right)$ where—

L=The ratio of the assumed airplane lift to the airplane weight, but not more than 1.0.

(c) The drop test attitude of the landing gear unit and the application of appropriate drag loads during the test must simulate the airplane landing conditions in a manner consistent with the development of a rational or conservative limit load factor value.

* * * * *

62. Section 25.727 is amended by amending paragraph (b) to read as follows:

§ 25.727 Reserve energy absorption drop tests.

* * * * *

(b) If airplane lift is simulated by air cylinders or by other mechanical means, the weight used for the drop must be equal to W. If the effect of airplane lift is represented in free drop tests by an equivalent reduced mass, the landing

gear must be dropped with an effective mass, $W_e = W\left(\frac{h}{h+d}\right)$ where the symbols and other details are the same as in § 25.725(b).

63. Section 25.729 is amended by amending paragraph (a)(1) (ii) and (iii) to read as follows:

§ 25.729 Retracting mechanism.

(a) *General.* * * *

(1) * * *

(ii) The combination of friction loads, inertia loads, brake torque loads, air loads, and gyroscopic loads resulting from the wheels rotating at a peripheral speed equal to 1.3 V_s (with the flaps in takeoff position at design takeoff weight), occurring during retraction and extension at any airspeed up to 1.6 V_s (with the flaps in the approach position at design landing weight), and

(iii) Any load factor up to those specified in § 25.345(a) for the flaps extended condition.

* * * * *

64. Section 25.733 is amended by amending paragraph (a) to read as follows:

§ 25.733 Tires.

(a) Each landing gear wheel must be fitted with a suitable tire of proper fit whose speed rating approved by the Administrator is not exceeded under critical conditions, and whose load rating approved by the Administrator is not exceeded under—

(1) Equal static loads, corresponding to the most critical combination of maximum takeoff weight and center of gravity position, on each main wheel tire; and

(2) Equal loads corresponding to the ground reactions in paragraph (b) of this section, on each nose wheel tire.

* * * * *

§ 25.735 [Amended]

65. Section 25.735 is amended by striking out the last sentence of paragraph (e).

66. Section 25.735 is amended by amending the definition of "V_s," in paragraph (f)(2) by inserting the word "(knots)" after the words "stalling speed."

67. Section 25.773 is amended by adding a new paragraph (c) to read as follows:

§ 25.773 Pilot compartment view.

* * * * *

(c) *Internal windshield and window fogging.* The airplane must have a means to prevent fogging of the internal portions of the windshield and window panels over an area which would provide the visibility specified in paragraph (a) of this section under all internal and external ambient conditions, including precipitation conditions, in which the airplane is intended to be operated.

§ 25.775 [Amended]

68. Section 25.775 is amended by amending paragraph (a) to read as follows:

(a) Internal panes must be made of nonsplintering material.

69. Section 25.775 is amended by amending the second sentence of paragraph (d) to read as follows: "The windshield and window panels must be capable of withstanding the maximum cabin pressure differential loads combined with critical aerodynamic pressure and temperature effects after any single failure in the installation or associated systems."

§ 25.783 [Amended]

70. Section 25.783 is amended by inserting the words "or failure of a single structural element" after the words "mechanical failure" in paragraphs (b) and (f).

71. Section 25.853 is amended by amending paragraph (e) to read as follows:

§ 25.853 Compartment interiors.

* * * * *

(e) There must be at least one hand fire extinguisher conveniently located in the pilot compartment.

* * * * *

72. Section 25.859 is amended by amending paragraph (e)(2) and the lead-in sentence of paragraph (g) to read as follows:

§ 25.859 Combustion heater fire protection.

* * * * *

(e) * * *

(2) The means of complying with subparagraph (1) of this paragraph for any individual heater must—

(i) Be independent of components serving any other heater whose heat output is essential for safe operation; and

(ii) Keep the heater off until restarted by the crew.

* * * * *

(g) *Heater exhaust.* Heater exhaust systems must meet the provisions of §§ 25.1121 and 25.1123. In addition, there must be provisions in the design of the heater exhaust system to safely expel the products of combustion to prevent the occurrence of—

* * * * *

73. Section 25.863 is amended to read as follows:

§ 25.863 Flammable fluid fire protection.

(a) In any area where flammable fluids or vapors might be liberated by the leakage of fluid systems, there must be means to prevent the ignition of those fluids or vapors, and means to minimize the hazards in the event ignition does occur.

(b) Compliance with paragraph (a) of this section must be shown by analysis or tests, and the following factors must be considered:

(1) Possible sources and paths of fluid leakage, and means of detecting leakage.

(2) Flammability characteristics of fluids, including effects of any combustible or absorbing materials.

(3) Possible ignition sources, including electrical faults, overheating of equipment, and malfunctioning of protective devices.

(4) Means available for controlling or extinguishing a fire, such as stopping flow of fluids, shutting down equipment, fireproof containment, or use of extinguishing agents.

(5) Ability of airplane components that are critical to safety of flight to withstand fire and heat.

(c) If action by the flight crew is required to prevent or counteract a fluid fire (e.g. equipment shutdown or actuation of a fire extinguisher) quick acting means must be provided to alert the crew.

74. A new § 25.865 is added to read as follows:

§ 25.865 Fire protection of flight controls, engine mounts, and other flight structure.

Essential flight controls, engine mounts, and other flight structures located in designated fire zones or in adjacent areas which would be subjected to the effects of fire in the fire zone must be constructed of fireproof material or shielded so that they are capable of withstanding the effects of fire.

75. A new § 25.867 is added to read as follows:

§ 25.867 Fire protection: other components.

(a) Surfaces to the rear of the nacelles, within one nacelle diameter of the nacelle centerline, must be at least fire-resistant.

(b) Paragraph (a) of this section does not apply to tail surfaces to the rear of the nacelles that could not be readily affected by heat, flames, or sparks coming from a designated fire zone or engine compartment of any nacelle.

76. Section 25.871 is amended to read as follows:

§ 25.871 Leveling means.

There must be means for determining when the airplane is in a level position on the ground.

77. Section 25.901 is amended by adding a new paragraph (c) to read as follows:

§ 25.901 Installation.

* * * * *

(c) The powerplant installation must comply with § 25.1309.

78. Section 25.903 is amended by amending paragraph (c) and (d) to read as follows:

§ 25.903 Engines.

* * * * *

(c) *Control of engine rotation and restart capability.* There must be means for stopping the rotation of any engine individually in flight, except that, for turbine engine installations, the means for stopping the rotation of any engine need be provided only where continued rotation could jeopardize the safety of the airplane. Each component of the stopping and restarting system on the engine side of the firewall that might be exposed to fire must be at least fire-resistent. Means to restart any engine in flight must be provided. If hydraulic propeller feathering systems are used for this purpose, the feathering lines must be at least

fire resistent under the operating conditions that may be expected to exist during feathering.

(d) *Turbine engine installations.* For turbine engine installations—

(1) Design precautions must be taken to minimize the hazards to the airplane in the event of an engine rotor failure or of a fire originating within the engine which burns through the engine case.

(2) The powerplant systems associated with engine control devices, systems, and instrumentation, must be designed to give reasonable assurance that those engine operating limitations that adversely affect turbine rotor structural integrity will not be exceeded in service.

79. A new § 25.934 is added to read as follows:

§ 25.934 Turbojet engine thrust reverser system tests.

Thrust reversers installed on turbojet engines must meet the requirements of § 33.97 of this chapter.

80. Section 25.951 is amended by amending paragraph (b) to read as follows:

§ 25.951 General.

* * * * *

(b) Each fuel system must be arranged so that any air which is introduced into the system will not result in—

(1) Power interruption for more than 20 seconds for reciprocating engines; or

(2) Flameout for turbine engines.

81. Section 25.959 is amended to read as follows:

§ 25.959 Unusable fuel supply.

The unusable fuel quantity for each fuel tank and its fuel system components must be established at not less than the quantity at which the first evidence of engine malfunction occurs under the most adverse fuel feed condition for all intended operations and flight maneuvers involving fuel feeding from that tank.

82. A new § 25.994 is added to read as follows:

§ 25.994 Fuel system components.

Fuel system components in an engine nacelle or in the fuselage must be protected from damage which could cause the release of fuel as a result of a wheels-up landing.

83. Section 25.997 is amended by amending paragraph (a)(1) to read as follows:

§ 25.997 Fuel strainer or filter.

(a) * * *

(1) Between the tank outlet and the engine-driven positive displacement pump inlet when an engine-driven positive displacement pump is used.

* * * * *

§ 25.1013 [Amended]

84. Section 25.1013 is amended by amending paragraph (c)(2) by striking out the reference to "§ 25.1557(c)" and inserting the reference "§ 25.1557(b)(2)" in place thereof.

85. Section 25.1015 is amended by amending paragraph (b)(1) to read as follows:

§ 25.1015 Oil tank tests.

* * * * *

(b) * * *

(1) The test pressure must be at least 5 p.s.i. instead of the pressure specified in § 25.965(a), except that for pressurized tanks, the test pressure may not be less than 5 p.s.i. plus the maximum operating pressure of the tank; and

* * * * *

86. Section 25.1091 is amended by amending paragraph (d)(2) to read as follows:

§ 25.1091 Air induction.

* * * * *

(d) * * *

(2) The airplane must be designed to prevent water or slush on the runway, taxiway, or other airport operating surfaces from being directed into the engine air inlet ducts in hazardous quantities, and the air inlet ducts must be located or protected so as to minimize the ingestion of foreign matter during takeoff, landing, and taxiing.

87. Section 25.1103 is amended by adding a new paragraph (d) to read as follows:

§ 25.1103 Induction system ducts.

* * * * *

(d) For turbine engine bleed air systems no hazard may result if a duct rupture or failure occurs at any point between the engine port and the airplane unit served by the bleed air.

88. Section 25.1143 is amended to read as follows:

§ 25.1143 Engine power and thrust, and antidetonant injection system controls.

(a) There must be a separate power or thrust control for each engine.

(b) Power and thrsut controls must be arranged to allow—

(1) Separate control of each engine; and

(2) Simultaneous control of all engines.

(c) Each power and thrust control must provide a positive and immediately responsive means of controlling its engine.

(d) If there is an antidetonant injection system, the flow of A.D.I. fluid must be automatically controlled with relation to the amount of power produced by the engine. In addition to the automatic control, there must be a separate control for the A.D.I. pumps.

(e) If the power or thrust control incorporates a fuel shutoff feature, then each power or thrust control must have a means to prevent inadvertent movement of the control into the cutoff position. The means must have a positive lock or stop at the idle position and must require a separate and distinct operation by the crew to displace the control from the idle position.

89. Section 25.1165 is amended by amending paragraph (f) to read as follows:

§ 25.1165 Engine ignition systems.

* * * * *

(f) Each ignition system must be independent of any electrical circuit not used for assisting, controlling, or analyzing the operation of that system.

* * * * *

90. Section 25.1181 is amended by amending paragraph (a)(3) to read as follows:

§ 25.1181 Designed fire zones; regions included.

(a) * * *

(3) Except for reciprocating engines, any complete powerplant compartment in which no isolation is provided between the engine power section and the engine accessory section;

* * * * *

91. Section 25.1183 is amended by amending the title and paragraph (a) to read as follows:

§ 25.1183 Lines, fittings, and components.

(a) Except as provided in paragraph (b) of this section, each line, fitting, and other component carrying flammable fluids in any area subject to engine fire conditions, and each fuel line, fitting, and other flammable fluid system component in a designated fire zone, must meet the following requirement:

(1) Each line, fitting, and component must be at least fire resistant.

(2) Each flexible hose assembly (hose and end fitting) must be approved.

* * * * *

92. Section 25.1189 is amended by amending paragraphs (a) and (d) and by adding new paragraphs (g) and (h) to read as follows:

§ 25.1189 Shutoff means.

(a) Each engine and each fire zone specified in § 25.1181(a) (4) and (5) must have a means to shut off or otherwise prevent hazardous quantities of fuel, oil, deicer, and other flammable fluids, from flowing into, within, or through any designated fire zone, except that shutoff means are not required for—

(1) Lines forming an integral part of an engine; and

(2) Oil systems for turbine engine installations in which all external components of the oil system, including the oil tanks, are fireproof.

* * * * *

(d) Each flammable fluid shutoff means and control must be fireproof or must be located and protected so that any fire in a fire zone will not affect its operation.

* * * * *

(g) Each tank-to-engine shutoff valve must be located so that the operation of the valve will not be affected by powerplant or engine mount structural failure.

(h) Each shutoff valve must have a means to relieve excessive pressure accumulation unless a means for pressure relief is otherwise provided in the system.

93. A new § 25.1192 is added to read as follows:

§ 25.1192 Engine accessory section diaphragm.

For reciprocating engines, the engine power section and all portions of the exhaust system must be isolated from the engine accessory compartment by a diaphragm that complies with the firewall requirements of § 25.1191.

94. Section 25.1195 is amended by amending paragraph (b) to read as follows:

§ 25.1195 Fire extinguisher systems.

* * * * *

(b) The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual "one shot" system may be used for auxiliary power units, fuel burning heaters, and other combustion equipment. For other designated fire zones, two discharges must be provided each of which produce adequate agent concentrations. It must be possible to direct each of these discharges to any main engine installation.

* * * * *

95. Section 25.1199 is amended by adding a new paragraph (e) to read as follows:

§ 25.1199 Extinguishing agent containers.

* * * * *

(e) If a pyrotechnic capsule is used to discharge the extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

§ 25.1203 [Amended]

96. Section 25.1203 is amended by striking out the words "fire detector" or "fire-detectors" wherever they appear in paragraphs (b) through (f) and inserting the words "fire or overheat detector" in place thereof.

§ 25.1205 [Revoked]

97. Section 25.1205 is revoked.

98. Section 25.1303 is amended to read as follows:

§ 25.1303 Flight and navigation instruments.

(a) The following flight and navigation instruments must be installed so that the instrument is visible from each pilot station:

(1) A free air temperature indicator or an air-temperature indicator which provides indications that are convertible to free-air temperature.

(2) A clock (sweep-second pointer).

(3) A direction indicator (nonstabilized magnetic compass).

(b) The following flight and navigation instruments must be installed at each pilot station:

(1) An airspeed indicator. If airspeed limitations vary with altitude, the indicator must have a maximum allowable airspeed indicator showing the variation of V_{MO} with altitude.

(2) An altimeter (sensitive).

(3) A rate-of-climb indicator (vertical speed).

(4) A gyroscopic rate-of-turn indicator combined with an integral slip-skid indicator (turn and bank indicator) except that only a slip-skid indicator is required on large airplanes with a third attitude instrument system installed in accordance with § 121.305(j) of this chapter.

(5) A bank and pitch indicator (gyroscopically stabilized).

(6) A direction indicator (gyroscopically stabilized, magnetic or nonmagnetic).

(c) The following flight and navigation instruments are required as prescribed in this paragraph:

(1) A speed warning device is required for turbine engine powered airplanes and for airplanes with V_{MO}/M_{MO} greater than 0.8 V_{DF}/M_{DF} or 0.8 V_D/M_D. The speed warning device must give effective aural warning (differing distinctively from aural warnings used for other purposes) to the pilots, whenever the speed exceeds V_{MO} plus 6 knots or M_{MO} +0.01. The upper limit of the production tolerance for the warning device may not exceed the prescribed warning speed.

(2) A machmeter is required at each pilot station for airpanes with compressibility limitations not otherwise indicated to the pilot by the airspeed indicating system required under paragraph (b)(1) of this section.

99. Section 25.1305 is amended to read as follows:

§ 25.1305 Powerplant instruments.

The following are required powerplant instruments:

(a) *For all airplanes.* (1) A fuel pressure warning means for each engine, or a master warning means for all engines with provision for isolating the individual warning means from the master warning means.

(2) A fuel quantity indicator for each fuel tank.

(3) An oil quantity indicator for each oil tank.

(4) An oil pressure indicator for each independent pressure oil system of each engine.

(5) An oil pressure warning means for each engine, or a master warning means for all engines with provision for isolating the individual warning means from the master warning means.

(6) An oil temperature indicator for each engine.

(7) Fire-warning indicators.

(8) An augmentation liquid quantity indicator (appropriate for the manner in which the liquid is to be used in operation) for each tank.

(b) *For reciprocating engine-powered airplanes.* In addition to the powerplant instruments required by paragraph (a) of this section, the following powerplant instruments are required:

(1) A carburetor air temperature indicator for each engine.

(2) A cylinder head temperature indicator for each air-cooled engine.

(3) A manifold pressure indicator for each engine.

(4) A fuel pressure indicator (to indicate the pressure at which the fuel is supplied) for each engine.

(5) A fuel flowmeter, or fuel mixture indicator, for each engine without an automatic altitude mixture control.

(6) A tachometer for each engine.

(7) A device that indicates, to the flight crew (during flight), any change in the power output, for each engine with—

(i) An automatic propeller feathering system, whose operation is initiated by a power output measuring system; or

(ii) A total engine piston displacement of 2,000 cubic inches or more.

(8) A means to indicate to the pilot when the propeller is in reverse pitch, for each reversing propeller.

(c) *For turbine engine-powered airplanes.* In addition to the powerplant instruments required by paragraph (a) of this section, the following powerplant instruments are required:

(1) A gas temperature indicator for each engine.

(2) A fuel flowmeter indicator for each engine.

(3) A tachometer (to indicate the speed of the rotors with established limiting speeds) for each engine.

(4) A means to indicate, to the flight crew, the operation of each engine starter that can be operated continuously but that is neither designed for continuous operation nor designed to prevent hazard if it failed.

(d) *For turbojet engine powered airplanes.* In addition to the powerplant instruments required by paragraphs (a) and (c) of this section, the following powerplant instruments are required:

(1) An indicator to indicate a change in thrust resulting from any deficiency in the engine, or to indicate a gas stream pressure that can be related to thrust, for each engine.

(2) A position indicating means to indicate to the flight crew when the thrust reversing device is in the reverse thrust position, for each engine using a thrust reversing device.

(e) *For turbopropeller-powered airplanes.* In addition to the powerplant instruments required by paragraphs (a) and (c) of this section, the following powerplant instruments are required:

(1) A torque indicator for each engine.

(2) Position indicating means to indicate to the flight crew when the propeller blade angle is below the flight low pitch positon, for each propeller.

(3) A means to indicate to the pilot when the propeller is in reverse pitch, for each reversing propeller.

100. Section 25.1307 is amended to read as follows:

§ 25.1307 Miscellaneous equipment.

The following is required miscellaneous equipment:

(a) A seat and safety belt, for each occupant.

(b) Two or more independent sources of electrical energy.

(c) Electrical protective devices, as prescribed in this part.

(d) Two systems for two-way radio communications, with controls for each

accessible from each pilot station, designed and installed so that failure of one system will not preclude operation of the other system. The use of a common antenna system is acceptable if adequate reliability is shown.

(e) Two systems for radio navigation, with controls for each accessible from each pilot station, designed and installed so that failure of one system will not preclude operation of the other system. The use of a common antenna system is acceptable if adequate reliability is shown.

(f) A windshield wiper, or equivalent, for each pilot station.

(g) An ignition switch, for each engine.

(h) Portable fire extinguishers as prescribed in § 25.853 (e) and (f).

101. Section 25.1309 is amended to read as follows:

§ 25.1309 Equipment systems and installations.

(a) The equipment, systems, and installations whose functioning is required by this subchapter, must be designed to ensure that they perform their intended functions under any foreseeable operating condition.

(b) The airplane systems and associated components, considered separately and in relation to other systems, must be designed so that—

(1) The occurrence of any failure condition which would prevent the continued safe flight and landing of the airplane is extremely improbable, and

(2) The occurrence of any other failure conditions which would result in injury to the occupants, or reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions is improbable.

(c) Warning information must be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action. Systems, controls, and associated monitoring and warning means must be designed so that crew errors that would create additional hazards are improbable.

(d) Compliance with the requirements of paragraphs (b) and (c) of this section must be shown by analysis, and where necessary, by appropriate ground, flight, or flight simulator tests. The analysis must consider—

(1) Possible modes of failure, including malfunctions and damage from external sources.

(2) The probability of multiple failures and undetected failures.

(3) The resulting effects on the airplane and occupants, considering the stage of flight and operating conditions, and

(4) The crew warning cues, corrective action required, and the capability of detecting faults.

(e) Each installation whose functioning is required by this subchapter, and that requires a power supply, is an "essential load" on the power supply. The power sources and the system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the system with the system functioning normally.

(2) Essential loads, after failure of any one prime mover, power converter, or energy storage device.

(3) Essential loads after failure of—

(i) Any one engine on two- or three-engine airplanes; and

(ii) Any two engines on four-or-more-engine airplanes.

(4) Essential loads for which an alternate source of power is required by this chapter, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(f) In determining compliance with paragraph (e) (2) and (3) of this section, the powerloads may be assumed to be reduced under a monitoring procedure consistent with safety in the kinds of operation authorized. Loads not required in controlled flight need not be considered for the two-engine-inoperative condition on airplanes with four or more engines.

(g) In showing compliance with paragraphs (a) and (b) of this section with regard to the electrical system and equipment design and installation, critical environmental conditions must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this chapter, except equipment covered by Technical Standard Orders containing environmental test procedures, the ability to provide continuous, safe service under foreseeable environmental conditions may be shown by environmental tests, design analysis, or reference to previous comparable service experience on other aircraft.

102. Section 25.1321 is amended to read as follows:

§ 25.1321 Arrangement and visibility.

(a) Each flight, navigation, and powerplant instrument for use by any pilot must be plainly visible to him from his station with the minimum practicable deviation from his normal position and line of vision when he is looking forward along the flight path.

(b) The flight instruments required by § 25.1303 must be grouped on the instrument panel and centered as nearly as practicable about the vertical plane of the pilot's forward vision. In addition—

(1) The instrument that most effectively indicates attitude must be on the panel in the top center position;

(2) The instrument that most effectively indicates airspeed must be adjacent to and directly to the left of the instrument in the top center position;

(3) The instrument that most effectively indicates altitude must be adjacent to and directly to the right of the instrument in the top center position; and

(4) The instrument that most effectively indicates direction of flight must be adjacent to and directly below the instrument in the top center position.

(c) Required powerplant instruments must be closely grouped on the instrument panel. In addition—

(1) The location of identical powerplant instruments for the engines must prevent confusion as to which engine each instrument relates; and

(2) Powerplant instruments vital to the safe operation of the airplane must be plainly visible to the appropriate crewmembers.

(d) Instrument panel vibration may not damage or impair the accuracy of any instrument.

103. Section 25.1331 is amended by amending paragraph (a) to read as follows:

§ 25.1331 Instruments using a power supply.

(a) For each instrument required by § 25.1303(b) that uses a power supply, the following apply:

(1) Each instrument must have a visual means integral with, or adjacent to, the instrument, to indicate when power adequate to sustain proper instrument performance is not being supplied. The power must be measured at or near the point where it enters the instruments. For electric instruments, the power is considered to be adequate when the voltage is within approved limits.

(2) Each instrument must have two independent power sources and a means for selecting either source.

* * * * *

104. Section 25.1333 is amended to read as follows:

§ 25.1333 Instrument systems.

For systems that operate the instruments required by § 25.1303(b) which are located at each pilot's station—

(a) Means must be provided to connect the required instruments at the first pilot's station to operating systems which are independent of the operating systems at other flight crew stations, or other equipment.

(b) The equipment, systems, and installations must be designed so that one display of the information essential to the safety of flight which is provided by the instruments, including attitude, direction, airspeed, and altitude will remain available to the pilots, without additional crewmember action, after any single failure or combination of failures that is not shown to be extremely improbable; and

(c) Additional instruments, systems, or equipment may not be connected to the operating systems for the required instruments, unless provisions are made to ensure the continued normal functioning of the required instruments in the event of any malfunction of the additional instruments, systems, or equipment which is not shown to be extremely improbable.

§ 25.1355 [Amended]

105. Section 25.1355 is amended by revoking paragraph (b).

§ 25.1369 [Revoked]

106. Section 25.1369 is revoked.

107. Section 25.1419 is amended by amending paragraph (c) to read as follows:

§ 25.1419 Ice protection.

* * * * *

(c) In addition to the analysis and physical evaluation prescribed in paragraph (b) of this section, the effectiveness of the ice protection system and its components must be shown by flight tests of the airplane or its components in measured natural atmospheric icing conditions and by one or more of the following tests as found necessary to determine adequacy of the ice protection system:

(1) Laboratory dry air or simulated icing tests, or a combination of both, of the components or models of the components.

(2) Flight dry air tests of the ice protection system as a whole, or of its individual components.

(3) Flight tests of the airplane or its components in measured simulated icing conditions.

* * * * *

108. Section 25.1435 is amended by amending paragraph (a)(4) to read as follows:

§ 25.1435 Hydraulic systems.

(a) * * *

(4) There must be means to insure that system pressures, including transient pressures and pressures from fluid volumetric changes in components which are likely to remain closed long enough for such changes to occur—

(i) Will be within 90 to 110 percent of pump average discharge pressure at each pump outlet or at the outlet of the pump transient pressure dampening device, if provided; and

(ii) Will not exceed 125 percent of the design operating pressure, excluding pressures at the outlets specified in subdivision (i) of this subparagraph. Design operating pressure is the maximum steady operating pressure.

* * * * *

109. Section 25.1455 is amended to read as follows:

§ 25.1455 Draining of fluids subject to freezing.

If fluids subject to freezing may be drained overboard in flight or during ground operation, the drains must be designed and located to prevent the formation of hazardous quantities of ice on the airplane as a result of the drainage.

110. Section 25.1505 is amended to read as follows:

§ 25.1505 Maximum operating limit speed.

The maximum operating limit speed (V_{MO}/M_{MO} airspeed or Mach Number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed V_C and so that it is sufficiently below V_D/M_D or V_{DF}/M_{DF}, to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/V_{MO} and V_D/M_D or V_{DF}/M_{DF} may not be less than that determined under § 25.335(b) or found necessary during the flight tests conducted under § 25.253.

111. Section 25.1585 is amended by amending paragraph (a) by striking out the word "and" at the end of subparagraph (5), by striking out the period at the end of subparagraph (6) and by inserting a semicolon and the word "and" in place thereof, and by adding new subparagraphs (7) and (8); and by adding a new paragraph (c), to read as follows:

§ 25.1585 Operating procedures.

(a) * * *

(7) Use of fuel jettisoning equipment (including information to warn flight crewmembers against jettisoning fuel when any means (including flaps, slots, and slats) for changing the airflow across or around the wings are being used); and

(8) Operation in turbulence for turbine powered airplanes (including recommended turbulence penetration airspeeds, flight peculiarities, and special control instructions).

* * * * *

(c) The buffet onset envelopes determined under § 25.251 must be furnished.

112. Section 25.1587 is amended by amending paragraph (a) to read as follows:

§ 25.1587 Performance information.

(a) *Each airplane.* For each airplane the Airplane Flight Manual must contain information to permit conversion of the indicated temperature to free-air temperature if other than a free-air temperature indicator is used to comply with the requirements of § 25.1303(a)(1).

* * * * *

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on April 1, 1970.

J. H. SHAFFER,
Administrator.

[F.R. Doc. 70-4269; Filed, Apr. 7, 1970; 8:50 a.m.]

[Docket No. 69-CE-28-AD; Amdt. 39-967]

PART 39—AIRWORTHINESS DIRECTIVES

Beech Model 278 Propellers Installed on Beech Models H35, J35, K35, M35, N35, P35, A45 (T34A), B45 and D45 (T34B) Airplanes

Amendment 39-897 (34 F.R. 20266, 20267), AD 69-26-4, requires in paragraph A.1.b. thereof repetitive inspections of Beech P/N 278-336 bolts on Beech Model 278 propellers installed in Beech Models H35, J35, K35, M35, N35, P35, A45, (T34A), B45, and D45 (T34B) airplanes for evidence of cracks. Cracked bolts must be replaced before further flight with serviceable Beech P/N 278-336 bolts in accordance with the procedures contained in Model 278 Propeller Manual P/N 115090-19-1, revised May 1, 1963.

Subsequent to the issuance of AD 69-26-4, the manufacturer has made available Beech Kit No. 278-0002 S which contains redesigned Beech P/N 278-368 pitch control bolts, Beech P/N 278-367 nuts, and Beech P/N 278-369 yoke. The installation of this kit, which is optional, eliminates the necessity for the inspections required by paragraph A of the AD. Consequently, it is necessary to add paragraph C to the AD to include this option.

Since this amendment is in the interest of safety, can be relieving in nature, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment should become effective within 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-897 (34 F.R. 20266, 20267), AD 69-26-4, is amended by adding paragraph C which reads as follows:

C. The inspections required by Paragraph A of the AD will no longer be required when Beech Kit No. 278-0002 S is installed in accordance with Beech Service Instruction No. 0302-248.

This amendment becomes effective April 9, 1970.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421 and 1423, sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on March 31, 1970.

EDWARD C. MARSH,
Director, Central Region.

[F.R. Doc. 70-4241; Filed, Apr. 7, 1970; 8:48 a.m.]

[Airspace Docket No. 69-CE-119]

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

Alteration of Control Zone and Transition Area

On page 322 of the FEDERAL REGISTER dated January 8, 1970, the Federal Aviation Administration published a notice of proposed rule making which would amend §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the control zone and transition area at Iron Mountain, Mich.

Interested persons were given 45 days to submit written comments, suggestions or objections regarding the proposed amendments.

No objections have been received and the proposed amendments are hereby adopted without change and are set forth below.

These amendments shall be effective 0901 G.m.t., May 28, 1970.

(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 Kansas City, Mo., on March 9, 1970.

DANIEL E. BARROW,
Acting Director, Central Region.

(1) In § 71.171, the following control zone is amended to read:

IRON MOUNTAIN, MICH.

Within a 5-mile radius of Ford Airport (latitude 45°48'55" N., longitude 88°07'00" W.); within 2½ miles each side of the Iron Mountain VOR 141° radial, extending from the 5-mile radius zone to 6½ miles southeast of the VOR; within 3 miles each side of the Iron Mountain VOR 193° radial, extending from the 5-mile radius zone to 7½ miles south of the VOR; within 3 miles each side of the 182° bearing from Ford Airport, extending from the 5-mile radius zone to 7 miles south of the airport; and within 3 miles each side of the 276° bearing from Ford Airport, extending from the 5-mile radius zone to 7 miles west of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

(2) In § 71.181, the following transition area is amended to read:

IRON MOUNTAIN, MICH.

That airspace extending upward from 700 feet above the surface within a 13-mile radius of the Iron Mountain VOR; within 4½ miles west and 9½ miles east of the Iron Mountain VOR 193° radial, extending from the 13-mile radius area to 18½ miles south of the VOR; within 4½ miles west and 9½ miles east of the 182° bearing from Ford Airport, extending from the 13-mile radius area to 18½ miles south of the airport; and within 4½ miles north and 9½ miles south of the 276° bearing from Ford Airport, extending from the 13-mile radius area to 18½ miles west of the airport; and that airspace extending upward from 1,200 feet above the surface within 4½ miles southwest and 9½ miles northeast of the Iron Mountain VOR 141° radial extending from the VOR to 18½ miles southeast of the VOR.

[F.R. Doc. 70-4242; Filed, Apr. 7, 1970; 8:48 a.m.]

[Airspace Docket No. 70-CE-18]

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

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the transition area at Adrian, Mich.

U.S. Standard for Terminal Instrument Procedures (TERPS) became effective November 18, 1967, and was issued only after extensive consideration and discussion with Government agencies concerned and affected industry groups. TERPS updates the criteria for the establishment of instrument approach procedures in order to meet the safety requirements of modern day aviation and to make more efficient use of the airspace possible. As a result, the criteria for designation of controlled airspace for the protection of these procedures were modified to conform to TERPS. The new criteria requires minor alterations of the transition area at Adrian, Mich. Action is taken herein to reflect this change.

Since changes in most, if not all, existing airspace designations are required in order to achieve the increased safety and efficient use of the airspace that TERPS is designed to accomplish and since these changes are minor in nature, notice and public procedure hereon have been determined to be both unnecessary and impracticable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0901 G.m.t., May 28, 1970, as hereinafter set forth:

In § 71.181 (35 F.R. 2134), the following transition area is amended to read:

ADRIAN, MICH.

That airspace extending upward from 700 feet above the surface within a 6½-mile radius of the Lenawee County Airport (latitude 41°52'10" N., longitude 84°04'30" W.); and within 3 miles each side of the 221° bearing from the Lenawee County Airport, extending from the 6½-mile radius area to 8 miles southwest of the airport.

(Sec. 307(a) of the 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 Kansas City, Mo., on March 9, 1970.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 70-4243; Filed, Apr. 7, 1970; 8:48 a.m.]

[Airspace Docket No. 69-CE-83]

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

Alteration of Control Zone and Transition Area; Correction

In F.R. Doc. 70-2135 on Page 3221 in the issue of Friday, February 20, 1970, the word "southwest" should be inserted between the words "miles" and "of" in the ninth line of the Chesterfield (Spirit of St. Louis), Mo., control zone description.

Issued in Kansas City, Mo., on March 9, 1970.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 70-4244; Filed, Apr. 7, 1970; 8:48 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER A—PROCEDURES AND RULES OF PRACTICE

PART 2—NONADJUDICATIVE PROCEDURES

Subpart A—Investigations

MISCELLANEOUS AMENDMENTS

The Commission announces the following revisions in Part 2 of Chapter I of Title 16 of the Code of Federal Regulations. These revisions shall become effective on the date of their publication in the FEDERAL REGISTER.

1. Section 2.1 of Subpart A of Part 2 is revised to read as follows:

§ 2.1 How initiated.

Commission investigations and inquiries may be originated upon the request of the President, Congress, governmental agencies, or the Attorney General; upon referrals by the courts; upon complaint by members of the public; or by the Commission upon its own initiative. The Commission has delegated to the Directors and Assistant Directors of the Bureaus of Deceptive Practices, Restraint of Trade, Textiles and Furs, and Industry Guidance, and the Attorneys in Charge and Assistant Attorneys in Charge of the Commission's field offices, without power of redelegation, limited authority to initiate investigations.

2. Section 2.7 of Subpart A of Part 2 is revised to read as follows:

§ 2.7 Subpoenas in investigations.

(a) The Commission or any member thereof may issue a subpoena, directing the person named therein to appear before a designated representative at a designated time and place to testify or to produce documentary evidence, or both, relating to any matter under investigation by the Commission. The Directors and Assistant Directors of the Bureaus of Deceptive Practices, Restraint of Trade, Textiles and Furs, Industry Guidance, and Economics, and the Attorneys in Charge and Assistant Attorneys in Charge of the Commission's field offices, pursuant to delegation of authority by the Commission, without power of redelegation, also may issue investigational subpoenas, and, for good cause shown, may extend the time prescribed for compliance with subpoenas issued during the investigation of any matter. The Director, Assistant Director, Attorney in Charge of a field office, or Assistant Attorney in Charge of a field office, who issues any subpoena under this section is authorized to negotiate and approve the terms of satisfactory compliance therewith.

(b) Any motion to limit or quash any investigational subpoena shall be filed

with the Secretary of the Commission within ten (10) days after service of the subpoena, or, if the return date is less than ten (10) days after service of the subpoena, within such other time as may be allowed. All motions to limit or quash any investigational subpoenas shall be ruled upon by the Commission itself, but the above-designated Directors, Assistant Directors, Attorneys in Charge and Assistant Attorneys in Charge are delegated, without power of redelegation, the authority to rule upon motions for extensions of time within which to file motions to limit or quash any investigational subpoenas.

3. Section 2.11 of Supbpart A of Part 2 is revised to read as follows:

§ 2.11 Orders requiring access.

(a) The Commission may issue an order requiring any corporation being investigated to grant access to files for the purpose of examination and the right to copy any documentary evidence. The Directors and Assistant Directors of the Bureaus of Deceptive Practices, Restraint of Trade, Textiles and Furs, Industry Guidance, and Economics, and the Attorneys in Charge and Assistant Attorneys in Charge of the Commission's field offices, pursuant to delegation of authority by the Commission, without power of redelegation, are authorized, for good cause shown, to extend the time prescribed for compliance with orders requiring access issued during the investigation of any matter.

(b) Any motion to limit or quash an order requiring access shall be filed with the Secretary of the Commission within ten (10) days after service of the order, or, if the date for compliance is less than ten (10) days after service of the order, within such other time as may be allowed. All motions to limit or quash orders requiring access shall be ruled upon by the Commission itself, but the above-designated Directors, Assistant Directors, Attorneys in Charge and Assistant Attorneys in Charge are delegated, without power of redelegation, the authority to rule upon motions for extensions of time within which to file motions to limit or quash orders requiring access.

4. Section 2.12 of Subpart A of Part 2 is revised to read as follows:

§ 2.12 Reports.

(a) The Commission may issue an order requiring a corporation to file a report or answers in writing to specific questions relating to any matter under investigation. The Directors and Assistant Directors of the Bureaus of Deceptive Practices, Restraint of Trade, Textiles and Furs, Industry Guidance, and Economics, and the Attorneys in Charge and Assistant Attorneys in Charge of the Commission's field offices, pursuant to delegation of authority by the Commission, without power of redelegation, are authorized, for good cause shown, to extend the time prescribed for compliance with orders requiring reports or answers to questions issued during the investigation of any matter.

(b) Any motion to limit or quash an order requiring a report or answers to specific questions shall be filed with the Secretary of the Commission within ten (10) days after service of the order, or, if the date for compliance is less than ten (10) days after service of the order, within such other time as may be allowed. All motions to limit or quash orders requiring reports or answers to questions shall be ruled upon by the Commission itself, but the above-designated Directors, Assistant Directors, Attorneys in Charge and Assistant Attorneys in Charge are delegated, without power of redelegation, the authority to rule upon motions for extensions of time within which to file motions to limit or quash orders requiring reports or answers to questions.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46)

Issued: April 3, 1970.

By direction of the Commission.

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

[F.R. Doc. 70-4198; Filed, Apr. 7, 1970; 8:45 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 5A—Federal Supply Service, General Services Administration

PART 5A-16—PROCUREMENT FORMS

Illustrations of Forms

The table of contents for Part 5A-16 is amended to delete the following entries:

Sec.	
5A-16.950-191	GSA Form 191, Acknowledgment—Purchase Authority Control.
5A-16.950-231	GSA Form 231, Extract of Agency Order.
5A-16.950-338	GSA Form 338, Buying Operations Report.
5A-16.950-1075	GSA Form 1075, Transmittal of Purchase Case Files.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 41 CFR 5-1.101(c))

Effective date. These regulations are effective 30 days after the date shown below.

Dated: March 31, 1970.

H. A. ABERSFELLER, *Commissioner, Federal Supply Service.*

[F.R. Doc. 70-4270; Filed, Apr. 7, 1970; 8:50 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Chapter VII—Federal Insurance Administration, Department of Housing and Urban Development

SUBCHAPTER A—NATIONAL INSURANCE DEVELOPMENT PROGRAM

PART 1907—STATE REIMBURSEMENT REQUIREMENT

Miscellaneous Amendments

Since the purpose of the following revision is simply to conform the provisions of Part 1907 to the provisions of section 1223(a)(1) of the National Housing Act, 12 U.S.C. 1749bbb-9(a)(1), as amended by section 406 of the Housing and Urban Development Act of 1969 (Public Law 91-152, Dec. 24, 1969), notice and public procedure thereon are hereby found to be unnecessary and to be exempt under 5 U.S.C. 553(b)(B) from the requirement for notice of proposed rulemaking.

Part 1907 of Chapter VII of Title 24 of the Code of Federal Regulations is amended as follows:

1. In § 1907.1, paragraph (a) is revised to read as follows:

§ 1907.1 State reimbursement requirement in general.

(a) Section 1223(a)(1) of the National Housing Act (12 U.S.C. 1749bbb-9), added by the Urban Property Protection and Reinsurance Act of 1968, hereinafter referred to as the "Act," prohibits the Secretary of Housing and Urban Development from offering riot loss reinsurance with respect to any line of insurance in a State which does not by the close of the second full regular session of the appropriate State legislative body following August 1, 1968, adopt legislation, retroactive to August 1, 1968, which enables it to reimburse him annually (to the extent necessary) for a portion of the claims he pays in connection with excessive losses which may occur in that State with respect to the line of insurance reinsured. While in many States no actual payment may be required, legislation providing for such payment, if needed, is required for the continued provision of Federal riot loss reinsurance.

* * * * *

2. In § 1907.2, paragraph (b) is revised to read as follows:

§ 1907.2 Amount of State share.

* * * * *

(b) The maximum State share in any 1 year is an amount equal to 5 percent of the aggregate or total property insurance premiums earned in the State during the calendar year immediately preceding the end of the reinsurance contract year on all lines of insurance for which any reinsurance is provided by the Secretary in the State during the contract year,

regardless of the number of companies actually purchasing Federal reinsurance.

3. Section 1907.3 is revised to read as follows:

§ 1907.3 Timing of State legislation.

To enable companies doing business within a State to continue to participate in the Federal reinsurance program, the State must enact the necessary reimbursement legislation by the close of the second full regular session of the appropriate State legislative body after August 1, 1968, when the Federal Act became law.

(Title XII of National Housing Act, added by Urban Property Protection and Reinsurance Act of 1968, 12 U.S.C. 1749bbb—1749bbb–21, as amended (secs. 405–407, Public Law 91–152, Dec. 24, 1969); 5 U.S.C. 553; Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Effective date. This document shall be effective upon publication.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[F.R. Doc. 70–4246; Filed, Apr. 7, 1970; 8:48 a.m.]

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

List of Designated Areas

Section 1914.4 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1914.4 List of designated areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
North Dakota.	Cass.....	Fargo.....	E 38 017 1020 01.	State Water Commission, Bismarck, N. Dak. 58501. State Insurance Commission, State Capitol, Bismarck, N. Dak. 58501.	Office of the City Engineer, City Hall, Fargo, N. Dak. 58102.	Apr. 10, 1970.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: April 7, 1970.

CHARLES W. WIECKING,
Acting Federal Insurance Administrator.

[F.R. Doc. 70–4275; Filed, Apr. 7, 1970; 8:51 a.m.]

PART 1915—IDENTIFICATION OF FLOOD-PRONE AREAS

List of Flood Hazard Areas

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 List of flood hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
* * *	* * *	* * *	* * *	* * *	* * *	* * *
North Dakota.	Cass.....	Fargo.....	H 38 017 1020 01.	State Water Commission, Bismarck, N. Dak. 58501. State Insurance Commission, State Capitol, Bismarck, N. Dak. 58501.	Office of the City Engineer, City Hall, Fargo, N. Dak. 58102.	Apr. 7, 1970.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: April 7, 1970.

CHARLES W. WIECKING,
Acting Federal Insurance Administrator.

[F.R. Doc. 70–4276; Filed, Apr. 7, 1970; 8:51 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER E—ALCOHOL, TOBACCO AND OTHER EXCISE TAXES

PART 180—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

Pursuant to Executive Order No. 11432, dated October 22, 1968 (33 F.R. 15701), transferring from the Secretary of State to the Secretary of the Treasury control of the import of arms, ammunition, and implements of war conferred upon the President by section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the following regulations are hereby prescribed as Part 180 of Title 26 of the Code of Federal Regulations:

Preamble. 1. The regulations in this part shall supersede the import provisions formerly contained in Title 22, Chapter I, Subchapter M, Code of Federal Regulations, "International Traffic in Arms" (31 F.R. 15174, 32 F.R. 4241, 32 F.R. 5456, 33 F.R. 11020, 33 F.R. 18374, 34 F.R. 1133), and shall supersede in their entirety the "Interim Firearms and Ammunition Importation Procedures" (33 F.R. 15732), approved by the Secretary of the Treasury on October 22, 1968.

2. These regulations shall not affect any act done or any liability or right accruing, or accrued, or any suit or proceeding had or commenced before the effective date of these regulations.

The regulations in this part shall become effective on the date of its publication in the FEDERAL REGISTER. Any act done prior to such date with respect to registration or an import permit shall be subject to these regulations and shall have the same effect as if done on or after the effective date of these regulations.

Subpart A—Introduction

Sec.
180.1 Scope of regulations.
180.2 Relation to other laws and regulations.
180.3 The U.S. Munitions Import List.
180.4 Forgings, castings, and machined bodies.
180.5 Forms prescribed.

Subpart B—Definitions

180.11 Meaning of terms.

Subpart C—Registration

180.21 Registration requirement.
180.22 Procedure.
180.23 Notification of changes in information furnished by registrants.
180.24 Maintenance of records by persons required to register as importers of Import List articles.

Subpart D—Importations Other Than Those Subject to Controls Under Parts 178 and 179 of This Chapter

180.31 Permit requirement.
180.32 Application for permit.
180.33 Terms of permit.
180.34 Permit denial, revocation, or suspension.
180.35 Importation.
180.36 Articles in transit.

Subpart E—Miscellaneous Provisions

Sec.
180.41 Import certification and delivery verification.
180.42 Import restrictions applicable to certain countries.
183.43 Exemptions.
180.44 Administrative procedures inapplicable.
180.45 Departments of State and Defense consulted.
180.46 Authority of Customs Officers.
180.47 U.S. military firearms or ammunition.

Subpart F—Penalties, Seizures, and Forfeitures

180.61 Unlawful importations.
180.62 False statements or concealment of facts.
180.63 Seizure and forfeiture.

AUTHORITY: The provisions of this Part 180 issued under sec. 414 of the Mutual Security Act of 1954, as amended (68 Stat. 848; 22 U.S.C. 1934) and Executive Order No. 11432, 33 F.R. 15701.

Subpart A—Introduction

§ 180.1 Scope of regulations.

This part adopts the State Department list of arms, ammunition and implements of war published at 22 CFR 121.01 (The U.S. Munitions List) insofar as it is applicable to the control of imports under section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934). Designation, including changes in designations, of articles subject to import control under section 414 of the Mutual Security Act of 1954, as amended, have the concurrence of the Secretary of State and the Secretary of Defense. This part also contains requirements and procedures for registration of importers, and permit procedures with respect to the importation of (a) all listed articles other than those which are subject to the permit procedures set out in Parts 178 and 179 of this chapter, and (b) all listed articles imported into the Panama Canal Zone.

§ 180.2 Relation to other laws and regulations.

(a) All of those items on the U.S. Munitions Import List (see § 180.3) which are "firearms" or "ammunition" as defined in 18 U.S.C. 921(a) are subject to the interstate and foreign commerce controls contained in Chapter 44 of title 18 U.S.C. and Part 178 of this chapter and if they are "firearms" within the definition set out in 26 U.S.C. 5845(a) are also subject to the provisions of Chapter 53, Internal Revenue Code of 1954 and of Part 179 of this chapter. Any person engaged in the business of importing firearms or ammunition as defined in 18 U.S.C. 921(a) must obtain a license under the provisions of Part 178 of this chapter, and if he imports firearms which fall within the definition of 26 U.S.C. 5845(a) must also register and pay special tax pursuant to the provisions of Part 179 of this chapter. Such licensing, registration and special tax requirements are in addition to registration under Subpart C of this part.

(b) The Panama Canal Zone is included in the United States by definition at § 180.11. It is excluded therefrom in Part 178 of this chapter, however, by virtue of the definitions of "interstate or foreign commerce" and "state" appearing at § 178.11. As a result, movement from the Zone to the United States (as described in § 178.11 of this chapter) of articles on the U.S. Munitions Import List constitutes an importation for purposes of Part 178 of this chapter but not for purposes of this part. Conversely, the bringing into the Panama Canal Zone from a foreign country of articles on the U.S. Munitions Import List is an importation under this part but not under Part 178 of this chapter.

(c) The permit procedures of Subpart D of this part are applicable to all importations of articles on the U.S. Munitions Import List coming into the Panama Canal Zone and to importations of all List articles not subject to controls under Part 178 or 179 of this chapter. List articles subject to controls under Part 178 and Part 179 of this chapter are subject to the import permit procedures of those regulations if imported into the United States (within the meaning of Parts 178 and 179 of this chapter).

(d) Articles on the U.S. Munitions Import List imported for the United States or any State or political subdivision thereof are exempt from the import controls of Part 178 of this chapter but are not exempt from control under the Mutual Security Act of 1954 unless imported by the United States or an agency thereof. All such importations not imported by the United States or any agency thereof shall be subject to the import permit procedures of Subpart D of this part.

§ 180.3 The U.S. Munitions Import List.

The U.S. Munitions List compiled by the Department of State, Office of Munitions Control, and published at 22 CFR 121.01, with the deletions indicated, is adopted as an enumeration of the arms, ammunition and implements of war subject to controls under this part. The expurgated List, set out below, shall, for purposes of this part, be known as the U.S. Munitions Import List:

THE U.S. MUNITIONS IMPORT LIST

CATEGORY I—FIREARMS[1]

(a) Nonautomatic and semiautomatic firearms, to caliber .50 inclusive, shotguns with barrels less than 8 inches in length, and all components and parts therefor.

(b) Automatic firearms an all components and parts therefor to caliber .50 inclusive.

(c) Insurgency-counterinsurgency type firearms or other weapons having a special military application regardless of caliber; and all components and parts therefor.

(d) Firearms silencers.

(e) Bayonets and specifically designed components therefor.

(f) Riflescopes (except sporting type sights including optical) and specifically designed components therefor.

CATEGORY II—ARTILLERY AND PROJECTORS

(a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.

(b) Military flame throwers and projectors.

(c) Components and parts including, but not limited to, mounts and carriages for the articles in paragraphs (a) and (b) of this Category.

CATEGORY III—AMMUNITION[2]

(a) Ammunition for the arms in Categories I and II.

(b) The following components, parts, accessories, and attachments: cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun), projectiles, boosters, fuzes, and components therefor, primers, and other detonating devices for such ammunition.

(c) Ammunition belting and linking machines.

(d) Ammunition manufacturing machines, and ammunition loading machines (except hand loading).

CATEGORY IV—LAUNCH VEHICLES, GUIDED MISSILES, BALLISTIC MISSILES, ROCKETS, TORPEDOES, BOMBS, AND MINES[3]

(a) Launch vehicles, guided missiles, ballistic missiles, bombs, grenades, rockets, torpedoes, rocket torpedoes, depth charges, land

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[1] Rifles, carbines, revolvers, and pistols, to caliber .50 inclusive, and shotguns with barrels less than 18 inches in length, are included under Category I(a). Machineguns, submachineguns, machine pistols and full automatic rifles to caliber .50 inclusive are included under Category I(b).

(a) As used in this Category, the term "firearm" denotes a weapon not over .50 caliber which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; but shall not include BB and pellet guns or firearms covered by Category I (a) and (e) established to have been manufactured before 1898.

(b) A "rifle" is a shoulder firearm discharging bullets through a rifled barrel at least 16 inches in length, including combination and drilling guns.

(c) A "carbine" is a lightweight shoulder firearm with a short barrel, under 16 inches in length.

(d) A "pistol" is a hand-operated firearm having a chamber integral with, or permanently aligned with, the bore.

(e) A "revolver" is a hand-operated firearm with a revolving cylinder containing chambers for individual cartridges.

(f) A "machinegun," "machine pistol" or "submachinegun" is a firearm originally designed to fire, or capable of being fired fully automatically by a single pull of the trigger.

(g) A "sporting type sight including optical" denotes a telescopic sight suitable for daylight use on a rifle, shotgun, pistol, or revolver for hunting or target shooting.

[2] Cartridge and shell casings are included under Category III unless, prior to their importation, they have been rendered useless beyond the possibility of restoration for use for the purpose originally produced by means of excessive heating, flame treatment, mangling, crushing, cutting, or popping.

[3] The term "military demolition blocks and blasting caps" as used in category IV(a) does not include the following articles:

(a) Electric squibs.

(b) No. 6 and No. 8 blasting caps, including electric.

(c) Delay electric blasting caps (including No. 6 and No. 8 millisecond).

(d) Seismograph electric blasting caps (including SSS, Static-Master, Vibrocap SR, and SEISMO SR).

(e) Oil well perforating devices.

Category IV(b) includes inter alia the following: Fuzes and components thereof, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance system materials (except those having a commercial application), launching racks and projectors, pistols (exploders), igniters, fuze arming devices, intervalometers, and components therefor, guided missile launchers and specialized handling equipment and hardened missile launching facilities.

and naval mines, and military demolition blocks and blasting caps.

(b) Apparatus, devices, and materials for the handling, control, activation, detection, protection, discharge, or detonation of the articles in paragraph (a) of this category.

(c) Missile and space vehicle powerplants.

(d) Military explosive excavating devices.

NOTE: Category IV (e) and (f) of "Munitions List" deleted as inapplicable to imports.

(g) All specifically designed components, parts, accessories, attachments, associated equipment, and specialized production equipment for the articles in this category.

NOTE: Category V of "Munitions List" deleted as inapplicable to imports.

CATEGORY VI—VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT [6]

(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels, service craft, floating dry docks, and experimental types of naval ships.

(b) Turrets and gun mounts, missile systems, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments, and accessories specifically designed for combatant vessels, including but not limited to, battleships, command ships, guided-missile ships, cruisers, aircraft carriers, destroyers, frigates, escorts, minesweepers, and submarines.

(c) Submarine and torpedo nets, and minesweeping equipment. Components, parts, attachments and accessories specifically designed therefor.

(d) Harbor entrance magnetic, pressure, and acoustic detection devices, controls and components thereof.

(e) Naval nuclear propulsion plants, their land prototypes and special facilities for their construction, support, and maintenance, including any machinery, device, component, or equipment specifically developed or designed for use in such plants or facilities.

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[6] The term "vessels of war" includes, but is not limited to, the following:

(a) Combatant:

(1) Warships (including nuclear-powered versions):

Aircraft carriers (CVA, CVE, CVHE, CVL, CVS).
Battleships (BB, BBG).
Command Ships (CBC, CLC).
Cruisers (CA, CAG, CB, CG, CLAA, CLG).
Destroyers (DD, DDC, DDE, DDG, DDR, DL, DLG).
Submarines (SS, SSB, SSG, SSK, SSR).

(2) Amphibious warfare vessels:

Amphibious assault ship (LPH).
Amphibious force flagship (AGC).
Assault helicopter aircraft carrier (CVHA).
Attack cargo ship (AKA).
Control escort vessel (DEC).
Cargo submarine (AK(SS)).
Inshore fire support ship (IFS).
Landing ships (LDS, LSMR, LST, LPD).
Transport submarine (AP(SS)).

(3) Landing craft (LCM, LCU, LCVP, ATC, CCB).

(4) Landing vehicle, tracked (LVT).

(5) Mine warfare vessels:

Mine hunter, coastal (MHC).
Mine countermeasures support ship (MCS).
Minelayers (DM, MMA, MMC, MMF).
Minesweepers (DMS, MSC, MSC(O), MSF, MSO, MSI, MSB, MDA, YMS, MSL, Ub/MS).

(6) Patrol vessels:

Escort vessels (DE, DER, PCS, PCER, PF, DEG).
Gunboats (PCM, PR).
Submarine chasers (PC, PCS, SC).

(b) Auxiliary vessels and service craft:

(1) Advanced aviation base ship (AVB).
(2) Auxiliary submarine (AG(SS)).
(3) Drone aircraft catapult control craft (YV).
(4) Guided Missile ship (AVM).
(5) Harbor utility craft (YFU).
(6) Icebreaker (AGB).
(7) Logistic support ships (AE, AF, AK, AKS, AO, ACE, AOG, AOR, AO(SS), AVS).
(8) Miscellaneous auxiliary (AG, IX, YAG).
(9) Patrol craft (PT, YP).
(10) Target and training submarine (SST).
(11) Ocean radar picket ship (AGR).
(12) Submersible craft (X). (See Category XX.)
(13) Utility aircraft carrier (CVU).

(c) Coast Guard patrol and service vessels and craft:

(1) Submarine repair and berthing barge (YRB).
(2) Labor transportation barracks ship (APL).
(3) Coast Guard cutter (CGC).
(4) Gunboat (WPG).
(5) Patrol craft (WPC, WSC).
(6) Seaplane tender (WAVP).
(7) Icebreaker (WAGB).
(8) Radio Ship (WAGR).
(9) Special Vessel (WIX).
(10) Auxiliary vessels (WAG, WAGE).
(11) Other Coast Guard patrol or rescue craft (i) of over 300 horsepower when equipped with a gas turbine engine or engines, and (ii) of over 600 horsepower when equipped with an engine or engines of the internal combustion, reciprocating type.

CATEGORY VII—TANKS AND MILITARY VEHICLES [8]

(a) Military type armed or armored vehicles, military railway trains, and vehicles fitted with, designed or modified to accommodate mountings for arms or other specialized military equipment.

(b) Military tanks, tank recovery vehicles, halftracks and gun carriers.

(c) Self-propelled guns and howitzers.

NOTE: Category VII (d) and (e) of "Munitions List" deleted as inapplicable to imports.

(f) Amphibious vehicles.

(g) All specifically designed components, parts, accessories, attachments, and associated equipment, including military bridging and deep water fording kits for the articles in this Category.

CATEGORY VIII—AIRCRAFT, SPACECRAFT, AND ASSOCIATED EQUIPMENT [9]

(a) Aircraft including helicopters designed, modified, or equipped for military purposes, including but not limited to the following: Gunnery, bombing, rocket, or missile launching, electronic surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, military trainers, drones, and lighter-than-air aircraft.

NOTE: Category VIII (b) through (l) and Categories IX through XIII of "Munitions List" deleted as inapplicable to imports.

CATEGORY XIV—TOXICOLOGICAL AGENTS AND EQUIPMENT, RADIOLOGICAL EQUIPMENT [7]

(a) Chemical agents, including lung irritants, vesicants, lachrymators, and tear gases, sternutators, and irritant smoke, and nerve gases and incapacitating agents.

(b) Biological agents adapted for use in war to produce death or disablement in human beings or animals or to damage crops and plants.

(c) Equipment for dissemination, detection, and identification of, and defense against the articles in paragraphs (a) and (b) of this category.

(d) Nuclear radiation detection and measuring devices, except such devices as are in normal commercial use.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category.

NOTE: Category XV of "Munitions List" deleted as inapplicable to imports.

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[8] As used in category VII(f), the term "amphibious vehicles" includes, but is not limited to, automotive vehicles or chassis embodying all-wheel drive and equipped to meet special military requirements, with adaptation features for deep water fording and sealed electrical systems.

[9] (a) The term "aircraft" used in Category VIII means aircraft designed, modified, or equipped for military purpose as specified in Category VIII, including so-called "demilitarized" aircraft.

(b) Regardless of demilitarization, all aircraft bearing an original military designation are included in Category VIII, except the following aircraft which have not been specifically equipped, reequipped, or modified for military operations:

(1) Cargo aircraft bearing "C" designations C-45 through C-118 inclusive, and C-121.

(2) Trainer aircraft bearing "T" designations and using reciprocating engines only.

(3) Utility aircraft bearing "U" designations and using reciprocating engines only.

(4) All liaison aircraft bearing an "L" designation.

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[7] (See Category XIV(a).) A chemical agent is a substance useful in war which, by its ordinary and direct chemical action, produces a powerful physiological effect. The term "chemical agents" includes but is not limited to the following chemical compounds:

1. Lung irritants:
   (a) Diphenylcyanorarsine (DC).
   (b) Fluorine (but not fluorene).
   (c) Trichloronitro methane (Chlorpicrin PS).
2. Vesicants:
   (a) B Chlorvinyldichlorarsine (Lewisite, L).
   (b) Bisdichlorethyl sulphide (Mustard gas, HD or H).
   (c) Ethyldichloroarsine (ED).
   (d) Methyldichloroarsine (MD).
3. Lachrymators and tear gases:
   (a) Brombenzylcyanide (BBC).
   (b) Chloroacetophenone (CN).
   (c) Dibromodimethyl ether.
   (d) Dichlorodimethyl ether (CLCL).
   (e) Ethyldibromoarsine.
   (f) Phenylcarbylamine chloride.
   (g) Tear gas solutions (CNB and CNS).
   (h) Tear gas orthochlorobenzalmalononitrile (CS).
4. Sternutators and irritant smokes:
   (a) Diphenylaminechloroarsine (Adamsite, DM).
   (b) Diphenylchlorarsine (BA).
   (c) Liquid pepper.
5. Nerve gases. These are toxic compounds which affect the nervous system, such as:
   (a) Dimethylaminoethoxycyanophosphine oxide (GA).
   (b) Methylisopropoxyfluorophosphine oxide (GB).
   (c) Methylpinacolyloxyfluoriphosphine oxide (GD).
6. Antiplant chemicals:
   (a) Cutyl, 2,4-dichlorophenoxyacetate (LNA).
   (b) 2,4,5-trichlorophenoxyacetate (LNB).
   (c) Butyl 2-chloro-4-fluorophenoxyacetate (LNF).

CATEGORY XVI—NUCLEAR WEAPONS DESIGN AND TEST EQUIPMENT

(a) Any article, material, equipment, or device, which is specifically designed or specifically modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices.

(b) Any article, material, equipment, or device, which is specifically designed or specifically modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions except such items as are in normal commercial use for other purposes.

(c) Cold cathode tubes such as krytrons and sprytrons.

NOTE: Categories XVII and XVIII of "Munitions List" deleted as inapplicable to imports.

CATEGORY XIX—[RESERVED]

CATEGORY XX—OCEANOGRAPHIC AND ASSOCIATED EQUIPMENT [3]

(a) Submersible vessels, manned and unmanned, designed for military purposes or having independent capability to maneuver vertically or horizontally at depths below 1,000 feet.

(b) Submersible vessels, manned or unmanned, designed in whole or in part from technology developed by or for the U.S. Armed Forces.

(c) Any of the articles in Categories VI, IX, XI, XIII and elsewhere in this list that may be used with submersible vessels.

(d) Equipment, components, parts, accessories, and attachments designed specifically for any of the articles in paragraphs (a) and (b) of this category.

CATEGORY XXI—[RESERVED]

CATEGORY XXII—MISCELLANEOUS ARTICLES

Any article not enumerated herein having significant military applicability, determined by the Director, Office of Munitions Control, Department of State, in consultation with appropriate agencies of the Government and having the concurrence of the Department of Defense.

§ 130.4 Forgings, castings, and machined bodies.

Items in a partially completed state, such as forgings, castings, extrusions, and machined bodies of any of the articles enumerated on the Import List which have reached a stage in manufacture where they are clearly identifiable as arms, ammunition, and implements of war are considered to be such articles for the purposes of section 414 of the Mutual Security Act, as amended.

§ 130.5 Forms prescribed.

The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished, as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

Subpart B—Definitions

§ 130.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude other things not enumerated which are in the same general class or are otherwise within the scope thereof.

Assistant Regional Commissioner. An Assistant Regional Commissioner, Alcohol, Tobacco, and Firearms, who is responsible to, and who functions under the direction and supervision of, a Regional Commissioner of Internal Revenue.

CFR. The Code of Federal Regulations.

Director. The Director, Alcohol, Tobacco, and Firearms Division, Internal Revenue Service, Treasury Department, Washington, D.C. 20224.

Import or Importation. The term "import" or "importation" means bringing into the United States from a foreign country any of the articles on the Import List but shall not include intransit, temporary import or temporary export transactions subject to State Department controls under Title 22, Code of Federal Regulations.

Import List. The list of articles contained in § 180.3 and identified therein as "The United States Munitions Import List."

Permit. The term "permit" means the same as "license" for purposes of 22 U.S.C. 1934(c).

Person. The term "person" includes a partnership, company, association or corporation, as well as a natural person.

This chapter, Chapter I, Title 26, Code of Federal Regulations.

United States. When used in a geographical sense, the term "United States" includes the several States, the insular possessions of the United States, the Canal Zone, the District of Columbia, and any territory over which the United States exercises all and any powers of administration, legislation and jurisdiction.

U.S.C. The United States Code.

Subpart C—Registration

§ 130.21 Registration requirement.

Persons engaged in the business, in the United States, of importing articles enumerated on the Import List must register with the Director.

§ 130.22 Procedure.

(a) Application for registration shall be filled on Form 4587, in duplicate, with the Director, and shall be accompanied by the registration fee at the rate prescribed in this section. On approval of the application by the Director, he will return the original to the applicant.

(b) Registration may be effected for periods of from 1 to 5 years at the option of the registrant by identifying on Form 4587 the period of registration desired. The registration fees are as follows:

1 year	$125
2 years	250
3 years	350
4 years	425
5 years	500

(c) No partial refund will be made of any registration fee paid and no registration fee will be refunded unless the Director finds that the person making application for registration is not engaged in the business of importing arms, ammunition or implements of war and is not required to register or pay the prescribed fee under this part.

§ 130.23 Notification of changes in information furnished by registrants.

Registered persons shall notify the Director in writing, in duplicate, of significant changes in the information set forth in their registration application (Form 4587).

§ 130.24 Maintenance of records by persons required to register as importers of Import List articles.

(a) Registrants under this part engaged in the business of importing articles subject to controls under Parts 178 and 179 of this chapter shall maintain records in accordance with the applicable provisions of those parts.

(b) Registrants under this part engaged in importing articles on the Import List subject to the permit procedures of Subpart D of this part shall maintain for a period of 6 years, subject to inspection by any internal revenue officer, records bearing on such articles imported, including records concerning their acquisition and disposition by the registrant. The Director may prescribe a longer or shorter period in individual cases as he deems necessary.

Subpart D—Importations Other Than Those Subject to Import Controls Under Parts 178 and 179 of This Chapter

§ 130.31 Permit requirement.

(a) Articles on the Import List not subject to import controls under Part 178 and 179 of this chapter shall not be imported into the United States except pursuant to a permit under this subpart issued by the Director.

(b) Articles on the Import List shall not be imported into the United States destined for the Panama Canal Zone except pursuant to a permit under this subpart issued by the Director.

(c) Articles on the Import List intended for the United States or any State or political subdivision thereof, or the District of Columbia, which are exempt from the import controls of § 178.115 of this chapter shall not be imported into the United States, except by the United States or an agency thereof, without first obtaining a permit issued by the Director under this subpart.

(d) A permit is not required for the importation of (1) the Import List articles from Canada not subject to the import controls of Part 178 or 179 of this chapter; or (2) minor components and parts for Category I(a) firearms, except barrels, cylinders, receivers (frames) or complete breech mechanisms, when the total value does not exceed $100 in any single transaction.

[3] Any oceanographic and associated equipment assigned a military designation shall constitute an article on the U.S. Munitions List, whether expressly enumerated therein.

§ 180.32 Application for permit.

Persons required to obtain a permit as provided in § 180.31 shall file Form 6, in triplicate, with the Director. On approval of the application by the Director, he will return the original to the applicant. Such approved application will serve as the permit.

§ 180.33 Terms of permit.

(a) Import permits issued under this subpart are valid for 6 months from their issuance date unless a different period of validity is stated thereon. They are not transferable.

(b) If shipment cannot be completed during the period of validity of the permit, another application must be submitted for permit to cover the unshipped balance. Such an application shall make reference to the previous permit and may include materials in addition to the unshipped balance.

(c) No amendments or alteration of a permit may be made except by the Director. No photographic or other copy of an original permit, unless certified by the Director, may be used to effect Customs release.

§ 180.34 Permit denial, revocation or suspension.

(a) Import permits under this subpart may be denied, revoked, suspended or revised without prior notice whenever the Director finds the proposed importation to be inconsistent with the purpose or in violation of section 414 of the Mutual Security Act of 1954 or the regulations in this part.

(b) Whenever, after appropriate consideration, a permit application is denied or an outstanding permit is revoked, suspended, or revised, the applicant or permittee shall be promptly advised in writing of the Director's decision and the reasons therefor.

(c) Upon written request made within 30 days after receipt of an adverse decision, the applicant or permittee shall be accorded an opportunity to present additional information and to have a full review of his case by the Director.

(d) Unused, expired, suspended, or revoked permits must be returned immediately to the Director.

§ 180.35 Importation.

(a) Articles subject to the import permit procedures of this subpart imported into the United States may be released from Customs custody to the person authorized to import same upon his showing that he has a permit from the Director for the importation of the article or articles to be released. In obtaining the release from Customs custody of an article imported pursuant to permit, the permit holder shall prepare Form 6A (Firearms), in duplicate, and furnish the original to the Customs officer releasing the article. The Customs officer shall, after certification, forward the Form 6A (Firearms) to the Assistant Regional Commissioner for the region wherein the importer maintains his place of business.

(b) Within 15 days of the date of their release from Customs custody, the importer of the articles released shall forward to the Assistant Regional Commissioner a copy of Form 6A (Firearms) on which shall be reported any error or discrepancy appearing on the Form 6A (Firearms) certified by Customs.

§ 180.36 Articles in transit.

Articles subject to the import permit procedures of this subpart which enter the United States for temporary deposit pending removal therefrom and such articles which are temporarily taken out of the United States for return thereto shall be regarded as in transit and will be considered neither imported nor exported. Such transactions are subject to the Intransit or Temporary Export License procedures of the Department of State (see 22 CFR Part 123).

Subpart E—Miscellaneous Provisions

§ 180.41 Import certification and delivery verification.

Pursuant to agreement with the United States, certain foreign countries are entitled to request certification of legality of importation of articles on the Import List. Upon request of a foreign government, the Director will certify the importation, on Form FC–826/IRS–4522, for the U.S. importer. Normally, the U.S. importer will submit this form to the Director at the time he applies for an import permit. This document will serve as evidence to the government of the exporting company that the U.S. importer has complied with import regulations of the U.S. Government and is prohibited from diverting, transshipping, or reexporting the material described therein without the approval of the U.S. Government. Foreign governments may also require documentation attesting to the delivery of the material into the United States. When such delivery certification is requested by a foreign government, the U.S. importer may obtain directly from the U.S. District Director of Customs the authenticated Delivery Verification (Form FC–908) for this purpose.

§ 180.42 Import restrictions applicable to certain countries.

Applications for permits to import articles on the Import List will be disapproved and the permit denied if such articles (a) originated in any of the following countries:

Albania,
Bulgaria,
Communist China,
Cuba,
Czechoslovakia,
East Germany,
Estonia,
Hungary,
Latvia,
Lithuania,
North Korea,
Outer Mongolia,
Poland,
Rumania,
Union of Soviet Socialist Republics; or

(b) originated in any of the area of Viet-Nam which is under de facto Communist control, or any other area, as determined by the Department of State, from which the importation of Import List articles would not be in furtherance of world peace and the security and foreign policy of the United States; or (c) were made from materials originating in Southern Rhodesia and designated in section (a) of Executive Order 11322 dated January 5, 1967 (32 F.R. 119).

§ 180.43 Exemptions.

(a) The provisions of this part are not applicable to:

(1) Importations by the United States or any agency thereof;

(2) Importation of components for items being manufactured under contract for the Department of Defense; or

(3) Importation of articles (other than those which would be "firearms" as defined in 18 U.S.C. 921(a)(3)) manufactured in foreign countries for persons in the United States pursuant to State Department approval.

(b) Any person seeking to import articles on the Import List as exempt under subparagraph (2) or (3) of paragraph (a) of this section may obtain release of such articles from Customs custody by submitting, to the Customs officer with authority to release, a statement claiming the exemption accompanied by satisfactory proof of eligibility. Such proof may be in the form of a letter from the Department of Defense or State, as the case may be, confirming that the conditions of the exemption are met.

§ 180.44 Administrative procedures inapplicable.

The functions conferred under section 414 of the Mutual Security Act of 1954, as amended, are excluded from the operation of Chapter 5, Title 5, United States Code, with respect to Rule Making and Adjudication, 5 U.S.C. 553 and 554.

§ 180.45 Departments of State and Defense consulted.

The administration of the provisions of this part will be subject to the guidance of the Secretary of State on matters affecting world peace and the external security and foreign policy of the United States.

§ 180.46 Authority of Customs officers.

(a) Officers of the Bureau of Customs are authorized to take appropriate action to assure compliance with this part and with Parts 178 and 179 of this chapter as to the importation or attempted importation of articles on the Import List, whether or not authorized by permit.

(b) Upon the presentation to him of a permit or written approval authorizing importation of articles on the Import List, the Customs officer who has authority to release same may require, in addition to such documents as may be required by Customs regulations, the production of other relevant documents relating to the proposed importation,

including, but not limited to, invoices, orders, packing lists, shipping documents, correspondence, and instructions.

§ 180.17 U.S. military firearms or ammunition.[18]

(a) Notwithstanding any other provision of this part or of Part 178 of this chapter, no military firearms or ammunition of U.S. manufacture may be imported for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State or local law enforcement agency) if such articles were furnished to foreign governments under a U.S. foreign assistance program. This prohibition is applicable to military firearms and ammunition furnished on a grant basis to, or for which payment in full was not made by, a foreign government under the Lend-Lease Act of 1941, as amended; the Greek-Turkish Aid Act of 1947, as amended; the China Aid Act of 1948, as amended; the Mutual Defense Assistance Act of 1949, as amended; the Mutual Security Act of 1951, as amended; the Mutual Security Act of 1954, as amended; the Foreign Assistance Act of 1961, as amended; or any other foreign assistance program of the United States.

(b) The above restriction covers firearms which are advanced in value or improved in condition in a foreign country, but it does not include those which have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(c) A person desiring to import military firearms and ammunition which were manufactured in the United States must certify that the importation of such firearms or ammunition is not prohibited by the provisions of paragraph (a) of this section, and that none of the firearms or ammunition being imported was furnished on a grant basis to, or was acquired without full payment by, a foreign government under a foreign assistance program of the United States as set forth in paragraph (a) of this section. The certification statement must be accompanied by documentary information on the original foreign source of the material.

(d) For the purpose of this section, the term "military firearms and ammunition" includes all firearms and ammunition furnished under the foreign assistanoe programs of the United States as set forth in paragraph (a) of this section. The term "payment in full" as used in paragraph (a) of this section means the payment of a sale price established by the U.S. Government as the full value of the propery at the time of initial transfer.

Subpart F—Penalties, Seizures, and Forfeitures

§ 180.61 Unlawful importation.

Any person who willfully:

(a) Imports articles on the Import List without permit;

(b) Engages in the business of importing articles on the Import List without registering under this part; or

(c) Otherwise violates any provision of this part—

shall upon conviction be fined not more than $25,000 or imprisoned not more than 2 years, or both.

§ 180.62 False statements or concealment of facts.

Any person who wilfully, in a registration or permit application, makes any untrue statement of a material fact or fails to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $25,000, or imprisoned not more than 2 years, or both.

§ 180.63 Seizure and forfeiture.

Whoever knowingly imports into the United States contrary to law any article on the Import List; or receives, conceals, buys, sells, or in any manner facilitates its transportation, concealment, or sale after importation, knowing the same to have been imported contrary to law, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both; and the merchandise so imported, or the value thereof shall be forfeited to the United States.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

Approved: April 3, 1970.

JOHN S. NOLAN,
Acting Assistant Secretary of the Treasury.

[F.R. Doc. 70-4278; Filed, Apr. 7, 1970; 8:51 a.m.]

[18] The Gun Control Act of 1968 (18 U.S.C. 922(1) and 925(d)), in general, prohibits importation of military surplus firearms, regardless of source, except for a governmental entity.

Title 29—LABOR

Chapter II—Office of the Assistant Secretary for Labor-Management Relations, Department of Labor

PART 201—GENERAL

PART 202—REPRESENTATION PROCEEDINGS

Labor Relations in Federal Service; Correction

F.R. Doc. 70-1247, published in Part II of the issue dated Wednesday, February 4, 1970, as 35 F.R. 2556, is corrected by making the following changes:

1. At page 2556, § 201.20; change the word "representation" to "representative".

2. At page 2558, § 202.5(a); place a comma after the word "petition"; change the period at the end of the sentence to a comma and add the following "or is the currently recognized or certified exclusive representative of any of the employees involved."

3. At page 2560, § 202.17(e); change the word "poling" to "polling".

Signed at Washington, D.C., this 31st day of March 1970.

W. J. USERY, Jr.,
Assistant Secretary of Labor for Labor-Management Relations.

[F.R. Doc. 70-4205; Filed, Apr. 7, 1970; 8:45 a.m.]

Chapter V—Wage and Hour Division, Department of Labor

PART 519—EMPLOYMENT OF FULL-TIME STUDENTS AT SPECIAL MINIMUM WAGES

Full-time Students; Definition

On January 9, 1970, there was published in the FEDERAL REGISTER a proposal to amend Part 519 of Title 29 of the Code of Federal Regulations in order to clarify the definition of "full-time students" by pointing out that there is a 14-year age requirement for the employment of full-time students in retail or service establishments and that there is no such requirement for the employment of full-time students in agriculture. After consideration of all written matter presented in response to the proposal, § 519.2 (a) of Part 519 of Title 29 of the Code of Federal Regulations is amended as set forth below. As the change in this amendment relieves present restrictions, delay in the effective date is not required by 5 U.S.C. 553. As such delay will serve no useful purpose, this amendment shall be effective immediately.

Section 519.2(a) is amended to read as follows:

§ 519.2 Definitions.

(a) *Full-time students.* A "full-time student" for the purpose of this part is defined as a student who receives primarily daytime instruction at the physical location of a bona fide educational institution, in accordance with the institution's accepted definition of a full-time student. A full-time student retains that status during Christmas, summer and other vacations. An individual who was such a student immediately prior to vacation will be presumed not to have discontinued such status during vacation if local law requires his attendance at the end of the vacation. In the absence of such requirement, his status during vacation will be governed by his intention as last communicated to his employer. The phrase in subsections (b) and (c) of the statute, "regardless of age but in compliance with applicable child labor laws", among other things, restricts the employment in a retail or service establishment to full-time students who are at least 14 years of age because of the application of section 3(l) of the Act. There is no minimum age restriction on the employment in agriculture of a full-time student outside of school hours for the school district where such employee is living while he is so employed except in occupations found to be particularly hazardous as declared in Subpart E of Part 1500 of this Title. The

term "full-time student" does not include a student learner covered by a certificate issued under Part 520 of this chapter.

* * * * *

(29 U.S.C. 211, 214)

Signed at Washington, D.C., this 3d day of April 1970.

ROBERT D. MORAN,
Administrator.

[F.R. Doc. 70-4212; Filed, Apr. 7, 1970; 8:46 a.m.]

PART 675—LUMBER AND WOOD PRODUCTS INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5 and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp. p. 1004), and by means of Administrative Order No. 612 (35 F.R. 1020), the Secretary of Labor appointed and convened Industry Committee No. 91–A for the Lumber and Wood Products Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the Committee.

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

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 91–A are hereby published, to be effective April 24, 1970, in this order amending § 675.2 of Title 29, Code of Federal Regulations.

As amended, § 675.2 reads as follows:

§ 675.2 Wages rates.

* * * * *

(a) *Pre-1961 coverage classifications.* * * *

(2) *Swimming pool equipment classification.* (i) The minimum wage for this classification is $1.60 an hour.

(ii) This classification is defined as the manufacture of diving boards from wood.

(3) *Kitchen cabinet classification.* (i) The minimum wage for this classification is $1.60 an hour.

(ii) This classification is defined as the manufacture of kitchen cabinets made wholly or chiefly of wood.

(4) *General classification.* (i) The minimum wage for this classification is $1.45 an hour.

(ii) This classification is defined as all activities in the industry which were brought within the purview of section 6 of the Act solely by reason of the Fair Labor Standards Amendments of 1961, except those included in any other 1961 coverage classification of this industry.

* * * * *

(d) *General 1961 coverage classification.* (1) The minimum wage for this classification is $1.50 an hour.

* * * * *

(e) *1966 coverage classification.* (1) The minimum wage for this classification is $1.45 for the period ending January 31, 1971; and $1.50 an hour thereafter.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208)

Signed at Washington, D.C., this 2d day of April 1970.

ROBERT D. MORAN,
Administrator, Wage and Hour Division, U.S. Department of Labor.

[F.R. Doc. 70-4213; Filed, Apr. 7, 1970; 8:46 a.m.]

PART 677—PAPER, PAPER PRODUCTS, PRINTING, AND PUBLISHING INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5 and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp. p. 1004), the Secretary of Labor appointed and convened Industry Committee No. 91–B for the Paper, Paper Products, Printing, and Publishing Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the Committee.

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

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 91–B are hereby published, to be effective April 24, 1970, in this order amending § 677.2 of Title 29, Code of Federal Regulations.

As amended, § 677.2 reads as follows:

§ 677.2 Wage rates.

* * * * *

(b) *1961 coverage classification.* (1) The minimum wage for this classification is $1.35 an hour.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.45 an hour for the period ending January 31, 1971; and $1.60 an hour thereafter.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208)

Signed at Washington, D.C., this 2d day of April 1970.

ROBERT D. MORAN,
Administrator, Wage and Hour Division, U.S. Department of Labor.

[F.R. Doc. 70-4214; Filed, Apr. 7, 1970; 8:46 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 70-318]

PART 0—COMMISSION ORGANIZATION

Delegations of Authority to Chief, Office of Opinions and Review

Order. 1. The Commission has determined that the Chief, Office of Opinions and Review, should be authorized to specify or change, in accordance with Commission instructions, the time allowed a party for oral argument before the Commission and, in addition, to act upon an unopposed motion by any party for dismissal or withdrawal of his own pleading. The delegation of this function to the Chief, Office of Opinions and Review, will contribute to the proper functioning of the Commission and the prompt and orderly conduct of its business.

2. Authority for this amendment is contained in sections 4 (i) and (j), 5(d), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 155(d), and 303(r). Because the amendment relates to matters of procedure and internal organization, the procedural and effective date provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. 553, are inapplicable.

3. In view of the foregoing: *It is ordered,* Effective April 8, 1970, that § 0.371 of the rules and regulations is amended as set forth below.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303)

Adopted: April 1, 1970.

Released: April 3, 1970.

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

In Part 0 of Chapter I of Title 47 of the Code of Federal Regulations, § 0.371(d) is amended, and § 0.371(f) is added, to read as follows:

§ 0.371 Authority delegated.

* * * * *

(d) To issue orders, in accordance with Commission instructions, specifying

[1] Commissioner H. Rex Lee absent.

or changing the day or hour of oral argument and the time allowed a party for oral argument.

* * * * *

(f) Unopposed motion by any party for dismissal or withdrawal of his own pleading.

[F.R. Doc. 70-4255; Filed, Apr. 7, 1970; 8:49 a.m.]

[Docket No. 17253; FCC 70-345]

PART 73—RADIO BROADCAST SERVICES

Prediction of Coverage of TV Broadcast Stations

Report and order. 1. On March 1, 1967, the Commission adopted a notice of proposed rulemaking in the above-entitled matter, RM-1060. Interested parties were invited to submit comments on or before April 14, 1967, and replies thereto on or before May 1, 1967. These dates were subsequently extended to May 15 and May 31, 1967, respectively.

2. The proceeding was based on a petition by WKBN Broadcasting Corp., licensee of UHF television broadcast Station WKBN-TV, Channel 27, Youngstown, Ohio, which claimed that using the power radiated in the horizontal plane as prescribed by current FCC rules, is not the proper way to estimate the distances to the various field strength contours, particularly when the station employs a high gain transmitting antenna with a relatively narrow vertical radiation pattern and also employs a technique known as "beam-tilt" to provide a more uniform field over the area intended to be served. "Gain" in a transmitting antenna is achieved by shaping the radiation pattern so that available power from the transmitter is concentrated in a predetermined vertical (and in the case of a directional antenna, horizontal) direction. The energy would normally be radiated straight out from the antenna in what is termed the "horizontal plane". Since the transmitting antenna is mounted on the earth which is a sphere and falls away in all directions, the energy radiated "straight out" or above the horizontal plane does not make the most efficient contribution to a station's effective coverage. Therefore, the radiation pattern may be tilted downward by either electrical or mechanical means, to aim the maximum power toward the horizon or the earth within the horizon. If this is done, less power is radiated in the "horizontal plane". Under the present rules of the Commission, the power radiated in the "horizontal plane" is used to determine the distance to the Grade A and Grade B field strength contours. Thus, the lesser power used for this "horizontal plane" determination, in effect, reduces the theoretical predictions of distances to the Grade A and B contours for stations using "beam-tilt" designed to optimize service.

3. A great many parties filed comments in this proceeding.[1] The bulk of them included and relied upon an engineering statement prepared by David Steel and Associates, a firm of communications consulting engineers. This statement treated the subject quite comprehensively. However, the statement was identical in all cases, thus failing to relate the problem to the specific technical facilities used or proposed to be used by the individual parties filing the comments. Comments concerning their own technical facilities were filed by Springfield Television Broadcasting Corp., John M. McLendon, Truth Publishing Co., Inc. (engineering by Lohnes and Culver), WBRE-TV, Inc. (engineering by Robert M. Silliman), Northwest Television Co., Bay Broadcasting Co., Vindicator Printing Co. and Kings Gordon, Inc. McLendon suggested that the radiation at 0.5° below horizontal be used in all cases for administrative convenience. All of the above comments supported the proposal that the present rule be modified.

4. Other comments supporting the proposal were filed byt Jampro Antenna Company (a manufacturer of antennas) who recommended that the pertinent angle be used in all cases including those antennas which do not employ "beam-tilt." Jampro argues that stations which radiate maximum power in the horizontal plane show a high "letter-head" power but that power radiated in the horizontal plane is wasted because it stays above the earth, and using it to establish the locations of the various contours gives an erroneously greater distance. Jet Broadcasting Co., Inc. stated that the present rule penalizes UHF stations using "beam-tilt" and that CATV operators report that UHF signals are often superior to VHF signals when received over the same path and distance. No data to support this claim was submitted. American Broadcasting Co. (ABC) supported the proposal as applied to UHF television stations, but urged that it should not apply to VHF stations because variations in circularity of VHF patterns are substantially greater than the small variations in radiated power over the relatively narrow vertical angles that would be involved for typical VHF transmitting antennas. A. S. Abell Co. supported the proposal, but urged that adoption of the modified rule should not preclude the use of actual field strength measurements for determining the location of the pertinent field strength contours.

5. Summit Radio Corp. merely endorsed the David Steel comments; WBOC, Inc., Rust Craft Broadcasting Co., and WACO Broadcasting Corp. merely voted for the proposal without supplying supporting data. Philadelphia Television Broadcasting Co. and Spanish Language Television of Arizona, Inc., endorsed the WBRE-TV, Inc., comments. The National Association of Broadcasters (NAB) supported the proposal as applied to UHF stations but was concerned about application to VHF stations. It stated that, in general, differences between the power radiated horizontally and in the major vertical lobe where "beam-tilt" is employed, are less than with UHF and it would be "inappropriate" to apply the rule to VHF stations. No engineering data was submitted to support these statements.

6. A number of the UHF station licensees, permittees or applicants, in supporting the proposal to use the power at the pertinent vertical angle, also opposed adoption of the proposed new UHF field strength curves. It was argued that the curves fail to give an accurate picture of the actual performance of UHF television broadcast stations and if adopted would unfairly downgrade UHF television broadcast service. On the other hand, the engineering firm of A. Earl Cullum, Jr., and Associates urged that the Commission defer action on this proposal until new UHF field strength curves are adopted. Cullum claimed that the use of the present VHF Channel 2-6 curves for determining the location of the various defined iso-service contours of UHF television stations is totally unrealistic, and that if the "beam-tilt" rule is applied to the present curves, the Grade A and B contours will be extended unrealistically only to be drawn back drastically when the new UHF curves are finally adopted. Arkansas Television Co., the Hearst Corp., and WLAC-TV, Inc., all VHF television station licensees, endorsed the Cullum comments. Television Transmission Co., a CATV operator, stated that the present rules are adequate and technically correct and should not be changed. No data to support the latter short statement was filed.

7. We have carefully considered all the comments and data filed by the various parties in response to the proposed rule change included in the notice for this proceeding. We are in substantial agreement with the majority of the participating parties who support the proposal. No party provided a detailed procedure taking into account the wide variations in antenna elevations over average terrain encountered in practice, or to adequately justify that the maximum vertical lobe power be used in all cases indiscriminately whenever beam tilt is employed. An extensive investigation was therefore undertaken in search of a practical and simple procedure that could be uniformly applied to all television stations, both VHF and UHF, with low- or high-gain antennas and with or without beam-tilted antennas, that would still provide reasonable results in unusual situations. Various procedures taking into account the entire antenna vertical plane radiated pattern were experimentally applied to a number of typical and atypical cases for authorized VHF and UHF stations, as reflected in the Commission files. The stations

[1] The bulk of the commenting parties were UHF licensees. All of the licensee parties referred to herein are UHF, except ABC, A. S. Abell Co., and the three licensee parties mentioned in paragraph 6, below.

studied included those employing very high antenna elevations, with and without mechanical or electrical beam tilt of the antenna. The procedures tested ranged from very sophisticated, tedious and time consuming analysis to merely making distance computations on the basis of the maximum effective radiated power in the vertical plane over the radial concerned.

8. Based on the results obtained from the above studies, the rules adopted herein specify a method to be used for establishing the statistical location of the Grade A and Grade B field strength contours, with recognition being given to the effective radiated power directed toward the radio horizon for each pertinent azimuthal direction. A standard radio horizon is used, based on the assumption of a smooth spherical earth with a radius of 5,280 miles. Determination of the depression angle between the antenna and the radio horizon will be by an empirically derived formula included in the amended rule. The pertinent vertical angle determined by the equation is based on the height of the antenna center of radiation above the average elevation of the terrain between 2 and 10 miles from the transmitting antenna site, at the pertinent azimuth. Because the formula is designed to be used only for the special purpose described herein, determining the statistical location of Grade A and Grade B contours, its use for other purposes would not necessarily be acceptable. Prescribed use of the formula for this purpose, however, will avoid disagreements over the location of the horizon in individual cases and, thus, assure identical results in all cases. The statistical accuracy of the location of the horizon should not be impaired, since normal terrain variations which place the horizon at various distances were encountered in the measurements used to develop the median field intensity charts and have already been properly weighted.

9. It is emphasized that the use of a standard radio horizon as is being considered here applies only to those cases when the "F(50,50) field intensity charts" are used to estimate the distance to the Grade A and Grade B field strength contours. In cases where field strength measurements are made for scientific purposes to add to the store of knowledge which is used by the Commission to update radio propagation curves, this simplified procedure would not be acceptable and the measuring organization would need to determine the appropriate power radiated in the pertinent direction (vertical and horizontal) from the actual antenna radiation patterns. Further, in making such field strength measurements, the entire terrain profile from the transmitter site to the most distant measurement point must be plotted and the actual elevation of each measurement point established so that it can be determined whether the point is within or beyond the true horizon, and the actual depression angle computed. The rules being adopted herein do not provide for the use of field strength measurements to determine a station's actual coverage. This is the subject of a separate rule making proceeding in Docket No. 18052. If the rules are subsequently amended to permit the use of field strength measurements on individual stations, the method of making such measurements will be clearly set forth, including whatever consideration will be required of the vertical radiation pattern of the transmitting antenna.

10. We hasten to point out that the rules being changed herein will not suddenly change the estimates of the Grade A and Grade B contours from very approximate to very exact. It will merely accomplish the desirable objective of permitting the use of a somewhat more logical method of using the power actually directed below the horizontal plane and toward the approximate horizon. It is expected that more accurate methods of determining television coverage will ultimately be developed and, when they are, the Commission will make appropriate changes in its rules.

11. The location of the Grade A and Grade B iso-service contours of TV broadcast stations is used by the Commission for certain administrative decisions and for carrying out certain of its policies. It is necessary, therefore, that there be agreement on the results obtained among the various parties who are required to determine their location. The Grade A and Grade B contours are statistical tools which are useful in assessing the extent of probable reception over a relatively large area but cannot be used to determine whether or not service is in fact available at a single location or a small area. The quantities that go into the definition of the contours, i.e., the percentage of locations, the percentage of time, "acceptable reception", "median viewer", "median field strength", and "typical receiving installation", are of a statistical nature and in some cases arbitrary, and do not necessarily apply to a specific location.

12. The provision being adopted here, to consider radiation at the pertinent angle, in locating the Grade A and Grade B contours does not alter the statistical character of the iso-service concept. The F(50,50) field strength charts appearing in the Commission rules relate median field strength to antenna height above average terrain and effective radiated power. In using field strength measurements to develop the "field intensity" charts, the correlation was made on the assumption that the power radiated in the horizontal plane in any azimuth was also radiated at all vertical angles in that direction. This is essentially true for most VHF stations because very high gain transmitting antennas with narrow vertical radiation patterns are not too common. The same can be said for early UHF stations. However, where high gain antennas are involved, "service" estimates are on the conservative side. Subsequent UHF measurements, principally on the New York City experimental UHF operation conducted by the Commission, did take into account the "beam tilt" of the transmitting antenna. These data were not available, however, when the original UHF propagation data were assembled and used as the basis upon which the F(50,50) field intensity chart currently used was prepared. These later data will be included in the development of any revised UHF median field strength curves adopted in the future.[2]

13. Several comments filed in this proceeding urged that action on this matter be deferred until new field strength charts are adopted. The median field strength charts in the present rules are empirical, having been developed from many field strength measurements made on many stations over a long period of time and under a variety of terrain conditions. Revised field strength charts have been proposed by the Commission which are also based on field strength measurements. It is anticipated that the charts eventually adopted will be more accurate than the present charts, particularly with respect to UHF television signals. It is quite possible that the present field strength charts and the new field strength charts would yield different statistical locations for the Grade A and Grade B contours at the UHF frequencies. The Commission is constantly striving to improve its understanding of the behavior of radio signals traveling over the earth but it cannot postpone action on needed modifications until perfection is achieved. By proceeding step-by-step it can carry out its functions and responsibilities in an orderly manner. There are still unresolved questions about the proposed new field strength charts as well as an outstanding proposal to explore the possibility of using actual field strength measurements on individual stations to locate field strength contours. It would be unfair and unwarranted to defer action on this matter until those questions can be resolved.

14. The rules as amended will be equally applicable to VHF and UHF stations. However, it appears that by virtue of the relatively broad vertical radiation patterns commonly employed by VHF stations, application of the rule to VHF operations usually will not change the presently estimated location of the various contours. In the case of UHF stations, it appears that most of those authorized antenna beam tilting will be affected, and will generally base their predictions on the vertical major lobe power.

15. The rules adopted herein are set forth below. Certain other rules have also been amended to be consistent with the adopted rules and to include various references to antenna beam tilting as it is commonly used today by both VHF and UHF stations. The amendments are discussed briefly in the following paragraphs.

16. Section 73.681 contains definitions. New definitions for electrical and mechanical "beam tilt" have been added.

[2] Revised UHF median field intensity curves are currently under consideration by the Commission in a separate proceeding in Docket No. 16004.

The present definition of "Effective radiated power" has been extended to include reference to the maximum radiated in any direction.

17. Section 73.684 is concerned with the prediction of coverage for television broadcast stations. It has been modified to provide for consideration of the vertical radiation pattern of transmitting antennas and to specify a standard method to be employed for determining effective radiated power in the vertical plane, based on the smooth earth radio horizon for each radial for which the location of the Grade A and Grade B contours are desired.

18. Section 73.685(e), concerning directional antenna systems, has been amended to include mechanically tilted antenna systems under directional antennas and to specify the additional information required when such a system is proposed in an application.

19. Applicability and filing requirements: As mentioned above, we are of the view that the Grade A and Grade B signal intensity contours of all television stations should be determined on the basis of the new rule. Obviously, it is not desirable to have the contours of different stations determined on different bases; this is particularly true since stations are often inter-related and the location of the contours of one has significance vis-a-vis the location of contours of another. That is the case, for example, with respect to CATV matters, sometimes in multiple ownership "overlap" cases, and, more generally, in the determination of contour locations for sales and other purposes in connection with which they are often depicted.

20. Therefore, we believe it necessary to require all commercial stations—in connection with which questions of contour location arise with great frequency—to file within the very near future showings as to their contour locations using the new method of determination adopted herein. This requirement is subject to approval of the Bureau of the Budget; however, it is not expected that this will present lengthy problems. Accordingly, we are now adopting a requirement, set forth in the ordering paragraph herein and in a note below § 73.684(c)(2) of the rule as adopted herein, that all commercial television stations shall file a showing as to the location of their Grade A and Grade B contours, under the new rules, within 90 days from the publication of this document in the FEDERAL REGISTER, unless the Commission by further order postpones or alters this requirement. If a station licensee finds after careful examination that the location of the predicted Grade A and Grade B contours on any radial, as reflected in the Commission's files for the station's current operation, will not be changed by application of the amended rule, the Commission will accept a sworn statement by a qualified engineer to this effect, and the filing of new contour location maps will not be required. Also, a number of UHF stations have submitted with their applications filed with the Commission contour predictions on the basis of both horizontal plane radiation and the maximum radiation at other angles of the vertical plane. For the latter cases, if the maximum radiation showing for all standard radials meets the 90 percent criterion set forth in § 73.684(c)(1), a sworn statement to this effect will be sufficient. All other commercial television stations—VHF and UHF—will be expected to file new contour location maps with determinations based on the new rule.[3]

21. All pending applicants and permittees will be required to file on the same basis, within the same time; applications for new or changed facilities tendered after publication of this report and order in the FEDERAL REGISTER will include showings based on the new rules. All parties are encouraged to file their showings under the new rules as soon as possible, without waiting for the 90-day period mentioned above, and if individual questions requiring Commission or staff consideration make it necessary, particular stations may be directed to file within a shorter time.

22. With respect to noncommercial educational TV stations, both those on reserved channels and the few which operate on unreserved channels, the same urgency is not necessary, since questions concerning the exact location of their Grade A and Grade B contours arise much less frequently. Such parties will be required to file at renewal time, with any application for new or changed facilities as mentioned above, or (before renewal time) if any specific questions involving their contour locations arise. They are, of course, encouraged to file as quickly as possible.

23. Applicability in hearing cases: The new rules will apply to all cases designated for hearing in which the record in the proceeding has not been closed. In cases where the record has been closed, the Commission will give consideration in each case, on its own motion or on the basis of pleadings duly filed by the parties to the proceeding, as to whether a further showing under the new rule should be required.

24. In view of the foregoing, and pursuant to sections 4(i), 303 (d), (h), and (r) and 308(b) of the Communications Act of 1934, as amended: *It is ordered*, That:

(a) Effective May 8, 1970, §§ 73.681, 73.684, and 73.685 of the Commission's rules and regulations are amended, as set forth below.

(b) On or before July 7, 1970, unless this requirement is postponed or changed by further order of the Commission, licensees and permittees of all operating commercial television broadcast stations, and applicants for new commercial television stations or changes in the facilities of existing commercial television stations whose applications were tendered before April 8, 1970, shall submit to the Commission a showing as to the location of their stations' or proposed stations' predicted Grade A and Grade B contours, determined in accordance with § 73.684 as amended herein. This showing shall include maps showing these contours, except where stations or applicants have previously submitted to the Commission material showing the location of these contours and it is found upon careful examination that their location would not change, on any radial, when the location is determined under amended § 73.684. In these cases, a sworn statement by a qualified engineer to this effect will satisfy this requirement and no contour maps need be submitted.

(c) All applications for new or changed television facilities (commercial or noncommercial educational) tendered for filing after April 8, 1970, shall submit section V–C of FCC Form 301, or FCC Form 340 in the case of noncommercial educational stations, on the basis of § 73.684 as amended herein.

(d) Licensees of noncommercial educational stations (those operating on reserved or unreserved channels) shall submit the showings mentioned in paragraph (b), above, with all renewal applications due on and after July 1, 1970, unless this requirement is postponed or changed by further Commission order. Pending applicants for new or changed noncommercial educational facilities shall submit such showings on or before July 7, 1970. Permittees of such stations shall submit such showings with their initial applications for license.

(e) In any case in which a question rises requiring Commission or staff determination of the contour location of a particular existing or proposed station, the Commission may require the licensee, permittee, or applicant involved to file the material mentioned in paragraph (b) at an earlier date than the dates otherwise specified in this paragraph.

25. *It is further ordered*, That this proceeding, docket No. 17253, is terminated.

(Secs. 4, 303, 308, 48 Stat., as amended, 1066, 1082, 1084; 47 U.S.C. 154, 303, 308)

Adopted: April 1, 1970.

Released: April 3, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[4]

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

§ 73.681 [Amended]

1. In § 73.681 the first two definitions listed below are added in the appropriate

[3] In setting forth this requirement, we have given consideration to an alternative of requiring filings only at renewal time or when specific questions requiring Commission action arise. However, this is not sufficient. Experience has shown that questions arise frequently concerning the contour locations shown in the Commission files for most commercial stations—e.g., by CATV systems or potential systems inquiring as to what signals they can or must carry or protect—and a considerable amount of staff time is spent in answering such inquiries. If a general filing is not required, the staff would inevitably have to recompute the contours of stations itself, and our staff devoted to TV processing is too limited to permit this. As noted earlier, many stations will show a gain of Grade A and Grade B coverage under the new rules and therefore will be anxious to file.

[4] Commissioner H. Rex Lee absent.

alphabetical sequence, and the definition "Effective radiated power" is amended to read as follows:

Antenna electrical beam tilt. The shaping of the radiation pattern in the vertical plane of a transmitting antenna by electrical means so that maximum radiation occurs at an angle below the horizontal plane.

Antenna mechanical beam tilt. The intentional installation of a transmitting antenna so that its axis is not vertical, in order to change the normal angle of maximum radiation in the vertical plane.

Effective radiated power. The product of the antenna input power and the antenna power gain. This product should be expressed in kilowatts and in decibels above 1 kilowatt (dbk). (If specified for a particular direction, effective radiated power is based on the antenna power gain in that direction only. The licensed effective radiated power is based on the average antenna power gain for each horizontal plane direction. When a station is authorized to use a directional antenna or an antenna beam tilt, the direction and amount of maximum effective radiated power will also be specified.)

2. Section 73.684(c) is revised to read as follows:

§ 73.684 Prediction of coverage.

* * * * *

(c) In predicting the distance to the field intensity contours, the F(50,50) field intensity charts (Figures 9 and 10 of § 73.699) shall be used. If the 50 percent field intensity is defined as that value exceeded for 50 percent of the time, these F(50,50) charts give the estimated 50 percent field intensities exceeded at 50 percent of the locations in decibels above one microvolt per meter. The charts are based on an effective power of 1 kilowatt radiated from a half-wave dipole in free space, which produces an unattenuated field strength at 1 mile of about 103 db above 1 microvolt per meter (137.6 millivolts per meter). To use the charts for other powers, the sliding scale associated with the charts should be trimmed and used as the ordinate scale. This sliding scale is placed on the charts with the appropriate gradation for power in line with the horizontal 40 db line on the charts. The right edge of the scale is placed in line with the appropriate antenna height gradations, and the charts then become direct reading (in μV/m and in db above 1 μV/m) for this power and antenna height. Where the antenna height is not one of those for which a scale is provided, the signal strength or distance is determined by interpolation between the curves connecting the equidistant points. Dividers may be used in lieu of the sliding scale.

(1) In predicting the distance to the Grade A and Grade B field intensity contours, the effective radiated power to be used is that radiated at the vertical angle corresponding to the depression angle between the transmitting antenna center of radiation and the radio horizon as determined individually for each azimuthal direction concerned. The depression angle is based on the difference in elevation of the antenna center of radiation above the average terrain and the radio horizon, assuming a smooth spherical earth with a radius of 5,280 miles, and shall be determined by the following equation:

$$A_s = 0.0153\sqrt{H}$$

Where:

A_s is the depression angle in degrees.

H is the height in feet of the transmitting antenna radiation center above average terrain of the 2–10 mile sector of the pertinent radial.

NOTE: It should be recognized that this formula is empirically derived for the limited purpose specified here. Its use for any other purpose may be inappropriate.

In cases where the relative field intensity at the depression angle determined by the above formula is 90 percent or more of the maximum field intensity developed in the vertical plane containing the pertinent radial, the maximum radiation shall be used.

(2) In predicting field intensities for other than the Grade A and Grade B contours, the effective radiated power to be used shall be based on the appropriate antenna vertical plane radiation pattern for the azimuthal direction concerned.

NOTE: Pursuant to amendment of § 73.684 by Report and Order, Docket 17253, effective May 8, 1970, television station licensees, permittees, and applicants will be subject to the following procedures, unless the requirements are postponed or changed by further order of the Commission:

(a) On or before July 7, 1970, licensees and permittees of all operating commercial television broadcast stations, and applicants for new commercial television stations or changes in the facilities of existing commercial television stations whose applications were tendered before April 8, 1970, shall submit to the Commission a showing as to the location of their stations' or proposed stations' predicted Grade A and Grade B contours, determined in accordance with § 73.684, as amended. This showing shall include maps showing these contours, except where stations or applicants have previously submitted material to the Commission containing such information and it is found upon careful examination that the contour locations indicated therein would not change, on any radial, when the locations are determined under amended § 73.684. In the latter cases, a sworn statement by a qualified engineer to this effect will satisfy this requirement and no contour maps need be submitted.

(b) Noncommercial educational stations (those operating on reserved or unreserved channels) shall submit the showings mentioned in paragraph (a) of this note with renewal applications due on or after July 1, 1970. Pending applicants for new or changed noncommercial educational facilities shall submit such showings on or before July 7, 1970. Permittees of such stations shall submit such showings with their initial applications for license.

(c) In any case in which a question arises requiring determination of the contour location of a particular existing or proposed station, the Commission may require the licensee, permittee or applicant involved to file the material mentioned in paragraph (a) of this Note at an earlier date than the dates otherwise specified.

* * * * *

3. In § 73.685, paragraphs (e) and (f) (2) and (3) are amended to read as follows:

§ 73.685 Transmitter location and antenna system.

* * * * *

(e) An antenna designed or altered to produce a noncircular radiation pattern in the horizontal plane is considered to be a directional antenna. Antennas purposely installed in such a manner as to result in the mechanical beam tilting of the major vertical radiation lobe are included in this category. Directional antennas may be employed for the purpose of improving service upon an appropriate showing of need. Stations operating on Channels 2–13 will not be permitted to employ a directional antenna having a ratio of maximum to minimum radiation in the horizontal plane in excess of 10 decibels. Stations operating on Channels 14–83 with transmitters delivering a peak visual power output of more than 1 kilowatt may employ directive transmitting antennas with a maximum to minimum radiation in the horizontal plane of not more than 15 decibels. Stations operating on Channels 14–83 and employing transmitters delivering a peak visual power output of 1 kilowatt or less are not limited as to the ratio of maximum to minimum radiation.

(f) * * *

(2) Orientation of array with respect to true north; time phasing of fields from elements (degrees leading or lagging); space phasing of elements (in feet and degrees); and ratio of fields from elements. Where mechanical beam tilt is intended, the amount of tilt in degrees of the antenna vertical axis and the orientation of the downward tilt with respect to true north shall be specified.

(3) Horizontal and vertical plane radiation patterns showing the free space field intensity in millivolts per meter at 1 mile and the effective radiated power, in dbk, for each direction. The method by which the radiation patterns were computed or measured shall be fully described, including formulas used, equipment employed, sample calculations and tabulations of data. Sufficient vertical plane patterns shall be included to indicate clearly the radiation characteristics of the antenna above and below the horizontal plane. In cases where the angle at which the maximum vertical radiation varies with azimuth, a separate vertical radiation pattern shall be provided for each pertinent radial direction. The horizontal plane pattern shall be plotted on polar coordinate paper with reference to true north. The vertical plane patterns shall be plotted on rectangular coordinate paper with reference to the horizontal plane.

* * * * *

[F.R. Doc. 70-4256; Filed, Apr. 7, 1970; 8:49 a.m.]

Title 50—WILDLIFE AND FISHERIES

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

PART 28—PUBLIC ACCESS, USE, AND RECREATION

National Wildlife Refuge System

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

§ 28.28 Special regulations, public access, use, and recreation; for individual national wildlife refuges.

Portions of the National Wildlife Refuge System are open to public access, use, and recreation, subject to the provisions of Title 50, Code of Federal Regulations. The public use areas are designated on maps available from Regional Directors, Bureau of Sport Fisheries and Wildlife, 730 Northeast Pacific Street, Post Office Box 3737, Portland, Oreg. 97208; 500 Gold Avenue SW., Post Office Box 1306, Albuquerque, N. Mex. 87103; Federal Building, Fort Snelling, Twin Cities, Minn. 55111; 809 Peachtree-Seventh Building, Atlanta, Ga. 30323; U.S. Post Office and Courthouse, Boston, Mass. 02109, and are subject to the following conditions:

(1) *Daily user permits.* (a) Daily user permits will be required for all users from age 16 years and up, who enter upon designated Bureau fee areas or sites.

(b) Permits will be honored for day use only.

(c) Permits may be used for more than one site on an individual area, but only for the day the permit is validated.

(d) The period of day use will be conspicuously posted at each designated area.

(2) *Cost of daily user permits.* (a) Cost of individual user permits is $0.50.

(b) A $1 daily user permit will admit all occupants of a vehicle during a 1-day use period, during hours specified for daily individual permits.

(3) *Exceptions.* (a) There will be no charge made on designated fee areas for public school groups on educational visits, physically and mentally handicapped, and underprivileged children.

The provisions of this special regulation supplement the regulations which govern public access, use, and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective until December 31, 1970.

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

APRIL 3, 1970.

[F.R. Doc. 70-4306; Filed, Apr. 7, 1970; [8:52 a.m.]

Proposed Rule Making

DEPARTMENT OF JUSTICE

Bureau of Narcotics and Dangerous Drugs

[21 CFR Part 320]

DEPRESSANT AND STIMULANT DRUGS

Chlordiazepoxide and Its Salts and Diazepam; Notice of Supplemental Hearing

In the matter of listing chlordiazepoxide and its salts and diazepam as drugs subject to control under the Drug Abuse Control Amendments of 1965:

A tentative order in this matter was published in the FEDERAL REGISTER of May 21, 1969 (34 F.R. 7968), Hoffmann-La Roche, Inc., of Nutley, N.J., submitted exceptions to the findings of fact and conclusions of law in the tentative order, and oral argument on these exceptions was heard on November 5, 1969, before the Director of the Bureau of Narcotics and Dangerous Drugs. At that time, the Director decided that the record should be updated in the areas of diversion and illegal use of these drugs. Further discussion on this matter was held on February 27, 1970.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(v), 511, 701, 52 Stat. 1055, as amended; 79 Stat. 227 et seq.; 21 U.S.C. 321(v); 360(a), 371) and under the authority vested in the Attorney General by Reorganization Plan No. 1 of 1968 (33 F.R. 5611), and redelegated to the Director, Bureau of Narcotics and Dangerous Drugs, by § 0.100 of Title 28 of the Code of Federal Regulations, notice is hereby given that a supplemental hearing will be held for the purpose of receiving additional relevant and material evidence. Pursuant to a joint recommendation filed with the Director by the Government and Respondent relating to additional evidence of developments since 1966, such hearing will be limited to evidence bearing on the use of Librium or Valium in conjunction with, or related to, the abuse of other drugs, including rebuttal evidence from respondent bearing on whether such abuse occurs, its nature, frequency, relevance, and significance.

Mr. Edgar Buttle has been appointed by the U.S. Civil Service Commission as Hearing Examiner in this matter. A prehearing conference will be held on April 13, 1970. The date of the supplemental hearing will be established at the prehearing conference. All conferences and hearings will be held in the offices of the Bureau of Narcotics and Dangerous Drugs, 1405 I Street NW., Washington, D.C., or at such other places as directed by the Hearing Examiner.

The Bureau of Narcotics and Dangerous Drugs and Hoffmann-La Roche, Inc., have agreed to waive the requirements set forth by 21 CFR 316.69(b)(6) that the hearing not take place earlier than 30 days after the date of publication of the notice of hearing in the FEDERAL REGISTER.

Dated: April 1, 1970.

JOHN E. INGERSOLL,
Director, Bureau of Narcotics and Dangerous Drugs.

[F.R. Doc. 70-4221; Filed, Apr. 7, 1970; 8:47 a.m.]

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

YOSEMITE NATIONAL PARK, CALIF.

Oversnow Vehicles, Mountain Climbing, Winter Touring

Notice is hereby given that pursuant to the authority contained in section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3), section 2 of the Act of October 1, 1890 (26 Stat. 650; 16 U.S.C. 61), and section 5 of the Act of June 2, 1920 (41 Stat. 731; 16 U.S.C. 57), 245 DM-1 (34 F.R. 13879, as amended), National Park Service Order No. 34 (31 F.R. 4255), Regional Director, Western Region Order No. 4 (31 F.R. 5577), it is proposed to amend § 7.16 of Title 36 of the Code of Federal Regulations as set forth below.

The purpose of this amendment is to provide for the registration of persons engaging in mountain climbing, winter touring activities, and for the registration and use of oversnow vehicles in Yosemite National Park.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed amendment to the Superintendent, Post Office Box 577, Yosemite National Park, Calif. 95389, within 30 days of the publication of this notice in the FEDERAL REGISTER.

Section 7.16 is amended as follows:

§ 7.16 Yosemite National Park.

* * * * *

(l) *Oversnow vehicles.* (1) The term "oversnow vehicle" shall include all motor propelled devices that are designed for oversnow travel.

(2) Registration with the Superintendent is required prior to operation of an oversnow vehicle. The registrant is required to sign in upon trip completion.

(3) The provisions set forth in Part 4 of this chapter will apply to the operation of oversnow vehicles.

(4) Oversnow vehicle use is permitted only on roadways designated by the Superintendent. A map of the designated roadways is located in the Superintendent's Office.

(5) Operation of oversnow vehicles upon park roads and parking areas when such roads and parking areas are open to automobiles, trucks, tractors, bicycles, or motorcycles is prohibited.

(6) No person under the age of 16 shall operate an oversnow vehicle without direct supervision of an adult.

(7) Racing, other competitive uses, and operation of oversnow vehicles in an unsafe manner is prohibited.

(8) Oversnow vehicles used to carry passengers for hire will be deemed commercial, and when appropriate will be subject to § 5.4 of this chapter.

(m) *Mountain climbing.* Registration with the Superintendent is required prior to any climbing in which direct aid requiring the use of ropes, carabiners, pitons, and similar technical mountain climbing equipment is needed. The registrant is required to sign in immediately upon return from such a climb.

(n) *Winter touring.* Registration with the Superintendent is required prior to any winter travel using skis, snowshoes, or other non-mechanical means away from plowed roads. The registrant is required to sign in immediately upon return from a trip.

LAWRENCE C. HADLEY,
Superintendent, Yosemite National Park.

[F.R. Doc. 70-4204; Filed, Apr. 7, 1970; 8:45 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

Decision on Proposed Amendments to Marketing Agreements and to Orders

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Massachusetts-Rhode Island-New Hampshire and Connecticut marketing areas. The hearing was held, 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 (7 CFR Part 900), at Sturbridge,

Mass., on October 21–24, 1969 and at Boston, Mass., on October 28, 1969, pursuant to notice thereof issued on September 12, 1969 (34 F.R. 14475) and a supplemental notice which was issued on September 20, 1969 (34 F.R. 15362).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on February 26, 1970 (34 F.R. 4056; F.R. Doc. 70–2584), filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. The material issues, findings and conclusions, rulings and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein except that the 15th paragraph under the discussion of "diverted milk" (issue 2) is revised and three new paragraphs are substituted in lieu thereof.

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 southeastern 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 nonregulated 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 nonpool plants.

The order presently provides that a handler may divert milk directly from a producer's farm to a plant (pool or nonpool) 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 recordkeeping 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 nonpool 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.

The Deputy Administrator, Regulatory Programs, in his recommended decision of February 26, concluded that unless an appropriate limit was provided, the "banana clause" could be the means by which the intent of the diversion limitations could be averted. He found, therefore, that such diversions should be permitted from any particular farm only if the responsible handler had not received or diverted milk from such farm in more than 2 months (other than the current month) subsequent to July of the preceding calendar year.

Certain cooperatives excepted to the Deputy Administrator's conclusions on this matter on the grounds that a 2-month limit, as recommended, could impede the efficient handling of milk. Exceptors pointed out that under the current provision of the order by which milk of an added producer would be so diverted, the application of the "banana clause" could cover as much as a six month period. This limitation, exceptors indicated, has accommodated the situation in the market without problem. They suggested, therefore, that up to a 6-month application of the "banana clause" be permitted (the current month and not more than 5 other months subsequent to July of the preceding calendar year).

After further consideration, in light of this exception, it is concluded that more orderly and efficient marketing can be assured by adopting this modification.

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 market 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 conclu-

sions 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 hundredweight 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 reduced 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.

The Deputy Administrator, Regulatory Programs, in his decision of February 26 recommended the revision of both §§ 1015.88 and 1015.89 as a means of implementing the changes here adopted. After further consideration of this matter, it is concluded that for purposes of clarity and brevity such changes may better be effectuated by amending only § 1015.89. Thus, § 1015.89 is restated and reflects the revisions otherwise incorporated in amendments 4 and 5 to the Connecticut order as set forth in the recommended decision.

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.

RULINGS ON EXCEPTIONS

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are four documents, a marketing agreement regulating the handling of milk, and an order amending the order regulating the handling of milk in each of the two specified marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreements, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreements are identical with those contained in the orders as hereby proposed to be amended by the attached orders which are published with this decision.

DETERMINATION OF PRODUCER APPROVAL AND REPRESENTATIVE PERIOD; REFERENDUM ORDER AND DESIGNATION OF REFERENDUM AGENT

January 1970 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Massachusetts-Rhode Island-New Hampshire market and the Connecticut market is approved or favored by producers, as defined under the terms of the respective orders, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid respective marketing areas.

With respect to such determination for the Massachusetts-Rhode Island-New Hampshire order as amended and as hereby proposed to be amended, it is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 et seq.). Notwithstanding the requirements of § 900.305(c)(3) (i) and (iii) of the aforesaid regulations, however, producer affiliation with cooperative associations will be determined as of the representative period.

The agent of the Secretary to conduct such referendum is hereby designated to be Richard D. Aplin.

Signed at Washington, D.C., on April 3, 1970.

ELVIN A. ADAMSON,
Acting Assistant Secretary.

Order[1] Amending the Order, Regulating the Handling of Milk in the Massachusetts-Rhode Island-New Hampshire Marketing Area

FINDINGS AND DETERMINATIONS

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

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Massachusetts-Rhode Island-New Hampshire marketing area. The hearing was held 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 (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) All of a handler's receipts at pool plants during the month of fluid milk products from all sources, except receipts from pool plants, receipts from regulated plants under other Federal orders if such receipts were subject to an administration expense assessment under the other order, and receipts of exempt milk processed at plants other than pool plants;

(b) All receipts and beginning inventory of a cooperative association in its capacity as a handler under § 1001.9(d) for the month less its disposition to pool plants and ending inventory for the month; and

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(c) The quantity distributed as route disposition in the marketing area from a handler's nonpool plant for which a value is determined under § 1001.64(d).

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Massachusetts-Rhode Island-New Hampshire marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on February 26, 1970, and published in the FEDERAL REGISTER on March 4, 1970 (35 F.R. 4056; F.R. Doc. 70-2584), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein except for a change in § 1001.27(a)(2) and in § 1001.27(b)(2).

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 5 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 5 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 nonproducer 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(b) 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 subparagraph (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.

Order[1] Amending the Order, Regulating the Handling of Milk in the Connecticut Marketing Area

FINDINGS AND DETERMINATIONS

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

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Connecticut marketing area. The hearing was held 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 (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Connecticut marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on February 26, 1970, and published in the FEDERAL REGISTER on March 4, 1970 (35 F.R. 4056; F.R. Doc. 70-2584), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein except for changes in §§ 1015.63(e)(1), 1015.88, and 1015.89.

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.

§ 1015.63 [Amendment]

4. In paragraph (e)(1) of § 1015.63, the reference "and (f)" is revoked.

5. Section 1015.89 is revised to read as follows:

§ 1015.89 Adjustment of overdue account.

Any unpaid obligation of a handler under §§ 1015.81 and 1015.88 to the producer settlement fund 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.

[F.R. Doc. 70-4219; Filed, Apr. 7, 1970; 8:46 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 519]

EMPLOYMENT OF FULL-TIME STUDENTS AT SPECIAL MINIMUM WAGES

Termination of Proposed Change in Conditions for Certificates

The rule making proceeding that was commenced with the publication in the FEDERAL REGISTER (34 F.R. 9345) of a proposal to amend §§ 519.4(f) and 519.6(c) of Part 519 of Title 29 of the Code of Federal Regulations to change the conditions for certificates for employment of full-time students is hereby terminated.

Signed at Washington, D.C., this 3d day of April 1970.

ROBERT D. MORAN,
Administrator, Wage and Hour and Public Contracts Divisions.

[F.R. Doc. 70-4215; Filed, Apr. 7, 1970; 8:46 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 130, 146]

DRUGS

Extension of Time for Filing Comments

Extension of time for filing comments on proposed amendments regarding hearing request on refusal or withdrawal of new-drug applications and issuance, amendment, or repeal of antibiotic drug regulations and regarding scientific content of adequate and well-controlled clinical investigations.

The notice of proposed rule making published in the FEDERAL REGISTER of February 17, 1970 (35 F.R. 3073), proposing the repromulgation of an order amending Parts 130 and 146, provided for the filing of comments within 30 days after said date.

The Commissioner of Food and Drugs has received a request to extend this time, and good reason therefor appearing, the time for filing comments on the subject proposal is extended to April 18, 1970.

This action is taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 505, 507, 701(a), 52 Stat. 1052-53, as amended, 1055, 59 Stat. 463, as amended; 21 U.S.C. 355, 357, 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: March 30, 1970.

SAM D. FINE,
Associate Commissioner for Compliance.

[F.R. Doc. 70-4227; Filed, Apr. 7, 1970; 8:47 a.m.]

Public Health Service

[42 CFR Part 81]

METROPOLITAN OMAHA INTERSTATE AIR QUALITY CONTROL REGION

Notice of Proposed Designation and Consultation with Appropriate State and Local Authorities

Pursuant to authority delegated by the Secretary and redelegated to the Commissioner of the National Air Pollution Control Administration (33 F.R. 9909), notice is hereby given of a proposal to designate the Metropolitan Omaha Interstate Air Quality Control Region (Nebraska–Iowa) as set forth in the following new § 81.50, which would be added to Part 81 of Title 42, Code of Federal Regulations. It is proposed to make such designation effective upon republication.

Interested persons may submit written data, views, or arguments in triplicate to the Office of the Commissioner, National Air Pollution Control Administration, Parklawn Building, Room 17-82, 5600 Fishers Lane, Rockville, Md. 20852. All relevant material received not later than 30 days after the publication of this notice will be considered.

Interested authorities of the States of Nebraska and Iowa and appropriate local authorities, both within and without the proposed region, who are affected by or interested in the proposed designation, are hereby given notice of an opportunity to consult with representatives of the Secretary concerning such designation. Such consultation will take place at 10 a.m., April 17, 1970, in the Council Chambers of the City of Omaha, Interim City Hall, 108 South 18th Street, Omaha, Nebr. 68102.

Mr. Doyle J. Borchers is hereby designated as chairman for the consultation. The chairman shall fix the time, date, and place of later sessions and may convene, reconvene, recess, and adjourn the sessions as he deems appropriate to expedite the proceedings.

State and local authorities wishing to participate in the consultation should notify the Office of the Commissioner, National Air Pollution Control Administration, Parklawn Building, Room 17-82, 5600 Fishers Lane, Rockville, Md. 20852, of such intention at least 1 week prior to the consultation. A report prepared for the consultation is available upon request to the Office of the Commissioner.

In Part 81 a new § 81.50 is proposed to be added to read as follows:

§ 81.50 Metropolitan Omaha Interstate Air Quality Control Region.

The Metropolitan Omaha Interstate Air Quality Control Region (Nebraska–Iowa) consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 185h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Nebraska:
Douglas County. Sarpy County.
In the State of Iowa:
Pottawattamie County.

This action is proposed under the authority of sections 107(a) and 301(2) of the Clean Air Act, section 2, Public Law 90-148, 81 Stat. 490, 504, 42 U.S.C. 1857c-2(a), 1857g(a).

Dated: April 1, 1970.

JOHN H. LUDWIG,
Acting Commissioner, National Air Pollution Control Administration.

[F.R. Doc 70-4247; Filed, Apr. 7, 1970; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 31, 33]

[Docket No. 18828; FCC 70-339]

UNIFORM SYSTEM OF ACCOUNTS FOR TELEPHONE COMPANIES

Notice of Proposed Rule Making

In the matter of amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, and Part 33, Uniform System of Accounts for Class C Telephone Companies, of the Commission's rules to provide for deferral accounting for income tax differentials occasioned by the use of accelerated depreciation for income tax purposes; also to make related changes in Annual Report Form M and to provide for interim reporting on Monthly Report Form 901; Docket No. 18828.

1. Notice is hereby given of proposed rule making in the above entitled matter.

2. Section 441, Public Utility Property, of the Tax Reform Act of 1969, covers the use of accelerated depreciation for Federal income tax purposes on certain public utility property, including property, used in furnishing telephone services, or other communications services if furnished or sold by the Communications Satellite Corp. for purposes authorized by the Communications Satellite Act of 1962. From the standpoint of the use of accelerated depreciation for Federal income tax purposes, the status of the domestic telegraph and the international telegraph carriers was not changed by this legislation. The amendments proposed herein relate only to the systems of accounts for telephone companies. It is expected that the Communications Satellite Corp. will be permitted to follow accounting procedures consistent in principle with the amendments finally adopted as a result of this proceeding. The tax amendments generally provide that, with certain exceptions, those utilities affected by the new provisions who are presently normalizing in their accounts with respect to tax differentials occasioned by the use of accelerated depreciation for Federal income tax purposes, shall continue to normalize and that utilities using flow-through accounting with respect to such tax differentials shall continue to use flow-through accounting. It is our understanding that affected utilities, including telephone, not using accelerated depreciation for tax purposes in 1970 or a subsequent year. quired to normalize the tax differentials in their accounts if they elect to use accelerated depreciation for income tax purposes in 1970 or a subsequent year.

3. The Commission has previously interpreted its accounting rules as requiring flow-through accounting with respect to the use of accelerated depreciation for income tax purposes. On February 15, 1961, the Commission, after going through rule making procedures, issued an order in Docket 11913 in which it concluded that no changes should be made in its accounting rules to permit normalization accounting with respect to income tax differentials occasioned by the use of accelerated depreciation for income tax purposes. In that order it was indicated that relatively few communication common carriers were using accelerated depreciation for income tax purposes and that any such carrier that thereafter might use accelerated depreciation could apply for a specific waiver of the rules if it desired to use other than flow-through accounting.

4. The Commission believes that it may be preferable for both the telephone companies and the rate payers if the companies are permitted to use accelerated depreciation for Federal income tax purposes with normalization accounting rather than for the companies to continue to use straight-line depreciation for income tax purposes. Even though there is no reduction in the income tax expense that is recorded in a company's accounts when it uses accelerated depreciation for income tax purposes and normalizes in its accounts, there would be a deferment to future years of the payment of that portion of income tax expense represented by the tax effect of the excess of accelerated tax depreciation expense over straight-line tax depreciation expenses during the early years of the service life of depreciable plant. Telephone companies thus would obtain additional funds to be used for general corporate purposes to the extent that taxes are deferred. The Senate Finance Committee Report on the tax bill indicates that the bill does not change the power of the regulatory agencies to exclude the amount of the deferred tax reserve from the rate base. Since it appears that most subject telephone companies may not be in a position to elect to use accelerated depreciation for Federal income tax purposes unless they normalize in their accounts with respect thereto, we believe that Parts 31 and 33 of our rules should be amended to permit normalization accounting with respect to the use of accelerated depreciation for Federal income tax purposes. It seems desirable also to include in the amendments proposed herein provisions permitting normalization accounting with respect to the use of accelerated depreciation for State and local income tax purposes.

5. Section 441 also requires that, in addition to the use of the normalization method for accounting purposes, telephone companies must, if they are to take advantage of accelerated depreciation, use normalization in determining their cost of service. We would, therefore, propose to adopt the policy, in general, of using normalization to determine the cost of furnishing telephone service for rate making purposes. At the same time, we would not permit the company to earn a return on the amount of the cost free capital represented by the reserve for deferred taxes. This policy is, of course, subject to the requirement that we consider any evidentiary showing to the contrary in a particular rate case. It is our purpose in following such a policy to provide impetus to the use by telephone companies of accelerated depreciation to the benefit, as noted above, of both the companies and the rate payers.

6. In Docket No. 18477, Part 31 was amended, effective January 1, 1970, so as to provide for an all-inclusive income statement and for intra-period income tax allocation. In that amendment, a separate income account was established for Federal income taxes pertaining to telephone operations. It seems appropriate to similarly provide a separate account in Part 31 to include the income tax differentials occasioned by the use of accelerated depreciation for Federal income tax purposes with respect to eligible depreciable telephone plant. Moreover, the Commission believes it is desirable to establish in Part 31, both a separate debit account to be entitled account 308, "Operating Federal income taxes deferred—Accelerated tax depreciation," to include the amounts of Federal income taxes deferred and a separate credit account to be entitled account 309, "Income credits resulting from prior deferrals of Federal income taxes," to include the amounts that are credited to income as a result of the amounts previously deferred being amortized. The amounts of deferred State and local income taxes occasioned by the use of accelerated tax depreciation on eligible depreciable telephone plant are expected to be relatively insignificant in amount. As a consequence, it is believed that debits and credits with respect thereto, need not be shown separately on the income statement. Therefore, it is proposed that both the debit and credit amounts of such tax differentials shall be included in account 307, "Other operating taxes." Also, both debit and credit tax differentials relating to eligible nonoperating depreciable property, which are normally relatively nominal in amount, are proposed to be included in account 326, "Federal income taxes—Nonoperating," or in account 327, "Other nonoperating taxes," as appropriate. It is further proposed that a new balance sheet account to be entitled account 176, "Accumulated deferred income taxes—Accelerated tax depreciation," shall be established to include the balances of all income taxes which have been deferred as a result of the use of accelerated depreciation for income tax purposes.

7. It is proposed that account 176 shall be maintained so as to show separately entries with respect to (a) deferred operating income taxes, further subdivided as between Federal income taxes and State and local income taxes, and (b) deferred nonoperating income taxes. Also, it is proposed that the records supporting the tax deferrals included in account 176, shall be maintained in greater detail by the same large telephone companies that are subject to the Commission's Standard Practices for the Establishment and Maintenance of Continuing Property Records, which practices apply to companies with telephone plant in service in excess of $40 million. It is proposed that these companies shall maintain supporting records with respect to account 176 in such manner as to show

separately tax differentials relating to the plant added in a single year to each class or subclass of plant for which a separate depreciation rate is computed in the accounts. It is our understanding that most of the telephone companies with an investment exceeding $40 million in telephone plant in-service plan to maintain such detailed records in any event to support their tax deductions. However, a provision is proposed to exempt those companies having telephone plant in-service at the end of the previous year of $40 million or less from maintaining the same degree of detail. The amendments proposed for Part 31 provide that these smaller companies need maintain their supporting records only on the basis of separate records for all plant added in a single year.

8. The amendments proposed herein with respect to Part 33 provide for the inclusion of both debit and credit income tax differentials in the existing tax accounts, namely account 5500, "Income taxes," and account 7000, "Miscellaneous taxes," for telephone plant and nonoperating property, respectively. Balance sheet account 2590, "Other deferred credits," is proposed to be amended to include the accumulated deferred taxes.

9. It is our understanding that a telephone company not now using accelerated depreciation may not commence its use for Federal income tax purposes unless it normalizes its accounts with respect to the tax effect thereof and a company cannot switch the depreciation method it uses for tax purposes with respect to any plant during a single year. It therefore seems imperative that the accounting proposed herein be made effective at the beginning of a year. Furthermore, we believe that the use of accelerated depreciation for income tax purposes should be made available to telephone companies as soon as possible. In view of the foregoing, it is believed that the usual elapsed period of 6 months after the adoption of amendments of accounting rules before such amendments are to become effective is not appropriate in this instance. Therefore, it is contemplated that any amendments to the rules that are made as a result of this proceeding will be made effective January 1, 1971, with the provision that any carrier that desires to do so may adopt the changes retroactive to January 1, 1970.

10. The Commission by its Chief, Common Carrier Bureau issued an order, released on February 27, 1970, granting a waiver to telephone companies subject to the provisions of Part 31 of the rules to permit any such company to use on a temporary basis, the accounts proposed herein for use on a permanent basis, for the purpose of normalizing the tax differentials occasioned by the use of accelerated depreciation for income tax purposes. The Wisconsin Public Service Commission (Wisconsin Commission) by letter of March 3, 1970, requested that the waiver order be modified to permit normalization accounting through the depreciation reserve which accounting it states is acceptable under the Tax Reform Act. The Wisconsin Commission contends that this accounting is consistent with the normalization accounting authorized by it since 1954 wherein additional depreciation expense is accrued equal to the net tax reduction occasioned by the use of accelerated depreciation for income tax purposes. On March 16, 1970, the Chief, Common Carrier Bureau advised the Wisconsin Commission that should the Wisconsin Telephone Co., pending finalization of the accounting rules, elect to use accelerated tax depreciation with normalization, such company, as all other Bell System companies, should follow the accounting outlined in the waiver order; and that in reports to the Wisconsin Commission the Wisconsin Telephone Co. could reflect the income and balance sheet deferred tax accounts or subaccounts as subaccounts of the depreciation expense and reserve accounts, respectively. Final adoption of rules changes will, of course, be made only after full and careful consideration of the comments filed pursuant to this notice, including comments, if any, on the Wisconsin method and on the alternative procedures suggested above with respect to the use of subaccounts for reporting purposes when needed to accommodate the requirements of individual regulatory agencies.

11. In the event that the amendments proposed herein are adopted, certain changes in Annual Report Form M and in Monthly Report 901 for telephone companies will be necessary and others, such as a supporting schedule in Annual Report Form M for deferred taxes, may be desirable. However, only minimal changes are now contemplated with respect to the report forms for 1970. It is therefore proposed that Schedule 11, Income and Retained Earnings Statement, of Annual Report Form M will be amended to include therein the two new income accounts (account 308, "Operating Federal income taxes deferred—Accelerated tax depreciation," and account 309, "Income credits resulting from prior deferrals of Federal income taxes") that are proposed to be added and that Schedule 10, Balance Sheet, will be amended to add thereon the proposed new balance sheet account 176, "Accumulated deferred income taxes—Accelerated tax depreciation." It is presently contemplated that Monthly Report 901 will not be formally amended for 1970 but that telephone companies will be requested to interline proposed new accounts 308 and 176, together with amounts included therein, on their monthly reports. It is contemplated that Form 901 will be appropriately amended for 1971 and that consideration will be given at a later date as to any additional changes that may be appropriate in Form M as a result of this proceeding.

12. In view of the foregoing, it is proposed to amend Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, and Part 33, Uniform System of Accounts for Class C Telephone Companies, of the rules as set forth below.

13. This notice of proposed rule making is issued under authority of sections 4(i), 219, and 220 of the Communications Act of 1934, as amended.

14. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before May 8, 1970, and reply comments on or before May 18, 1970. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

15. In accordance with the provisions of § 1.419 of the Commission's rules and regulations, an original and fourteen copies of all statements or briefs shall be furnished to the Commission.

Adopted: April 1, 1970.

Released: April 3, 1970.

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

I. Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, is amended as follows:

1. New § 31.176 is added as follows:

§ 31.176 Accumulated deferred income taxes—Accelerated tax depreciation.

(a) This account shall include the balance of income tax expense that has been deferred to later periods as a result of the use of the normalized method of accounting for tax differentials arising from the use of accelerated depreciation for income tax purposes. (See § 31.3–32.)

(b) This account shall be credited with the amounts charged to accounts 307, "Other operating taxes," 308, "Operating Federal income taxes deferred—Accelerated tax depreciation," 326, "Federal income taxes—Nonoperating," and 327, "Other nonoperating taxes," in accordance with the provisions of § 31.3–32.

(c) This account shall be charged with the amounts credited to accounts 307, 309, "Income credits resulting from prior deferrals of Federal income taxes," 326 and 327 in accordance with the provisions of § 31.3–32.

(d) Adjustments shall be made between this account and account 307, account 309, account 326 or account 327, as appropriate, upon the sale of any property with respect to which amounts are included herein.

(e) Subdivisions of this account and records supporting such subdivisions shall be maintained in accordance with the provisions of § 31.3–32.

2. New § 31.3–32 is added as follows:

§ 31.3–32 Normalization accounting for tax differentials resulting from the use of accelerated depreciation for income tax purposes.

(a) Any company that uses accelerated depreciation for income tax purposes shall normalize the tax differentials

[1] Commissioner H. Rex Lee absent.

occasioned thereby as indicated hereinafter: *Provided, however,* That in lieu of the accounting prescribed herein, any company may treat the reduction in current income taxes payable resulting from the use of accelerated depreciation for tax purposes as a reduction in current income tax expense to the extent that it is eligible under law and elects to continue to follow flow-through accounting.

(b) With respect to each vintage class or subclass of eligible depreciable telephone plant (except as provided in paragraph (d) of this section) that is recognized for depreciation accounting purposes, or the amount in account 103, "Miscellaneous physical property," for which the use of accelerated depreciation for income tax purposes results in a great amount of tax depreciation in the current year than under straight line depreciation, the tax differential occasioned by such use shall be accounted for in the manner indicated hereinafter. A tax differential with respect to State and local income taxes relating to eligible depreciable telephone plant shall be charged to account 307, "Other operating taxes"; a tax differential with respect to Federal income taxes relating to eligible depreciable telephone plant shall be charged to account 308, "Operating Federal income taxes deferred—Accelerated tax depreciation"; a tax differential with respect to Federal income taxes on eligible nonoperating depreciable property shall be charged to account 326, "Federal income taxes—Nonoperating"; and a tax differential with respect to State and local income taxes relating to eligible nonoperating depreciable property shall be charged to account 327, "Other nonoperating taxes." The appropriate subaccount of account 176, "Accumulated deferred income taxes—Accelerated tax depreciation," shall be credited with the amounts charged to each of the foregoing accounts in accordance with the provisions of paragraph (d) of this section.

(c) With respect to each vintage class or subclass of eligible depreciable plant or the amount in account 103 for which the use of accelerated depreciation for income tax purposes results in a lesser amount of tax depreciation in the current year than under straight line depreciation, the tax differential resulting from such use that is determined on an equitable basis as being applicable to the current year, shall be charged to the appropriate subdivision of account 176, "Accumulated deferred income taxes—Accelerated tax depreciation," and credited to account 307, "Other operating taxes," account 309, "Income credits resulting from prior deferrals of Federal income taxes," account 326, "Federal income taxes—Nonoperating," or account 327, "Other nonoperating taxes," as appropriate: *Provided, however,* That, in lieu of continuing to amortize the balance in account 176 in the manner indicated above until the retirement of all plant of a vintage class or subclass, any company may submit for the consideration and approval of the Commission a plan of straight-line amortization for relatively small balances remaining in account 176.

(d) Account 176 shall be maintained so as to show separately (1) deferred operating income taxes, further subdivided as between Federal income taxes and State and local income taxes, and (2) deferred nonoperating income taxes. The records underlying entries to and the balances in account 176 shall be kept so as to show the deferred tax amounts by vintage year separately for each class or subclass of eligible depreciable telephone plant for which an accelerated method of depreciation has been used for income tax purposes, except that any company that had a balance of $40 million or less in account 100:1, "Telephone plant in service," as at the end of the previous year may use as its vintage class all or any portion of the eligible depreciable telephone plant added in a single year.

(e) Debit and credit tax differentials with respect to Federal income taxes relating to eligible depreciable telephone plant shall not be netted but shall be charged and credited, in all instances, to the accounts indicated herein.

3. In § 31.306, Note A is amended to read as follows:

§ 31.306 Federal income taxes—Operating.

* * * * *

NOTE A: No entries shall be made in this account to reflect interperiod allocation of taxes except as provided in Case 26. (See, however, § 31.3–32 with respect to interperiod allocation of income taxes in connection with the use of an accelerated method of depreciation for Federal income tax purposes.)

* * * * *

4. Section 31.307 is amended by adding new paragraphs (c) and (d) reading as follows:

§ 31.307 Other operating taxes.

* * * * *

(c) This account shall be charged also and account 176, "Accumulated deferred income taxes—Accelerated tax depreciation," shall be credited, in accordance with the provisions of § 31.3–32, with the amounts of income tax differentials applicable to the current period resulting from the deferral of income taxes occasioned by the use of accelerated depreciation for State and local income tax purposes with respect to eligible depreciable telephone plant.

(d) This account shall be credited and account 176 shall be charged, in accordance with the provisions of § 31.3–32, with the amounts of income tax differentials applicable to the current period resulting from the deferral in prior years of income taxes occasioned by the use of accelerated depreciation for State and local income tax purposes with respect to eligible depreciable telephone plant.

5. New § 31.308 is added as follows:

§ 31.308 Operating Federal income taxes deferred—Accelerated tax depreciation.

This account shall be charged and account 176, "Accumulated deferred income taxes—Accelerated tax depreciation," shall be credited, in accordance with the provisions of § 31.3–32, with the amounts of income tax differentials applicable to the current period resulting from the deferral of income taxes occasioned by the use of accelerated depreciation for Federal income tax purposes with respect to eligible depreciable telephone plant.

6. New § 31.309 is added as follows:

§ 31.309 Income credits resulting from prior deferrals of Federal income taxes.

This account shall be credited and acocunt 176, "Accumulated deferred income taxes—Accelerated tax depreciation," shall be charged, in accordance with the provisions of § 31.4–32, with the amounts of income tax differentials applicable to the current period resulting from the deferral in prior years of income taxes occasioned by the use of accelerated depreciation for Federal income tax purposes with respect to eligible depreciable telephone plant.

7. Section 31.326 is amended by redesignating the present text as paragraph (a) and adding new paragraphs (b) and (c) to read as follows:

§ 31.326 Federal income taxes—Nonoperating.

(a) This account shall include the amounts of Federal income taxes and the reductions in such income taxes that are applicable to items included in accounts 312, 313, 314, 315, 316, 323, and 327.

(b) This account shall be charged also and account 176, "Accumulated deferred income taxes—Accelerated tax depreciation," shall be credited, in accordance with the provisions of § 31.3–32, with the amounts of income tax differentials applicable to the current period resulting from the deferral of income taxes occasioned by the use of accelerated depreciation for Federal income tax purposes with respect to eligible nonoperating depreciable property.

(c) This account shall be credited and account 176 shall be charged, in accordance with the provisions of § 31.3–32, with the amounts of income tax differentials applicable to the current period resulting from the deferral in prior years of income taxes occasioned by the use of accelerated depreciation for Federal income tax purposes with respect to eligible nonoperating depreciable property.

8. Section 31.327 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 31.327 Other nonoperating taxes.

* * * * *

(c) This account shall be charged also and account 176, "Accumulated deferred income taxes—Accelerated tax depreciation," shall be credited, in accordance with the provisions of § 31.3–32, with the amounts of income tax differentials applicable to the current period resulting from the deferral of income taxes occasioned by the use of accelerated depreciation for State and local income tax

purposes with respect to eligible nonoperating depreciable property.

(d) This account shall be credited and account 176 shall be charged, in accordance with the provisions of § 31.3–32, with the amounts of income tax differentials applicable to the current period resulting from the deferral in prior years of income taxes occasioned by the use of accelerated depreciation for State and local income tax purposes with respect to eligible nonoperating depreciable property.

* * * * *

II. Part 33, Uniform System of Accounts for Class C Telephone Companies, is amended as follows:

1. In § 33.2590 paragraph (a) is amended to read as follows:

§ 33.2590 **Other deferred credits.**

(a) This account shall include the amounts of all deferred credits, not provided for elsewhere, that cannot be entirely cleared or disposed of until additional information has been received or amounts that are being held for credit to other accounts in the future, including investment credits and deferred income taxes occasioned by the use of accelerated depreciation for income tax purposes.

* * * * *

2. In § 33.5500 the present text is redesignated as paragraph (a), new paragraphs (b) and (c) are added and the note is amended. The section, as amended, reads as follows:

§ 33.5500 **Income taxes.**

(a) This account shall include the amounts of Federal, State, and local government taxes on net income applicable to telephone operations, including additional assessments of such taxes. Taxes accrued through this account prior to their payment shall be credited to account 2400, "Accrued liabilities."

(b) This account shall be charged and account 2590, "Other deferred credits," shall be credited with the amounts of income tax differentials applicable to the current period that are occasioned by the use of accelerated depreciation for Federal, State, and local income tax purposes with respect to eligible depreciable telephone plant.

(c) This account shall be credited and account 2590 shall be charged with the amounts of income tax differentials applicable to the current period resulting from the deferral in prior years of income taxes occasioned by the use of accelerated depreciation for Federal, State, and local income tax purposes with respect to eligible depreciable telephone plant.

NOTE: Income taxes and income tax differentials that are not applicable to telephone operations shall be included in account 7000, "Miscellaneous taxes."

3. Case 13 of Appendix A is redesignated as Case 13–R–1 and the Answer is amended to read as follows:

Case 13–R–1 (Cancels Case 13)

JANUARY 1, 1970.

* * * * *

Answer: No. Account 5500, "Income taxes," should include provision for actual taxes only except for taxes deferred with respect to the use of accelerated depreciation for income tax purposes with respect to eligible telephone plant. Account 5500 should not be increased by the amount which would have been paid had the refunding transaction not occurred. In other words, there was an actual saving in taxes, and this saving should be reflected in the income statement because it is a fact.

[F.R. Doc. 70–4257; Filed, Apr. 7, 1970; 8:49 a.m.]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Part 561]

[No. 23,969]

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Definition of Scheduled Items; Withdrawal of Proposed Rule Making

APRIL 2, 1970.

Whereas, by Resolution No. 22,368, dated November 27, 1968, and duly published in the FEDERAL REGISTER on December 5, 1968 (33 F.R. 18102), this Board resolved to propose that paragraph (d) of § 561.15 of the Rules and Regulations for Insurance of Accounts (12 CFR 561.15(d)) be amended by an amendment the substance of which was set out in said publication, and

Whereas, careful consideration has been given to such proposed amendment;

It is hereby resolved, that this Board determines not to adopt the amendment proposed by said Resolution No. 22,368.

(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 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER, *Secretary.*

[F.R. Doc. 70–4252; Filed, Apr. 7, 1970; 8:49 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Airworthiness Docket No. 70–SW–18]

BELL MODEL 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, AND 47H–1 HELICOPTERS

Proposed Airworthiness Directive

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Bell Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, and 47H–1 helicopters. On some wood main rotor blade assemblies there have been reports of improper casting material being used for the drag link equalizer horns, P/N 47–120–167–1, that could result in the failure of these horns and in severe vibration necessitating an emergency landing.

Since this condition is likely to exist on other helicopters of the same type design equipped with wood main rotor blades, the proposed airworthiness directive would require an inspection of the equalizer horn for proper hardness within 50 hours' time in service on Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, and 47H–1 helicopters.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or comments as they may desire. Communications should identify the docket number and be submitted in triplicate to the Regional Counsel, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Tex. 76101. All communications received on or before May 5, 1970, will be considered by the Director, before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Tex.

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

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

BELL. Applies to Bell Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47H–1 helicopters, and to any other helicopters, equipped with wood main rotor blades and drag link equalizer horn, P/N 47–120–167–1. Compliance required within 50 hours' time in service after the effective date of this AD unless already accomplished.

To prevent possible failure of the drag link equalized horn due to improper casting material, accomplish the one time inspection for hardness as specified in Part I and Part II of Bell Helicopter Co. Service Bulletin No. 144SB dated October 9, 1969. Before further flight remove and replace horns having hardness values below those specified in Part II of Bell Helicopter Co. Service Bulletin No. 144SB.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Service Manager, Bell Helicopter Co., Post Office Box 482, Fort Worth, Tex. 76101.

These documents may also be examined at the Office of the Regional Counsel, Southwest Region, FAA, 4400 Blue Mound Road, Fort Worth, Tex., and at FAA Headquarters, 800 Independence Avenue SW., Washington, D.C. A historical file on this AD which includes the incorporated material in full is maintained by the FAA at its headquarters

in Washington, D.C., and at the Southwest Region Office in Fort Worth, Tex.

Issued in Fort Worth, Tex., on March 26, 1970.

The incorporation by reference provisions in this document were approved by the Director of the Federal Register on June 19, 1967.

HENRY L. NEWMAN,
Director, South Region.

[F.R. Doc. 70-4233; Filed, Apr. 7, 1970; 8:47 a.m.]

[14 CFR Part 39]

[Airworthiness Docket No. 70-SW-16]

BELL MODEL 206A SERIES HELICOPTERS

Proposed Airworthiness Directive

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Bell Model 206A helicopters. Failures of engine compressor shaft bearings have resulted in loss of power from the engine and have required an emergency landing of the helicopter. Investigation has revealed that a probable cause for these bearing failures is an engine case bending condition. This condition is attributed to the firewall-to-compressor seal excessively restricting the vibratory motion of the compressor front flange. Since this condition is likely to exist in other helicopters of the same type design, the proposed airworthiness directive would require replacement of the firewall-to-compressor seal with a seal which is less restrictive to movement of the engine compressor front flange.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or comments as they may desire. Communications should identify the docket number and be submitted in triplicate to the Regional Counsel, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Tex. 76101. All communications received on or before May 5, 1970, will be considered by the Director before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available for examination by interested persons before and after the closing date for comments, in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Tex.

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

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

BELL. Applies to Model 206A Helicopters S/N 4 through 448, 460 through 464, 467, 469 through 473, and 475 through 477.

Compliance required not later than 300 hours time in service after the effective date of this Airworthiness Directive, unless already accomplished.

To relieve engine compressor flange loads, replace existing firewall-to-compressor seal with a new improved firewall seal kit, Bell Part No. 206-704-026-1, in accordance with paragraphs 1 through 9 of Bell Service Letter 206A-142, Revision "A" dated March 2, 1970, or later FAA approved revision, or an equivalent method approved by the Chief, Engineering and Manufacturing Branch, FAA Southwest Region.

Issued in Fort Worth, Tex., on March 24, 1970.

HENRY L. NEWMAN,
Director, Southwest Region.

[F.R. Doc. 70-4234; Filed, Apr. 7, 1970; 8:47 a.m.]

[14 CFR Part 39]

[Airworthiness Docket No. 70-SW-15]

BELL MODEL 206A SERIES HELICOPTERS

Proposed Airworthiness Directive

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Bell Model 206A helicopters. Failures of sixth stage engine compressor blades have resulted in loss of power from the engine and have required emergency landings of the helicopters. Investigation has revealed that a probable cause for these compressor blade failures is the loss of effective action of the generator shaft torsional damper. As a result, generator shaft oscillatory torsional motions are transmitted undiminished to the engine at frequencies which may, under certain operating conditions, coincide with the natural frequency of sixth stage compressor blades. A corresponding increase in compressor blade stress will occur. Since this condition is likely to exist in other helicopters of the same type design, this proposed airworthiness directive would require replacement of the existing voltage regulator with a different type regulator which decouples the regulator response frequency from the generator's natural frequency. The corresponding reduction in generator shaft oscillatory loads will reduce compressor blade stresses originating from generator sources.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or comments as they may desire. Communications should identify the docket number and be submitted in triplicate to the Regional Counsel, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Tex. 76101. All communications received on or before May 5, 1970, will be considered by the Director before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available for examination by interested persons before and after the closing date for comments, in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Tex.

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

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

BELL. Applies to all Model 206A helicopters equipped with voltage regulator P/N 206-075-027-3.

Compliance is required within 300 hours time in service after the effective date of this airworthiness directive, unless already accomplished.

Replace the voltage regulator, Bell P/N 206-075-027-3, in accordance with the instructions in paragraphs 1 through 11, as applicable, of Bell Helicopter Co. Service Letter No. 206A-139, Revision "A", dated October 14, 1969, or later FAA-approved revision.

Alternate means of compliance or equivalent replacement parts may be acceptable if approved by the Director, Southwest Region, Federal Aviation Administration.

Issued in Fort Worth, Tex., on March 24, 1970.

HENRY L. NEWMAN,
Director, Southwest Region.

[F.R. Doc. 70-4235; Filed, Apr. 7, 1970; 8:48 a.m.]

[14 CFR Part 39]

[Airworthiness Docket No. 70-WE-12-AD]

BOEING AIRPLANE CO. MODELS 707/720, 727 AND 737 SERIES

Proposed Airworthiness Directive

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Boeing Models 707/720, 727, and 737 series airplanes. There are incidents of inflight fire, damage to wiring, and unprotected electrical circuits which are attributed to Wood Electric Co.'s Model 108 single phase circuit breakers which have become jammed in the closed position.

Boeing has previously issued the following Service Bulletins recommending testing to locate jammed circuit breakers and replacement.

Model 707/720:
2693, December 14, 1967.
2693 Revision 1, January 26, 1968.
6993 Revision 2, March 20, 1970.
Model 727:
24-35, December 14, 1967.
24-35 Revision 1, January 16, 1968.
24-35 Revision 2, March 20, 1970.
Model 737:
24-1019, March 20, 1970.

Tests have determined that with the breaker in the closed position, if the push

button is subjected to a static load of 75 pounds or an impact of approximately 8 inch-pounds, or the breaker dropped on the button from a height of approximately 4.5 feet, it is possible to mechanically jam the breaker and prevent it from being opened either manually or thermally.

Since this condition is likely to exist or develop in all Boeing airplanes on which the Wood Model 108 circuit breakers are installed, the proposed airworthiness directive would require that they be periodically tested until replaced.

The Wood Electric Co. Model 108 circuit breaker is a derivative from a basic Wood's Model 105 design. Other derived models such as Models 108, 447, and 448 are installed on other types of aircraft. At this time there are no reported incidents with models other than the 108. Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, FAA Western Region, Attention: Regional Counsel, Airworthiness Rules Docket, Post Office Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009. All communications received on or before May 8, 1970, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

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

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new Airworthiness Directive:

BOEING. Applies to Boeing Models 707/720, 727, and 737 airplanes.

Compliance required as indicated unless already accomplished.

To detect damaged circuit breakers, at a period not to exceed 250 hours' time in service after the effective date of this AD and thereafter every 1,000 hours' time in service, manually open and close all Wood Electric Co. single phase circuit breakers, Model 108, 5 to 35 amps (inclusive) installed in aircraft. All circuit breakers found jammed must be replaced.

Within 5,000 hours' time in service or by the next major airframe overhaul scheduled after 1,000 hours' time in service after the effective date of this AD, whichever comes first, all Wood Electric Co. single phase circuit breakers Model 108 must be replaced by circuit breakers approved by the Boeing Co. or by the Chief, Aircraft Engineering Division, FAA Western Region.

Wood Electric Co. part Nos.	*Boeing part Nos.*
108-205-102	BACC18R-5B
108-507-102	BACC18R-7B
108-210-102	BACC18R-10B
108-215-102	BACC18R-15B
108-220-102	BACC18R-20B
108-225-102	BACC18R-25B
108-235-102	BACC18R-35B

Tests by the Boeing Co. have indicated that Mechanical Products, Inc. Model 700 and Wood Electric Co. Model 492 circuit breakers have been tested for mechanical jamming and have been found to be satisfactory replacements. These are only two of the models which have been approved by the FAA.

Issued in Los Angeles, Calif., on March 30, 1970.

ARVIN O. BASNIGHT,
Director, Western Region.

[F.R. Doc. 70-4232; Filed, Apr. 7, 1970; 8:47 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 70-CE-16]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Wabash, Ind.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

A new public use instrument approach procedure has been developed for the Wabash, Ind., Municipal Airport, utilizing a city-owned radio beacon located on the airport as a navigational aid. In addition, the criteria for designation of transition areas have been changed. Accordingly, it is necessary to alter the Wabash transition area to adequately protect aircraft executing the new approach procedure and to comply with the new transition area criteria.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (35 F.R. 2134), the following transition area is amended to read:

WABASH, IND.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Wabash Municipal Airport (latitude 40°-45'50" N., longitude 85°48'05" W.); within 5 miles each side of the 105° bearing from Wabash Municipal Airport extending from the 5-mile radius area to 12 miles east of the airport; and within 2 miles each side of the 040° radial of the Kokomo, Ind., VORTAC, extending from the 5-mile radius area to 15 miles northeast of the Kokomo, Ind., VORTAC; excluding the portion which overlies the Kokomo, Ind., 700-foot floor transition area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on March 11, 1970.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 70-4236; Filed, Apr. 7, 1970; 8:48 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 70-CE-19]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Wisconsin Rapids, Wis.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

Since designation of controlled airspace at Wisconsin Rapids, Wis., an amended public use instrument approach procedure has been developed for Alexander Field-Southwood County Airport. In addition, the criteria for designation of transition areas have been changed. Accordingly, it is necessary to alter the Wisconsin Rapids transition area to adequately protect aircraft executing the amended approach procedure and to comply with the new transition area criteria.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (35 F.R. 2134), the following transition area is amended to read:

WISCONSIN RAPIDS, WIS.

That airspace extending upward from 700 feet above the surface within a 6½-mile radius of the Alexander Field-Southwood County Airport (latitude 44°21'30" N., longitude 89°50'15" W.); and within 3 miles each side of the 193° bearing from Alexander Field-Southwood County Airport, extending from the 6½-mile radius area to 8 miles south of the airport.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on March 9, 1970.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 70-4237; Filed, Apr. 7, 1970; 8:48 a.m.]

[14 CFR Part 7]

[Airspace Docket No. 70-CE-20]

CONTROL ZONE

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a control zone at Carbondale, Ill.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

Accredited airport management personnel are providing weather reporting services at Southern Illinois Airport, Carbondale, Ill., and surface communications are also being provided there so that a part-time control zone can be designated at this location. Accordingly, it is advisable to designate a part-time control zone at Carbondale, Ill., to provide controlled airspace for the protection of aircraft executing prescribed instrument approach procedures at this airport. The control zone will be effective during the times that the control tower is in operation, initially from 1400Z to 2300Z daily, and will be so published in advance by a Notice to Airmen. The effective date and time of the control zone and any changes thereto will thereafter be continuously published in the Airman's Information Manual. Air traffic control service at this airport will be provided by the Kansas City Air Route Traffic Control Center.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.171 (35 F.R. 2054), the following control zone is added:

CARBONDALE, ILL.

Within a 5-mile radius of Southern Illinois Airport (latitude 37°46'50" N., longitude 89°15'15" W.); and within 3 miles each side of the 014° bearing from Southern Illinois Airport, extending from the 5-mile radius zone to 8 miles north of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on March 18, 1970.

EDWARD C. MARSH,
Director, Central Region.

[F.R. Doc. 70-4238; Filed, Apr. 7, 1970; 8:48 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 70-EA-8]

FEDERAL AIRWAY SEGMENT

Proposed Revocation

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would revoke VOR Federal airway V-47 west segment between Cincinnati, Ohio, and the Englewood, Ohio, intersection.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20590. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

V-47W is presently designated, in part, on the Dayton, Ohio, Municipal Airport ILS localizer southwest course. Also, the Dayton ILS localizer intersects V-275 at the Camden, Ohio, intersection. The ILS portion of V-47W has a minimum en route altitude of 2,700 feet MSL and a maximum authorized altitude of 6,000 feet MSL. This provides only four usable altitudes.

The Dayton localizer and associated ILS components will be relocated to serve a newly constructed Runway 6-L. Therefore, the localizer will no longer intersect V-275 at the Camden intersection. A transition route will be established between the Camden intersection and the Dayton 6-L outer marker compass locator.

In view of the foregoing, the FAA proposes the revocation of V-47W between the Cincinnati VORTAC and Englewood intersection.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

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

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

[F.R. Doc. 70-4239; Filed, Apr. 7, 1970; 8:48 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 70-SW-8]

FEDERAL AIRWAY SEGMENT

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that

would realign VOR Federal airway No. 14 south segment from Oklahoma City, Okla.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Tex. 76101. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20590. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The Federal Aviation Administration proposes to realign VOR Federal airway No. 14 south alternate segment from Oklahoma City, Okla., via the intersection of Oklahoma City 087° T (078° M) and Tulsa, Okla., 228° T (220° M) radials; to Tulsa. This realigned south alternate segment would serve all eastbound aircraft departing Oklahoma City destined to land at Tulsa or terminals east of Tulsa.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

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

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

[F.R. Doc. 70-4240; Filed, Apr. 7, 1970; 8:48 a.m.]

Office of Pipeline Safety

[49 CFR Part 192]

[Notice 70-7; Docket No. OPS-3G]

MINIMUM FEDERAL SAFETY STANDARDS FOR GAS PIPELINES

Definitions; Materials; and Pipe, Piping System Components and Facilities, Design

The Department of Transportation is developing proposals for the comprehensive minimum Federal safety standards for gas pipeline facilities and for the transportation of gas, as required by section 3(b) of the Natural Gas Pipeline Safety Act of 1968. This notice of proposed rule making is the last of a series of notices by which the proposed Federal safety standards will be issued for public comment.

Interested persons are invited to participate in the making of these proposed rules by submitting written data, views, or arguments as they may desire. Communications should identify the regulatory docket and notice number and be submitted in duplicate to the Office of Pipeline Safety, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590. Communications received before May 25, 1970, will be considered before taking final action on this notice. All comments will be available for examination by interested persons at the Office of Pipeline Safety before and after the closing date for comments. The proposals contained in this notice may be changed in light of comment received.

The first notice in this series was published in the FEDERAL REGISTER on November 21, 1969 (Notice 69-3; 34 F.R. 18556). That notice discussed both the Department's plan for establishing the minimum Federal standards and the source materials to be used in developing proposals for these standards. It proposed, without stating specific regulatory language, several requirements for inclusion in the minimum Federal standards.

This notice proposes specific regulations that contain the scope of Part 192, definition of terms, and requirements for the qualification of materials and design of piping system components and facilities. These proposed regulations are derived from—

(1) The scope and definitions of the Natural Gas Pipeline Safety Act; and

(2) The definitions, Chapter I, and the design provisions of Chapters III and IV, of the USAS B31.8 Code.

SUBPART A—GENERAL

Section 192.1 sets forth the scope of the minimum standards and is as broad as the coverage of the Act itself. It also clearly states the applicability of these standards to offshore pipelines that lie on the outer continental shelf, outside the boundaries of any State. Paragraph (b) excludes gathering lines outside of certain specified areas from applicability of this part. In effect, these specified areas are being defined as nonrural areas as provided for in the definition of "transportation of gas" that is set forth in the Act.

Section 192.3 contains the definitions of section 2 of the Act, with the exception of a few terms that are not used in this regulation. Some minor changes have been made to adopt them to these proposed standards. Gathering lines in nonrural areas are not excepted in the proposed definition of "transportation of gas." These lines will be excluded from the scope of the part by § 192.1(b). Other definitions are based on the definitions in the USAS B31.8 Code.

Section 192.5 will contain the class location definitions which were formally proposed in Notice 70-4 (34 F.R. 5012, Mar. 24, 1970) and are not included herein. Although these are primarily used in determining pipeline design, they will be referred to frequently in other subparts and are proposed for inclusion in Subpart A.

Section 192.7 contains a list of all documents that are incorporated by reference into Part 192. This is included to meet the requirements of the Freedom of Information Act (5 U.S.C. sec. 552) that all incorporated matter be reasonably available to the public. To assure this, the full title of each such document and addresses at which it is available or may be obtained are listed. This list will include all specifications which would qualify pipe for use under this part.

Section 192.9 sets forth special requirements for liquefied petroleum gas (LPG) systems which are presently contained in section 862 of the B31.8 Code. Although the Act does not apply to "liquefied" gas, it does apply to any pipeline facilities that are used in the transportation of a gaseous product. The USAS B31.8 Code required these systems to comply with both the B31.8 Code and NFPA Standards 58 and 59. This has been clarified slightly by adding a sentence to provide that, in the event of conflicting provisions, Part 192 standards will govern.

SUBPART B—MATERIALS

Subpart B is based entirely on Chapter I of the B31.8 Code. Much of the detail on qualifying materials other than pipe has been omitted from this proposal and general performance type requirements, as set forth in § 192.53, would be relied upon to assure the suitability of these materials. These would be specific requirements for both new and used pipe similar to those in the existing regulations.

Steel pipe, both new and used, would have to be qualified under § 192.55. This section would permit the use of new pipe made in accordance with a listed specification (see discussion below on Appendix B). Used pipe and new pipe of unlisted specification would be required to meet certain tests or be restricted to low stress level lines. The procedures and limits contained in section 811.253 of the USAS B31.8 Code have been divided into two groups. Those that contained qualifying tests have been placed in Appendix B while the others, which involved determining values for use in the design formula, would be set forth in the appropriate provisions dealing with steel pipe design. The provisions for hydrostatic testing need not be stated since this is covered by proposed Subpart J.

The requirements for new and used pipe of other materials are proposed in § 192.57 through 192.61. The requirements for qualifying used cast iron and ductile iron pipe would not require a minimum wall thickness as this will be covered by the design requirement of proposed Subpart C. The provisions of section 814 with respect to cold climates are adequately covered by the performance requirements of § 192.53 which require consideration of environmental conditions when selecting materials.

SUBPART C.—PIPE DESIGNS

This subpart sets forth pipe design requirements and limitations that are derived from sections of chapter IV of the B31.8 Code. Section 192.103 contains the design formula for steel pipe and §§ 192.105 through 192.113 contain requirements for determining certain of

the values which are used in the design formula. Sections 192.105, 192.107, and 192.111 include the provisions taken from section 811.253 of the B31.8 Code, as discussed above. One significant change in this area is the elimination of construction types A, B, C, and D. Since these types of construction were virtually synonymous with the various values of design factor F, these values can easily be substituted by relating class location directly to design factor as it is done elsewhere in the B31.8 Code. This direct relationship has a few exceptions which are expressed in paragraphs (b) and (c) of § 192.109. A new performance requirement has been added to replace all of the various tables that are used to determine wall thickness. This would require that the pipe be sufficiently thick to withstand any external pressures such as cover and those external loads that can reasonably be anticipated after installation. In addition, certain provisions that related to testing have been placed in proposed Subpart J.

Appendix B—Qualification of Pipe. This appendix would set forth the two methods by which pipe could be qualified for use under this part. Section I would contain a list of all acceptable pipe specifications. It would not list any specification for structural materials or components which would be governed by performance requirements in Subparts B and D. Section II of the appendix would contain several tests that are designed to qualify used steel pipe or new steel pipe of an unknown or unlisted specification. These are derived from paragraphs A, B, E, F, and G of section 811.253 of the B31.8 Code.

Appendix C—Documents Incorporated by Reference. The appendix will contain a list of all documents incorporated by reference in Part 192 as well as the names and addresses of the organizations that issue these documents. The list of documents will contain the number of the specification or standard, its full title and the applicable edition. The edition listed in proposed Appendix C corresponds to that listed in the B31.8 Code. However, upon issuing the final regulations, this list may be updated by incorporating the most recent edition of the referenced standard or specification. Interested persons are requested to comment on this proposed change by indicating whether the use of the newer editions would cause a significant change in the impact of the regulations involved.

Subpart D—Design of Piping System Components and Facilities

This subpart prescribes minimum requirements for the design and installation of components of piping systems, including valves, flanges, bolting, standard and special fittings, special components fabricated by welding, extruded outlets, anchorage for exposed or buried piping, and also those additional materials referred to below.

Please note that the organization of Subpart D differs from that of chapter III of the B31.8 Code (Piping System Components and Fabrication Details). In addition to the subjects covered in that chapter, Subpart D also deals with certain subjects now included in chapter IV of the B31.8 Code (Design, Installation and Testing), that were thought to be appropriately classified as piping system components or facilities. These additional subjects include compressor stations, pipe-type and bottle-type holders, and vaults, as well as the design and installation of pressure relief and pressure limiting devices to protect against accidental overpressuring.

Section 192.146 (partly based on section 821.33 of the B31.8 Code) would prohibit the use of threaded taps in cast iron pipe 5 inches in nominal diameter or smaller, except for existing taps used for replacement service that are free of cracks and have good threads, and taps used for gas control equipment which are closed after use by means of a threaded plug or reinforcing sleeve. In cast iron pipe larger than 6 inches nominal diameter, threaded taps would be permitted without reinforcement to a size not more than 25 percent of the nominal diameter of the pipe, but larger taps would have to be covered by reinforcing sleeves. These additional requirements are based on the proposed NARUC Model Code and the Michigan State Code.

Section 192.187(d) (based on section 845.61 of the B31.8 Code), would provide that support for pressure relief or pressure limiting devices would have to be made of noncombustible material. This requirement is based on the Massachusetts and Vermont Codes.

Section 192.188 (partly based on section 845.72 of the B31.8 Code) would require that when more than one pressure regulating station or compressor station feeds into a pipeline or distribution system, each station would be required to have a relief valve or other protective device installed to insure that the complete failure of the largest capacity of any single run or lesser capacity regulators or compressors in that station would not impose pressures on any part of the distribution system, in excess of those it was designed for or protected against, whichever is lower. In addition, relief valves or other pressure limiting devices would be required at or near regulator stations in low pressure systems, with the capacity to limit the maximum pressure in the main to 2 p.s.i.g. These additional requirements are based on the Vermont State Code.

Section 192.165 would substitute the design factors required by § 192.109, for the table included in section 844.32(a) of the B31.8 Code, in order to make both of these sections consistent.

In consideration of the foregoing, the Department proposes to amend Title 49 of the Code of Federal Regulations by adding a new Part 192 to include Subparts A, B, C, and D as set forth below.

This notice is issued under the authority of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. sec. 1671 et seq.), Part 1 of the Regulations of the Office of the Secretary of Transportation (49 CFR Part 1), and the delegation of authority to the Director, Office of Pipeline Safety, dated November 6, 1968 (33 F.R. 16468).

Issued in Washington, D.C., on April 3, 1970.

W. C. Jennings,
Acting Director,
Office of Pipeline Safety.

Derivation Table

New section	Source
192.1	New.
192.3	New.
192.5	841.01.
192.7	New.
192.9(a)	862.3.
192.9(b)	862.4.
192.51	New.
192.53(a)(1)	810.1.
192.53(a)(2)	810.1 and 814.
192.53(b)	813.1.
192.55(a)(1)	811.21.
192.55(a)(2)	811.253.
192.55(a)(3)	811.252.
192.55(b)(1)	811.253.
192.55(b)(2)	811.253.
192.55(b)(3)	811.251.
192.55(b)(4)	811.252.
192.55(c)	811.252.
192.55(d)	813.2.
192.57(a)	811.21.
192.57(b)	811.26.
192.59(a)	811.27.
192.59(b)	811.28.
192.61	New.
192.63	812.
192.65	
192.101	816.
192.103	New.
192.105(a)	841.1.
192.105(b)	841.1.
102.107	811.253G.
192.109(a)	811.253C.
192.109 (b) and (c)	841.11.
192.109(d)	841.02.
192.111	841.011(b).
192.113	841.12 and 811.253D.
192.115(a)	841.13.
192.115(b)	841.171.
192.117(a)	841.122. 841.14(e).
192.117(b)	841.14(d) and 841.141.
192.119(a)	842.11 and 842.12. 842.13, 842.14.
192.119(b)	842.141 and 842.142.
192.121	842.211 through 842.214.
192.123	
192.125	842.32 and 842.33.
192.127	842.611.
192.142	831.
192.143	841.11(b).
192.144(a)	831.22(a).
192.144(b)	831.22(g).
192.144(c)	831.23.
192.145	831.31.
192.146(a) and (b)	Michigan Code and NARUC Model Code.
192.146(c) and (d)	831.33.
192.147	831.34.
192.148	831.41.
192.149	831.6.
192.150	832.31.
192.151	834.
192.152	835.
192.153	843.1.
192.154	843.2.
192.155	843.41.
192.156	843.42.
192.157	843.432.
192.158	843.441, 843.444.
192.159	843.45.
192.160	843.46.
192.161	843.47.
192.162	843.5.

New Section	Source
192.163	844.1.
192.164	844.2, 844.3.
192.165	844.32(a).
192.166	844.32 (b) and (c).
192.167	844.4.
192.168	844.5.
192.169	846.1.
192.170	846.21.
192.171	846.22.
192.172	847.1.
192.173	847.2.
192.174	847.3.
192.175	847.4.
192.180	842.33.
192.181	842.34.
192.182	842.35.
192.185(a)	845.1, 845.21, 845.41 and 845.42.
192.185(b)	845.31, 845.32, and 845.41.
192.186	845.5.
192.187	845.6 and Massachusetts and Vermont Codes.
192.188	845.7 and Vermont Code.
192.189	845.9.

Subpart A—General

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192.115 Corrosion factor for steel pipe.
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192.146 Branch connections.
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192.153 Compressor stations: Design and construction.
192.154 Compressor stations: Electrical facilities.
192.155 Compressor stations: Gas treating facilities for liquid removal.
192.156 Compressor stations: Fire protection.
192.157 Compressor stations: Safety devices.
192.158 Compressor stations: Pressure limiting requirements.
192.159 Compressor stations: Fuel gas control.
192.160 Compressor stations: Cooling and lubrication failures.
192.161 Compressor stations: Explosion prevention.
192.162 Compressor stations: Piping.
192.163 Pipe-type holders in rights-of-way not under exclusive use and control of the operator.
192.164 Pipe-type and bottle-type holders located on property under the exclusive use and control of the operator: Installation and testing.
192.165 Pipe-type and bottle-type holders located on property under the exclusive use and control of the operator: Design factors.
192.166 Pipe-type and bottle-type holders located on property under the exclusive use and control of the operator: Minimum clearance.
192.167 Special provisions applicable to bottle-type holders.
192.168 General provisions applicable to both pipe-type and bottle-type holders.
192.169 Required spacing of valves.
192.170 Location of transmission system valves.
192.171 Location of distribution system valves.
192.172 Vaults: Structural design requirements.
192.173 Vaults: Accessibility.
192.174 Vaults: Sealing, venting and ventilation.
192.175 Vaults: Drainage and waterproofing.
192.176 through 192.179 Reserved.
192.180 Reinforced thermosetting plastic design.
192.181 Design pressure of plastic fittings.
192.182 Valve installation in plastic piping.
192.183 Reserved.
192.184 Reserved.
192.185 Protection against accidental overpressuring.
192.186 Control and limiting of the pressure of gas delivered to domestic, small commercial and small industrial customers from high-pressure distribution systems.
192.187 Requirements for design of pressure relief and pressure limiting installations.
192.188 Required capacity of pressure relieving and pressure limiting stations.
192.189 Instrument, control and sampling piping.

Subpart A—General

§ 192.1 Scope of part.

(a) This part prescribes minimum safety requirements for pipeline facilities and the transportation of gas—

(1) Within any State; and

(2) Within the limits of the outer continental shelf as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(b) This part does not apply to the gathering of gas outside of the following areas:

(1) An area within the limits of any incorporated or unincorporated city, town, or village.

(2) Any designated residential or commercial area such as a subdivision, business or shopping center, or community development.

§ 192.3 Definitions.

As used in this part—

"Gas" means natural gas, flammable gas, or gas which is toxic or corrosive;

"High pressure distribution systems" means a distribution system in which the gas pressure in the mains and service lines is higher than the pressure provided to the customer.

"Low pressure distribution system" means a distribution system in which the gas pressure in the mains and service lines is substantially the same as the pressure provided to the customer.

"Maximum actual operating pressure" means the maximum pressure that occurs during normal operations over a period of 1 year.

"Maximum allowable operating pressure" means the maximum pressure at which a particular gas system or segment of a gas system may be operated under the provisions of this part.

"Municipality" means a city, county, or any other political subdivision of a State;

"Operator" means a person who engages in the transportation of gas;

"Person" means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof;

"Pipeline facilities" includes, without limitation, new and existing pipe, rights-of-way, and any equipment, facility, or building used in the transportation of gas or the treatment of gas during the course of transportation.

"Secretary" means the Secretary of Transportation or any person to whom he has delegated authority in the matter concerned;

"State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico,

"Transportation of gas" means the gathering, transmission or distribution of gas by pipe or the storage of gas in or affecting interstate or foreign commerce.

"SMYS" means specified minimum yield strength or the yield strength specified as a minimum in the specification under which the pipe was manufactured.

§ 192.5 Class location.

[See OPS Notice No. 70-4, 34 F.R. 5012, Mar. 24, 1970]

§ 192.7 Incorporations by reference.

(a) Any documents or parts thereof incorporated by reference in this part are hereby made a part of this regulation as though set out in full herein.

(b) All incorporated documents are available for inspection in the Office of Pipeline Safety, Room 107, 400 Sixth

Street SW., Washington, D.C. In addition, materials incorporated by reference are available at the addresses provided in Appendix C to this part.

(c) The full titles for the publications incorporated by reference in this part are listed in Appendix C to this part.

§ 192.9 Propane and other petroleum gas systems.

(a) No operator may transport propane or other gas, or gas mixture, unless the gas system meets the requirements of this part and of NFPA Standards No. 58 and No. 59. In the event of a conflict, the requirements of this part prevail.

(b) Liquified petroleum gas systems must comply with the following:

(1) Above ground structures must have open vents near the floor level.

(2) Below ground structures must have forced ventilation that will prevent any accumulation of gas.

(3) Relief valve discharge vents must be located so as to prevent any accumulation of gas at or below ground level.

(4) Special precautions must be taken to provide adequate ventilation where excavations are made to repair an underground system.

Subpart B—Materials

§ 192.51 Scope.

This subpart prescribes minimum requirements for the selection and qualification of materials for pipe and components that become part of pipeline facilities.

§ 192.53 General.

(a) Materials for pipe and components that become part of a pipeline facilities must be—

(1) Qualified in accordance with any applicable requirements of this subpart; and

(2) Capable of maintaining the structural integrity of the pipeline facility under reasonably anticipated temperature and other environmental conditions.

(b) For the purposes of this subpart, a listed specification is one that is listed in Appendix B to this part.

§ 192.55 Steel pipe.

(a) New steel pipe is qualified for use under this part if—

(1) It was manufactured in accordance with a listed specification;

(2) It meets the requirements of paragraphs II–A through II–D of Appendix B to this part;

(3) It is used in accordance with paragraph (c) of this section.

(b) Used steel pipe is qualified for use under this part if—

(1) It was manufactured in accordance with a listed specification and it meets the requirements of paragraph II–C of Appendix B to this part;

(2) It meets requirements of paragraphs II–A through II–D of Appendix B to this part;

(3) It has been used in an existing line of the same or higher pressure and it meets the requirements of paragraph II–C of Appendix B to this part; or

(4) It is used in accordance with paragraph (c) of this section.

(c) New or used steel pipe may be used at a pressure resulting in a hoop stress of less than 6,000 p.s.i. where no close coiling or close bending is to be done, if visual examination indicates that the pipe is in good condition and is free of split seams and other defects that would cause leakage. Pipe of unlisted specification that is to be welded must also satisfactorily pass the weldability tests prescribed in paragraph II–B of Appendix B to this part.

(d) New steel pipe that has been cold expanded must meet the mandatory requirements of API Standard 5LX.

§ 192.57 Cast iron or ductile iron pipe.

(a) New cast iron or new ductile iron pipe is qualified for use under this part if it has been manufactured in accordance with a listed specification.

(b) Used cast iron or used ductile iron pipe is qualified for use under this part if inspection shows that the pipe is sound and permits the makeup of tight joints and—

(1) It has been removed from an existing pipeline that operated at the same or higher pressure, or

(2) It was manufactured in accordance with a listed specification.

§ 192.59 Plastic pipe.

(a) New plastic pipe is qualified for use under this part if—

(1) It is manufactured in accordance with a listed specification; and

(2) It is adequately resistant to chemicals with which it may come in contact.

(b) Used plastic pipe is qualified for use under this part if it meets the requirements of paragraph (a) of this section and—

(1) It has been used only in natural gas service;

(2) It has known dimensions; and

(3) It is free of visible defects.

§ 192.61 Copper pipe.

New copper pipe is qualified for use under this part if it has been manufactured in accordance with a listed specification.

§ 192.63 Marking of materials.

(a) Each valve, fitting, length of pipe, and other component used in a pipeline or pipeline facility must be marked as prescribed in—

(1) The specification or standard to which it was manufactured; or

(2) MSS SP–25, Standard Marking System for Valves, Fittings, Flanges, and Unions.

(b) If any item is marked by die stamping, the die must have blunt or rounded edges that will minimize stress concentrations.

§ 192.65 Transportation of line pipe.

No person may use any line pipe transported by railroad unless that transportation was performed in accordance with API RP5L1, Recommended Practice for Railroad Transportation of Line Pipe.

Subpart C—Pipe Design

§ 192.101 Scope.

This subpart prescribes the minimum requirements for the design of pipe that is used in constructing, relocating, replacing, or otherwise changing pipeline facilities.

§ 192.103 Design formula for steel pipe.

The design pressure for steel pipe is determined in accordance with the following formula:

$$P = \frac{2St}{D} \times F \times E \times T$$

P = Design pressure in pounds per square inch gage.
S = Yield strength in pounds per square inch determined in accordance with § 192.105.
D = Nominal outside diameter of the pipe in inches.
t = Nominal wall thickness of the pipe in inches. If this is unknown, it is determined in accordance with § 192.107.
F = Design factor determined in accordance with § 192.109.
E = Longitudinal joint factor determined in accordance with § 192.111.
T = Temperature derating factor determined in accordance with § 192.113.

§ 192.105 Yield strength for steel pipe(s).

(a) For pipe that is manufactured in accordance with a specification listed in section I of Appendix B of this part, the yield strength to be used in the design formula in § 192.103 is the specified minimum yield strength stated in the listed specification, if that value is known.

(b) For pipe that is manufactured in accordance with a specification not listed in section I of Appendix B to this part or whose specification or tensile properties are unknown, the yield strength to be used in the design formula in § 192.103 is one of the following:

(1) If the pipe is tensile tested in accordance with section II–D of Appendix B to this part, the yield strength is the lower of—

(i) Eighty percent of the average yield strength determined by the tensile tests; or

(ii) The lowest yield strength determined by the tensile tests, but not more than 52,000 p.s.i.

(2) If the pipe is not tensile tested as provided in subparagraph (1) of this section, the yield strength is 24,000 p.s.i.

§ 192.107 Nominal wall thickness for steel pipe (t).

If the nominal wall thickness for steel pipe is not known, it is determined by measuring the thickness of each piece of pipe at quarter points on one end. However, if the pipe is of uniform grade, size, and thickness, and there are more than 10 lengths, only 10 percent of the individual lengths, but not less than 10 lengths, need be measured and the thickness of the lengths that are not measured is verified by applying a gage set to the minimum thickness found by the measurement. The nominal wall thickness of the pipe is the next wall thickness

found in commercial specifications below the average of all the measurements taken, but not more than 1.14 times the smallest measurement taken on pipe less than 20 inches in outside diameter, nor more than 1.11 times the smallest measurement taken on pipe 20 inches or more in outside diameter.

§ 192.109 Design factor for steel pipe (F).

(a) Unless otherwise provided in paragraphs (b), (c), and (d) of this section, the design factor to be used in the design formula in § 192.103 is determined in accordance with the following table:

Class locations:	Design factor (F)
1	0.72
2	0.60
3	0.50
4	0.40

(b) A design factor of 0.60 must be used in the design formula in § 192.103 for steel pipe in Class 1 locations that:

(1) Crosses an unimproved public road without a casing;

(2) Crosses without a casing, or makes a parallel encroachment on, a hard surfaced road, a highway, a public street, or a railroad;

(3) Is supported by a vehicular, pedestrian, railroad, or pipeline bridge; or

(4) Is used in a fabricated assembly, including separators, mainline valve assemblies, cross-connections, and river crossing headers, or is used within five pipe diameters in any direction from the last fitting (other than a transition piece or an elbow used in place of a pipe bend) of a fabricated assembly.

(c) A design factor of 0.50 must be used in the design formula in § 192.103 for steel pipe in Class 2 locations that crosses without a casing a hard surfaced road, a highway, a public street, or a railroad.

(d) A design factor of at least 0.50 must be used in the design formula in § 192.103 for compressor stations, regulator stations and measuring stations.

(e) If a physical barrier or other factor exists in a particular class location that will limit the expansion of population, a design factor may be used that would be appropriate if the class location had been determined without regard to the adjacent populated areas.

§ 192.111 Longitudinal joint factor for steel pipe (E).

The longitudinal joint factor to be used in the design formula in § 192.103 is determined in accordance with the following table:

Specification	Pipe class	Longitudinal joint factor (E)
ASTM A 53	Seamless	1.00
	Electric resistance welded	1.00
	Furnace butt welded	.60
ASTM A 106	Seamless	1.00
ASTM A 134	Electric fusion arc welded	.80
ASTM A 135	Electric resistance welded	1.00
ASTM A 139	Electric fusion welded	.80
ASTM A 155	Electric fusion arc welded	1.00
ASTM A 211	Spiral welded steel pipe	.80
ASTM A 381	Double submerged arc welded	1.00
API 5 L	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Furnace butt welded	.60
	Furnace lap-welded	.80
API 5LX	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Submerged arc welded	1.00
API 5 LS	Electric resistance welded	1.00
	Submerged arc welded	1.00
Other	Pipe over 4 inches	.80
Other	Pipe 4 inches or less	.60

If the longitudinal joint cannot be determined with certainty, it must be considered as "Other."

§ 192.113 Temperature derating factor for steel pipe (T).

The temperature derating factor to be used in the design formula in § 192.103 is determined as follows:

Temperature degrees fahrenheit	Temperature derating factor (T)
250 or less	1.000
300	0.967
350	0.933
400	0.900
450	0.867

For intermediate temperatures, the derating factor is determined by interpolation.

§ 192.115 Corrosion factor for steel pipe.

(a) After design pressure for steel pipe has been established under § 192.103, the wall thickness must be increased as follows:

(1) If corrosive gas is transported, the wall thickness must be increased by 0.075 inch.

(2) If the pipe is laid in corrosive soil and protection against external corrosion is not provided, the wall thickness must be increased by 0.05 inch.

(b) For the purpose of this section, corrosive gas is—

(1) Any gas whose water dewpoint equals or exceeds the pipeline temperature at any time, unless testing or experience have demonstrated that the gas is noncorrosive; or

(2) Any gas that experience has demonstrated to be corrosive.

§ 192.117 Design limitations for steel pipe.

(a) The design pressure for steel pipe that has been cold worked to meet specified minimum yield strength is limited to 75 percent of the pressure determined under § 192.103 if the pipe is heated, other than by welding to 600° Fahrenheit or more.

(b) The nominal wall thickness of steel pipe must be sufficient to withstand any external pressure and anticipated external loads that will be imposed on the pipe after installation.

§ 192.119 Design of cast iron pipe.

(a) Cast iron pipe must be designed in accordance with USAS A 21.1 using the following values for S (bursting tensile strength) and R (modulus of rupture) in the design equations:

Specification	Type of pipe	S	R
		p.s.i.	p.s.i.
USAS A 21.3	Pit cast	11,000	31,000
USAS A 21.7	Centrifugal (metal mold)	18,000	40,000
USAS A 21.9	Centrifugal (sand-lined mold)	18,000	40,000

(b) The nominal wall thickness for cast iron pipe must be sufficient to withstand any external pressure and anticipated external loads that will be imposed on the pipe after installation.

§ 192.121 Design of ductile iron pipe.

(a) Ductile iron pipe must be designed in accordance with USAS A 21.50 using the following values in the design equations:

s (design hoop stress) = 16,800 p.s.i.
f (design hoop stress) = 16,800 p.s.i.

(b) The nominal wall thickness for ductile iron pipe must be sufficient to withstand any external pressure and anticipated external loads that will be imposed on the pipe after installation.

(c) Ductile iron pipe must be grade (60–42–10) and must conform to the requirements of USAS A21.52.

§ 192.123 Design of plastic pipe.

(a) The design pressure for plastic pipe is determined in accordance with the following formula and is subject to the limitations of § 192.125:

$$P = 2S\frac{t}{(D-t)} \times F$$

P = Design pressure in pounds per square inch.
S = Long term hydrostatic strength in pounds per square inch as stated in the specification to which the pipe was manufactured.
t = Specified wall thickness in inches.
D = Specified outside diameter in inches.
F = Design factor for plastic pipe.

(b) The design factor for plastic pipe is determined as follows:

Class location:	Design factor
1	0.32
2	0.25
3	0.25
4	0.20

§ 192.125 Design limitations for plastic pipe.

(a) The design pressure for plastic pipe used in mains and service lines of distribution systems and in all Class 3 and 4 locations may not exceed 100 p.s.i.g.

(b) Plastic pipe must not be used where operating temperatures will be—

(1) Below 20° F.; or

(2) Above 100° F. for thermoplastic pipe or above 150° F. for reinforced thermosetting plastic pipe.

(c) The wall thickness for thermoplastic pipe must not be less than 0.062 inches.

§ 192.127 Design of copper pipe.

(a) Except for service lines, copper pipe must have a minimum wall thickness of 0.065 inches and must be hard drawn.

(b) Copper pipe must not be used at pressures in excess of 100 p.s.i.g.

(c) Copper pipe must not be used to carry gas that contains more than an average of 0.3 grains of hydrogen sulfide per 100 standard cubic feet of gas.

(d) The nominal wall thickness for copper pipe must be sufficient to withstand any external pressure and anticipated external loads that will be imposed on the pipe after installation.

APPENDIX B—QUALIFICATION OF PIPE

I. Listed Specifications.

The following are listed specifications for steel, cast iron, ductile iron, copper and plastic pipe.

API 5 L—Steel and Iron Pipe.
API 5 L S—Steel Pipe.
API 5 L X—Steel Pipe.
ASTM A 53—Steel Pipe.
ASTM A 106—Steel Pipe.
ASTM A 134—Steel Pipe.
ASTM A 135—Steel Pipe.
ASTM A 139—Steel Pipe.
ASTM A 155—Steel Pipe.
ASTM A 211—Steel and Iron Pipe.
ASTM A 333—Steel Pipe.
ASTM A 377—Cast Iron Pipe.
ASTM A 381—Steel Pipe.
USAS A 21.3—Cast Iron Pipe.
USAS A 21.7—Cast Iron Pipe.
USAS A 21.9—Cast Iron Pipe.
USAS A 21.52—Ductile Iron Pipe.
ASTM A 72—Wrought Iron Pipe.
ASTM B 42—Copper Pipe.
ASTM B 68—Copper Tubing.
ASTM B 75—Copper Tubing.
ASTM B 88—Copper Tubing.
ASTM B 251—Copper Pipe and Tubing.
ASTM D 2513—Plastic Pipe.
ASTM D 2517—Plastic Pipe.

II. Steel pipe of unknown or unlisted specification.

A. *Bending properties.* For pipe 2 inches or less in diameter, a length of pipe containing a weld must be cold bent through at least 90° around a cylindrical mandrel that has a diameter 12 times the diameter of the pipe, without developing cracks at any portion and without opening the weld.

For pipe more than 2 inches in diameter, the pipe must meet the requirements of the flattening tests set forth in ASTM A 53 except that the number of tests must be at least equal to the minimum required in paragraph II-D of this appendix to determine yield strength.

B. *Weldability.* A girth weld must be made in the pipe by a welder who is qualified under Subpart E of this part. The weld must be made under the most severe conditions under which welding will be permitted in the field and using the same procedure that will be used in the field. On pipe more than 4 inches in diameter, at least one test weld must be made for each 100 lengths of pipe. On pipe 4 inches or less in diameter at least one test must be made for each 400 lengths of pipe. The weld must be tested in accordance with API Standard 1104. If these requirements cannot be met, weldability may be established by making chemical tests for carbon and manganese, and proceeding in accordance with the provisions of the ASME Boiler and Pressure Vessel Code, section IX. The same number of chemical tests must be made as are required for testing girth weld.

C. *Inspection.* The pipe must be clean enough to permit adequate inspection. It must be visually inspected to insure that it is reasonably round and straight, to discover any defects which might impair its strength or tightness, and to assure the absence of gouges, grooves, and dents in the pipe.

D. *Tensile properties.* If the tensile properties of the pipe are not known, the minimum yield strength may be taken as 24,000 p.s.i.g. or less, or the tensile properties may be established by performing tensile tests as set forth in API Standards 5LX. All test specimens shall be selected at random and the number of tests must be as follows:

NUMBER OF TENSILE TESTS—ALL SIZES

Lot of—	
10 lengths or less	1 set of tests for each length.
11 to 100 lengths.	1 set of tests for each 5 lengths, but not less than 10.
Over 100 lengths.	1 set of tests for each 10 lengths, but not less than 20.

If the yield-tensile ratio, based on the properties determined by these tests, exceeds 0.85, the pipe may be used only as provided in § 192.55(c).

APPENDIX C—MATERIALS INCORPORATED BY REFERENCE

I. List of organizations and addresses.

A. American Petroleum Institute (API), 1271 Avenue of the Americas, New York, N.Y. 10020, or 300 Corrigan Tower Building, Dallas, Tex. 75201.

B. The American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

C. American National Standards Institute (ANSI), 1430 Broadway, New York, N.Y. 10018 (Formerly the United States of American Standards Institute (USASI). All current standards issued by USASI and ASI have been redesignated as American National Standards and continue in effect.

D. American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pa. 19103.

E. National Fire Protection Association, 60 Batterymarch Street, Boston, Mass. 02110.

F. Manufacturers Standardization Society of the Valve and Fittings Industry, 420 Lexington Avenue, New York, N.Y. 10017.

II. Listed standards or specifications.

A. American Petroleum Institute:

1. API Standard 5L entitled "API Specification for Line Pipe." (1967 edition)

2. API Standard 5LS entitled "API Specification for Spiral-Weld Line Pipe." (1967 edition)

3. API Standard 5LX entitled "API Specification for High-Test Line Pipe." (1967 edition)

4. API Recommended Practice 5L1 entitled "API Recommended Practice for Railroad Transportation of Line Pipe." (1967 edition)

5. API Standard 5A entitled "API Specification for Casing, Tubing, and Drill Pipe." (1967 edition)

B. The American Society for Testing and Materials:

1. ASTM Specification A53 entitled "Standard Specification for Welded and Seamless Steel Pipe." (A53–65)

2. ASTM Specification A72 entitled "Tentative Specification for Welded Wrought-Iron Pipe." (A72–64T)

3. ASTM Specification A106 entitled "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service." (A106–66)

4. ASTM Specification A134 entitled "Standard Specification for Electric-Fusion (ARC)-Welded Steel Plate Pipe, Sizes 16 in. and over." (A134–64)

5. ASTM Specification A135 entitled "Tentative Specification for Electric-Resistance-Welded Steel Pipe." (A135–63T)

6. ASTM Specification A139 entitled "Standard Specification for Electric-Fusion (ARC)-Welded Steel Pipe, Sizes 4 in. and over." (A139–64)

7. ASTM Specification A155 entitled "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Temperature Service." (A155–65)

8. ASTM Specification A333 entitled "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service." (A333–64)

9. ASTM Specification A377 entitled "Standard Specification for Cast Iron and Ductile Iron Pressure Pipe." (A377–66)

10. ASTM Specification A381 entitled "Standard Specification for Metal-Arc-Welded Steel Pipe for High-Pressure Transmission Service." (A381–66)

11. ASTM Specification B42 entitled "Standard Specification for Seamless Copper Pipe, Standard Sizes." (B42–62)

12. ASTM Specification B68 entitled "Standard Specification for Seamless Copper Tube, Bright Annealed." (B68–65)

13. ASTM Specification B75 entitled "Standard Specification for Seamless Copper Tube." (75–65)

14. ASTM Specification B88 entitled "Standard Specification for Seamless Copper Water Tube." (B88–66)

15. ASTM Specification B251 entitled "Standard Specification for General Requirements for Wrought Seamless Copper and Copper-Alloy Tube." (B251–66)

16. ASTM Specification D2513 entitled "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings." (D2513–66T)

17. ASTM Specification D2517 entitled "Tentative Specification for Reinforced Thermosetting Plastic Gas Pressure Pipe and Fittings." (D2517–66T)

18. ASTM Specification A372 entitled "Standard Specification for Carbon and Alloy Steel Forgings for Pressure Vessel Shells." (A372–65)

C. The American National Standards Institute, Inc.:

1. ANSI A21.3 is titled "Specifications for Cast Iron Pit Cast Pipe for Gas." (A21.3–1953)

2. ANSI A21.7 is titled "Cast-Iron Pipe Centrifugally Cast in Metal Molds for Gas." (A21.7–1962)

3. ANSI A21.9 is titled "Cast-Iron Pipe Centrifugally Cast in Sand-Lined Molds for Gas." (A21.9–1962)

4. ANSI A21.11 is titled "Rubber Gasket Joints for Cast-Iron Pressure Pipe and Fittings." (A21.11–1964)

5. ANSI A21.52 is titled "Ductile-Iron Pipe, Centrifugally Cast, in Metal Molds or Sand-Lined Molds for Gas." (A21.52–1965)

6. ANSI B16.1 is titled "Cast Iron Pipe Flanges and Flanged Fittings." (B16.1–1966)

7. ANSI B36.10 is titled "Wrought-Steel and Wrought-Iron Pipe." (B36.10–1959)

8. ANSI C1 is titled "National Electrical Code, 1965." (C1–1965)

D. National Fire Protection Association:

1. NFPA Standard 30 is titled "Flammable and Combustile Liquids Code." (1963 edition)

2. NFPA Standard 58 is titled "Storage and Handling, Liquefied Petroleum Gases." (1963 edition)

3. NFPA Standard 59 is titled "LP Gases at Utility Gas Plants." (1962 and 1963 addendum)

E. The American Society of Mechanical Engineers:

1. ASME Boiler and Presure Vessel Code, Section VIII is titled "Pressure Vessels, Division 1." (1965 edition and 1966 Addenda)

2. ASME Boiler and Pressure Vessel Code, Section IX is titled "Welding Qualifications." (1965 edition and 1966 Addenda)

Subpart D—Design of Piping System Components and Facilities

§ 192.141 Scope.

This subpart prescribes minimum requirements for the design and installation of piping system components and facilities such as valves, flanges (including bolts, nuts and gaskets) standard fittings, branch connections, special components fabricated by welding, extruded outlets, anchorage for exposed or buried piping, compressor stations, pipe-type and bottle-type holders, and vaults. In addition, it covers requirements relating to protection against accidental overpressuring, including the design and installation of presure relief or pressure limiting devices.

§ 192.142 General requirements.

Each component of a piping system must be able to withstand operating pressures and other specified loadings with unit stresses equivalent to those permitted for comparable material in pipe in the same location and type of service.

§ 192.143 Valves.

(a) Each valve must be used in accordance with the service recommendation of the manufacturer.

(b) No valve having pressure containing parts made of ductile iron may be used at pressures exceeding 80 percent of the pressure ratings for comparable steel valves at their listed temperature.

(c) A valve having pressure containing parts made of ductile iron may be used at pressures up to 80 percent of the pressure ratings for comparable steel valves at their listed temperature, if—

(1) The adjusted service pressure does not exceed 1,000 p.s.i.g.; and

(2) Welding is not employed on any ductile iron component in the fabrication of the valve shells or their assembly.

(d) No valve having pressure containing parts made of ductile iron may be used in the gas piping components of compressor stations.

§ 192.144 Flanges.

(a) *Bolting.* Each bolt or studbolt used for flange joints must extend completely through the nuts when secured.

(b) *Nuts.* Nuts cut from bar stock so that the axis is parallel to the direction of rolling of the bar—

(1) May be used in all sizes for joints in which one or both flanges are cast iron, and for joints with steel flanges where the pressure does not exceed 250 p.s.i.g.; but

(2) Except for nut sizes one-half inch and smaller, may not be used for joints in which both flanges are steel and the pressure exceeds 250 p.s.i.g.

(c) *Gaskets.* Each gasket must meet the following requirements as applicable:

(1) All material used for gaskets must be capable of withstanding the maximum pressure at which the pipeline is to be operated, and of maintaining its physical and chemical properties, at any temperature to which it might reasonably to subjected in service.

(2) Each gasket used under pressure and at temperatures above 250° F. must be of noncombustible material.

(3) Metallic gaskets may not be used with 150-pound standard or lighter flanges.

(4) Material used in rings for ring joints must be suitable for the service conditions encountered and must be softer than the flanges.

§ 192.145 Standard fittings.

(a) The minimum metal thickness of flanged or threaded fittings may not be less than specified for the pressures and temperatures in the applicable USA Standards or the MSS Standard Practice.

(b) Each steel butt-welding fitting must have pressure and temperature ratings based on stresses for pipe of the same or equivalent material. To insure adequacy of fitting design, the actual bursting strength of the fitting must at least equal the computed bursting strength of pipe of the designated material and wall thickness.

§ 192.146 Branch connections.

(a) Threaded taps in cast iron pipe 6 inches nominal size and smaller may not be used, except for the following:

(1) Existing taps used for replacement service, that are free of cracks and have good threads.

(2) Taps used for gas control equipment, which are not more than 25 percent of the nominal diameter of the pipe, and are closed after use by means of a threaded plug or reinforcing sleeve.

(b) Threaded taps in cast iron pipe larger than 6 inches nominal diameter may be used without reinforcement to a size not more than 25 percent of the nominal diameter of the pipe. Larger taps must be covered by reinforcing sleeves.

(c) Threaded taps in ductile iron pipe may be used without reinforcement to a size not more than 25 percent of the nominal diameter of the pipe. The extent of full-thread engagement necessary, and the necessity for use of outside-sealing service connections, tapping saddles, or other fixtures must be determined by service conditions.

(d) Mechanical fittings may be used for making hot taps on pipelines and mains, provided they are designed for the operating pressure of the pipeline or main.

§ 192.147 Special components fabricated by welding.

(a) This section covers piping system components other than assemblies consisting of standard pipe and fittings joined by circumferential welds.

(b) All welding must be performed using procedures and operators that are qualified in accordance with the requirements of §§ 192.205, 192.207, and 192.209.

(c) Each branch connection must meet the design requirements of §§ 192.148 and 192.149.

(d) The design of other components must be in accordance with applicable requirements of this part. When the strength of a component cannot be determined with reasonable accuracy under the provisions of this part, the allowable working pressure must be established as prescribed by paragraph UG–101, section VIII, ASME Boiler and Pressure Vessel Code.

(e) Each prefabricated unit which employs plate and longitudinal seams must be designed, constructed, and tested under requirements of the ASME Boiler and Pressure Vessel Code. However, the requirements of that code do not apply to regularly manufactured butt-welding fittings, to pipe that has been produced and tested under the specifications listed in this part, or to such partial assemblies as split rings or collars or other field welded details.

(f) No orange-peel bull plug or orange-peel swage may be used on systems operating at stress levels of 20 percent or more of the specified minimum yield strength of the pipe material.

(g) Fish tails and flat closures may be used for 3-inch diameter pipe and smaller, operating at less than 100 p.s.i.g.

(h) No fish tail may be used on pipe larger than 3 inch diameter.

(i) Each flat closure larger than 3 inches in diameter must be designed according to section VIII, Unfired Pressure Vessels, of the ASME Boiler and Pressure Vessel Code.

§ 192.148 Reinforcement of welded branch connections.

(a) When branch connections are made to pipe in the form of a single connection, or in a header or manifold as a series of connections, the design must be adequate to control the stress levels in the pipe within safe limits. The design must also assure that the addition of any fabricated branch connection will not reduce the strength of the pipeline system.

(b) The construction must take into account the stresses in the remaining pipe wall due to the opening in the pipe or header, the shear stresses produced by the pressure acting on the area of the branch opening, and any external loadings due to thermal movement, weight, and vibration.

§ 192.149 Extruded outlets.

Each extruded outlet must be designed so as to be suitable for the intended service and must be at least as strong as the pipe and other fittings in the pipeline system to which it is attached.

§ 192.150 Flexibility.

Each piping system must be designed to have sufficient flexibility to prevent

thermal expansion or contraction from causing excessive stresses in the piping material, excessive bending or unusual loads at joints, or undesirable forces or movements at points of connection to equipment, or at anchorage or guide points.

§ 192.151 Supports and anchorage for exposed piping.

(a) *General requirements.* All piping and equipment must be supported so as to prevent or damp out excessive vibration, and must be anchored sufficiently to prevent undue strains on connected equipment.

(b) *Provision for expansion.* Each support, hanger, or anchor must be installed in such a manner as not to interfere with the free expansion and contraction of the piping between anchors.

(c) *Materials, design, and installation.* Each permanent hanger, support, or anchor must be fabricated from durable, incombustible material, and designed and installed for the service conditions involved. Each part of the supporting equipment must be designed and installed so that it will not be disengaged by movement of the supported piping.

(d) *Forces on pipe joints.* Each exposed pipe joint must be able to sustain the maximum end force due to the internal pressure, i.e., the design pressure (p.s.i.g.) times the internal area of the pipe (sq. in.), as well as any additional forces due to temperature expansion or contraction, or to the weight of the pipe and its contents.

(e) *Attachment of supports or anchors.* (1) Where pipe is designed to operate at a hoop stress of less than 50 percent of the specified minimum yield strength, structural supports or anchors may be welded directly to the pipe. Proportioning and welding strength requirements of each attachment must conform to standard structural practice.

(2) Where pipe is designed to operate at a hoop stress of 50 percent or more of the specified minimum yield strength, support of the pipe must be furnished by a member which completely encircles it. Where it is necessary to provide positive attachment, as at an anchor, the pipe must be welded to the encircling member only, and the support must be attached to the encircling member. The connection of the pipe to the encircling member must be by continuous welds.

§ 192.152 Anchorage for buried piping.

(a) *General requirements.* Each longitudinal force caused by a bend or offset in buried pipe must be resisted.

(b) *Supports for buried piping.* (1) Uniform and adequate support of the pipe in the trench must be provided. At branch connections, the fill must be thoroughly consolidated, or other provision must be made to resist the thrust.

(2) When openings are made in a consolidated backfill to connect new branches to an existing line, firm foundation for both the header and the branch must be provided to prevent both vertical and lateral movements.

(c) *Interconnection of underground lines.* If a connection is made to a relatively unyielding line or other fixed object at a location adjacent to a bend or an end, the interconnection must have ample flexibility to care for possible movement, or the line must be provided with an anchor sufficient to develop the forces necessary to limit the movement.

§ 192.153 Compressor stations; Design and construction.

(a) *Location of compressor building.* Each main compressor building for a gas compressor station must be located at such a clear distance from adjacent property not under control of the operator, as to minimize the hazard of communication of fire to the compressor building from structures on adjacent property. Sufficient open space must be provided around the building to permit the free movement of firefighting equipment.

(b) *Building construction.* Each compressor station building which houses gas piping in sizes larger than 2 inches in diameter, or equipment handling gas (except equipment for domestic purposes), must be constructed of noncombustible materials.

(c) *Exits.* Each exit from an operating floor of a main compressor building must be an unobstructed doorway so located as to provide a convenient possibility of escape and to provide unobstructed passage to a place of safety. Each door latch must be of a type which can be readily opened from the inside without a key. Each swinging door located in an exterior wall must swing outward.

(d) *Fenced areas.* Each fence gate in the vicinity of a compressor station must be located to provide a convenient opportunity for escape to a place of safety. Each gate located within 200 feet of any compressor plant building must open outward and must be unlocked, or capable of being opened from the inside without a key, when the area within the enclosure is occupied, or other facilities affording a similarly convenient exit from the area must be provided.

§ 192.154 Compressor stations: Electrical facilities.

All electrical equipment and wiring installed in gas transmission and distribution compressor stations must conform to the requirements of the National Electric Code, USAS C1.

§ 192.155 Compressor stations: Gas treating facilities for liquid removal.

(a) The suction stream to each stage of compression (or to each unit, for centrifugal compressors) must be protected against the introduction of dangerous quantities of entrained liquids into the compressor.

(b) Each liquid separator used for this purpose must be provided with manually operated facilities for removal of liquids from the separator.

(c) Where slugs of liquid might be carried into the compressors, automatic liquid removal facilities or an automatic compressor shutdown device, or a high liquid level alarm must be used.

(d) Each liquid separator constructed of pipe and fittings without internal welding must be fabricated with a design factor of 0.4. All other liquid separators must be manufactured in accordance with section VIII, Unfired Pressure Vessels, of the ASME Boiler and Pressure Vessel Code.

§ 192.156 Compressor stations: Fire protection.

Each compressor station must be equipped with adequate fire protection facilities. If fire pumps are a part of these facilities, their operation must be unaffected by emergency shutdown facilities.

§ 192.157 Compressor stations: Safety devices.

(a) *Emergency shutdown facilities for transmission compressor stations.* Except for unattended field compressor stations of 1,000 horsepower or less, each transmission compressor station must have an emergency shutdown system meeting the following requirements:

(1) Except as provided in subparagraph (2) of this paragraph, the emergency shutdown system must provide means by which all gas compressing equipment, all gas fires, and all electrical facilities in the vicinity of gas headers and in the compressor building can be shut down, and the gas can be blocked out of the station and the station gas piping blown down.

(2) Electrical circuits supplying emergency lighting required to assist station personnel in evacuating the compressor building and the area in the vicinity of the gas headers, may remain energized after the actuation of the station emergency shutdown system.

(3) The emergency shutdown system must be operable from any one of at least two locations outside the gas area of the station, preferably near exit gates in the station fence, but not more than 500 feet from the limits of the station.

(4) Blowdown piping must extend to a location where the discharge of gas is not likely to create a hazard to the compressor station or surrounding area.

(b) *Emergency shutdown facilities for distribution compressor stations.* Each compressor station supplying gas directly to a distribution system must be provided with emergency shutdown facilities located outside of the compressor station buildings, by means of which all gas can be blocked out of the station, provided there is another adequate source of gas for the distribution system. When no other gas source is available, then no shutdown facilities may be installed that might function at the wrong time and cause an outage on the distribution system.

(c) *Engine overspeed stops.* Each compressor prime mover, except electrical induction or synchronous motors, must be provided with an automatic device to shut down the unit before the speed of the prime mover or the driven unit exceeds the maximum safe speed of either.

§ 192.158 Compressor stations: Pressure limiting requirements.

(a) Pressure relief or other suitable protective devices of sufficient capacity

and sensitivity must be installed and maintained to assure that the maximum allowable operating pressure of the station piping and equipment is not exceeded by more than 10 percent.

(b) Each vent line provided to exhaust the gas from the pressure relief valves to the atmosphere must be extended to a location where the gas may be discharged without undue hazard.

§ 192.159 Compressor stations: Fuel gas control.

Each gas engine operating with pressure gas injection must be provided with an automatic device designed to shut off the fuel gas when the engine stops. The engine distribution manifold must be simultaneously automatically vented.

§ 192.160 Compressor stations: Cooling and lubrication failures.

Each gas compressor unit must be equipped with a shutdown or alarm device to operate in the event of inadequate cooling or lubrication of the unit.

§ 192.161 Compressor stations: Explosion prevention.

(a) *Mufflers.* Each muffler for engines using gas as fuel must be constructed with all compartments having vent slots or holes in the baffles to prevent gas from being trapped in the muffler.

(b) *Building ventilation.* Ventilation equipment must be ample to assure that employees are not endangered by accumulations of hazardous concentrations of flammable or noxious vapors or gases in rooms, sumps, attics, pits, or similarly enclosed places.

§ 192.162 Compressor stations: Piping.

The materials, construction, installation, testing, types of valves and type of pressure limiting devices used on compressor station gas piping must conform to the applicable requirements of this part.

§ 192.163 Pipe-type holders in rights-of-way not under exclusive use and control of the operator.

Each pipe-type holder installed in a street, highway or in a private right-of-way not under the exclusive control and use of the operator, must be designed, installed, and tested in accordance with the provisions of this part applicable to a pipeline installed in the same location and operated at the same maximum operating pressure.

§ 192.164 Pipe-type and bottle-type holders located on property under the exclusive use and control of the operator: Installation and testing.

(a) Each bottle-type holder must be located on land owned or under the exclusive control and use of the operator.

(b) Each storage site must be entirely surrounded by fencing to prevent access by unauthorized persons.

(c) Each pipe container must be buried with the depth of cover required by § 192.333.

(d) Each bottle must be buried with the top of each container below the normal frost line, but in no case with a depth of cover less than that required by § 192.333.

(e) Each pipe-type holder must be tested in accordance with the provisions of § 192.505, for a pipeline located in the same class location as the holder site.

§ 192.165 Pipe-type and bottle-type holders located on property under the exclusive use and control of the operator: Design factors.

Each pipe-type or bottle-type holder installed on property under the exclusive control and use of the operator must be designed in accordance with design factors required by § 192.109.

§ 192.166 Pipe-type and bottle-type holders located on property under the exclusive use and control of the operator: Minimum clearance.

(a) *Minimum clearance between containers and fenced boundaries.* The minimum clearance between containers and the fenced boundaries of the site is fixed by the maximum operating pressure of the holder as follows:

Maximum operating pressure:	*Minimum clearance (feet)*
Less than 1,000 p.s.i.g.	25
1,000 p.s.i.g. or more	100

(b) *Minimum clearance between pipe containers or bottles.* The minimum distance in inches between pipe containers or bottles is determined by the following formula:

$$C = \frac{3D \times P \times F}{1{,}000}$$

in which:

C = Minimum clearance between pipe containers or bottles in inches.
D = Outside diameter of pipe container or bottle in inches.
P = Maximum allowable operating pressure, p.s.i.g.
F = Design factor (§ 192.109).

§ 192.167 Special provisions applicable to bottle-type holders.

A bottle-type holder may be manufactured from steel which is not weldable under field conditions, subject to each of the following limitations:

(a) Each bottle-type holder made from alloy steel must meet the chemical and tensile requirements for the various grades of steel in API Standard 5A, "Specifications for Casing, Tubing and Drill Pipe," or ASTM A372, "Specification for Carbon and Alloy Steel Forgings for Pressure Vessel Shells."

(b) In no case may the actual yield-tensile ratio exceed 0.85.

(c) Welding may not be performed on such a bottle after it has been heat treated, stress relieved, or both, except that copper wires may be attached to the small diameter portion of the bottle end closure for cathodic protection, using a localized thermit welding process.

(d) Each such bottle must be given a hydrostatic test in the mill, and need not be retested hydrostatically at the time of installation. The mill test pressure may not be less than that required to produce a hoop stress equal to 85 percent of the specified minimum yield strength of the steel. Careful inspection of the bottle at the time of installation must be made, and no damaged bottle may be used.

(e) Each such bottle and connecting piping must be leak tested after installation as required by Subpart J of this part.

§ 192.168 General provisions applicable to both pipe-type and bottle-type holders.

(a) Suitable measures must be taken to protect the storage system against external corrosion.

(b) No gas containing more than 0.1 grain of hydrogen sulfide per 100 cubic feet at 14.7 p.s.i.a. and 60° F. may be stored.

(c) Provision must be made to prevent the formation or accumulation of liquids in the holder, connecting piping and auxiliary equipment, that might cause corrosion or might interfere with the safe operation of the storage equipment.

(d) Relief valves on pipe-type and bottle-type holders must be installed in accordance with provisions of this part, which will have relieving capacity able to limit the pressure imposed on the filling lines, and thereby on the storage holder, to 100 percent of the design pressure of the holder, or to that pressure which produces a hoop stress of 75 percent of the specified minimum yield strength of the steel, whichever is less.

§ 192.169 Required spacing of valves.

(a) *Transmission lines.* Each sectionalizing block valve on a transmission line must be installed at a spacing not to exceed 20 miles within areas conforming to Class 1 Location, 15 miles within areas conforming to Class 2 Location, 8 miles within areas conforming to Class 3 Location, and 5 miles within areas conforming to Class 4 Location.

(b) *High-pressure distribution systems.* Valves must be installed in high-pressure distribution systems in accessible locations in order to reduce the time to shut down a section of main in an emergency. The spacing of the valves must be determined by the operating pressure, the size of the mains, and the local physical conditions.

§ 192.170 Location of transmission system valves.

(a) Each sectionalizing block valve must be accessible and protected from damage and tampering.

(b) Each operating device to open or close a valve must be readily accessible to authorized persons.

(c) Each valve must be suitably supported to prevent settlement, or movement by the attached piping.

(d) Blow-down valves must be provided so that each section of pipeline between main line valves can be blown down rapidly. Each blow down valve must be located where the gas can be blown to the atmosphere without hazard.

§ 192.171 Location of distribution system valves.

(a) Each regulator station controlling the flow or pressure of gas in a distribution system must have a valve installed on the inlet piping. The distance between

the valve and the regulator or regulators must be sufficient to permit the operation of the valve during an emergency.

(b) Each valve on a distribution main, whether for operating or emergency purposes, must be located in a manner that will provide ready access, and facilitate its operation during an emergency.

(c) Where a valve is installed in a buried box or enclosure, only ready access to the operating stem or mechanism is required. The box or enclosure must be installed in a manner to avoid transmitting external loads to the main.

§ 192.172 Vaults: Structural design requirements.

(a) Each underground vault or pit for valves, pressure relieving, pressure limiting or pressure regulating stations, must be designed and constructed to meet the loads which may be imposed upon it.

(b) Sufficient working space must be provided so that all of the equipment required in the vault or pit can be properly installed, operated and maintained.

(c) In the design of such a vault or pit, consideration must be given to the protection of the installed equipment from damage, such as that resulting from an explosion within the vault or pit, which may cause portions of the roof or cover to fall into it.

(d) All pipe entering or within regulator vaults or pits must be steel for sizes 10 inches and less, except that control and gage piping may be copper. Where piping extends through the vault or pit structure, provision must be made to prevent the passage of gasses or liquids through the opening and to avert strains in the piping.

§ 192.173 Vaults: Accessibility.

Each vault must be located in an accessible location, away from street intersections or points where traffic is heavy or dense, and away from points of minimum elevation, catch basins, or places where the access cover will be in the course of surface waters. Each vault must be located as far as practical from water, electric, steam, or other facilities.

§ 192.174 Vaults: Sealing, venting and ventilation.

Each underground vault or closed top pit containing either a pressure regulating or reducing station, or a pressure limiting or relieving station, must be sealed, vented or ventilated, as follows:

(a) When the internal volume exceeds 200 cubic feet—

(1) The vault or pit must be ventilated with two ducts, each having at least the ventilating effect of a pipe 4 inches in diameter;

(2) The ventilation provided must be sufficient to minimize the possible formation of combustible atmosphere in the vault or pit; and

(3) The ducts must extend to a height above grade adequate to disperse any gas air mixtures that might be discharged.

(b) When the internal volume is between 75 cubic feet and 200 cubic feet—

(1) If the vault or pit is sealed, all openings must be equipped with tight fitting covers without open holes through which an explosive mixture might be ignited, and means must be provided for testing the internal atmosphere before removing the covers;

(2) If the vault or pit is vented, provision to prevent external sources of ignition from reaching the vault atmosphere must be provided; or

(3) If the vault or pit is ventilated, the provisions of paragraph (a) or (c) of this section are applicable.

(c) If vaults or pits referred to in paragraph (b) of this section are ventilated by means of openings in the covers or gratings and ratio of the internal volume, in cubic feet, to the effective ventilating area of the cover or grating, in square feet, is less than 20 to 1, no additional ventilation is required.

§ 192.175 Vaults: Drainage and waterproofing.

(a) Provisions must be made to minimize the entrance of water into vaults.

(b) A vault containing gas piping may not be connected by means of a drain connection to any other substructure, such as a sewer.

(c) All electrical equipment in vaults must conform to the requirements of Class 1, Group D, of the National Electrical Code, USAS C1.

§ 192.180 Reinforced thermosetting plastic design.

The wall thickness for reinforced thermosetting plastic pipe may not be less than that shown in the following table:

DIAMETER AND WALL THICKNESS FOR REINFORCED THERMOSETTING PLASTIC PIPE (SHOWN IN INCHES)

Nominal size	Outside diameter	Minimum wall thickness
2	2.375	0.060
3	3.500	0.060
4	4.500	0.070
6	6.625	0.100

§ 192.181 Design pressure of plastic fittings.

(a) Thermosetting fittings for plastic pipe must conform to ASTM D 2517.

(b) The design pressure of ABS and PVC Schedule 40 and 80 thermoplastic fittings must be obtained from the following table:

DESIGN PRESSURE OF THERMOPLASTIC FITTINGS, P.S.I. OF VARIOUS STRENGTHS, MATERIALS AND CLASS LOCATIONS

Size inches	Schedule	ABS Type I and PVC Type II class location			PVC Type I class location		
		1	2 and 3	4	1	2 and 3	4
½	40	100	100	100	100	100	100
	80	100	100	100	100	100	100
¾	40	100	100	96	100	100	100
	80	100	100	100	100	100	100
1	40	100	100	90	100	100	100
	80	100	100	100	100	100	100
1¼	40	100	92	74	100	100	100
	80	100	100	100	100	100	100
1½	40	100	83	66	100	100	100
	80	100	100	94	100	100	100
2	40	89	69	55	100	100	100
	80	100	100	81	100	100	100
2½	40	99	76	61	100	100	100
	80	100	100	85	100	100	100
3	40	84	66	53	100	100	100
	80	100	94	75	100	100	100
3½	40	77	60	48	100	100	96
	80	100	86	69	100	100	100
4	40	71	56	44	100	100	88
	80	100	81	65	100	100	100
5	40	62	49	39	100	97	78
	80	93	72	58	100	100	100
6	40	56	44	35	100	88	71
	80	89	70	56	100	100	100

NOTE: These pressure ratings are the same value as the design pressure of the corresponding pipe size and schedule in the same class location, as determined by the formula given in § 192.123 and the limitations in § 192.125 of this part.

§ 192.182 Valve installation in plastic piping.

Each valve installation in plastic piping must be so designed as to protect the plastic material against excessive torsional or shearing loads when the valve or shutoff is operated, and from any other secondary stresses which might be exerted through the valve or its enclosure.

§ 192.185 Protection against accidental overpressuring.

(a) *In general.* Each pipeline, main, distribution system, customer's meter and connected facilities, compressor station, pipe-type holder, bottle-type holder, container fabricated from pipe and fittings, and any special equipment that is connected to a compressor or to a gas source so that the maximum allowable operating pressure of the facility could be exceeded as the result of pressure control failure or of some other type of failure, must be equipped with pressure relieving or pressure limiting devices that will ensure that the maximum allowable operating pressure of the facility will not be exceeded.

(b) *Additional requirements for high pressure and low pressume distribution systems.* Each high pressure or low pressure distribution system or main that is supplied from a source of gas that is at a higher pressure than the maximum allowable operating pressure for the system must—

(1) Be equipped with pressure regulation devices capable of meeting the pressure, load, and other service conditions that will be experienced in normal operation of the system, and that could be activated in the event of failure of some portion of the system; and

(2) Be designed so as to prevent accidental overpressuring.

§ 192.186 Control and limiting of the pressure of gas delivered to domestic, small commercial and small industrial customers from high-pressure distribution systems.

(a) If the maximum actual operating pressure of the distribution system is between 2 p.s.i.g. and 60 p.s.i.g., and a service regulator having the characteristics listed below is used, no other pressure limiting device is required:

(1) A pressure regulator capable of reducing distribution line pressure (pounds per square inch) to pressures recommended for household appliances (inches of water column).

(2) Single port valve with proper orifice for the maximum gas pressure at the regulator inlet.

(3) A valve seat made of resilient material designed to withstand abrasion of the gas, impurities in gas, cutting by the valve, and to resist permanent deformation when it is pressed against the valve port.

(4) Pipe connections to the regulator not exceeding 2 inches in diameter.

(5) A regulator of a type that is capable under normal operating conditions of regulating the downstream pressure within the necessary limits of accuracy and of limiting the build-up of pressure under no-flow conditions to 50 percent or less of the discharge pressure maintained under flow conditions.

(6) A self-contained service regulator with no external static or control lines.

(b) If the maximum actual operating pressure of the distribution system is between 2 p.s.i.g. and 60 p.s.i.g. and a service regulator not having all of the characteristics listed in paragraph (a) of this section is used, or if the gas contains materials that seriously interfere with the operation of service regulators, suitable protective devices must be installed to prevent unsafe overpressuring of the customer's appliances should the service regulator fail.

(c) If the maximum actual operating pressure of the distribution system exceeds 60 p.s.i.g., one of the following methods must be used to regulate and limit, to the maximum safe value, the pressure of gas delivered to the customer:

(1) A service regulator having the characteristics listed in paragraph (a) of this section, and a secondary regulator located upstream from the service regulator. The secondary regulator in no case may be set to maintain a pressure higher than 60 p.s.i.g. A device must be installed between the secondary regulator and the service regulator to limit the pressure on the inlet of the service regulator to 60 p.s.i.g. or less in case the secondary regulator fails to function properly. This device may be either a relief valve, or an automatic shutoff that shuts, if the pressure on the inlet of the service regulator exceeds the set pressure (60 p.s.i.g. or less), and remains closed until manually reset.

(2) A service regulator and a monitoring regulator set to limit, to a maximum safe value, the pressure of the gas delivered to the customer.

(3) A service regulator with a relief valve vented to the outside atmosphere, with the relief valve set to open so that the pressure of gas going to the customer does not exceed a maximum safe valve. The relief valve may either be built into the service regulator or it may be a separate unit installed downstream from the service regulator. This combination may be used alone only in those cases where the inlet pressure on the service regulator does not exceed the manufacturer's safe working pressure rating of the service regulator, and may not be used where the inlet pressure on the service regulator exceeds 125 p.s.i.g. For higher inlet pressures, the method in subparagraph (1) or (2) of this paragraph must be used.

(d) When the pressure of the gas and the demand by the customer are greater than that which is applicable under the provisions of this section, the requirements for control and limiting of the pressure of gas delivered are covered by § 192.185.

§ 192.187 Requirements for design of pressure relief and pressure limiting installations.

Each pressure relief or pressure limiting device must—

(a) Be constructed of materials such that the operation of the device will not be impaired by corrosion;

(b) Have valves and valve seats that are designed not to stick in a position that will make the device inoperative;

(c) Be designed and installed so that it can be readily operated to determine if the valve is free, can be tested to determine the pressure at which it will operate, and can be tested for leakage when in the closed position;

(d) Have support made of noncombustible material;

(e) Have discharge stacks, vents or outlet ports protected with rain caps, located where gas can be discharged into the atmosphere without undue hazard for any exposures in the immediate vicinity;

(f) Be designed and installed so that the size of the openings, pipe and fittings located between the system to be protected and the pressure relieving device, and the size of the vent line, are adequate to prevent hammering of the valve and to prevent impairment of relief capacity; and

(g) Where installed at a district regulator station to protect a piping system from overpressuring, be designed and installed to prevent any single incident such as an explosion in a vault or damage by a vehicle from affecting the operation of both the overpressure protective device and the district regulator.

§ 192.188 Required capacity of pressure relieving and pressure limiting stations.

(a) Each pressure relief station or pressure limiting station or group of such stations installed to protect a piping system or pressure vessel must have sufficient capacity, and must be set to operate, to prevent the pressure from exceeding the maximum allowable operating pressure plus 10 percent, or the pressure which produces a hoop stress of 75 percent of the specified minimum yield strength, whichever is lower, or in a low-pressure distribution system, a pressure which would cause the unsafe operation of any connected and properly adjusted gas burning equipment.

(b) When more than one pressure regulating or compressor station feeds into a pipeline or distribution system, relief valves, or other protective devices, must be installed at each station to insure that the complete failure of the largest capacity of any single run or lesser capacity regulators or compressors in that station will not impose pressures on any part of the distribution system, in excess of those it was designed for, or protected against, whichever is lower.

(c) Relief valves or other pressure limiting devices must be installed at or near regulator stations in low pressure systems, with a capacity to limit the maximum pressure in the main to 2 p.s.i.g.

§ 192.189 Instrument, control and sampling piping.

(a) *Applicability.* (1) The requirements in this section apply to the design of instrument, control and sampling piping for safe and proper operation of the piping itself, and do not cover design of piping to secure proper functioning of instruments for which the piping is installed.

(2) This section does not apply to permanently closed piping systems, such as fluid-filled temperature-responsive devices.

(b) *Materials and design.* (1) All materials employed for valves, fittings, tubing, and piping must be designed to meet the particular conditions of service.

(2) Each takeoff connection and attaching boss, fitting, or adapter must be made of suitable material, be capable of withstanding the maximum service pressure and temperature of the piping or equipment to which it is attached, and be designed to satisfactorily withstand all stresses without failure by fatigue.

(3) A shutoff valve must be installed in each takeoff line as near as practicable to the point of takeoff. Blowdown valves must be installed where necessary.

(4) Brass pipe or copper pipe or tubing may not be used for metal temperatures greater than 400° F.

(5) Piping which may contain liquids must be protected by heating or other suitable means from damage due to freezing.

(6) Piping in which liquids may accumulate must be provided with drains or drips.

(7) The arrangement of piping and supports must be designed to provide safety under operating stresses.

(8) Suitable precautions, such as increasing the pipe wall thickness, must be taken where internal corrosive conditions may exist. All underground piping must be protected against corrosion where soil tests or experience indicate that the soil is corrosive.

(9) Each joint between sections of tubing and pipe, and between tubing or pipe and valves or fittings, must be made in a manner suitable for the pressure and temperature condition. Slip type expansion joints may not be used. Expansion must be taken care of by providing flexibility within the piping or tubing system itself.

(10) Each control line must be protected from predictable causes of damage and must be designed and installed to prevent damage to any one control line from making both the district regulator and the overpressure protective device inoperative.

[F.R. Doc. 70-4344; Filed, Apr. 7, 1970; 8:52 a.m.]

Office of Pipeline Safety

[49 CFR Parts 192, 195]

[Notice 70-6; Docket No. OPS-3F]

MINIMUM FEDERAL SAFETY STANDARDS FOR GAS PIPELINES

Testing and Uprating

The Department of Transportation is developing proposals for the comprehensive minimum Federal safety standards for gas pipeline facilities and for the transportation of gas, as required by subsection 3(b) of the Natural Gas Pipeline Safety Act of 1968. This notice of proposed rulemaking is the seventh of a series of notices by which the proposed Federal safety standards will be issued for public comment.

Interested persons are invited to participate in the making of these proposed rules by submitting written data, views, or arguments as they may desire. Communications should identify the regulatory docket and notice number and be submitted in duplicate to the Office of Pipeline Safety, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590. Communications received before May 25, 1970, will be considered before taking final action on this notice. All comments will be available for examination by interested persons at the Office of Pipeline Safety before and after the closing date for comments. The proposals contained in this notice may be changed in light of comments received.

The first notice in this series was published in the FEDERAL REGISTER on November 21, 1969 (Notice 69-3; F.R. 18556). That notice discussed both the Department's plan for establishing the minimum Federal standards and the source materials to be used in developing proposals for these standards. It also proposed, without stating specific regulatory language, several requirements for inclusion in the minimum Federal standards. This notice sets forth the specific regulations that are being proposed as testing and uprating requirements.

Included in this notice are proposed Subparts J and K of Part 192 which contain—

(1) The general requirements for strength testing new, relocated, or replaced pipelines, mains, and related facilities that are presently contained in sections 841 and 842 of chapter IV of the USAS B31.8 Code;

(2) The general requirements for qualifying pipelines, mains, and related facilities for higher operating pressures that are presently contained in section 845 of chapter IV of the USAS B31.8 Code; and

(3) Certain of the additional requirements that were discussed in Notice 69-3 and other additional requirements the basis for which is discussed in this preamble.

Although these proposed regulations closely parallel the presently effective interim standards that are set forth in the USAS B31.8 Code, a number of differences will be noted. For the most part these are nonsubstantive in nature.

A number of Code provisions are not included because they contain unnecessarily detailed specifications for which a performance requirement already existed or could be readily substituted. Any person reviewing the proposed regulation who feels that the omission of any language or the manner of revision would decrease the presently required level of safety should state his conclusions and supporting reasons in his comments. Similarly, if a proposed performance requirement does not appear to be an adequate substitute for an omitted specification requirement this should also be stated with supporting reasons.

To assist persons in reviewing and commenting on the proposed regulations, this notice contains a derivation table showing, to the extent possible, the source of proposed requirements. In most cases this is the USAS B31.8 Code. Some are derived from various State regulations, and others are based on recommendations made by the National Transportation Safety Board. Changes from the present requirements of USAS B31.8 of particular note are discussed below:

SUBPART J—LEAK AND STRENGTH TEST REQUIREMENTS

Section 192.501. The leak and strength test requirements of this subpart apply to relocations and replacement of pipelines and mains as well as to new installations. This broadening of the present applicability of the comparable code requirements has been made since it appears reasonable to require pipe that is replaced or relocated to meet the same test requirements as new pipe before it is put into operation.

Section 192.503(b). Presently the B31.8 Code only allows water as a test medium. This proposed section would authorize the use of any liquid as a test medium as long as it meets the stated criteria.

Section 192.505. This section is based for the most part on sections 841.411 through 416 of the B31.8 Code. However, the authorization to use air as a test medium in class 3 and 4 locations under certain circumstances that are presently contained in section 841.413 is omitted. It is recognized that this may require more advanced scheduling requirements than is presently the case and comments on the lead time problems and any other problems that could arise from eliminating this authorization are invited. In addition, the required minimum test pressure for pipelines and mains in class 3 and 4 locations would be 150 percent of maximum operating pressure.

An additional provision has been added to the present test requirements to require that a hydrostatic test must be conducted at a test pressure of at least 1.25 times the maximum operating pressure for any point on a pipeline within 300 feet of a building intended for human occupancy. In no event may the length of pipe tested under this requirement be less than 600 feet.

At present there is no minimum time limit for the strength test requirements in the code. Section 192.505 proposes to require that test pressure should be maintained for at least 24 consecutive hours.

A new provision has been included in § 192.505(c), comparable to § 195.304, to eliminate the need for a field test for a component other than pipe, such as a valve or fitting, if it is the only item being added or replaced and if the manufacturer certifies that it was previously tested to certain stated criteria. This provision also permits a shorter test for above ground pipeline facilities and certain fabricated units.

Section 192.511. This section for the most part reflects the present requirements of section 841.44. However, as indicated in Notice 69-3, specific minimum pressure requirements have been included that are not contained in the present requirements. In addition, the proposed test pressure for pipe with a coating that is able to seal a leak is 125 p.s.i.g. rather than the present 100 p.s.i.g.

Section 192.515(b). As Notice 69-3 stated, a provision has been included to require that the person conducting a test shall dispose of the test medium in a manner that will not be detrimental to the environment.

Section 192.517. The recordkeeping requirements of present section 841.417 have been expanded to state additional information that it is felt must be recorded to comply with the spirit and intent of chapter V of the code.

SUBPART K—UPRATING

Section 192.553. This proposed section contains new requirements for increasing pressure in existing pipeline systems. Presently sections 845.23(c), 845.34(c), 845.35(c), and 845.44(c) contain some general requirements for increasing pressure "gradually" or "by steps" when qualifying a pipeline or main

for an increase in operating pressure or when converting from a low pressure to a high pressure distribution system. The proposed requirements would limit each step increase to not more than 25 percent of the total proposed pressure increase and would require between each increase, an interval of constant pressure of sufficient duration for the entire pipeline, main, or pipeline system affected to be checked for leaks.

This section also contains recordkeeping requirements applicable to all upratings covered by the subpart even though the present code requirements for recordkeeping are less broad in scope.

Consistent with a recommendation of the National Transportation Safety Board, this section contains a proposed requirement that each operator prepare and follow a written plan that would ensure that all applicable requirements are met for each system being uprated.

Section 192.555. Paragraph (a) of this section is based on the "Note" presently contained in 845.23. However, as proposed, the uprating requirements relate to previous "maximum actual operating pressure" rather than "maximum allowable operating pressure." This is because the present code requirements would appear to be effective only if previous maximum "actual" operating pressures are controlling (this applies to proposed §§ 192.557 and 192.559). Further, a 5-year limit has been added whereas the present code refers to the previous "several years."

As was described in Notice 69-3, paragraph (b)(2) of § 192.555 (and also § 192.557(c)(3)) requires a leakage survey in every uprating rather than just where certain conditions exist as is the case under the present code requirements.

The authority to increase operating pressure in a pipeline, or main not previously tested, that is presently contained in section 845.23(b)(3), is reflected in § 192.555(c)(3) but is limited to a pipeline or main in a class 1 location. This is to be consistent with the philosophy which is reflected in the prohibition in proposed § 192.505 against testing with gas in other than a class 1 location.

In consideration of the foregoing, the Department proposes to amend Title 49 of the Federal Regulations by adding a new Part 192 to include Subparts J and K as set forth below.

This notice is issued under the authority of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. sec. 1671 et seq.), Part 1 of the Regulations of the Office of the Secretary of Transportation (49 CFR Part 1), and the delegation of authority to the Director, Office of Pipeline Safety, dated November 6, 1968 (33 F.R. 16468).

Issued in Washington, D.C., on April 1, 1970.

W. C. JENNINGS,
Acting Director,
Office of Pipeline Safety.

Subpart J—Leak and Strength Test Requirements

DERIVATION TABLE

New section	*Source*
192.501	New and 195.
192.503	841.31 and 49 CFR 195.306.
192.505(a)	841.412. 841.414. 841.415 and 49 CFR 195.302.
192.505(b)	New.
192.505(c)	New and 195.304.
192.507	841.42.
192.509	841.43.
192.511	841.44 plus changes recommended by Technical Committee.
192.513	842.5.
192.515(a)	841.5.
192.515(b)	New.
192.517	841.417 and 195.

Sec.

192.501 Scope.
192.503 General requirements.
192.505 Strength test requirements for steel pipelines and mains to operate at hoop stresses of 30 percent or more of specified minimum yield strength.
192.507 Strength test requirements for steel pipelines, mains, and related facilities to operate at hoop stresses less than 30 percent of specified minimum yield strength and at or above 100 p.s.i.g.
192.509 Leak tests for pipelines, mains, and related facilities (other than plastic) to operate at or above 100 p.s.i.g.
192.511 Leak test requirements for pipelines, mains, and related facilities (other than plastic) to operate below 100 p.s.i.g.
192.513 Test requirements for plastic pipe.
192.515 Environmental protection and safety requirements.
192.517 Records.

Subpart J—Leak and Strength Test Requirements

§ 192.501 Scope.

This subpart applies to and prescribes minimum leak and strength test requirements for new pipelines, mains, and related facilities and the return to operation of a pipeline, main, or related facility that has been relocated or replaced.

§ 192.503 General requirements.

(a) No person may operate a pipeline or main, or a related facility, until it has—

(1) Been tested in accordance with this subpart; and

(2) Each leak has been located and eliminated.

(b) For the purposes of this subpart, each liquid test medium used must, while being used—

(1) Not be corrosive to the material of which the pipeline, main, or facility being tested is constructed;

(2) Be relatively free of sedimentary materials; and

(3) Be nonflammable.

§ 192.505 Strength test requirements for steel pipelines and mains to operate at hoop stresses of 30 percent or more of specified minimum yield strength.

(a) For a steel pipeline, main, or related facility, that is to operate at a hoop stress of 30 percent or more of the specified minimum yield strength, a strength test must be conducted in accordance with this section. The required test medium and test level are set forth in the following table:

Location	Test medium	Required test pressure	
		Minimum [2]	Maximum [3]
1 [1]	Liquid	1.1 xmop	None.
	Air or Gas	1.1 xmop	1.1 xd p.
2 [1]	Liquid	1.25 xmop	None.
	Air	1.25 xmop	1.25 xd p.
3	Liquid	1.50 xmop	None.
4	Liquid	1.50 xmop	None.

[1] If there is a building intended for human occupancy within 300 feet of a pipeline, main, or related facility a hydrostatic test must be conducted to a test pressure of at least 1.25 xmop on that part of the pipeline, main or related facility within 300 feet of such a building, but in no event may the test section be less than 600 feet.
[2] mop=maximum operating pressure.
[3] d p=design pressure.

(b) Pipeline facilities in a class 1 location that are required to be constructed to a design factor of at least 0.6 may be tested in accordance with class 1 location testing requirements. Except for uncased pipelines crossing hard surfaced roads and railroads in a class 2 location, pipeline facilities that are required to be constructed to a design factor of at least 0.5 must be tested to at least class 3 location test requirements.

(c) Except as provided in paragraph (e) of this section, the field test must be conducted by maintaining the test pressure for at least 24 consecutive hours after the test pressure has stabilized in all parts of the pipeline facility being tested.

(d) If a component other than pipe, such as a fitting or valve is the only item being replaced or added to a pipeline system, a strength test after installation is not required if the manufacturer certifies that the component was tested to at least the pressure required by paragraph (a) of this section for the applicable class location.

(e) For pipeline facilities installed above ground and for short sections of pipe and fabricated units for which a postinstallation test is impractical, the minimum test duration is 4 hours. Each unit being tested under this paragraph must be visually inspected during the test.

§ 192.507 Strength test requirements for steel pipelines, mains, and related facilities to operate at hoop stresses less than 30 percent of specified minimum yield strength and at or above 100 p.s.i.g.

(a) For a steel pipeline, main, or related facility that is to operate at a hoop stress less than 30 percent of SMYS but above 100 p.s.i.g., a strength test must be conducted in accordance with this section.

(b) Pipeline facilities in a class 1 location must be tested to at least the requirements of § 192.509.

(c) Pipeline facilities in a class 2, 3, or 4 location must be tested in accordance with § 192.505(a), except that gas

or air may be used as the test medium within the following limits:

Class location	Gas maximum hoop stress permitted as percentage of SMYS	Air maximum hoop stress permitted as percentage of SMYS
2	30	75
3	30	50
4	30	40

(d) The minimum test duration is 4 consecutive hours.

§ 192.509 Leak tests for pipelines, mains, and related facilities (other than plastic) to operate at or above 100 p.s.i.g.

For a pipeline, main, or related facility (other than plastic) that is to operate at or above 100 p.s.i.g., a leak test must be conducted in accordance with the following:

(a) The pipeline operator must choose a test procedure that is able to disclose all leaks in the section being tested; and

(b) If, during the strength test, the pipeline facility is to be stressed to 20 percent or more of the specified minimum yield strength of the pipe, and gas or air is the test medium, a leak test must first be made at a pressure between 100 p.s.i.g. and the pressure required to produce a hoop stress of 28 percent of SMYS or the line must be walked to check for leaks while the hoop stress is held at approximately 20 percent of SMYS.

§ 192.511 Leak test requirements for pipelines, mains, and related facilities (other than plastic) to operate below 100 p.s.i.g.

(a) For a pipeline, main, or related facility (other than plastic) that is to operate below 100 p.s.i.g., a leak test must be conducted in accordance with this section.

(b) Distribution mains and related facilities that are to operate at less than 1 p.s.i.g. must be tested to at least 10 p.s.i.g., and those to operate at or above 1 p.s.i.g. must be tested to at least 100 p.s.i.g.

(c) Pipelines, mains, and related facilities with a coating capable of sealing a leak must be tested to a minimum of 125 p.s.i.g.

§ 192.513 Test requirements for plastic pipe.

(a) For a plastic pipeline, main, or related facility (except a tie-in section), a test must be conducted in accordance with this section.

(b) The test procedure used, including the test duration must be able to disclose all leaks in the section being tested.

(c) The test pressure must be at least 1.5 times the maximum operating pressure or 50 p.s.i.g., whichever is greater. However, the maximum test pressure must not exceed three times the design pressure of the pipe.

(d) No test may begin until sufficient time has elapsed after installation of the pipe for all joints to set properly.

(e) The test medium may be gas, air, or water.

(f) The temperature of thermoplastic material must not exceed 100° F. during the test.

§ 192.515 Environmental protection and safety requirements.

(a) In conducting tests under this subpart, each pipeline operator and each testing company shall take every reasonable precaution to protect its employees and the general public during the testing. Whenever the hoop stress of the pipeline, main, or related facility being tested will exceed 50 percent of the SMYS of the pipeline facility, the person in charge of the testing shall take all practicable steps to keep persons not working on the testing operation outside of the testing area until the pressure is reduced to or below the pipeline facilities' proposed maximum operating pressure.

(b) The person conducting the test shall dispose of the test medium in a manner that will not be detrimental to the environment.

§ 192.517 Records.

Each operating company shall make, and retain for the useful life of the pipeline, main, or facility, a record of each test performed under this subpart. The record must contain at least the following information:

(a) The operator's name, the name of the operator's employee responsible for making the test, and the name of the test company used, if any.

(b) Proposed maximum operating pressure and maximum allowable operating pressure.

(c) Test medium used.

(d) Test pressure.

(e) Test duration.

(f) Pressure recording charts.

(g) Elevation variations of test section.

(h) Leaks and failures noted and their disposition.

Subpart K—Uprating

DERIVATION TABLE

New section	*Source*
192.551	New.
192.553(a)	845.23(c), 845.34(c), 845.35(e), 845.44(c), and new requirements.
192.553(b)	845.23(d), 845.34(d).
192.555	845.23 (a), (b), and (c).
192.557	845.34 (a), (b), and (c).
192.559	845.35.
192.561	845.44 (a) and (b).

Sec.

192.551 Scope.
192.553 General requirements.
192.555 Uprating to a pressure that will produce a hoop stress of 30 percent or more of specified minimum yield strength: Steel pipelines or mains.
192.557 Uprating: Steel pipelines or mains to a pressure that will produce a hoop stress less than 30 percent of specified minimum yield strength; and plastic pipelines or mains.
192.559 Uprating: Cast iron or ductile iron high-pressure main or system.
192.561 Conversion of low-pressure distribution system to high-pressure distribution system.

Subpart K—Uprating

§ 192.551 Scope.

This subpart prescribes minimum requirements for qualifying pipelines, mains, and pipeline systems to operate at a new or higher operating pressure, and for converting a low-pressure distribution system to a high-pressure distribution system.

§ 192.553 General requirements.

(a) *Pressure increases.* Whenever the requirements of this subpart authorize an increase in the operating pressure of a pipeline, main, or pipeline system, the pressure must be increased gradually, at a rate that can be controlled, and in accordance with the following:

(1) The increase must be made in increments, each of which is not more than 25 percent of the total increase.

(2) At the end of each incremental increase, the pressure must be held constant for a sufficient period of time for the entire pipeline, main, or pipeline system that is affected, to be checked for leaks.

(3) Each leak detected must be repaired before a further pressure increase is made.

(b) *Records.* Each operator who uprates a pipeline, main, or pipeline system under this subpart, shall retain for the life of that pipeline, main, or pipeline system a record of each investigation required by this subpart, of all work performed, and of each pressure test conducted, in connection with the uprating.

(c) *Written plan.* Each operator shall prepare and follow a written plan that will insure that each applicable requirement of this subpart is complied with.

§ 192.555 Uprating to a pressure that will produce a hoop stress of 30 percent or more of specified minimum yield strength: Steel pipelines or mains.

(a) Unless during the preceding 5 years the requirements of this section, or the applicable strength test requirements for a new pipeline or main, have been met, no person may subject a steel pipeline or main to an operating pressure above the highest maximum actual operating pressure experienced during the preceding 5 years if the increased pressure will produce a hoop stress of 30 percent or more of specified minimum yield strength. However, in no event may the operating pressure exceed the maximum that would be allowed under this part for a new line, constructed of the same materials, in the same location.

(b) Before increasing the operating pressure the operator shall—

(1) Review the design and previous testing of the pipeline or main to determine whether the proposed increase is safe and consistent with the requirements of this part;

(2) Determine the condition of the pipeline or main by leakage surveys and other field inspections and by examining maintenance records, corrosion surveys, and other suitable means; and

(3) Make any repairs, replacements, or alterations in the pipeline or main that are found to be necessary.

(c) After complying with paragraph (b) of this section, the operating pressure may be increased if at least one of the following requirements is met:

(1) The condition, as determined under paragraph (b) of this section, indicates that the pipeline or main is able to meet the increased operating pressure consistent with the design requirements of this part and the pipeline or main has previously been tested to a pressure equal to or greater than that required by this part for a new line of the same material, in the same location, to operate under the same conditions.

(2) Before increasing the operating pressure the pipeline or main is successfully tested in accordance with the requirements of this part for a new line of the same material, in the same location, and to operate under the same conditions.

(3) A new operating pressure may be established for a pipeline or main in a class 1 location if the line has not previously been tested, and if—

(i) It is impractical to test it in accordance with the requirements of this part,

(ii) The new maximum operating pressure does not exceed 80 percent of that allowed for a new line of the same design in the same location, and,

(iii) The operator determines that the new operating pressure is consistent with the condition of the pipeline, or main and the design requirements of this part.

§ 192.557 Uprating: Steel pipelines or mains to a pressure that will produce a hoop stress less than 30 percent of specified minimum yield strength; and plastic pipelines or mains.

(a) This section applies to steel pipelines or mains that are to operate at a pressure that will produce a hoop stress less than 30 percent of specified minimum yield strength and to plastic pipelines or mains.

(b) Unless during the preceding 5 years the requirements of this section, or the applicable test requirements for a new pipeline or main have been met, no person may subject a pipeline or main to which this section applies to an operating pressure above the highest maximum actual operating pressure during the preceding 5 years.

(c) Before increasing the operating pressure the operator shall—

(1) Review and consider the design of the pipeline or main including the material and equipment used;

(2) Review and consider past maintenance records including the results of previous leakage surveys;

(3) Make a leakage survey and repair any leaks that are found;

(4) Repair or replace parts of the pipeline or mains found not to conform to the requirements of this part for a new pipeline or main to be operated at the higher operating pressure in the same location;

(5) If the new operating pressure is to be over 60 p.s.i.g., install regulating and limiting devices on the service lines in accordance with § 192.___(845.53) for a new system;

(6) Reinforce or anchor offsets, bends, and dead ends in coupled pipe sufficiently to avoid movement of the pipe if the offset, bend, or dead end is exposed in an excavation.

§ 192.559 Uprating: Cast iron or ductile iron high pressure main or system.

(a) Unless during the preceding 5 years the requirements of this section have been met, no person may subject a cast iron or ductile iron high-pressure main or system to an operating pressure above the highest maximum actual operating pressure during the preceding 5 years.

(b) In any event, no person may subject a cast iron or ductile iron high-pressure main or system to a pressure that exceeds the lowest of the following pressures, as applicable:

(1) For a cast iron main or system the maximum allowable operating pressure may not exceed the pressure allowed by § 192.619 or § 192.___(842.1).

(2) For a ductile iron main or system the maximum allowable operating pressure may not exceed the pressure allowed by § 192.___(842.21).

(c) If records are not sufficiently complete to ascertain compliance with § 192.___(842.11) or § 192.___(842.21), as applicable, the following procedures must be followed:

(1) If the original laying conditions cannot be ascertained, the operator shall assume when applying the design formulas of USAS A 21.1 that cast iron pipe was supported on blocks with tamped backfill and when applying the design formulas of USAS A 21.50 that ductile iron pipe was laid without blocks with tamped backfill.

(2) Unless the actual maximum cover depth is known, the operator shall measure the actual cover in at least three places where the cover is most likely to be greatest and shall use the greatest cover measured.

(3) Unless the actual nominal wall thickness is known, the operator shall determine the wall thickness by cutting and measuring coupons from at least three separate pipe lengths. The coupons must be cut from pipe lengths in areas where the cover depth is most likely to be the greatest. The average of all measurements taken must be increased by the allowance indicated in the following table:

Pipe size (inches)	Allowance (inches)		
	Cast iron pipe		Ductile iron pipe
	Pit cast pipe	Centrifugally cast pipe	
3–8	0.075	0.065	0.066
10–12	0.08	0.07	0.07
14–24	0.08	0.08	0.075
30–42	0.09	0.09	0.075
48	0.09	0.09	0.08
54–60	0.09		

The nominal wall thickness of the cast iron is the standard thickness listed in Table 10 or Table 11, as applicable, of USAS A21.1 nearest the value obtained under this subparagraph. The nominal wall thickness of ductile iron pipe is the standard thickness listed in Table 6 of USAS A21.50 nearest the value obtained under this subparagraph.

(4) For cast iron pipe, unless the pipe manufacturing process is known, the operator shall assume that the pipe is pit cast pipe with a bursting tensile strength of 11,000 p.s.i. and a modulus of rupture of 31,000 p.s.i.

(c) Before the operating pressure in a cast iron or ductile iron high-pressure main or system is increased the requirements of § 192.557(c) must be complied with. The requirements of paragraph (c) (6) also apply to bell and spigot joined pipe.

§ 192.561 Conversion of low-pressure distribution system to high-pressure distribution system.

(a) No person may convert a distribution system from low-pressure to high-pressure except in accordance with this section.

(b) Before increasing the pressure the operator shall—

(1) Review the design of the system, including the materials and equipment used, and the past maintenance records, including results of leakage surveys, to determine whether the proposed conversion is safe and is consistent with the requirements of this part.

(2) Make a leakage survey and repair all leaks that are found.

(3) Reinforce or replace any part of the system found to be inadequate for the proposed higher operating pressure.

(4) Install a service regulator on each service line, and test each regulator to determine that it is functioning.

(5) Isolate the system from any adjacent low-pressure system.

(6) Check each bend or offset in coupled or bell and spigot pipe, and reinforce or replace each anchorage found to be inadequate for the proposed higher pressure.

[F.R. Doc. 70–4189; Filed, Apr. 7, 1970; 8:45 a.m.]

Notices

DEPARTMENT OF STATE

Agency for International Development

HOUSING INVESTMENT GUARANTY PROJECTS IN LATIN AMERICAN COUNTRIES

Special Announcement for Chile

Extension of dates for filing applications and increase of maximum price ceilings.

On September 13, 1969, the Agency for International Development, announced in the FEDERAL REGISTER, volume 34, No. 176, page 14412, the reopening of the Housing Guaranty Program for Chile.

On November 11, 1969, by Special Announcement in the FEDERAL REGISTER, volume 34, No. 217, page 18140, the dates for receiving applications under the reopened program were established as January 1–15, 1970.

On February 3, 1970, by Special Announcement in the FEDERAL REGISTER, volume 35, No. 23, page 2416, the date for receiving applications under the reopened program was extended to March 1, 1970.

New maximum allowable sales prices have now been established for Chile. To give all interested parties time to revise and/or present new applications, the terminal date for filing applications is hereby further extended to May 1, 1970.

Effective as of this date, the following maximum allowable sales prices are established and will apply to all areas of Chile:

1. $8,500 for projects within these categories: (a) Private Housing Projects (formerly known as "Pilot demonstration projects"), (b) Local Participation Projects.

2. $6,500 for projects within the category of Institutions Important to the Alliance for Progress.

All other terms and conditions of the announcement of September 13, 1969, as amended by special announcements dated November 11, 1969, and February 3, 1970, will remain in full force and effect.

STANLEY BARUCH,
Director,
Housing and Urban Development.

MARCH 30, 1970.

[F.R. Doc. 70-4210; Filed, Apr. 7, 1970; 8:46 a.m.]

[Delegation of Authority 32, Modification]

UNITED STATES OPERATIONS MISSION TO VIETNAM

Delegation of Authority

Pursuant to the authority delegated to me by Delegation of Authority No. 104, as amended, from the Secretary of State, dated November 3, 1961 (26 F.R. 10608), I hereby modify the Delegation of Authority No. 32 (28 F.R. 10801), to the Mission Director of the U.S. Mission to Vietnam by striking out the sentence which reads "However, authorities redelegated to more than one such other member of the Mission Staff must relate to separate fields of activity." and inserting in lieu thereof the following: "However, authorities redelegated to more than one such other member of the Mission Staff must relate to separate fields of activity, except that for small value purchases ($2,500 or under) additional members of the Mission Staff may be redelegated authority within separate fields of activity to sign small value orders."

This delegation of authority shall become effective upon publication in the FEDERAL REGISTER.

Dated: March 31, 1970.

JOHN A. HANNAH,
Administrator.

[F.R. Doc. 70-4231; Filed, Apr. 7, 1970; 8:47 a.m.]

DEPARTMENT OF THE TREASURY

Secret Service

TREASURY SECURITY FORCE

Change of Name From Treasury Guard Force

By virtue of the authority vested in me as Director of the Secret Service including the authority in Treasury Department Order No. 15, as amended, and Treasury Department Order No. 173-3, and subject to the concurrence of the Assistant Secretary for Enforcement and Operations, as indicated by his signature below, the following organizational name change and realignment of functions and duties will become effective immediately:

1. The Treasury Guard Force shall hereafter be designated and referred to as the Treasury Security Force.

2. All present functions, powers, and duties of the Treasury Guard Force, including functions, powers, and duties under any delegation of authority to that organization are hereby transferred to the Treasury Security Force.

[SEAL] JAMES J. ROWLEY,
Director.

Approved: March 11, 1970.

EUGENE T. ROSSIDES,
Assistant Secretary
of the Treasury.

[F.R. Doc. 70-4279; Filed, Apr. 7, 1970; 8:51 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-508]

ALASKA

Notice of Classification of Lands for Mutliple Use Management

1. Pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411–18), and to the regulations in 43 CFR Parts 2410 and 2411, all of the public lands in the area described below are hereby classified for multiple use management.

Publication of this notice will not affect valid existing rights, or the determination and the protection of the rights of the Native Aleuts, Eskimos, and Indians of Alaska.

Except as provided in paragraphs 3 and 4, publication of this notice has the effect of segregating the public lands in the described area from appropriation under the Agricultural Land Laws, 43 CFR 2211.9 (48 U.S.C. 371–380); the Trade and Manufacturing Site Law, 43 CFR Subpart 2213 (48 U.S.C. 461); the Headquarters Site Law, 43 CFR 2233.9–1 (48 U.S.C. 461); the Homesite Law, 43 CFR 2233.9–2 (48 U.S.C. 461); and the Native and General Allotment Acts, 43 CFR Subpart 2212 (48 U.S.C. 357–357b, 25 U.S.C. 334).

The lands shall remain open to all other forms of use and occupancy, including mineral leasing and mining, as provided by applicable law.

As used herein, "public lands" means any lands which are not withdrawn or reserved for a Federal use or purpose.

2. The public domain lands affected are located in the Kobuk River Valley and include Ambler, Shungnak, and Kobuk villages.

The lands classified are described as follows and are shown on maps on file in the Fairbanks District and Land Office, 516 Second Avenue, Fairbanks, Alaska, and the State Office, Bureau of Land Management, 555 Cordova Street, Anchorage, Alaska.

KATEEL RIVER MERIDIAN

PROTRACTED TOWNSHIPS AS FOLLOWS

T. 17 N., R. 5 E. through 11 E.
T. 18 N., R. 5 E. through 11 E.
T. 19 N., R. 2 E. through 11 E.
T. 20 N., R. 2 E. through 11 E.
T. 21 N., R. 2 E. through 8 E.
T. 22 N., R. 2 E. through 4 E.

The lands described aggregate approximately 1,013,760 acres.

3. The public lands in the following described areas shall remain open to settlement by Natives of Alaska and to appropriation under the Native Allotment Act of 1906, as amended (48 U.S.C. 357, 357a, 357b), and to general settlement and appropriation for Homesites

under the act of May 26, 1934 (48 U.S.C. 461):

All public lands within 1 statute mile of the main stream or channels of the Kobuk River and the Ambler River, except:

a. A tract on the Kobuk River at Onion Portage described as follows:

Beginning at a point on the north bank of the Kobuk River, said point bears N. 66° E. 28 chains from U.S.L.M. 4433; said point further found at approximate latitude 67°06'38" N., longitude 158°15'18" W. From the point of beginning, by metes and bounds: N. 45° W., 70 chains; S. 45° W., 86 chains; S. 45° E., 52 chains to a point on the north bank of the Kobuk River; northeasterly approximately 90 chains to the point of beginning.

The area described, including both public and nonpublic lands, aggregates approximately 595 acres.

b. A tract at Onion Portage described as follows:

Beginning at a point on the north bank of the Kobuk River, said point bears N. 66° E. approximately 28 chains from U.S.L.M. 4433; said point further found at approximate latitude 67°06'38" N., longitude 158°15'18" W. From the point of beginning, by metes and bounds: N. 45° W., 24 chains; N. 60° E., 128 chains; S. 65° E., 224 chains; S. 45° W., 68 chains; westerly along the north bank of the Kobuk River, approximately 3.25 miles to the point of beginning.

The tract described contains approximately 3,200 acres and is contiguous to those lands described in 3a above.

c. A tract at the confluence of the Kobuk and Ambler Rivers described as follows:

Beginning at a point on the north and right bank of the Kobuk River, said point found at latitude 67°05'08" N., longitude 157°46'-45". Said point further found on a bearing of S. 78°20' W. and a distance of 6.63 miles from VABM AMBLER (1557). From the point of beginning, by metes and bounds: N. 40° E., 60 chains; N. 50° W., 66 chains to a point on the east and left bank of the Ambler River; southerly and downstream along the east and left bank of the Ambler River, continuing southerly along the east and left bank of the east dividing channel of the Ambler River to the point of confluence with the Kobuk River; continuing southeasterly and upstream along the north and right bank of the Kobuk River, approximately 130 chains to the point of beginning.

The tract described contains approximately 390 acres.

d. A tract on the Kobuk River approximately 3 miles upstream from the confluence of the Kobuk and Ambler Rivers, described as follows:

Beginning at a point on the north and right bank of the Kobuk River, said point found at latitude 67°03'27" N., longitude 157°46'12" W. Said point further found on a bearing of S. 62°30' W., and a distance of 7.04 miles from VABM AMBLER (1557). From the point of beginning, by metes and bounds: north, 30 chains; east, 55 chains; south, 45 chains; west, 38 chains to a point on the north and right bank of the Kobuk River; westerly and downstream along the north and right bank of the Kobuk River omitting any sloughs, 24 chains to the point of beginning.

The tract described contains approximately 230 acres.

e. A tract approximately 2.50 miles downstream from the village of Kobuk, described as follows:

Beginning at a point on the north bank of the Kobuk River, said point found at latitude 66°55'00" N., longitude 156°56'50" W. Said point further found on a bearing of N. 72°30' W. and a distance of 1.95 miles from the school house at the village of Kobuk. From the point of beginning, by metes and bounds: N. 45° E., 30 chains; S. 45° E., 30 chains; S. 45° W., 30 chains; northwesterly and downstream along the right (north) bank of the Kobuk River to the point of beginning.

The tract described contains approximately 90 acres.

f. Those lands along the Kobuk River east of longitude 156°37'30" W. and; those lands along the Kobuk River from longitude 157°20' W. to longitude 157°40' W. and; those lands along the Kobuk River from longitude 157°54' W. to longitude 158°07' W.

g. Those lands along the Ambler River upstream from the confluence of the Redstone River.

4. The following described public lands are further segregated from location under the mining laws (30 U.S.C. ch. 2) and from disposals under the materials disposal laws (30 U.S.C. 601–2).

a. A tract near Dahl Creek described as follows:

Beginning at a point which bears N. 25°10'-00" E., at a distance of 227 chains from the school house at the village of Kobuk, said point further found at latitude 66°56'43" N., longitude 156°55'30" W. From the point of beginning by metes and bounds: N. 78°-28' W., 75 chains; N. 11°32' E., 65 chains; S. 78°28' E., 185 chains; S. 11°32' W., 50 chains; N. 78°28' W., 110 chains; S. 11°32' W., 15 chains to the point of beginning.

The tract described contains approximately 1,035 acres.

b. The tracts described under a, b, c, d, and e in foregoing paragraph 3.

5. Following publication of a notice of proposed classification (May 9, 1968, 33 F.R. 6990–6991), numerous informal meetings were held at various locations, including Ambler, Shungnak, and Kobuk. Formal hearings were held at Kotzebue on March 13, 1969, and Fairbanks on April 16, 1969. The record showing the comments received, transcripts of the formal hearings and other information is on file in the Fairbanks District Office, 516 Second Avenue, Fairbanks, Alaska 99701.

The comments received have been favorable. Certain suggestions and requests have been incorporated into this notice and reflect changes from the original proposal.

Lands on the Kobuk River containing Native fishing or campsites and supporting vital caribou migration routes have been segregated from all forms of settlement and remain subject to all valid rights.

Lands containing an important archeological site have been delineated by separate description.

This classification involves no transfer of title and does not affect the eventual settlement of any Native aboriginal claims in the area.

Practically all of the land remains open to mining or mineral leasing. The tracts closed to this use are not known to contain any valuable minerals and may be required as support areas for future mineral or other development.

Further study of the lands will continue after classification and the Bureau will consider any reclassification action in the public interest required for orderly development.

6. For a period of 30 days from the date of publication in the FEDERAL REGISTER, this classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior as provided in 43 CFR 2411.2c.

BURTON W. SILCOCK,
State Director.

APRIL 1, 1970.

[F.R. Doc. 70–4200; Filed, Apr. 7, 1970; 8:45 a.m.]

[Serial No. F–850]

ALASKA

Notice of Classification of Lands for Multiple Use Management

1. Pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411–18), and to the regulations in 43 CFR Parts 2410 and 2411, all of the public lands in the area described below, are hereby classified for multiple use management.

Publication of this notice will not affect valid existing rights or the determination and protection of the rights of the Native Aleuts, Eskimos, and Indians of Alaska.

Publication of this notice has the effect of segregating the lands from all forms of use or occupancy governed by statute or regulations, including the mining laws except permits issued under the provisions of section 3 of the Antiquities Act of June 8, 1906. As used herein, "public lands" means any lands which are not withdrawn or reserved for a Federal use or purpose.

2. The lands affected are located near Cape Nome on the Seward Peninsula in western Alaska.

The lands classified are described as follows and are shown on maps on file in the Fairbanks District and Land Office, 516 Second Avenue, Fairbanks, Alaska 99701.

CAPE NOME—SAFETY SOUND ANTIQUITY SITE
SEWARD PENINSULA, ALASKA

TRACT A

Beginning at MC 6 of USS 4107 thence; westerly approximately 80 chains parallel to the Nome—Council Road; south approximately 11 chains to the mean high tide line of Norton Sound; easterly approximately 80 chains along the mean high tide line of Norton Sound to MC 5 of USS 4107; north approximately 11.3 chains along the west boundaries of lots 87 and 89 of USS 4107 to the point of beginning.

Containing approximately 88 acres.

TRACT B

Lots 70–89 inclusive, USS 4107.
Containing 69.85 acres.

Tracts A and B are contiguous and aggregate approximately 157.85 acres.

3. Following publication in the FEDERAL REGISTER (33 F.R. 5689, April 12, 1968) of a notice of proposed classification, numerous meetings were held in the Nome area. On May 22, 1969, a formal hearing was held in Nome.

The record showing the comments received, a transcript of the hearing and other information is on file and can be examined in the Fairbanks District Office, 516 Second Avenue, Fairbanks, Alaska 99701.

Both adverse and favorable comments were received.

The lands classified are recognized to contain an important archeological site represented by a prehistoric Native village. Evaluation by professional archeologists has not been completed and the exact extent or scientific value of this site is not yet established. Comments from professional archeologists favor preservation of the lands until investigations can be completed.

Some persons who visit the area for fishing, berry picking, and other outdoor activities have objected to closing the lands to private settlement.

This classification recognizes all valid claims which may continue to patent or other disposition in compliance with applicable law.

The classification does not limit any seasonal surface use. No restriction is placed on recreational or subsistence activities that would not compromise the archeological values present.

This classification involves no transfer of title and does not affect any Native aboriginal claims in the area.

Further study of the lands will be made after classification, and completion of scientific investigations at an early date will be encouraged. The Bureau will continue discussions with interested parties and will consider reclassification action for both public and private requirements where the values present will not be endangered or lost.

4. For a period of 30 days from the date of publication in the FEDERAL REGISTER, this classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior as provided in 43 CFR 2411.2c.

BURTON W. SILCOCK,
State Director.

APRIL 1, 1970.

[F.R. Doc. 70-4201; Filed, Apr. 7, 1970; 8:45 a.m.]

[F-860]

ALASKA

Notice of Classification of Public Lands for Multiple Use Management

1. Pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411–18) and the regulations in 43 CFR Parts 2410 and 2411, all of the public lands in the areas described below are hereby classified for multiple use management. As used herein, "public lands" means any lands which are not withdrawn or reserved for a Federal use or purpose.

Publication of this notice will not affect valid existing rights, or the determination and protection of the rights of the Native Aleuts, Eskimos, and Indians of Alaska.

Publication of this notice segregates the public lands in the areas described from appropriation under the settlement laws (43 U.S.C. 355, 357–357b, 371–380a, 461), and further segregates the land described in paragraph 3 from the mining laws (30 U.S.C. 21) and the material sale law (30 U.S.C. 601). Except as noted, the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws.

2. The lands classified are described as follows and are shown on maps on file in the Fairbanks District Office, 516 Second Avenue, Fairbanks, Alaska, and the State Office, Bureau of Land Management, 555 Cordova Street, Anchorage, Alaska.

SALMON LAKE AREA

Describing lands in Alaska on the Seward Peninsula. The Salmon Lake Area is located on the Nome-Kougarok Road approximately 40 miles north of the city of Nome.

TRACT A

Beginning at a point on the centerline of the Nome-Kougarok Road found 0.8 mile west of the bridge, measured on the centerline of said road where said road crosses the Grand Central River. Said point further found at approximate coordinates 64°54' N., 165°08' W. From the point of beginning, by metes and bounds:

South, 0.4 mile to the roadbed of the abandoned Seward Peninsula Railroad; easterly, along the roadbed of the abandoned railroad 11.4 miles to a point 2 miles due south of hill 632, as shown on U.S.G.S. Map Solomon (D–6) Quadrangle; northerly, 3 miles to a point 0.50 mile north of the Nome-Kougarok Road; westerly, parallel to and 0.50 mile north of the Nome-Kougarok Road approximately 11 miles to a point 0.50 mile north of the point of beginning; south, 0.50 mile to the point of beginning.

TRACT B

Beginning at a point 0.50 mile north of the point of beginning described in Tract 1 and coincident to the point initiating the final course in Tract 1:

Northerly on a course parallel to and 0.5 mile west of the Grand Central River and the most westerly channel of said river approximately 2 miles to Tumit Creek; north 75° E., 1 mile; southerly on a course parallel to and 0.5 mile east of the Grand Central River and the most easterly channel of said river approximately 2 miles to a point 0.50 mile north of the centerline of Nome-Kougarok Road and 0.4 mile west of Rainbow Creek; westerly parallel to and 0.50 mile north of the centerline of the Nome-Kaugarok Road on a course coincident to the northern limit of Tract 1 to the point of beginning.

The two tracts are contiguous and continuous. The tracts described, including both public and nonpublic lands, aggregate approximately 7,800 acres.

3. As provided in paragraph 1 above, the following described lands within Tract A are further segregated from location under the mining law (30 U.S.C. 21), and disposal of materials under the materials disposal law (30 U.S.C. 601).

PARCEL 1

Beginning at corner 10, U.S. Survey 4212; thence N. 08°08' W., approximately 20 chains; S. 71°52' W., approximately 13.50 chains; S. 28°08' E., approximately 20 chains to corner 11, U.S. Survey 4212; N. 61°45' E., 6.10 chains to the point of beginning.

The tract described aggregates approximately 19.20 acres.

PARCEL 2

Lot 17, U.S. Survey 4212 containing 24.78 acres.

PARCEL 3

Beginning at corner 11, U.S. Survey 4212, by metes and bounds: N. 28°08' W., 6.55 chains; S. 61°23' W., parallel to the centerline of the Nome-Kougarok Road and coincident to the north (corner 2–3) line of U.S. Survey 4216, 28.90 chains; S. 28°37' E., 13.52 chains; N. 61°23' E., parallel to the Nome-Kougarok Road, 27.00 chains; N. 18°08' W., coincident to the west (corner 11–12) line of Lot 17, U.S. Survey 4212, 7.00 chains to the point of beginning.

The tract described excludes U.S. Survey 4216 and aggregates approximately 17 acres.

PARCEL 4

Beginning at corner 10, U.S. Survey 4212, by metes and bounds: N. 08°08' W., 6.55 chains; N. 61°45' E., parallel to the Nome-Kougarok Road, 18.90 chains; S. 18°08' E., 13.52 chains; S. 61°45' W., parallel to the Nome-Kougarok Road, 20.00 chains; N. 18°08' W., coincident to the east (corner 9–10) line of Lot 17, U.S. Survey 4212, 7.00 chains to the point of beginning.

The tract described aggregates approximately 26.68 acres.

PARCEL 5

Beginning at the junction of an unnamed creek and the Kruzgamepa River (Pilgrim River), at approximately 64°55'22" north latitude, 164°55'56" west longitude; thence northerly along the west bank of said unnamed creek approximately 10 chains to a point on the centerline of the Nome-Kougarok Road; westerly along the centerline of said road approximately 94 chains to corner 2, U.S. Survey 5009 (unapproved); S. 23°23' E., 5.9 chains; S. 01°57' E., 4.7 chains; easterly along the meander of Salmon Lake and Kruzgamepa River approximately 100 chains to the point of beginning.

The tract described aggregates approximately 265 acres.

PARCEL 6

Beginning at a point of the right (south) bank of the Kruzgamepa or Pilgrim River, which bears S. 41°57' E., approximately 6 chains from MC 1, U.S. Survey 4214. From the point of beginning by metes and bounds: S 41°57' E., 15 chains; S. 70°00' W., approximately 18 chains to a point on the shoreline of Salmon Lake; northerly and easterly along the meander of Salmon Lake and the Kruzgamepa River approximately 30 chains to the point of beginning.

The tract described aggregates approximately 27 acres.

PARCEL 7

Beginning at the northeast corner of Lot 5, U.S. Survey 4213, found N. 48°11' E., 11.56 chains from monumented corner 3 said survey, thence N. 48°11' E., 10 chains; North 15 chains; West 40 chains; South approximately 32 chains; East 20 chains to corner 2, U.S. Survey 4213; N. 48°11' E., 5.50 chains; N. 41°49' W., 8.20 chains; N. 48°11' E., 11.56 chains; S. 41°49' E., 8.20 chains to the point of beginning, and Lot 4, U.S. Survey 4213.

The tract described aggregates approximately 108.51 acres.

PARCEL 8

Beginning at a point 3 chains north of the centerline of the Nome-Kougarok Road and 12 chains east of Rainbow Creek; thence northeasterly and parallel to the Nome-Kougarok Road, 20 chains; N. 45°00' W., approximately 25 chains; southwesterly and parallel to the Nome-Kougarok Road approximately 10 chains; southerly and perpendicular to the Nome-Kougarouk Road centerline, 15 chains to the point of beginning.

The tract described aggregates approximately 22 acres.

PARCEL 9

Beginning at a point 5 chains north of the centerline of the Nome-Kougarok Road and 3 chains west of Rainbow Creek; thence southwesterly and parallel to the Nome-Kougarok Road, 20 chains; northerly and perpendicular to the Nome-Kougarok Road centerline 15 chains; northeasterly and parallel to the Nome-Kougarok Road 20 chains; southerly and perpendicular to the Nome-Kougarok Road centerline, 15 chains to the point of beginning.

The tract described aggregates approximately 30 acres.

4. This classification was published as a proposed notice (33 F.R. 6249–6250) on April 24, 1968. Since that time numerous meetings were held in the Nome and Fairbanks areas. A formal public hearing was held in Nome on May 22, 1968. The record showing the comments received can be examined in the Fairbanks District Office, 516 Second Avenue, Fairbanks, Alaska 99701. Comments received were favorable.

As a result of suggestions from the public and further study of the Salmon Lake Area, minor changes have been made in the original proposal. These changes are reflected in the foregoing notice of classification.

5. This classification does not involve a transfer of title and has no effect on the eventual settlement of any Native aboriginal claim in the area.

6. For a period of 30 days from the date of publication in the FEDERAL REGISTER, this classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior as provided in 43 CFR 2411.2c.

BURTON W. SILCOCK,
State Director.

APRIL 1, 1970.

[F.R. Doc. 70-4202; Filed, Apr. 7, 1970; 8:45 a.m.]

[New Mexico 435]

NEW MEXICO

Notice of Proposed Classification of Public Lands for Multiple Use Management; Amendment

MARCH 31, 1970.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411–18), and to the regulations in 43 CFR Parts 2410 and 2411, it is proposed to classify for multiple use management the public lands within the areas described below. Publication of this notice has the effect of segregating the described lands from appropriation only under the agricultural land laws (43 U.S.C. Parts 7 and 9; 25 U.S.C. sec. 334) and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171) and the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for Federal use or purpose.

2. The public lands located within the following described areas are shown on maps designated Las Uvas No. 03–01 and Caballo-Truth or Consequences No. 03–07 on file in the Las Cruces District Office, Bureau of Land Management, 1705 North 7th Street, Las Cruces, N. Mex. 88001, and Land Office, Bureau of Land Management, U.S. Post Office and Federal Building, Santa Fe, N. Mex. 87501.

The overall description of the areas is as follows:

NEW MEXICO PRINCIPAL MERIDIAN

T. 28 S., R. 1 W.,
Sec. 7, lots 3, 4, E½SW¼ and SE¼.
T. 12 S., R. 4 W.,
Sec. 15, lot 4.
T. 22 S., R. 4 W.,
Sec 3, lot 1.
T. 12 S., R. 5 W.,
Sec. 15, SW¼SE¼.
T. 13 S., R. 5 W.,
Sec. 3, lot 13;
Sec. 6, NE¼SE¼;
Sec. 28, SE¼NW¼.
T. 18 S., R. 5 W.,
Sec. 7, NE¼NE¼.
T. 19 S., R. 5 W.,
Sec. 5, SW¼NE¼;
Sec. 22, S½SE¼;
Sec. 25, S½N½;
Sec. 26, S½;
Sec. 27, N½NE¼, SW¼NE¼, and NW¼SE¼.
T. 12 S., R. 6 W.,
Sec. 14, SW¼NE¼;
Sec. 27, SE¼SE¼;
Sec. 29, SW¼NW¼.
T. 18 S., R. 6 W.,
Sec. 3, NE¼SE¼;
Sec. 31, NE¼NE¼.
T. 19 S., R. 6 W.,
Sec. 11, SE¼SW¼.
T. 11 S., R. 7 W.,
Sec. 1, lot 11.
T. 21 S., R. 7 W.,
Sec. 3, lots 5, 6, 11, 12 and SW¼;
Sec. 4, lots 5 to 12, inclusive, and S½;
Sec. 6, lots 4, 5, 6, SW¼NE¼ and SE¼NW¼;
Sec. 8, E½W½ and SE¼;
Sec. 17, NE¼ and E½W½;
Sec. 20, E½SW¼;
Sec. 29, NE¼ and E½NW¼.
T. 22 S., R. 7 W.,
Sec. 5, lots 2 and 3;
Sec. 6, lots 1, 2, 7, 8 and NE¼;
Sec. 7, N½SW¼;
Sec. 8, S½NE¼.
T. 21 S., R. 8 W.,
Sec. 5, lots 1, 2, 3, 4, N½N½, SW¼NE¼, and S½NW¼.
T. 22 S., R. 8 W.,
Sec. 1, lots 5, 6 and S½SW¼;
Sec. 4, lots 5, 6, 7, 8 and S½S½;
Sec. 5, lots 9, 10, 11, 12 and S½S½;
Sec. 6, lots 1, 2, 3, 4, S½N½, W½SW¼, and E½SE¼;
Sec. 7, E½;
Sec. 8, W½;
Sec. 10;
Sec. 11, E½, E½W½, and NW¼NW¼;
Sec. 12, SW¼;
Sec. 13, N½NW¼, W½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 14, N½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 15;
Sec. 17, E½ and NW¼;
Sec. 19, NE¼ and SW¼;
Sec. 20, N½NE¼, SW¼NE¼, NW¼, and NW¼SE¼;
Sec. 21, N½N½;
Sec. 22, N½ and SE¼;
Secs. 23 and 24;
Sec. 26, W½;
Sec. 27;
Sec. 30, NW¼;
Sec. 35, NW¼.
T. 22 S., R. 9 W.,
Sec. 3, NW¼SW¼;
Sec. 4, NE¼;
Sec. 6, NW¼NE¼;
Sec. 7, SW¼NE¼ and SE¼;
Sec. 15, W½E½ and E½W½;
Sec. 19;
Sec. 20, E½NE¼, SW¼, and W½SE¼;
Sec. 21;
Sec. 22, W½E½, W½, and E½SE¼;
Sec. 23, S½;
Sec. 24, S½;
Secs. 25 and 26;
Sec. 27, E½NE¼ and W½NW¼;
Sec. 28, N½;
Sec. 29, W½NW¼;
Sec. 30, lots 1, 2, NE¼ and E½NW¼;
Sec. 35, W½NE¼ and E½NW¼.
T. 28 S., R. 14 W.,
Sec. 7, lot 1, N½NE¼ and NE¼NW¼;
Sec. 8, NE¼, N½NW¼, and E½SE¼;
Sec. 9, W½ and SE¼.
T. 27 S., R. 15 W.,
Sec. 24, S½NE¼, SE¼NW¼, and E½SE¼.

The areas described aggregate approximately 20,488.25 acres in Dona Ana, Grant, Luna, and Sierra Counties.

3. For a period of 60 days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the Las Cruces District Office, Post Office Box 1420, Las Cruces, N. Mex. 88001.

W. J. ANDERSON,
State Director.

[F.R. Doc. 70-4249; Filed, Apr. 7, 1970; 8:49 a.m.]

[OR 5757]

OREGON

Notice of Proposed Classification of Public Lands for Multiple-Use Management

MARCH 27, 1970.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411–18) and to the regulations in 43 CFR Parts 2410 and 2411, it is proposed to classify the public lands within the areas described in paragraph 3 for multiple-use management. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. Publication of this notice has the effect of segregating all public lands described in paragraph 3 from appropriation under the agricultural land laws (43 U.S.C., chs. 7 and 9; 25 U.S.C., sec. 334) and from sales under 2455 of the revised statutes (43 U.S.C. 1171). The lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws.

3. The lands proposed to be classified are located within Douglas County and are shown on maps on file in the Roseburg District Office, Bureau of Land Management, Roseburg, Oreg. 97470 and the Land Office, Bureau of Land Management, 729 Northeast Oregon Street, Portland, Oreg. 97208. The maps are designated OR 5757; 2411.2:36–100 Jan. 1970. The description of the areas is as follows:

WILLAMETTE MERIDIAN

T. 24 S., R. 2 W.,
Sec. 34, Tract 38;
Sec. 36, Tract 40.
T. 25 S., R. 2 W.,
Sec. 4, Tract 37, part of lot 8;
Sec. 26, SE¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 32, lots 1 and 4;
Sec. 34, lot 4, W½NW¼, N½SW¼, and NW¼SE¼.
T. 26 S., R. 2 W.,
Sec. 2, lots 1, 2, and 3, NE¼SW¼, and W½SE¼;
Sec. 10, NW¼NE¼;
Sec. 12, NW¼;
Sec. 20, lots 5 to 16, inclusive;
Sec. 26, lots 8 and 9;
Sec. 30, lots 1, 2, 3, and 4, and E½W½;
Sec. 34, lots 5, 6, 12, 13, and 14.
T. 27 S., R. 2 W.,
Sec. 2, lot 1;
Sec. 6, S½SE¼.
T. 29 S., R. 2 W.,
Sec. 27, MS 883;
Sec. 33, MS 863.
T. 30 S., R. 2 W.,
Sec. 5, lot 4 and SW¼NW¼;
Sec. 6, lots 6 and 7, SE¼NE¼, and E½SE¼;
Sec. 7, lots 1, 2, and 3, NE¼NE¼, and NE¼SW¼;
Sec. 14, NE¼SE¼;
Sec. 28, NE¼NE¼;
Sec. 32, lot 3;
Sec. 34, SE¼SW¼.
T. 31 S., R. 2 W.,
Sec. 4, lots 1 and 8;
Sec. 6, lots 1, 2, 3, 4, and 5, S½NE¼, and NW¼SE¼.

T. 24 S., R. 3 W.,
Sec. 22, SW¼NE¼ and NW¼SW¼.
T. 25 S., R. 3 W.,
Sec. 4, lot 5;
Sec. 32, N½N½, SE¼NE¼, and E½SE¼;
Sec. 34, lot 1.
T. 26 S., R. 3 W.,
Sec. 26, NE¼NE¼, SW¼NE¼, and SE¼SW¼.
T. 27 S., R. 3 W.,
Sec. 22, SW¼SW¼;
Sec. 34, SE¼SW¼.
T. 28 S., R. 3 W.,
Sec. 2, lot 2.
T. 29 S., R. 3 W.,
Sec. 4, lot 4;
Sec. 18, NE¼SE¼;
Sec. 20, lot 1 and NW¼NW¼;
Sec. 24, NE¼NE¼;
Sec. 30, lot 1 and NE¼NW¼.
T. 30 S., R. 3 W.,
Sec. 2, SE¼SW¼ and SW¼SE¼;
Sec. 4, lot 1 and E½SE¼;
Sec. 34, NE¼SW¼.
T. 31 S., R. 3 W.,
Sec. 6, SE¼SE¼;
Sec. 20, SW¼NE¼ and S½NW¼;
Sec. 23, NE¼NE¼ and SW¼NW¼.
T. 22 S., R. 4 W.,
Sec. 20, SE¼NE¼;
Sec. 34, NE¼SE¼.
T. 23 S., R. 4 W.,
Sec. 4, NW¼SE¼;
Sec. 14, SE¼SE¼;
Sec. 20, SW¼NE¼ and NW¼SE¼.
T. 25 S., R. 4 W.,
Sec. 16, NE¼NW¼;
Sec. 28, SW¼SW¼.
T. 27 S., R. 4 W.,
Sec. 33, NW¼SW¼.
T. 28 S., R. 4 W.,
Sec. 10, SW¼NW¼ and NW¼SW¼;
Sec. 14, NE¼ and E½NW¼;
Sec. 15, SE¼, except lots 1, 2, 3, 4, and 5;
Sec. 18, SE¼NE¼ and SE¼;
Sec. 23, NW¼.
T. 29 S., R. 4 W.,
Sec. 6, fractional W½SW¼;
Sec. 24, NE¼NE¼ and SW¼NE¼;
Sec. 32, SE¼SE¼.
T. 30 S., R. 4 W.,
Sec. 4, lots 2 and 9;
Sec. 14, lots 1 and 2;
Sec. 28, lot 13;
Sec. 32, lots 3, 7, and 9, NW¼NE¼, N½NW¼, and E½E½;
Sec. 34, lot 4.
T. 31 S., R. 4 W.,
Sec. 2, SE¼SW¼;
Sec. 4, lot 4;
Sec. 6, lot 5;
Sec. 12, NE¼NE¼, NW¼NW¼, and S½NW¼.
T. 28 S., R. 5 W.,
Sec. 26, SE¼SW¼;
Sec. 28, NW¼NW¼;
Sec. 34, SE¼SE¼.
T. 29 S., R. 5 W.,
Sec. 2, fractional NW¼NW¼, SW¼NE¼, SW¼NW¼, and NE¼SW¼;
Sec. 4, SE¼SE¼;
Sec. 10, NE¼NE¼ and NW¼NW¼.
T. 30 S., R. 5 W.,
Sec. 2, lot 1;
Sec. 10, NW¼NW¼, SW¼SW¼, and SE¼SE¼;
Sec. 34, lot 2.
T. 31 S., R. 5 W.,
Sec. 20, N½N½;
Sec. 28, SE¼SE¼.
T. 20 S., R. 6 W.,
Sec. 26, N½SE¼ and SW¼SE¼;
Sec. 32, SE¼NE¼.
T. 21 S., R. 6 W.,
Sec. 6, lot 7 and SE¼SW¼;
Sec. 8, W½;
Sec. 18, lot 3, NE¼NW¼, NE¼SE¼, and S½SE¼;
Sec. 20, NW¼NE¼.

T. 22 S., R. 6 W.,
Sec. 30, lot 4, E½, NE¼NW¼, and E½SW¼;
Sec. 32, NW¼NE¼ and NE¼NW¼.
T. 23 S., R. 6 W.,
Sec. 20, lots 1, 2, 3, 4, and 5;
Sec. 22, lots 1, 2, 3, and 4;
Sec. 26, lots 1, 2, 3, and 4;
Sec. 28, lots 1 to 12, inclusive.
T. 24 S., R. 6 W.,
Sec. 4, SW¼NE¼, N½SW¼, and NW¼SE¼.
T. 26 S., R. 6 W.,
Sec. 8, SW¼NE¼ and SE¼NW¼.
T. 29 S., R. 6 W.,
Sec. 22, W½SW¼;
Sec. 28, SW¼SW¼.
T. 30 S., R. 6 W.,
Sec. 10, W½SW¼;
Sec. 12, N½NW¼;
Sec. 18, lots 1 and 2;
Sec. 20, lots 1, 2, and 3.
T. 31 S., R. 6 W.,
Sec. 6, lot 5, SW¼NE¼, SE¼NW¼, and NW¼SE¼;
Sec. 10, SW¼NE¼, NW¼NW¼, SE¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 12, NW¼NW¼;
Sec. 18, SW¼SE¼;
Sec. 20, NE¼NW¼;
Sec. 22, NE¼NE¼, S½SE¼NE¼, S½SW¼, and SE¼;
Sec. 26, SE¼NW¼.
T. 32 S., R. 6 W.,
Sec 6, lot 1.
T. 20 S., R. 7 W.,
Sec. 14, SW¼ and W½SE¼;
Sec. 22, N½NE¼, SW¼NE¼, and W½.
T. 21 S., R. 7 W.,
Sec. 10, NE¼SE¼;
Sec. 20, NE¼NW¼.
T. 22 S., R. 7 W.,
Sec. 14, E½SE¼;
Sec. 26, lots 4 and 5;
Sec. 28, lot 1.
T. 23 S., R. 7 W.,
Sec. 24, NE¼NE¼.
T. 24 S., R. 7 W.,
Sec. 2, lots 7 and 8;
Sec. 6, SE¼NW¼;
Sec. 28, lots 6 and 7.
T. 25 S., R. 7 W.,
Sec. 2, lots 1 and 2 and S½NE¼;
Sec. 4, S½SW¼;
Sec. 6, NW¼SE¼;
Sec 10, NE¼SE¼;
Sec. 12, NW¼SW¼;
Sec. 14, N½NE¼, NE¼NW¼, and SE¼SE¼;
Sec. 20, NE¼NW¼;
Sec. 30, lot 1;
Sec. 34, lot 1 and NW¼NW¼.
T. 26 S., R. 7 W.,
Sec. 8, NW¼NW¼, N½SW¼, and SE¼SE¼;
Sec. 11, lot 1 and SE¼NE¼;
Sec. 12, S½SW¼;
Sec. 18, NE¼SE¼ and S½SE¼;
Sec. 32, SE¼SE¼.
T. 28 S., R. 7 W.,
Sec. 8, SE¼NE¼ and SE¼SE¼;
Sec. 9, NE¼SE¼;
Sec. 14, lot 1 and N½NE¼;
Sec. 18, NE¼NE¼;
Sec. 20, W½;
Sec. 22, SE¼NE¼ and S½NW¼.
T. 29 S., R. 7 W.,
Sec. 3, SE¼NE¼ and NE¼SE¼;
Sec. 26½, lots 1, 2, 3, and 4;
Sec. 27, M & B mining claims;
Sec. 34, lots 1 and 2;
Sec. 34½, lots 1, 2, and 3.
T. 29½ S., R. 7 W.,
Sec. 32, lots 7 and 8;
Sec. 34, lots 1, 2, 3, and 4.
T. 30 S., R. 7 W.,
Sec. 4, SE¼SE¼;
Sec. 8, N½NE¼;
Sec. 14, SW¼NE¼;

Sec. 18, SE¼SW¼ and SW¼SE¼;
Sec. 24, NE¼NW¼;
Sec. 30, lots 1 and 3 and SE¼SE¼;
Sec. 32, lots 1, 2, 3, and 4, SW¼NE¼, and NW¼;
Sec. 34, SW¼NE¼, NW¼NW¼, and NW¼SE¼.
T. 31 S., R. 7 W.,
Sec. 2, lots 3 and 4;
Sec. 3, lot 1;
Sec. 4, lot 2, fractional N½NW¼, fractional NW¼NE¼, and NE¼SE¼;
Sec. 6, SE¼NE¼;
Sec. 7, E½SE¼SE¼ and SE¼NE¼SE¼;
Sec. 8, lot 2 and SW¼NE¼;
Sec. 17, SW¼SE¼NW¼, SE¼SW¼NW¼, W½NE¼SW¼, and E½NW¼SW¼;
Sec. 32, NE¼SE¼.
T. 32 S., R. 7 W.,
Sec. 2, SW¼NE¼.
T. 28 S., R. 7½ W.,
Sec. 13, lots 1, 2, 3, and 4.
T. 25 S., R. 8 W.,
sec. 14, lots 1, 2, and 3;
sec. 24, lots 1 to 10, inclusive.
T. 26 S., R. 8 W.,
sec. 12, SE¼NW¼ and NW¼SE¼;
Sec. 24, N½NE¼, SW¼NE¼, SW¼NW¼, S½SW¼, and SW¼SE¼.
T. 27½ S., R. 8 W.,
sec. 32, lots 1, 2, 3, and 4;
sec. 34, lots 1, 2, 3, and 4.
T. 28 S., R. 8 W.,
sec. 8, NE¼;
sec. 10, N½NW¼;
sec. 22, NW¼SE¼;
sec. 24, NE¼ and E½NW¼.
T. 29 S., R. 8 W.,
sec. 10, SE¼SE¼.
T. 30 S., R. 8 W.,
sec. 32, SW¼NW¼.
T. 31 S., R. 8 W.,
sec. 22, NE¼NE¼ and SW¼SW¼.
T. 32 S., R. 8 W.,
sec. 2, lot 1, SE¼NE¼, SE¼NW¼, and NE¼SE¼.

The areas described aggregate approximately 17,827.42 acres of public lands.

4. For a period of 60 days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the District Manager, Bureau of Land Management, 1928 Airport Road, Post Office Box 1045, Roseburg, Oreg. 97470.

5. A public hearing on the proposed classification will be held at 10:30 a.m. on April 20, 1970, at the Roseburg District Office, 1928 Airport Road, Roseburg, Oreg.

ARCHIE D. CRAFT,
State Director.

[F.R. Doc. 70-4203; Filed, Apr. 7, 1970; 8:45 a.m.]

Office of the Secretary

IMPORTS INTO PUERTO RICO OF CRUDE OIL AND UNFINISHED OILS

Maximum Level of Imports

Pursuant to paragraph (c) of section 2 of Proclamation 3279, as amended, for the allocation period April 1, 1970 through March 31, 1971, a maximum level of imports of crude oil and unfinished oils into Puerto Rico by holders of allocations made pursuant to paragraph (a), section 15 of Oil Import Regulation 1 (Revision 5) is established at 163,870 B/D. Of this amount, 125,347 B/D is allocated to Commonwealth Oil Refining Company, Inc. and 38,523 B/D is allocated to Gulf Oil Corporation.

WALTER J. HICKEL,
Secretary of the Interior.

MARCH 24, 1970.

[F.R. Doc. 70-4271; Filed, Apr. 7, 1970; 8:50 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

CALIFORNIA

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of California, natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

CALIFORNIA

Butte	Lassen
Colusa	Shasta
Glenn	Tehama

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after December 31, 1970, except to applicants who previously received emergency or special livestock loan assistance and can qualify under established policies and procedures.

Done at Washington, D.C., this 3d day of April 1970.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[F.R. Doc. 70-4274; Filed, April 7, 1970; 8:51 a.m.]

DEPARTMENT OF COMMERCE

Business and Defense Services Administration

UNIVERSITY OF HAWAII ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

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

Amended regulations issued under cited Act, as published in the October 14, 1969 issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 70-00535-85-06040. Applicant: University of Hawaii, Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, Hawaii 96822. Article: Two (2) microbarometers, Baromec Type M. Manufacturer: Mechanism Limited, U.K. Intended use of article: The decade counting portable microbarometers will be used in calibration of the Wallace and Tierner altimeters. Application received by Commissioner of Customs, March 10, 1970.

Docket No. 70-00536-33-46040. Applicant: Loyola University School of Dentistry, 2160 South First Avenue, Maywood, Ill. 60153. Article: Electron microscope, Model EM 9S. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article will be used to prepare teaching material in ultrastructure for pathology, histology, microbiology and materials and will be the only training instrument for undergraduate dental students, graduate students and faculty. The research projects include studies of hard and soft tissues from human and animal sources; of the ultrastructure of benign and malignant tumors, inflammatory cellular exudate, bone, dentine and enamel, oral mucosa, salivary glands and supporting soft tissues; and of identification of virus particles in gland explants and transmission to blood vessels. Application received by Commissioner of Customs, March 12, 1970.

Docket No. 70-00539-33-46040. Applicant: Duke University Medical School—Department of Anatomy, Box 3011, Duke University Medical Center, Durham, N.C. 27706. Article: Electron microscope, Model EM 801. Manufacturer: Associated Electrical Industries, Ltd., United Kingdom. Intended use of article: The article will be used in a high resolution study of unit membrane architecture in which it has been found that there are regular dense granules disposed in the dense strata bordering the light central core of certain membranes. Another project concerns the study of replicas of freeze-fracture and freeze-etched surfaces of certain membranes, such as frog retinal rod outer segments and the Mauthner cell club endings in the goldfish medulla. Application received by Commissioner of Customs, March 13, 1970.

Docket No. 70-00540-33-46500. Applicant: The University of Texas Medical School at San Antonio, 7703 Floyd Curl Drive, San Antonio, Tex. 78229. Article: Ultramicrotome, Model LKB 8800A.

Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used in projects which include examining the ultrastructure of the fallopian tube and of the uterine artery in various laboratory animals, and eventually in humans. The fallopian tubes of different laboratory animals will be obtained, both treated and untreated, fixed, and serial sections of the areas believed to be the point at which the adrenergic nerves are located will be studied. The anatomic changes of the uterine artery will be correlated with changes in the chemical constituents of the wall (RNA, DNA, elastin and collagen) and with changes in the histochemistry. Application received by Commissioner of Customs, March 16, 1970.

Docket No. 70–00541–33–46500. Applicant: Canisius College, 2001 Main Street, Buffalo, N.Y. 14208. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: Research, using the article, concerns the ultrastructural appearance of the gametes, sperms and eggs, of a variety of species including both invertebrates (decapod crustacea and insects) and vertebrates, especially amphibians. Information from this research will be used in courses in Cell Biology, Embryology and Cytogenetics. Application received by Commissioner of Customs, March 16, 1970.

Docket No. 70–00542–33–46500. Applicant: Wagner College, Staten Island, N.Y. 10301. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used for training students in the methods and materials of research and for faculty and student research projects. One study currently underway involves the cellular invasiveness of Listeria Monocytogenous in the conjunctiva of the guinea pig eye. Two courses, Clinical Pathology and Electron Microscopy, will use the article for the training of medical laboratory technologists and for advanced and graduate students. Application received by Commissioner of Customs, March 16, 1970.

Docket No. 70–00543–33–46500. Applicant: University of Missouri—Columbia, Purchasing Department, General Services Building, Columbia, Mo. 65201. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used to study the ultrastructural characteristics of Herring bodies, their appearance and disappearance and their connection with neurosecretory axons; the ultrastructural characteristics of transected neurosecretory neurons; and to study the relationship between dense lamellar bodies, tubular formations, neurofilaments, and neurosecretory granules in neurosecretory axons. Application received by Commissioner of Customs, March 16, 1970.

Docket No. 70–00544–33–46500. Applicant: Northeastern Illinois State College, Bryn Mawr at St. Louis Avenue, Chicago, Ill. 60625. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used by a number of investigators on a variety of tissues and cell organelles (e.g. lysosomal preparation, Protozoa, *Drosophila* ovaries, muscle and plant tissues). Studies of *Drosophila* oogenesis require serial sections since three-dimensional reconstructional analysis of cells will be performed. Students will be taught to use the ultramicrotome in a course entitled "An Introduction to Electron Microscopy." Application received by Commissioner of Customs, March 16, 1970.

Docket No. 70–00545–33–46500. Applicant: University of Louisville, 2301 South Third Street, Louisville, Ky. 40208. Article: Ultramicrotome, Model LKB 4800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used by researchers in the preparation of thin sections for viewing with the electron microscope. The types of materials to be sectioned will be variable and the sections should be easily operator-chosen between values of 50 angstroms to 2 microns. During research, the applicant will be experimenting with various embeddings (water solubles, vestopal, eponaraldite, frozen material). Application received by Commissioner of Customs, March 16, 1970.

Docket No. 70–00550–33–46040. Applicant: Institute for Medical Research, Copewood Street, Camden, N.J. 08103. Article: Electron microscope, Model JEM–100B. Manufacturer: Japan Electron Optics Lab. Co. Ltd., Japan. Intended use of article: The article will be used to determine the fine structure of viruses for identification purposes. The applicant is studying a virus in mouse milk that transmits mammary cancer from mother to daughter. This virus will be tested by inoculating young mice with it and observing the development of tumors. A similar-looking virus particle in human milk has been found, but aside from its morphology, there has been no identification of the particle. Application received by Commissioner of Customs, March 17, 1970.

Docket No. 70–00547–33–46500. Applicant: Louisiana State University Medical College, 2542 Tulane Avenue, New Orleans La. 70112. Article: Ultramicrotome, Model "OmU2". Manufacturer: C. Reichert Optische Werke AG, Austria. Intended use of article: The article will be used to cut ultrathin sections of plastic-embedded biological materials. Studies include embryonic chick tissues and a variety of cancer tissues, animal and human. Special attention will be given to the cell surface material. The ultramicrotome will also be used in graduate student research and in several courses. Application received by Commissioner of Customs, March 17, 1970.

Docket No. 70–00548–33–01110. Applicant: University of Colorado Medical Center, 4200 East Ninth Avenue, Denver, Colo. 80220. Article: Amino Acid Analyzer, Model JLC–5AH. Manufacturer: Japan Electron Optics Lab. Co., Ltd., Japan. Intended use of article: The article will be used by the Department of Pediatrics for basic research into the structure of insulin derived from human diabetic pancreas; for research on normal and pathological excretion of urinary peptides; and for research on hereditary disorders of amino acid metabolism, particularly those associated with mental retardation. Application received by Commissioner of Customs, March 17, 1970.

Docket No. 70–00549–33–46040. Applicant: University of North Carolina, School of Medicine, Chapel Hill, N.C. 27514. Article: Electron microscope, Model JEM 100–B. Manufacturer: Japan Electron Optics Lab. Co., Ltd., Japan. Intended use of article: The article will be used for studies of the molecular and cell biology of reproductive processes in living things. Research concerns studies of detailed membrane configurations in spermatozoa, ova, zygotes, developing organisms, and cells accessory to those which participate directly in reproduction. Application received by Commissioner of Customs, March 17, 1970.

Docket No. 70–00551–33–46040. Applicant: Lenox Hill Hospital, 100 East 77th Street, New York, N.Y. 10021. Article: Electron microscope, Model Elmiskop 101. Manufacturer: Siemens AG, West Germany. Intended use of article: The article will be used in the Department of Pathology for a study of a virus present in oocysts of the avian malarial parasite, *Plasmodium gallinaceum* which infects *Aedes aegypti* mosquitoes. Another project involves the ultrastructural study of various renal glomerular disease taken from patient biopsies. Patient biopsies will be processed according to conventional techniques for ultrastructural tissue preparation. Application received by Commissioner of Customs, March 17, 1970.

Docket No. 70–00552–67–46040. Applicant: National Aeronautics and Space Administration, Ames Research Center, Moffet Field, Calif. 94035. Article: Electron microscope, Model Elmiskop 101. Manufacturer: Siemens AG, West Germany. Intended use of article: The article will be used in a research program involving studies of high resolution electron diffraction and microscopy analysis of results of well controlled heterogeneous nucleation and expitaxial thin film growth experiments, and, for an investigation of the crystallographic structure and chemical composition of microscopic precipitates in titanium alloys which are of particular interest to the applicant's hydrogen embrittlement program (cryogenic fuel tanks). Application received by Commissioner of Customs, March 17, 1970.

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

[F.R. Doc. 70–4223; Filed, Apr. 7, 1970; 8:47 a.m.]

UNIVERSITY OF ALASKA

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

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

Docket No. 70-00209-50-70000. Applicant: Geophysical Institute, University of Alaska, College, Alaska 99701. Article: Radiometer for short and long wave length, Type Davos PD 4. Manufacturer: Physikalisch-Meteorologisches Observatorium, Switzerland.

Intended use of article: The article will be used for the McCall Glacier project to measure the albedo of different surfaces, and to measure the albedo changes of the snow during the season in different altitudes. Furthermore, the long wave outgoing radiation of different surfaces can be measured.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is capable of measuring the four basic solar and terrestrial hemispherical components separately and simultaneously.

We are advised by the National Bureau of Standards (NBS) in a memorandum dated December 8, 1969, that this capability of the foreign article is pertinent to the purposes for which the article is intended to be used. NBS further advises that it knows of no instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

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

[F.R. Doc. 70-4208; Filed, Apr. 7, 1970; 8:46 a.m.]

UNIVERSITY OF CALIFORNIA

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

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

Docket No. 70-00214-33-46040. Applicant: University of California, Davis, School of Medicine, Davis, Calif. 95616. Article: Electron microscope, Model EM 9S and spare parts. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article will be used for training purposes, high negative output electron microscopy, low magnification electron microscopy, and general high speed scanning electron microscopy. The specific intended uses are listed below:

(a) Training of students, technicians, predoctoral and postdoctoral fellows, and scientists who are unfamiliar with electron microscopy on the operation, theory, and applications of the electron microscope and its relation, with comparative medicine.

(b) Very low magnification electron microscopy for mapping the general structure of lung, liver, brain, and other tissues by stereological and stereometrical analyses of a necessarily large number of electron micrographs.

(c) High negative output electron microscopy of a variety of tissues from several species of animals for pathological, physiological, or morphological changes or differences.

(d) Low magnification electron microscopy of the granule cells of the gyrus dentata of irradiated and control rat brain.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is a relatively simple medium resolution electron microscope which can be used by students with a minimum of detailed programing and early use by the student with self-confidence. The foreign article provides as low as 80 diameters (X) magnification which permits a student an easy transition from lightmicroscopy. The foreign article also provides a digital readout for focusing adjustments, which allows the instructor to check the correctness of the student's focusing adjustment and to exactly repeat focusing adjustment for several students performing an identical experiment. The Model EMU-4B electron microscope which is the only known comparable electron microscope manufactured by Forgflo Corp. (Forgflo), is high resolution and relatively complex instrument designed for high level research. We are advised by the Department of Health, Education, and Welfare (HEW), in a memorandum dated February 6, 1970, that for the purposes the foreign article is intended to be used there is no equivalent domestic electron microscope manufactured in the United States.

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

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

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

[F.R. Doc. 70-4209; Filed, Apr. 7, 1970; 8:46 a.m.]

UNIVERSITY OF OREGON

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

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

Docket No. 70-00248-33-43420. Applicant: University of Oregon, Department of Psychology, Condon Hall, Eugene, Oreg. 97403. Article: Micromanipulator and accessories. Manufacturer: La Precesion Cinematographique, France.

Intended use of article: The article will be used for positioning micropipettes and microsurgical tools at calibrated positions within a cubic domain of 1 cm^3 for the purpose of recording the electrical activity of single neurons in the brain of small mammals and in the central ganglia of *Aplysia*.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article permits a recording of single neuron potentials over a period of 24 hours, by means of an amplifier mounting adjacent to the microelectrode through an appropriate geometric arrangement. The construction of the foreign article provides the mechanical stability necessary to produce the required results. We are advised by the Department of Health, Education, and Welfare (HEW), that these

characteristics are pertinent to the purposes for which the foreign article is intended to be used. (Memorandum dated February 11, 1970.) HEW further advises that it knows of no comparable apparatus being manufactured in the United States, which provides these characteristics to the degree required by the applicant to achieve the purposes for which the foreign article is intended to be used.

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

[F.R. Doc. 70-4222; Filed, Apr. 7, 1970; 8:47 a.m.]

Office of Field Services

COMMERCE BUSINESS DAILY

Notice of Availability

Notice is hereby given of the availability of the Department of Commerce publication entitled "Commerce Business Daily" which is designed to help American business firms keep abreast of Federal Government procurement and general contracting activity.

The "Commerce Business Daily" is published Monday through Friday (except Federal holidays). It lists (by commodity and service) U.S. Government procurement invitations, subcontracting leads, contract awards, and sales of surplus property, and other business opportunities. As a result of recent improvements, the Daily provides more lead time for bidding on proposed procurements, lists emergency procurements no later than the date solications are sent to firms, and lists personal and professional services as feasible.

The "Commerce Business Daily" is sold by subscription by the Superintendent of Documents, Washington, D.C. 20402. Subscription blanks may be obtained from the Office of Field Services, U.S. Department of Commerce, Washington, D.C. 20230, or from the nearest Department of Commerce field office.

JACK O. PADRICK,
Director,
Office of Field Services.

[F.R. Doc. 70-4220; Filed, Apr. 7, 1970; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 18381; Order 70-4-10]

AIR SOUTH, INC., ET AL.

Order Fixing Final Mail Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 2d day of April 1970.

By Order 70-4-9, issued concurrently herewith, final nonpriority service mail rates have been established in Docket 18381. By previous orders setting temporary nonpriority mail rates, 22 air-taxi operators were made parties in this proceeding,[1] and the final rates established herein were to be made applicable to the transportation of nonpriority mail by these air taxis. Therefore:

It is ordered That:

1. The fair and reasonable final service mail rates to be paid to Air South, Inc., Air Wisconsin, Inc., Cape & Islands Flight Service, Inc., Commuter Airlines, Inc., Crown Airways, Inc., Executive Airlines, Inc., Fischer Bros. Aviation, Inc., Fleet Airlines, Inc., Georgia Air, Inc., Henson Aviation, Inc., Massachusetts Air Industries, Inc., Northern Airlines, Inc., Pocono Airlines, Inc., Reading Aviation Service, Inc., Shawnee Airlines, Inc., Southeast Airlines, Inc., Vercoa Air Service, Inc., Travel-Air Aviation, Inc., and Winnipesaukee Aviation, Inc., for the transportation of non priority mail by aircraft, the facilities used and useful therefor, and the services connected therewith, over their routes specified in Orders 69-7-73 (July 15, 1969), 69-8-121 (Aug. 22, 1969), 69-12-18 (Dec. 3, 1969), 69-8-107 (Aug. 19, 1969), 69-10-42 (Oct. 9, 1969), 70-1-21 (Jan. 6, 1970), 69-3-72 (Mar. 20, 1969), 69-7-72 (July 15, 1969), 69-7-3 (July 1, 1969), 69-6-8 (June 3, 1969), 69-8-96 (Aug. 18, 1969), 70-1-31 (Jan. 7, 1970), E-26189 (Dec. 28, 1967), 69-6-16 (June 4, 1969), 69-6-131 (June 25, 1969), 68-9-21 (Sept. 6, 1968), 69-9-59 (Sept. 11, 1969), 69-6-41 (June 10, 1969), E-26701 (April 23, 1968), 69-9-121 (Sept. 19, 1969), and 68-10-11 (Oct. 3, 1968), on and after the effective dates specified in those orders shall be the rates established by the Board in Order 70-4-10, dated April 2, 1970.

2. The service mail rates here fixed and determined are to be paid in their entirety by the Postmaster General.

3. This order shall be served on the Postmaster General, the air-taxi operators who have been made parties in this proceeding, and Keystone Aeronautics Corp.

4. This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-4265; Filed, Apr. 7, 1970; 8:50 a.m.]

[1] Orders E-26106 (Dec. 11, 1967), E-26189 (Dec. 28, 1967), 69-5-64 (May 15, 1969), and 69-6-16 (June 4, 1969); E-26629 (Apr. 8, 1968) and E-26701 (Apr. 23, 1968); 68-8-79 (Aug. 20, 1968) and 68-9-21 (Sept. 6, 1968); 68-9-88 (Sept. 20, 1968) and 68-10-11 (Oct. 3, 1968); 69-2-158 (Feb. 28, 1969) and 69-3-72 (Mar. 20, 1969); 69-5-38 (May 9, 1969) and 69-6-8 (June 3, 1969); 69-5-42 (May 9, 1969) and 69-6-41 (June 10, 1969); 69-6-30 (June 6, 1969) and 69-6-131 (June 25, 1969); 69-6-84 (June 16, 1969) and 69-7-3 (July 1, 1969); 69-6-119 (June 23, 1969) and 69-7-72 (July 15, 1969); and 69-6-171 (June 30, 1969); 69-7-73 (July 15, 1969), 69-8-11 (Aug. 4, 1969), and 69-8-121 (Aug. 22, 1969); 69-7-108 (July 22, 1969) and 69-8-96 (Aug. 18, 1969); 69-7-165 (July 31, 1969) and 69-8-107 (Aug. 19, 1969); 69-8-132 (Aug. 25, 1969) and 69-9-59 (Sept. 11, 1969); 69-9-21 (Sept. 4, 1969) and 69-9-121 (Sept. 19, 1969); 69-10-1 (Oct. 1, 1969) and 69-10-42 (Oct. 9, 1969); 69-11-32 (Nov. 10, 1969) and 69-12-18 (Dec. 3, 1969); 69-12-49 (Dec. 11, 1969) and 70-1-21 (Jan. 6, 1970); 69-12-109 (Dec. 24, 1969) and 70-1-31 (Jan. 7, 1970); 70-1-24 (Jan. 6, 1970); 70-2-64 (Feb. 16, 1970); and 70-2-65 (Feb. 16, 1970). While no temporary rates have been established for Air East, Tradewinds, or PRINAIR, they have been made parties to this proceeding. In addition, Keystone Aeronautics Corp. has requested that it be made a party to this proceeding, contingent on its being authorized to carry mail.

[Docket No. 22073; Order 70-4-5]

AIR TRANSPORT ASSOCIATION

Request for Permission To Hold Multicarrier Discussions and Make Arrangements for Certain Flight and Schedule Adjustments

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 2d day of April 1970.

Order. By letter dated April 1, 1970 (Docket 22073), the Air Transport Association on behalf of certain member carriers[1] requests authority from the Board for all carriers holding certificates of public convenience and necessity to hold discussions on, and to rearrange, the number of flights at the nation's airports "during the existing emergency resulting from the absenteeism of certain air traffic control personnel." It is further requested that the carriers be authorized to implement such arrangements during the period of the stated emergency without further order of the Board. The Association states that an actual emergency currently exists requiring immediate remedial action and that the carriers should be allowed to implement the agreed upon flight arrangements without prior Board approval. The Association further states that there is insufficient time for the carriers to hold formal meetings of the type for which attendance of a Board observer would be appropriate.

Upon consideration of the matters set forth in the above application, the Board finds that the public interest warrants a grant of the requested air carriers' actions subject to the restrictions set forth below. We take note of the fact that the capacity of the air traffic control system has been substantially diminished for an uncertain period of time at varying points throughout the country. Diminution of traffic control capacity is causing substantial uncertainty and inconvenience in terms of the ability of the carriers to provide the amount and frequency of service for which they have filed schedules with the Board. It does not appear that the inability of the carriers to maintain their full normal schedule of operations exists in all or even most parts of the country. Nevertheless, it does appear that some major points or routes have been substantially affected, although the points may differ on

[1] American, Continental, Trans World, and United.

a day-to-day basis. It therefore appears with regard to such points or markets that the carriers should be allowed mutually to arrange their service to conform with the existing air traffic control capacity. Thus, in view of the current emergency adversely affecting the nation's air transportation system, we believe that the public interest requires prompt and effective action to insure the continued efficient functioning of the system. We are therefore authorizing the air carriers to engage in discussions and enter into arrangements which seek to guarantee the provision of adequate service.

Specifically, we shall allow the carriers to engage in discussions in order to determine where specific air traffic control problems exist and how the carriers may accommodate their service to the practical limits of the control capacity at such points. The carriers may agree on various flight reductions or rearrangements which do not not accord with their current published schedules. We contemplate that such discussions and resulting arrangements will deal only with specific points or markets where an actual substantial reduction in air traffic control capacity exists. We further expect that a daily report be filed with the Board summarizing the intercarrier discussions and detailing the arrangements made in and resulting from those discussions. Since the Board is granting prior aproval to the holding of such discussions and the making of such arrangements, these reports will enable the Board to determine whether any subsequent Board action is necessary. Further our approval herein shall extend only for a 10-day period, and shall expire sooner if the existing emergency subsides.

We wish to make it clear that we are reluctant to allow the carriers to enter into such discussions and arrangements. We do so here, however, in order to allow the necessary smooth functioning of the air transportation system to the maximum extent allowable under the current reduced traffic control capacity. In short, we view this as an emergency situation which warrants emergency measures. Our action is not intended and in no way should be construed as a precedent of any nature. It is uniquely tailored to a crisis in air transportation. We therefore find that the engaging in discussions and the entering into arrangements as above described are not adverse to the public interest, and are not in violation of the Act.

Accordingly, it is ordered, That:

1. All United States air carriers holding certificates of public convenience and necessity to engage in scheduled services in air transportation be and they hereby are authorized to hold discussions and to enter into joint arrangements to reduce or otherwise arrange schedules to alleviate air traffic congestion problems arising as a result of reduced capacity of air traffic control system, subject to the following conditions:

(a) Such authorization shall extend only to discussions and arrangements concerning specific points or markets where an actual substantial reduction in air traffic control capacity exists;

(b) A daily report shall be filed with the Board summarizing the discussions held and detailing the arrangements entered into during or as a result of such discussions; such report shall be filed with the Board's docket section by the close of business on the day following such discussion or arrangement; and

(c) The Board reserves jurisdiction to disapprove or modify any such agreement;

2. The authorization granted herein shall expire ten (10) days from the date of issuance of this order, or sooner upon the termination of the existing emergency, and may be earlier revoked or amended at any time in the discretion of the Board; and

3. A copy of this order shall be served upon the carriers described in paragraph (1), the Air Transport Association, the Federal Aviation Administration, the Department of Transportation, the Department of Justice, the Professional Air Traffic Controllers Organization, the Air Traffic Controllers Association, and the National Association of Government Employees.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-4266; Filed, Apr. 7, 1970; 8:50 a.m.]

[Docket No. 18381; Order 70-4-9]

CARIBBEAN-ATLANTIC AIRLINES, INC., ET AL.

Order Regarding Nonpriority Mail Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 2d day of April 1970.

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof:

It is ordered, That:

(A) The fair and reasonable rates of compensation to be paid by the Postmaster General for the transportation by air of nonpriority mail (i.e., all mail other than airmail and air parcel post, which may be tendered from time to time by the Post Office Department and carried on a space-available basis), the facilities used and useful therefor, and the services connected therewith to:

(1) Caribbean-Atlantic Airlines, Inc., on and after September 17, 1968, Pan American World Airways, Inc., on and after October 28, 1968, and Eastern Air Lines, Inc., and Trans Caribbean Airways, Inc., on and after January 25, 1969, for operations over their routes authorized under certificates in effect on or subsequent to those dates between points in Puerto Rico, on the one hand, and St. Croix and St. Thomas, Virgin Islands, on the other; between points in Puerto Rico; and between St. Croix and St. Thomas; and

(2) Caribbean-Atlantic Airlines, Inc., on and after January 25, 1969, and Seaboard World Airlines, Inc., on and after June 28, 1969, for operations over their routes authorized under certificates in effect on or subsequent to those dates, and

Airlift International, Inc.
Air West, Inc.
Alaska Airlines, Inc.
Allegheny Airlines, Inc.
American Airlines, Inc.
Bonanza Air Lines, Inc.
Braniff Airways, Inc.
Central Airlines, Inc.
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Eastern Air Lines, Inc.
The Flying Tiger Line Inc.
Frontier Airlines, Inc.
Lake Central Airlines, Inc.
Mohawk Airlines, Inc.
National Airlines, Inc.
North Central Airlines, Inc.
Northeast Airlines, Inc.
Northwest Airlines, Inc.
Ozark Air Lines, Inc.
Pacific Air Lines, Inc.
Pacific Northern Airlines, Inc.
Pan American World Airways, Inc.
Piedmont Aviation, Inc.
The Slick Corporation
Southern Airways, Inc.
Texas International Airlines, Inc.
Trans Caribbean Airways, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
West Coast Airlines, Inc.
Western Air Lines, Inc.

for operations over their routes authorized under certificates in effect on or subsequent to April 6, 1967:

(a) On and after April 6, 1967, within the 48 contiguous States and the District of Columbia; and between points within the 48 contiguous States and the District of Columbia, on the one hand, and, on the other hand, Anchorage, Cordova, Fairbanks, Juneau, Ketchikan, Kodiak, and Yakutat, Alaska; Agana, Guam; Honolulu, Hawaii; San Juan, Puerto Rico; and between Honolulu and Agana;

(b) On and after September 29, 1967, between points within the 48 contiguous States and the District of Columbia, on the one hand, and Wake Island on the other; and between Honolulu and Wake Island;

(c) On and after October 1, 1967, between points within the 48 contiguous States and the District of Columbia, on the one hand, and Hilo, Hawaii, on the other;

(d) On and after January 31, 1968, between points within the 48 contiguous States and the District of Columbia, on the one hand, and St. Croix and St. Thomas, Virgin Islands, on the other;

(e) On and after March 4, 1968, between points within the 48 contiguous States and the District of Columbia, on the one hand, and Pago Pago, American Samoa, on the other; and between Honolulu and Pago Pago;

(f) On and after May 23, 1968, between points within the 48 contiguous States and the District of Columbia, on

the one hand, and, on the other hand, Acapulco, Guaymas, La Paz, Mazatlan, Mexico City, Monterrey, Puerto Vallarta, Tampico, and Veracruz, Mexico; and terminal points in Canada;

(g) On and after October 28, 1968, between points within the 48 contiguous States and the District of Columbia, on the one hand, and Merida, Mexico, on the other;

shall be the sum of the linehaul charges and the terminal charges computed as follows:

1. *Line-haul charges.* For the period April 6, 1967, through June 30, 1969, the line-haul charge shall be the product of the nonpriority mail ton-miles times the line-haul rate of 10.98 cents per nonpriority mail ton-mile. On and after July 1, 1969, the line-haul charge shall be the product of the nonpriority mail ton-miles times the line-haul rate of 11.33 cents per nonpriority mail ton-mile. The nonpriority mail ton-miles for each shipment shall be computed by using the nonstop great-circle miles between the station of origin and station of destination for each shipment as the standard mileage between such points.

In the case of any community served through more than one airport, the provisions of this formula shall be applied as if the community were served by only one airport and that airport shall be the one having the greatest total number of scheduled departures of domestic flights during the month of May preceding the commencement of each fiscal year by air carriers certificated to transport mail: *Provided, however,* That in any case where one of the multiairports other than the controlling airport has a flight (or flights) which would produce a shorter distance to a given point, if the mileage for such flight (or flights) were computed from the controlling airport, than the flights actually serving the controlling airport, the standard mileage shall be computed as if such flight (or flights) serves the controlling airport.

2. *Terminal charges.* (a) The terminal charge for each shipment of nonpriority mail shall be the product of the pounds of nonpriority mail in each shipment times the terminal rate per pound set forth below for the station of origin of the mail shipment:

Station of origin	*Terminal rate per pound*
Class X	2.34¢
Class Y	4.68
Class Z	9.36

(b) The stations included in each of the foregoing station classes shall be as specified in the appendix to Order 69–12–132, as amended by Order 70–1–2: *Provided, however,* That any station not listed in said amended appendix shall be classified as a Class Z station.

(c) At any time, the Board upon its own initiative may institute a proceeding, and any party may make application to the Board for change in the classification of any station, without disturbing the overall rate and rate structure, on the ground that the total revenue tons enplaned at the station in question during the most recent 12-month period preceding the filing of such application bring the station within a different class based upon the classification set forth in the note below.[1] Such application will

Classes of stations	*Revenue tons all traffic enplaned per year*
X	25,000 and over.
Y	5,000–24,999.
Z	4,999 or less.

not be regarded as reopening the rate provided that it raises only the factual question as to the total tons enplaned at the particular station and does not challenge the limits of the station classifications provided for herein.

Applications provided for above shall be clearly entitled "Application for Change in Classification of Station," shall contain a clear and concise statement of the requested classification change and the facts upon which such request is based, and shall in all other respects conform to the applicable requirements of the rules of practice. Any order changing a station classification shall take effect as of the first day of the first postal accounting period following the filing of the application, unless the application is filed on the first day of a postal accounting period, in which event the order shall be effective as of the date of filing of the application.

3. *Definitions.* As used herein "station (or point) of origin" means the station at which the carrier first enplanes the mail shipment after receipt thereof from the Post Office Department or its representatives, from another ratemaking division of the same carrier, the operations of which division are not encompassed herein, or from another carrier; and "station (or point) of destination" means the station at which the carrier deplanes the mail shipment for delivery to the Post Office Department or its representatives, to a separate ratemaking divisision of the same carrier, the operations of which division are not encompassed herein, or to another carrier. When a mail shipment is transported between domestic (including terminal points in Canada) and international or overseas points (excluding terminal points in Canada) of a carrier, the entire system of which is encompassed herein, the last scheduled station in the domestic operations (including terminal points in Canada) departed on the way to the international or overseas destination and the first scheduled station in the domestic operations (including terminal points in Canada) entered on the way from the international or overseas origination shall be considered both a "station (or point) of destination" and a "station (or point) of origin" even though the mail does not pass through the airport mail facility at such station. Each interchange point on a through flight of two or more carriers flown pursuant to an interchange agreement shall not be considered as a separate point of origin and destination. Except as otherwise stated above a point at which a mail shipment is transferred from one flight to another flight of the same carrier shall not be considered as a point of origin or point of destination for such shipment.

4. *Equalization of rates.* (a) Any carrier or, pursuant to agreement, any two or more carriers providing service on an interline or interchange basis, may, by notice, elect to transport mail between stated points served by such carrier or carriers at a reduced rate equal to the rate then in effect for such service between such points by any other carrier or carriers.

(b) In the case of equalization of rates by agreement pursuant to (a) above, the agreement shall provide for the proration of the mail compensation by the participating carriers on the basis of the relative compensation which would otherwise be payable to each carrier in the absence of the provisions of paragraph (a).

(c) In the absence of an agreement among carriers, pursuant to (a) above, for equalization of rates for interline shipments between a stated pair of points, any carrier (or two or more carriers jointly) may, by notice, elect to receive as its portion of the total compensation for each such shipment the amount remaining after subtracting from such total compensation the compensation due the other carrier or carriers involved (nonelecting carriers). Such total compensation shall be computed on the basis of the lowest rate then in effect for service between the stated pair of points for any carrier or carriers. The compensation due the nonelecting carrier or carriers shall be determined on the basis of all the provisions of this formula.

In those instances where two or more carriers elect to receive payment under this provision, the total payment due such carriers shall be prorated by them on the basis of the relative compensation which would otherwise be payable to each carrier in the absence of the provisions of this paragraph.

(d) In the event that any carrier is unable to enter into an agreement with any other carrier to transport mail between any stated points at a reduced rate pursuant to paragraphs (a) and (b) and elects initially to accept compensation as provided in paragraph (c), it may file an application with the Board requesting it to determine and fix a different method of apportioning the total compensation for each such shipment of mail between the participating carriers. In reviewing such applications, the Board will consider, among other pertinent factors, the need for the proposed service, the historical participation of the electing carrier or carriers in the transportation of mail between such stated points, the amount of absorption required, and the grounds for refusal by the carrier or carriers to enter into an equalization agreement. After hearing the carriers concerned, either orally or in writing, in those cases where it deems such action appropriate the Board will by order prescribe the method for apportioning the

[1] See the following table:

total compensation between such carriers, but in no event shall the carrier or carriers refusing to enter into an agreement to equalize compensation be required to accept less than the compensation which would have been payable if the service were performed under voluntary agreement pursuant to paragraphs (a) and (b).

(c) An original and three copies of each notice of election and agreement and an original and 19 copies of each application, under the preceding paragraph 4(d) shall be filed with the Board and a copy thereof shall be served upon the Postmaster General and each carrier providing service between the stated points. Such notices shall contain a complete description of the reduced charge being established, the routing over which it applies, and how it is constructed and shall similarly describe the charge being equalized with. Applications filed pursuant to paragraph 4(d) shall not be deemed to reopen the mail rates or rate structure prescribed herein. All notices and agreements outstanding under Order E-17255 as of April 5, 1967, shall continue in effect under this order until canceled as provided herein.

Any rate established pursuant to paragraph (a), (b), or (c) shall be effective for the electing carrier or carriers as of the date of filing of the notice required by such paragraphs, or such later date as may be specified in the notice, until said election is terminated: *Provided, however,* That in no event shall any such rates be effective prior to April 6, 1967. Elections may be terminated by any electing carrier upon 10 days' notice filed with the Board, as aforesaid, and served upon the Postmaster General and each carrier providing service between the stated points.

Applications filed pursuant to paragraph 4(d) shall conform generally to the provisions of the rules of practice governing the filing of petitions in mail rate cases. Within 7 days after the application is served, any party may file an answer in support of or in opposition to the application together with any documentary material upon which it relies. Any order upon such application pursuant to paragraph (d) shall be effective no earlier than the date of filing of the application with the Board, provided that in no event shall any such rates be effective prior to April 6, 1967.

(B) The rates established in this proceeding shall be applicable, under the following terms and conditions, to the transportation of nonpriority mail between airport mail facilities or the carriers' airport facilities:

1. No air carrier shall transport nonpriority mail at the rates fixed herein on any aircraft if such transportation impedes the carriage of airmail, air parcel post, passengers, passenger baggage, air express, or regular airfreight, except that nonpriority mail which has been loaded in the aircraft need not be removed to permit carriage of regular airfreight received thereafter or received at an intermediate point. The movement by air of nonpriority mail shall have priority over the movement of deferred freight.

2. In the event that any or all of such mail has not been dispatched by the carrier within 4 hours after receipt or 4 hours after anticipated dispatch in the event of early receipt for preloading on a flight where available space is anticipated, the carrier shall notify the Department and, on instructions from the Department, such mail shall be (a) returned by the carrier to the custody of the postal service at the place where the initial delivery was made, (b) delivered at the holding carrier's facilities to another designated carrier at the airport of dispatch which has space available and which will pick the mail up within a reasonable time, or (c) held for an additional period if acceptable to the carrier.

3. The transportation of such mail shall be subject to sections 531.33, 531.511, and 533.6 (except with reference to airmail forms) of the Postal Manual.

4. Rules for record requirements by carriers: (a) Local-service carriers—Postal units will tender mail to carrier with completed dispatch record; carrier representative will verify mail counts, receipt the dispatch record, and return receipted copy to mail messenger or vehicle service driver. (b) Carriers other than local service—Postal units will tender mail to carrier with pieces and bulk weight listed on air carrier receipt. Air carrier will verify mail count, sign receipt, and return copy to postal unit. The mail received by carrier will be entered on summary form of mail handled. When mail is boarded aircraft, carrier will enter pieces, weight, trip number of dispatch, and time on summary form. The summary form will be balanced at the close of each 24-hour period and given to postal unit for verification. These procedures will be subject to change to achieve greater simplicity where mutually agreeable to the Post Office Department and the carrier.

5. Each air carrier will summarize mail transported during a 28-day period by origin-destination; apply the prescribed rate for each origin-destination segment; determine total charge, and bill central point. The bill will be supported by original copies of summary form. These procedures will be subject to change to achieve greater simplicity where mutually agreeable to both Post Office Department and carrier.

6. No air carrier shall be subject to penalties (fines) with respect to the carriage of such mail except to cover serious cases of failure to protect mail from damage and depredation or repetitive instances of neglect resulting in substantial delay. Inability to accommodate such mail on a specific flight or flights shall not be construed as neglect.

7. No air carrier shall be required to accept such mail for protection and storage pending shipment, but may elect to do so if such mail is tendered by the Department.

(C) This order shall be served upon the Postmaster General, Airlift International, Inc., Air West, Inc., Alaska Airlines, Inc., Allegheny Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Caribbean-Atlantic Airlines, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., The Flying Tiger Line, Inc., Frontier Airlines, Inc., Mohawk Airlines, Inc., National Airlines, Inc., North Central Airlines, Inc., Northeast Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Pan American World Airways, Inc., Piedmont Aviation, Inc., Seaboard World Airlines, Inc., Southern Airways, Inc., Texas International Airlines, Inc., Trans Caribbean Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc., and Second Class Mail Publications, Inc.

(D) The service mail rates herein fixed and determined are to be paid in their entirety by the Postmaster General.

(E) The investigation herein be and it hereby is terminated.

(F) This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-4264; Filed, Apr. 7, 1970; 8:50 a.m.]

[Docket No. 21381, etc.; Order 70-4-6]

HOLIDAY AIRLINES, INC.

Order Instituting Investigation and Denying Exemption

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 2d day of April 1970.

Application of Holiday Airlines, Inc. for exemption authority, Docket 21381; application of Holiday Airlines, Inc. for a certificate of public convenience and necessity, Docket 21383; in the matter of the Lake Tahoe Service Investigation, Docket 22075.

By application filed September 4, 1969, in Docket 21381, Holiday Airlines, Inc. (Holiday), an intrastate scheduled passenger carrier, seeks exemption from section 401 of the Federal Aviation Act of 1958, as amended (Act), insofar as it would otherwise prevent Holiday from using Lockheed Electra aircraft in scheduled passenger interstate air transportation between San Jose Municipal Airport, Oakland International Airport, Hollywood-Burbank Airport, Long Beach Airport, and Los Angeles International Airport, on the one hand, and Lake Tahoe Airport and Truckee-Tahoe Airport, California, on the other hand.[1]

Concurrent with the filing of this application, Holiday filed an application for

[1] Holiday is authorized by the California Public Utilities Commission (P.U.C.) to perform flights between San Jose, Oakland, Hollywood-Burbank, Long Beach, on the one hand, and Lake Tahoe Airport, Calif., on the other hand. Application for Los Angeles International Airport authority is pending, P.U.C. No. 51159. In addition, Holiday has also applied (Sept. 3, 1969) to the P.U.C. for authority to provide scheduled passenger service between the above-named points and Truckee-Tahoe Airport.

a certificate of public convenience and necessity, Docket 21383, to provide scheduled passenger air transportation between the coterminal points Hollywood Burbank/Long Beach Airport/Los Angeles International Airport; on the one hand, and Lake Tahoe Airport/Truckee-Tahoe Airport, Calif., on the other; between San Jose Municipal Airport/San Francisco International Airport/Oakland International Airport, on the one hand, and Lake Tahoe Airport/Truckee-Tahoe Airport, Calif., on the other; and between Lake Tahoe Airport and Truckee-Tahoe Airport, Calif. On December 22, 1969, Holiday filed a motion for an immediate hearing on its application in Docket 21383.

In support of its exemption application, Docket 21381, Holiday indicates that it seeks to engage in certain advertising, through-ticketing, and other customer services and promotional activities in interstate commerce which are prohibited by virtue of Holiday's status as an intrastate carrier. Holiday indicates that it now provides safe schedules with Electra aircraft and that it is now on a sound financial footing as a result of a recent $3 million sale of stock. Holiday argues that there is a public need for service to Lake Tahoe and that such need is not being adequately met by Air West and Western.

Answers supporting Holiday's exemption were filed by various lodges, inns, and real estate developers located in the Lake Tahoe area and various travel agencies throughout the country. American Express Co. (Atlanta), Continental Express, Inc., Hawaiian Holiday Inc., and the Truckee-Tahoe Airport District filed motions for leave to file late answers in support of Holiday's application. Answers opposing Holiday's application were filed by Air West and Western, and Air Nevada requested that Holiday's application be dismissed or in the alternative that it be set for hearing. Holiday filed a reply to the answers and Air West and Western filed motions to strike the reply. Holiday, in turn, filed an answer opposing the motion to strike.[2]

In support of its motion for immediate hearing on its certificate application, Holiday alleges that it provides the only scheduled service in large aircraft from the Lake Tahoe area to southern California, Oakland, and San Jose; that if the Board believes that a hearing would be more appropriate than grant of an exemption to Holiday, Holiday is prepared to proceed immediately to hearing; that Holiday carries 80 percent of the traffic to and from Lake Tahoe despite the fact that Air West holds certificate authority to serve Lake Tahoe; that Air Nevada, despite holding exemption authority to serve the Truckee-Tahoe Airport, provides no service to that airport; and that if granted authority Holiday will carry approximately 213,000 passengers in its first future year of operations. Answers opposing Holiday's motion for an immediate hearing were filed by Air West and Western. Air West asserts that its minimal pattern of service to Lake Tahoe has been due to its recent financial difficulties.[3]

Upon consideration of the pleadings and all the relevant facts, we have decided to (1) deny Holiday's application for an exemption, and (2) institute an investigation to determine whether service between San Jose, Oakland, San Francisco, Hollywood-Burbank, Long Beach, and Los Angeles, on the one hand, and the Lake Tahoe Airport and the Truckee-Tahoe Airport, Calif., on the other hand, should be authorized by a certificate of public convenience and necessity or an exemption on a nonsubsidy basis.

There is a substantial amount of traffic moving between southern California and the Lake Tahoe area, and every indication is that the traffic will increase due to the growing popularity of the Lake Tahoe area as a year-round resort. Furthermore, Lake Tahoe funnels sizeable portions of traffic to and from the resort areas in Nevada. Because Lake Tahoe is poorly served by surface transportation, adequate air service is very important to its economic well-being.

Although Air West is certificated to serve Lake Tahoe from both the Los Angeles and Bay Areas, that carrier provides only one daily round trip 5 days weekly between San Francisco and Lake Tahoe, thus raising the question of whether the available certificated service is responsive to the traffic needs of the Lake Tahoe area.

We will also include in the investigation an issue of whether Air Nevada, in lieu of or in addition to Holiday, should hold certificate or exemption authority. Air Nevada currently holds exemption authority to serve the Truckee-Tahoe Airport, and although its service to this point has been minimal, Air Nevada indicates that it plans to expand its services. Since the operations of Air Nevada and Holiday would be competitive insofar as services to and from the Truckee-Tahoe Airport are concerned, we believe that it is reasonable to explore in the same proceeding the relative merits of awarding Lake Tahoe area authority to one or both of these carriers.[4]

Although we believe an evidentiary hearing is warranted, we are not persuaded that Holiday should be granted a temporary exemption pending resolution of this case. Holiday's application is not limited in terms of the number of aircraft to be used or frequencies to be operated. In addition, Holiday already serves the points in question on an intrastate basis and thus presently conveniences a certain segment of the Lake Tahoe potential. Under these circumstances, we cannot find that enforcement of the provisions of the Act would be an undue burden on Holiday and not in the public interest.[5]

Accordingly, it is ordered, That:

1. An investigation designated the Lake Tahoe Service Investigation, be and it hereby is instituted in Docket 22075, pursuant to sections 204(a), 401, and 416(b) of the Federal Aviation Act of 1958, as amended, to determine whether the public convenience and necessity require, and the Board should order, the issuance of a certificate of public convenience and necessity or exemption authority to Holiday Airlines, Inc., and/or Air Nevada, Inc., to engage in air transportation between San Jose, Oakland, and San Francisco, on the one hand, and the Lake Tahoe and Truckee-Tahoe Airports, on the other hand; and between Hollywood-Burbank, Long Beach, and Los Angeles, on the one hand, and the Lake Tahoe and Truckee-Tahoe Airports, on the other hand;

2. The application of Holiday Airlines, Inc., Docket 21383, be and it hereby is consolidated for hearing and decision with the investigation instituted herein;

3. The application of Holiday Airlines, Inc., for exemption authority, Docket 21381, be and it hereby is denied;

4. Any authority awarded in this proceeding shall be on a subsidy-ineligible basis;

5. The motions of American Express Co. (Atlanta), Continental Express, Inc., Hawaiian Holiday, Inc., and the Truckee-Tahoe Airport District for leave to file late answers in Docket 21381, be and they hereby are granted;

6. The motions of Air West, Inc., and Western Air Lines, Inc., to strike the reply of Holiday in Docket 21381, be and they hereby are denied;

7. The motion of Holiday Airlines, Inc., for leave to file an unauthorized document be and it hereby is granted;

8. Except to the extent granted herein all motions and requests filed in Dockets

[2] We will grant the motions to file late answers and will deny the motions to strike Holiday's reply.

[3] On Mar. 13, 1970, Holiday filed a motion for leave to file an unauthorized document, a petition in support of Holiday's various applications signed by numerous residents of the Lake Tahoe community. We will grant the motion.

[4] By separate order issued concurrently herewith, we have reconsidered and reaffirmed our earlier expansion of Air Nevada's Truckee-Tahoe exemption authority. However, we have indicated in that order that Air Nevada's exemption authority, insofar as the Truckee-Tahoe Airport is concerned, would be subject to termination 60 days after final decision in the investigation we are instituting. This will give the Board flexibility to determine which carrier or carriers should ultimately hold authority to the Lake Tahoe area.

[5] This denial is not inconsistent with our reaffirmation of Air Nevada's expanded Truckee-Tahoe exemption authority. It has not been shown that the exemption authorizing Air Nevada to use Electras instead of L-049's at Truckee-Tahoe will have any material competitive impact on Holiday's existing intrastate service at the Lake Tahoe Airport, or that failure to award Holiday interstate authority by exemption will put it at a material disadvantage in relation to Air Nevada. Moreover, Air Nevada has held exemption authority to serve Truckee-Tahoe with large aircraft since January 1969, while Holiday has not held any authority from the Board to provide service to either Truckee-Tahoe or Lake Tahoe Airport. Accordingly, in our judgment the interest of fairness will best be served by preserving the status quo pending completion of the investigation.

21381 and 21383, be and they hereby are denied;

9. Applications, petitions for reconsideration, and motions to consolidate applications in this proceeding shall be filed no later than 20 days after date of service of this order, and answers shall be filed no later than 10 days thereafter;

10. The investigation instituted herein shall be set down for hearing before an examiner of the Board at a time and place hereafter to be designated; and

11. A copy of this order shall be served on Air Nevada, Inc., Air West, Inc., Holiday Airlines, Inc., and Western Air Lines, Inc., who are hereby made parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-4267; Filed, Apr. 7, 1970; 8:50 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 18636-18638; FCC 70R-131]

HARRISON RADIO, INC., ET AL.

Memorandum Opinion and Order Enlarging Issues

In re applications of Harrison Radio, Inc., Corydon, Ind., Docket No. 18636, File No. BPH-6226; M. R. Lankford, Stuart K. Lankford, George R. Lankford, and Ray J. Lankford, doing business as Lankford Broadcasting Co., New Albany, Ind., Docket No. 18637, File No. BPH-6427; Radio 900, Inc., Louisville, Ky., Docket No. 18638, File No. BPH-6742; for construction permits.

1. This proceeding involves the mutually exclusive applications of Harrison Radio, Inc. (Harrison); M. R. Lankford, Stuart K. Lankford, George R. Lankford, and Ray J. Lankford, doing business as Lankford Broadcasting Co. (Lankford); and Radio 900, Inc. (Radio 900), each seeking an authorization to construct a new Class A FM broadcast station to operate on channel 280, currently assigned to Louisville, Ky.[1] Radio 900 proposes to utilize the requested channel in the community of assignment, whereas Harrison and Lankford contemplate its usage in their respective communities of Corydon and New Albany, Ind. On August 14, 1969, these applications were designated for hearing under various issues including, inter alia, a section 307(b) issue.[2] Memorandum Opinion and Order, 18 F.C.C. 2d 906, 16 R.R. 2d 1123. Presently confronting the Review Board is Radio 900's appeal from a ruling of the hearing examiner concerning the scope of the section 307(b) issue herein, and its petition to enlarge issues which seeks the specification of section 307(b) Suburban Community and Suburban programing issues against Lankford and a Rule 1.65 issue against Harrison.[3] In the interests of clarity and expedition, both the appeal and the petition to enlarge will be treated in this document.

APPEAL FROM THE EXAMINER'S RULING

2. In paragraph 6 of the designation order, the Commission pointed out that Harrison, the Corydon applicant, would serve an area and population substantially different from those to be served by Radio 900 and Lankford, which applicants, although specifying different communities, Louisville and New Albany, respectively, would serve substantially the same areas and populations. Under these circumstances, the Commission stated its intention to determine whether the "Corydon or the Louisville/New Albany applicants" would better fulfill the objectives articulated in section 307(b) of the Communications Act of 1934, as amended. Because of the similarity between the Louisville and New Albany applicants, the Commission also noted that these applicants would be "compared under the contingent comparative issue if this group is favored over the Corydon proposal under the section 307(b) issue".[4] Apparently rejecting Radio 900's argument that issue number 10 (see note 4, supra) encompasses a section 307(b) comparison between its proposal and that of Lankford, if the Louisville/New Albany area is deemed more needful of service than that served by Harrison's proposal, the hearing examiner construed the issue to require that "Louisville, Ky., and New Albany, Ind. * * * be regarded here as one broadcast area". FC C69M-1537, released November 24, 1969. From this ruling, Radio 900 prosecutes the instant appeal.

3. Notwithstanding the Commission's recognition that it would serve substantial areas and populations in common with Lankford,[5] Radio 900 maintains that it should be afforded the opportunity to demonstrate at the hearing that Louisville, as opposed to New Albany, is possessed of factors engendering a section 307(b) preference. It is the contention of Radio 900 that Louisville, Ky., has separate and distinct radio transmission as well as reception needs from those of New Albany, Ind. The opportunity to demonstrate such characteristics, argues Radio 900, is fundamental to the mandate of section 307(b) of the Act and should not be abridged by the hearing examiner's restrictive interpretation of the section 307(b) issue herein.

4. The Broadcast Bureau supports the ruling of the hearing examiner that, for the purpose of the section 307(b) comparison in this proceeding, Louisville, Ky. and New Albany, Ind. are to be regarded as one broadcast area. Construing the section 307(b) issue in light of the Commission's discussion in paragraph 6 of the designation order (see par. 2, supra), the Bureau contends that the issue is not susceptible of the interpretation advanced by Radio 900. Contending that a thorough consideration of the status of all three communities was made by the Commission, Harrison also maintains that the hearing examiner's ruling should be sustained. In reply, Radio 900 reiterates its right to compare, pursuant to the section 307(b) issue, its proposed community of Louisville, Ky., to Lankford's specified community of New Albany, Ind., an assertedly separate and distinct community which is located in another state.

5. The Review Board is of the opinion that the hearing examiner has improperly restricted the scope of the section 307(b) issue in this proceeding. Issue No. 10, the section 307(b) issue which the Commission herein specified (see note 4, supra), does not explicitly limit the determination to be made thereunder as only between the Corydon and the Louisville/New Albany proposals. Nor is such a restriction expressed in paragraph 6 of the designation order. The Board is not persuaded that the Commission's intention to discern, in the first instance, whether Corydon, Ind. or the Louisville, Ky./New Albany, Ind. area has a greater need for the broadcast service proposed effectively forecloses consideration of the relative broadcast needs of Louisville and New Albany. Had such a result been desired, the Commission would have clearly articulated this intention, especially in light of its prior acknowledged reluctance to indulge in such prejudgments. See Rockland Broadcasting Co., F.C.C. 62-577, 23 R.R. 789 (1962). Moreover, the Commission's continued adherence to this policy has occurred in similar situations wherein mutually exclusive FM applicants, which had specified different communities, were afforded the opportunity to demonstrate

[1] On Feb. 2, 1970, the Review Board dismissed with prejudice the application of Trinity Towers Corp., another Louisville applicant. FCC 70R-32, released Feb. 3, 1970.

[2] The Commission also therein affirmed its earlier waiver of § 73.203(b) of its rules relating to Lankford's proposed use of the requested channel outside of the assigned community of Louisville, Ky. See Lankford Broadcasting Company, FCC 68-852, 14 R.R. 2d 69, released Aug. 27, 1968.

[3] The pleadings before the Review Board for consideration are: (*a*) Appeal from adverse ruling of hearing examiner, filed Dec. 2, 1969, by Radio 900; (*b*) opposition, filed Dec. 19, 1969, by Harrison; (*c*) Broadcast Bureau's opposition, filed Dec. 19, 1969; and (*d*) reply to oppositions, filed Dec. 31, 1969, by Radio 900. Also before the Board are: (*a*) Petition to enlarge issues, and supporting affidavit, filed Sept. 8 and 9, 1969, respectively, by Radio 900; (*b*) opposition, filed Oct. 7, 1969, by Harrison; (*c*) opposition, filed Oct. 7, 1969, by Lankford; (*d*) Broadcast Bureau's partial opposition, filed Oct. 7, 1969; and (*e*) reply to oppositions, filed Oct. 17, 1969, by petitioner.

[4] Specifically, these designated issues read as follows:

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

11. To determine, in the event it is concluded that a choice between applications should not be based solely on considerations relating to section 307(b), which of the New Albany or Louisville proposals would, on a comparative basis, best serve the public interest.

[5] In this regard, Radio 900 points out that Lankford will only serve approximately 20 percent of Louisville with a city-grade signal.

dissimilar section 307(b) characteristics, notwithstanding the applicants' proposed service to substantial areas in common. See Christian Voice of Central Ohio, 21 F.C.C. 2d 369, 18 R.R. 2d 375 (1970); Ditmer Broadcasting Company, Inc., F.C.C. 69-1157, 34 F.R. 17533, released October 27, 1969; and Rochester Radio Company, F.C.C. 69-1027, 34 F.R. 15391, released September 29, 1969. In view of the foregoing circumstances, the Review Board believes that the hearing examiner's restrictive interpretation of the section 307(b) issue specified herein was unwarranted and, accordingly, the ruling complained of cannot be sustained.

SUBURBAN COMMUNITY ISSUE

6. To support its request for the addition of a Suburban Community issue against Lankford, Radio 900 notes that Lankford's proposed 1 mv./m. contour, as depicted in the engineering portion of the application, encompasses virtually the entire city of Louisville, Ky., whose 1960 population (390,639 persons) greatly exceeds that of New Albany, Ind. (38,218 persons); that Lankford will also place a city grade signal (3.16 mv./m.) over approximately 15 to 20 percent of the larger community;[4] and that New Albany, albeit located in Indiana, is part of both the standard metropolitan statistical area and the urbanized area of Louisville. It is petitioner's belief that Lankford will, by necessity, seek substantial income from Louisville since there is a dearth of existing or potential revenues in New Albany, as evidenced by the desire of standard broadcast Station WHEL, whose New Albany operation has recently encountered financial difficulties, to transfer its facilities to Louisville. Radio 900 further asserts that Lankford has not demonstrated that New Albany, as opposed to Louisville, has distinct, unsatisfied program needs. Assuming the existence of such needs, Radio 900 alleges that the Lankford proposal, which contemplates the complete duplication of the applicant's daytime-only New Albany standard broadcast facility, Station WREY, will not be responsive thereto.[5] Citing Berwick Broadcasting Corporation,[6] petitioner contends that the foregoing circumstances raise a substantial question as to whether Lankford will realistically serve New Albany, Ind. or nearby Louisville, Ky.

7. In opposition, Lankford contends that the factors which prompted the specification of the Suburban Community issue in the Berwick case are not present herein.[7] The selection of the same transmitter site from which its AM facility serves the specified community of New Albany is not, alleges Lankford, suggestive of an attempt to achieve maximum coverage of Louisville, Ky., the community of assignment. Nor is the placement of a signal over most of Louisville unwarranted, in Lankford's view, for such attendant coverage is allegedly envisioned by § 73.203 of the rules, which explicitly permits the utilization of FM channels outside of listed communities. Cf. note 2, supra. Asserting the reliance of Station WREY on revenues from the New Albany market, Lankford contends that petitioner's allegations do not raise a substantial question of whether its proposal will provide a realistic local transmission service to New Albany, Ind. In reply, petitioner reiterates essentially the contentions set forth in paragraph 6, supra.

8. The Review Board believes that Radio 900's allegations are not sufficient to warrant the addition of a Suburban Community issue directed to the Lankford proposal. Petitioner has neither alleged nor made any attempt to show that the effective radiated power proposed by Lankford is excessive or that the transmitter site ultimately proposed by that applicant was chosen for any reason other than to satisfy the Commission's minimum mileage separations and the stated purpose of a Class A FM facility, namely, "to render service to a relatively small community, city, or town, and the surrounding rural area".[9] See Rule 73.206(a)(2). As we recently had occasion to note in Christian Broadcasting Association, Inc., 18 FCC 2d 15, 16 RR 2d 401 (1969), coverage of the listed community is contemplated by the Commission in the utilization of FM channels by applicants for unlisted communities. Similarly, location of the unlisted community near the community of assignment is to be expected especially where, as here, the channel assigned is a Class A frequency whose usage beyond 10 miles from the listed community is expressly enjoyed by Rule 73.203(b).[11] The Board also notes that petitioner has neither alleged nor demonstrated that New Albany, Ind., albeit closely situated to Louisville, Ky., is dependent upon the larger community for civic, social, educational, religious or other activities. The application of Station WHEL for transfer of facilities to Louisville, even coupled with that station's report of recent financial losses, is insufficient without more to establish prima facie that Lankford intends to derive substantial revenues from Louisville rather than its specified station location, or that New Albany is incapable of supporting the applicant's proposed station, which will provide New Albany with its first nighttime local broadcast transmission facility. The Lankford principals' lack of residential or business relationships with the listed community, in addition to the applicant's ownership of an AM facility in New Albany and its proposed substantial duplication of that station's programing tend to negate an inference that the applicant intends to serve the listed community rather than its specified station location. Moreover, the limitation of the applicant's initial survey efforts to New Albany and nearby Indiana communities adds further support to this view.[12] With respect to petitioner's contention that there is no need for an additional broadcast facility in New Albany, the Board is of the opinion that the applicant, merely by virtue of the proposed use of an FM channel in a community other than the community of assignment, is under no obligation to demonstrate the existence of distinct, unsatisfied program needs in the specified community and the responsiveness of its programing thereto. See Report and Order (Docket No. 17969)

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[4] Radio 900 claims that Lankford will serve "most of Louisville with city grade signal, and nearly the entire city with a 1 mv./m. signal". However, the Broadcast Bureau, in its pleading, maintains that petitioner is in error for, according to the Bureau's analysis of section V-B of the Lankford application, a "city grade signal will cover 15-20 percent of Louisville, with a 1 mv./m. signal covering the remainder". In its reply pleading, Radio 900 appears to acquiesce in the Bureau's evaluation.

[5] Of the 133 hours the applicant proposes to operate each week, 84 hours (approximately 64 percent) will be devoted to the duplication of station WREY's programing.

[6] In the Berwick case (12 FCC 2d 8, 12 RR 2d 665 (1968), review granted on other grounds 20 FCC 2d 393, 17 RR 2d 884 (1969)), a Suburban Community issue was specified against an FM applicant, which sought to utilize the requested channel outside of the listed community, on the grounds, inter alia, that the applicant owned an AM station in a nearby larger community; that it planned both to duplicate to some extent the programing of its AM facility and to utilize the AM's staff in its FM operation; and that it placed a city-grade signal over the entire larger community by virtue of the location of the FM transmitter, which was situated outside of the specified community, in order to achieve maximum coverage of the larger community. As noted by the Commission these factors assume added significance since use of the channel requested to serve this larger community had expressly been proscribed by the Commission when it assigned the channel to the listed community. In a similar vein, see our recent holding in Brinsfield Broadcasting Company, FCC 70R-69, 18 RR 2d 526, released February 26, 1970.

[7] The Broadcast Bureau agrees that petitioner's reliance upon the Berwick case is misplaced, and opposes the addition of the requested Suburban Community issue.

[8] The Board notes that, prior to designation, Lankford amended its technical proposal to reflect both changes in its proposed effective radiated power and antenna height above average terrain, and the selection of a transmitter site farther northwest of New Albany, Ind. The chosen site is also farther removed from Louisville, Kentucky, which is situated approximately 4.5 miles southeast of New Albany. Without apparently augmenting its earlier coverage of Louisville, Lankford, by virtue of this amendment substantially increased its proposed 1 mv/m coverage with respect to both the area (from 366 sq. mi. to 961 sq. mi.) and the population enclosed within this contour (from 601,637 persons to 655,972 persons).

[9] This situation is distinguishable from that involved in Berwick and, more recently, in Brinsfield where the Commission, in assigning the FM channel to the listed community, had expressed concern over the use of the channel outside of the community of assignment to serve another larger community. See note 8, supra.

[10] Prior to designation, Lankford conducted two surveys of New Albany and its immediate environs. No attempt was made by the applicant to discern the community needs of nearby Louisville, Ky., until October of 1969, after petitioner and Broadcast Bureau had, in their pleadings herein, pointed out this omission in the applicant's survey efforts.

Concerning the Availability of FM Channels to Unlisted Communities, 12 FCC 2d 660, 662, 12 RR 2d 1612, 1615 (1968); and Campbell and Sheftall, 7 FCC 2d 658, 666–67, 9 RR 2d 999, 1009–10 (1967), review denied FCC 67–1297, adopted December 20, 1967. Since, as noted above, the threshold showing proffered by petitioner is not sufficient to raise a substantial question as to whether the applicant will realistically provide a local transmission service to its specified community, Lankford is not required to demonstrate that the needs of New Albany, to which its programing proposal is to be primarily directed, are unsatisfied. Compare Berwick Broadcasting Corporation, supra. Rather, Lankford is obligated only to demonstrate that its proposal is responsive to the real needs and interests of New Albany as ascertained through its survey efforts. See H. & C. Broadcasting Company, 18 FCC 2d 901, 16 RR 2d 993 (1969); and WMID, Inc., 13 FCC 2d 412, 13 RR 2d 505 (1968).

SUBURBAN ISSUE

9. Radio 900 also requests the inclusion of a Suburban issue against Lankford. However, in light of the Commission's recent pronouncement governing the disposition of Suburban issues in hearing proceedings, the Review Board will dismiss the instant request for a Suburban issue without prejudice to its refiling, when and if appropriate, after the Commission's final determination in Docket No. 18774. See Public Notice, FCC 70–312, released March 26, 1970.

RULE 1.65 ISSUE

10. Radio 900 requests the addition of an issue to determine whether Harrison has failed to keep the Commission advised of substantial changes in its application, as required by § 1.65 of the Commission's rules, and the effect thereof upon the applicant's basic qualifications. In its application, which was filed on March 19, 1968, the corporate applicant disclosed at table I of section II that it was comprised of the same stockholders as are listed in the corporation's original application for standard broadcast station WPDF, Corydon, Ind., which had been granted by the Commission on December 11, 1963.[13] In response to paragraph 19 of section II, FCC Form 301, which seeks, inter alia, to ascertain the applicant's and its principals' past and present interests in, or connections with, any standard broadcast facilities, Harrison set forth only the interests of Sam B. Holmes and Paul Dean Ford. However, neither their interests in station WPDF nor those of either Mary Arms or Arthur Mitchell were enunciated. While pointing out that Holmes' interest in station WPDF should have been articulated in response to paragraph 19, the petitioner apparently premises its request for a Rule 1.65 issue upon Harrison's failure to timely update its application to reflect the subsequent transfer of control of the corporate licensee from Sam B. and Joyce A. Holmes to Herbert L. and Mary R. Arms. Nowithstanding Harrison's obligation to keep its application complete and accurate in all significant respects. Radio 900 contends that neither the filing of the transfer application (BTC–5858), which occurred on January 23, 1969, nor the Commission's grant of said application on April 25, 1969 (Report No. 8109, released Apr. 30, 1969) and the resulting realignment in the corporate licensee's ownership were disclosed by Harrison in the instant application. Noting the uncertainty surrounding the Holmes' participation in the corporate applicant, Radio 900 contends that Harrison's omissions with respect to the transfer of control of station WPDF warrant the inclusion of the requested Rule 1.65 issues.[14]

11. Conceding that its instant application should have been amended to reflect the transfer of control of Station WPDF, Harrison submits that this omission was occasioned by its mistake in preparing and filing the instant application without the assistance of legal counsel, who was not retained until after the tendering of Radio 900's petition. In further mitigation of its acknowledged omission, Harrison asserts that the transfer of control of Station WPDF does not bear directly upon a matter to be determined in the present hearing and that the information which should have been supplied was extant in the Commission's files. Harrison also concedes that Sam B. Holmes' interest in Station WPDF should have been set forth in response to paragraph 19 of its application.[15] This latter omission, alleges Harrison, was prompted by its mistaken belief that the references to the earlier filed application for Station WPDF sufficed to incorporate the then current information concerning all the Harrison principals' involvement in Station WPDF and that the reiteration of these principals' interests in, and connections with, that station in response to paragraph 19 would be redundant. Finally, Harrison notes that, on October 1, 1969, it petitioned the Hearing Examiner for leave to amend its application with respect to the above matters.[16]

12. Radio 900, in reply, maintains that the disclosures contained in Harrison's responsive pleading do not excuse that applicant's failure to preserve the completeness and accuracy of its application. Petitioner also contends that the October 1, 1969 amendment has not elucidated the ownership of the applicant. Specifically, Radio 900 alleges that the ownership interests of the Arms and Paul Dean Ford total only 97.97 percent (242 shares); that the ownership of the remaining 2.03 percent of the corporate applicant's stock is unclear; and that the interest in the corporate applicant of Arthur D. Mitchell, who had been previously identified as a Harrison principal in table II of section II of the subject application, is not mentioned. The applicant's ownership is further confused, alleges Radio 900, by reference, in the October 1969 amendment, to Joyce A. Holmes as a cotransferor of Station WPDF. Asserting that the Harrison application does not reflect any ownership interest by this individual, petitioner argues that this is an additional matter warranting the requested enlargement of issues.

13. The Review Board believes that a substantial question exists as to who are the principals of Harrison, and whether Harrison has failed to keep its application current, as required by § 1.65 of the Commission's rules. It is evident from the material before the Board that, subsequent to the filing of the instant appli-

[13] Although the AM application had been filed with the Commission on Jan. 4, 1962, Harrison indicated in its FM application that no changes had occurred in its corporate structure or the ownership interests of its four stockholders. The 215 outstanding shares of the corporate licensee were distributed among four stockholders in the following manner: 90 shares apiece were owned by Sam B. Holmes (41.86 percent) and Mary R. Arms (41.86 percent); 30 shares were owned by Paul Dean Ford (13.95 percent); and 5 shares were owned by Arthur D. Mitchell (2.33 percent). Except for Arthur Mitchell, each of the stockholders was identified as an officer and director of the corporate licensee.

[14] Although petitioner suggests that Commission precedent requires the "addition of a Rule 1.65 and nondisclosure issue" under such circumstances, the "nondisclosure" aspect of the request apparently only relates to Harrison's failure to reflect Holmes' interest in Station WPDF in the appropriate part of its FM application. Since the specific issue requested by Radio 900, both in its petition to enlarge issues and in its reply pleading, concerns only Harrison's compliance with Rule 1.65 and since Harrison's explanation for the omissions of its principals' broadcast interests in Station WPDF in response to paragraph 19 of its FM application has not been contested by Radio 900 (see paragraph 11, infra), we need not address ourselves to the asserted "nondisclosure" and, in any event, we are of the opinion that the undisputed facts present herein do not warrant the addition of such an issue on our own motion.

[15] In its pleading, the applicant points out that Holmes is no longer a principal since his interest in, and connection with, the corporate licensee were disposed of by the above-mentioned transfer of control.

[16] This amendment, which was accepted by the Hearing Examiner on Oct. 13, 1960 (FCC 69M–1314, released Oct. 14, 1969), revised paragraph 19 to reflect that Sam B. Holmes is the president and 41.86 percent stockholder in the corporate licensee of Station WPDF. It was also indicated therein that, for a total consideration of $30,000, control of that licensee has been transferred, with Commission approval, from Sam B. and Joyce A. Holmes to Herbert L. and Mary R. Arms; that Mr. and Mrs. Arms jointly own 122 shares (49.39 percent) of the licensee, with an additional 90 shares (36.43 percent) being held severally by Mrs. Arms; and that Paul Dean Ford owns 30 shares (12.15 percent). Mr. and Mrs. Arms are identified, respectively, as the president and secretary of the licensee, whereas Mr. Ford is its vice president.

cation,[17] material changes occurred in the ownership structure of the corporate applicant.[18] The number of outstanding shares of the Harrison corporation has been augmented, and stockholders have apparently acquired and relinquished ownership interests in the corporate applicant without any revisions of the subject application to reflect these events. Harrison's tardiness in disclosing the recent transfer of control of Station WPDF, together with its repeated omissions concerning the identification of its stockholders and their other interests, leads the Board to conclude that a full inquiry with respect to these matters is warranted, especially in view of the applicant's failure to file an appropriate amendment to the subject application to clearly and completely reflect its present ownership. See Sumiton Broadcasting Company, Inc., 20 FCC 2d 669, 17 RR 2d 1038 (1969); WMGS, Inc. (WMGS), 13 FCC 2d 226, 13 RR 2d 255 (1968); and Centex Radio Co. (KEFC (FM)), 12 FCC 2d 318, 13 RR 2d 267 (1968). The Review Board will, therefore, add an appropriate Rule 1.65 issue to this proceeding.

14. *Accordingly, it is ordered*, That the appeal from adverse ruling of Hearing Examiner, filed December 2, 1969, by Radio 900, Inc., is granted; that the memorandum opinion and order, FCC 69M–1537, released November 24, 1969, is set aside; and that the petition to enlarge issues, filed September 8, 1969, by Radio 900, Inc., is granted to the extent indicated below; is dismissed to the extent indicated in paragraph 9 herein; and is denied in all other respects; and

15. *It is further ordered*, That the issues in this proceeding are enlarged by addition of the following issue: To determine who are the principals of Harrison Radio, Inc.; and whether Harrison Radio, Inc., has complied with the provisions of § 1.65 of the Commission's rules by keeping the Commission advised of substantial changes on matters specifically referred to in this memorandum opinion and order, and, if not, the effect of such noncompliance on the basic qualifications of Harrison Radio, Inc., to be a Commission licensee.

16. *It is further ordered*, That the burdens of proceeding with the introduction of evidence and proof on the issue added herein with respect to Harrison Radio, Inc., will be on that applicant.

[17] There is no allegation that Harrison's representations of Mar. 19, 1968, the date its FM application was filed, did not accurately depict the ownership structure of the corporate licensee.

[18] The Board also notes that, in the July 8, 1968 amendment of the subject application, Harrison revealed that the two principal stockholders of Station WPDF were "Mary R. Arms and Sam B. and Aleene Holmes". As with the case of Joyce Holmes, Aleene Holmes' relationship to Sam B. Holmes has not been expressed. See paragraph 21(a) of section II, FCC Form 301. Nor have the past and present ownership interests of these women been properly and completely disclosed by Harrison.

Adopted: April 1, 1970.

Released: April 3, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[19]

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

[F.R. Doc. 70-4254; Filed, Apr. 7, 1970; 8:49 a.m.]

STANDARD BROADCAST APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Notice is hereby given, pursuant to § 1.571(c) of the Commission's rules, that on May 12, 1970, the applications for increase in daytime power of Class IV standard broadcast stations listed below, will be considered as ready and available for processing.

The purpose of this notice is not to invite applications which may conflict with the listed applications, but to apprise any party in interest who desires to file pleadings concerning any of the applications pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, of the necessity of complying with § 1.580(i) of the Commission's rules governing the time of filing and other requirements relating to such pleadings.

Adopted: April 1, 1970.

Released April 2, 1970.

FEDERAL COMMUNICATIONS COMMISSION,

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

Applications from the top of the processing line:

BP–18720	KGRO, Pampa, Tex. Pampa Broadcasters, Inc. Has: 1230 kc., 250 w., U. Req: 1230 kc., 250 w., 1 kw.–LS, U.
BP–18731	KVWC, Vernon, Tex. KVWC, Inc. Has: 1490 kc., 250 w., U. Req: 1490 kc., 250 w., 1 kw.–LS, U.
BP–18737	KVAC, Forks, Wash. Forks Broadcasting Co. Has: 1490 kc., 250 w., 500 w.–LS, U. Req: 1490 kc., 250 w., 1 kw.–LS, U.

[F.R. Doc. 70-4253; Filed, Apr. 7, 1970; 8:49 a.m.]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN MEXICO

Entry or Withdrawal From Warehouse for Consumption

APRIL 3, 1970.

On May 3, 1969, there was published in the FEDERAL REGISTER (34 F.R. 7311) a letter dated April 28, 1969, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, establishing levels of restraint applicable to certain specified categories of cotton textiles and cotton textile products produced or manufactured in Mexico and exported to the United States during the 12-month period beginning May 1, 1969. As set forth in that letter, the levels of restraint are subject to adjustment pursuant to the bilateral cotton textile agreement of June 2, 1967, between the Governments of the United States and Mexico, which provides that within the aggregate limit, the group limit for Group II (Categories 5 through 27) may be exceeded by not more than ten (10) percent and applicable limits on certain specific categories may be exceeded by not more than five (5) percent and for the limited carryover of short falls in certain categories to the next agreement year. The aforementioned letter also provided that any such adjustments in the levels of restraint would be made to the Commissioner of Customs by letter from the Chairman of the Interagency Textile Administrative Committee.

Accordingly, at the request of the Government of Mexico and pursuant to the bilateral agreement referred to above, there is published below a letter of April 3, 1970, from the Chairman of the Interagency Textile Administrative Committee to the Commissioner of Customs adjusting the levels of restraint applicable to cotton textile products in Group II (Categories 5 through 27) and Categories 9, 10, 22, 23, 26, and 27 for the 12-month period which began on May 1, 1969.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

ASSISTANT SECRETARY OF COMMERCE

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

APRIL 3, 1970.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

DEAR MR. COMMISSIONER: On April 28, 1969, the Chairman of the President's Cabinet Textile Advisory Committee, directed you to prohibit entry of cotton textiles and cotton textile products in certain specified categories, produced or manufactured in Mexico, and exported to the United States on or after May 1, 1969, in excess of the designated levels of restraint. The Chairman further advised you that in the event that there were any adjustments[1] in the levels of restraint you would be so informed by letter from the

[19] Review Board Member Berkemeyer dissenting in part and issuing a statement which is filed as part of the original document.

[1] The term "adjustments" refers to those provisions of the bilateral cotton textile agreement of June 2, 1967, between the Governments of the United States and Mexico which provide in part that within the aggregate limit the group limit on Group II (Categories 5 through 27) may be exceeded by 10 percent, limits on certain specific categories may be exceeded by not more than five (5) percent; for the limited carryover of short falls in certain categories to the next agreement year; and for administrative arrangements.

Chairman of the Interagency Textile Administrative Committee.

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of June 2, 1967, between the Governments of the United States and Mexico, in accordance with Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, and under the terms of the aforementioned directive of April 28, 1969, the overall level of restraint provided in that directive for cotton textile products in Categories 5 through 27 and the levels of restraint for Categories 9, 10, 22, 23, 26 and 27, produced or manufactured in Mexico and exported from Mexico to the United States for the period beginning May 1, 1969, and extending through April 30, 1970, are hereby amended as follows, to be effective as soon as possible:

Categories	Amended 12-Month levels of restraint [1]
5 through 27	square yards 25,457,750
9	do. 4,830,000
10	do. 2,415,000
22	do. 4,830,000
23	do. 3,622,500
26	do. [2] 7,245,000
27	do. [2] 2,415,000

[1] These levels have not been adjusted to reflect entries made on or after May 1, 1969.

[2] Of the total amount for Categories 26 and 27, not more than 5,433,700 square yards shall be in duck fabric, T.S.U.S.A. Nos.:

320.... 01 through 04, 06, 08
321.... 01 through 04, 06, 08
322.... 01 through 04, 06, 08
326.... 01 through 04, 06, 08
327.... 01 through 04, 06, 08
328.... 01 through 04, 06, 08

The actions taken with respect to the Government of Mexico and with respect to imports of cotton textiles and cotton textile products from Mexico have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553 (Supp. IV, 1965–68). This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

[F.R. Doc. 70-4268; Filed, Apr. 7, 1970; 8:50 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[70-4861]

ARKANSAS POWER & LIGHT CO. AND MIDDLE SOUTH UTILITIES, INC.

Notice of Proposed Issue and Sale of First Mortgage Bonds at Competitive Bidding and Proposed Issue of Common Stock to Holding Company

MARCH 31, 1970.

Notice is hereby given that Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Arkansas Power & Light Co. ("Arkansas"), a public-utility subsidiary company of Middle South, Two Eighty Park Avenue, New York, N.Y. 10017, have filed an application-declaration with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 6(b), 9, 10, and 12 of the act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Arkansas proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 promulgated under the act, $25,000,000 principal amount of its First Mortgage Bonds, —— percent Series due May 1, 2000. The interest rate on the bonds (which will be a multiple of ⅛ of 1 percent) and the price, exclusive of accrued interest, to be paid to Arkansas (which will be not less than 100 percent nor more than 102¾ percent of the principal amount thereof) will be determined by the competitive bidding. The bonds will be issued under Arkansas' Mortgage and Deed of Trust, dated as of October 1, 1944, to Guaranty Trust Co. of New York and Henry A. Theis, as trustees, as heretofore supplemented and as to be further supplemented by a Nineteenth Supplemental Indenture to be dated as of May 1, 1970, and includes a prohibition until May 1, 1975, against refunding the issue with the proceeds of funds borrowed at lower interest cost. The net proceeds from the sale of the bonds are to be used by Arkansas for its current construction program (estimated for 1970 at $74,400,000) and for other corporate purposes, including the repayment of short-term bank loans and commercial paper indebtedness approximating $17 million.

As of December 31, 1969, the retained earnings of Arkansas amounted to $25,867,640. Arkansas proposes to transfer $9 million of its retained earnings and credit such amount to its common stock capital account. Concurrently with such transfer, Arkansas proposes to issue to Middle South (the holder of all of the issued and outstanding shares of Arkansas' common stock, $12.50 par value), and Middle South proposes to acquire 720,000 additional shares of Arkansas' authorized but unissued common stock aggregating $9 million in par value. It is stated that the issuance of such common stock will permit Arkansas to convert into capital a portion of its earned surplus which has been permanently invested in betterments and improvements of its physical properties.

Fees and expenses incident to the proposed issuance and sale of the bonds are estimated at $85,000, including auditors' fees of $4,750, and counsel fees of $24,500. Fees of counsel for the underwriters in the amount of $9,500, together with out-of-pocket expenses, are to be paid by the successful bidders. The filing states that in connection with the issuance of the common stock no special or separable expenses of any kind are anticipated by either Arkansas or Middle South.

The filing states that the Arkansas Public Service Commission, the State commission of the State in which Arkansas is organized and doing business, has jurisdiction over the issuance and sale of the bonds and the common stock. The filing further states that the Tennessee Public Service Commission, the commission of a State in which Arkansas also does business, asserts jurisdiction over the proposed transactions. The orders of said commissions are to be filed herein by amendment. It is further stated that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than April 23, 1970, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70-4229; Filed, Apr. 7, 1970; 8:47 a.m.]

[70-4865]

MONTAUP ELECTRIC CO. ET AL.

Notice of Proposed Issuance and Sale of Debentures

APRIL 1, 1970.

In the matter of Montaup Electric Co., Brockton Edison Co., Blackstone Valley Electric Co., Fall River Electric Light Co., Eastern Utilities Associates, Post Office Box 2333, Boston, Mass. 02107.

Notice is hereby given that Brockton Edison Co. ("Brockton"), Fall River

Electric Light Co. ("Fall River"), and Blackstone Valley Electric Co. ("Blackstone"), exempt holding companies and public-utility subsidiary companies of Eastern Utilities Associates ("EUA"), a registered holding company, and EUA and Montaup Electric Co. ("Montaup"), a public-utility company owned by Brockton, Fall River, and Blackstone, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 6(b), 7, 9(a), 10, 12(b), 12(c), and 12(f) of the act and Rule 43 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Montaup proposes to issue and sell, $8,500,000 principal amount of ———— percent Debenture Bonds due 2000, dated May 1, 1970 and maturing May 1, 2000. Montaup's common stockholders, Brockton, Blackstone, and Fall River, propose to acquire such Debenture Bonds at prices equal to the principal amount thereof, and in proportions conforming with the terms of an agreement dated as of September 11, 1923, as amended, among Montaup and its owner companies, as follows: Brockton, $3,698,300 principal amount; Blackstone, $2,287,200 principal amount; and Fall River, $2,514,500 principal amount. The interest rate of the Debenture Bonds is to be supplied by amendment. Blackstone, Brockton, and Fall River will deposit and pledge the acquired Debenture Bonds with their respective indenture trustees. The proceeds to Montaup from the sale of the Debenture Bonds will be used to reduce its short-term bank indebtedness incurred for the construction of additions and improvements to its plant and system.

The agreement of September 11, 1923, as amended, requires that the relative investments of the owner companies in Montaup be readjusted from time to time to bring them into the same proportions as the estimated unrelayed maximum demands of electric power of the respective owner companies bear to the total estimated unrelayed maximum demands of the three owner companies, which recently has been in the ratio of 35 percent for Blackstone, 39 percent for Brockton, and 26 percent for Fall River. The allocation of the debentures as proposed will result in the same ownership ratio with respect to the total Montaup debentures outstanding. In order that the ownership of Montaup common stock be also held in the same ratios, it is proposed that Brockton purchase from Blackstone 4,650 shares of Montaup common stock and that Fall River purchase from Blackstone 3,694 shares of Montaup common stock. The purchase will be made at a price of $112.16 per share, which is the par value plus the pro rata portion of the earned surplus attributable to each share of capital stock of Montaup outstanding at the close of business on December 31, 1969. Blackstone will obtain the release of said Montaup common stock from the lien of its mortgage indenture by the substitution of additional property. The proceeds from such sale of Montaup common stock, which will amount to $935,874.88, will be applied by Blackstone toward its purchase of the Debenture Bonds described above. The Montaup common stock to be purchased by Brockton and Fall River will be deposited and pledged by them with the trustee under their respective mortgage indentures.

In addition, Montaup proposes to amend its Debenture Bonds by adding (1) a definition of the term "indebtedness" and (2) a clause which would permit Montaup to have any kind of indebtedness, as defined, if consented to by the owners of all of the Debenture Bonds (the owner companies) and by the trustee under each indenture under which any of the Debenture Bonds may at the time be pledged as collateral. The Debenture Bonds are not issued under an indenture, consequently all applicable terms and conditions are contained on the instrument itself. The Debenture Bonds owned by the owner companies are pledged with the trustee under each company's mortgage indenture securing its first mortgage and collateral trust bonds. Montaup is obtaining the consents of such trustees to the proposed amendment. The purpose of the proposed amendment is to specify the type of indebtedness requiring the consent of the owners and trustees and to specifically exclude nonbalance sheet items from consent requirements and thus facilitate Montaup's entering into contractual arrangements with other utility systems for the purchase and transmission of power and related matters.

It is stated that the proposed issue and sale of the Debenture Bonds by Montaup and the acquisition of the Debenture Bonds and common stock by Brockton and Fall River and the amendment of the Debenture Bonds are subject to the jurisdiction of the Department of Public Utilities of the Commonwealth of Massachusetts and that no other State commission or Federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred in connection with the proposed transactions are to be filed by amendment.

Notice is further given that any interested person may, not later than April 26, 1970, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70-4230; Filed, Apr. 7, 1970; 8:47 a.m.]

SMALL BUSINESS ADMINISTRATION

CITY OF COMMERCE INVESTMENT CO.

Notice of Issuance of Federal License To Operate as Minority Enterprise Small Business Investment Company

Notice is hereby given that the Small Business Administration (SBA) has issued license No. 12/12-5151, dated March 19, 1970, to City of Commerce Investment Co., located at 1117-B South Goodrich Boulevard, Los Angeles, Calif. 90022, to operate as a minority enterprise small business investment company in the State of California under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.) (Act).

Dated: March 27, 1970.

For SBA, pursuant to delegated authority.

A. H. SINGER,
Associate Administrator for Investment.

[F.R. Doc. 70-4207; Filed, Apr. 7, 1970; 8:45 a.m.]

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Labor-Management Relations

REGIONAL AND AREA ADMINISTRATORS

Addresses and Jurisdiction; Correction

F.R. Doc. 70-1248, published in Part II of the issue dated Wednesday, February 4, 1970, as 35 F.R. 2565, is corrected in the State column by inserting "Florida" after the "District of Columbia"; in the Area column by inserting "Miami" after "Washington, D.C." and in the Regional column by inserting "Atlanta" after "Washington, D.C.".

Signed at Washington, D.C., this 31st day of March 1970.

W. J. USERY, Jr.,
Assistant Secretary of Labor for Labor-Management Relations.

[F.R. Doc. 70-4206; Filed, Apr. 7, 1970; 8:45 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-4079 etc.]

CROWNWELL OIL COMPANY, INC., ET AL.

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

MARCH 30, 1970.

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

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 24, 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. Any parties who have heretofore filed petitions to intervene or notices of intervention in the subject dockets should file again if they are still interested in participating in any proceedings in the subject dockets.

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

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

GORDON M. GRANT,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser, field, and location	Price per Mcf	Pressure base
G-4079 D 3-18-70 [2]	Crownwell Oil Co., Inc. (formerly Crown Properties, Inc.), Post Office Box 447, Gretna, La. 70053.	United Fuel Gas Co., Orange Grove Field, Terrebonne Parish, La.	[3] 21.1	15.025
G-4290 D 3-18-70 [2]	do	do	[3] 21.1	15.025
G-4574 E 3-10-70	Garner & Gawthrop, Inc. (successor to E. R. Gawthrop & J. Ralph Garner), c/o Clarence W. Mutschelknaus, agent, Main St., Salem, W. Va. 26426.	Pennzoil United, Inc., Tennile District, Harrison County, W. Va.	12.0	15.325
G-6265 D 3-9-70	Getty Oil Co., Post Office Box 1404, Houston, Tex. 77001.	Lone Star Gas Co., Sholem Alechem Field, Carter County, Okla.	Uneconomical	
G-7670 C 3-19-70	Southern Union Gathering Co., Fidelity Union Tower, 1507 Pacific, Dallas, Tex. 75201.	El Paso Natural Gas Co., Dakota Pool, San Juan County, N. Mex.	[4] 13.0	15.025
G-7943 12-22-69 [2]	North American Royalties, Inc. (formerly Gordon Street, Inc.), c/o Michael Schneiderman, attorney, 1229 19th St. NW., Washington, D.C. 20036.	El Paso Natural Gas Co., Spraberry Field, Reagan County, Tex.	14.5	14.65
G-10700 12-22-69 [2]	do	do	14.5	14.65
G-17456 A 1-5-59 [2]	Union Oil Co. of California, Union Oil Center, Los Angeles, Calif. 90017.	United Gas Pipe Line Co., Tri-Channel Field, Nueces County, Tex.	14.8	14.65
C161-1461 [5] (C170-847) C 3-16-70	El Paso Products Co., (Operator) et al., Post Office Box 3986, Odessa, Tex. 79760.	Colorado Interstate Gas Co., a division of Colorado Interstate Corp., East Rock Springs Field, Sweetwater County, Wyo.	[7] 15.0	14.65
C161-1787 E 3-10-70	Garner & Gawthrop, Inc. (successor to E. R. Gawthrop & J. Ralph Garner).	Consolidated Gas Supply Corp., Tennile District, Harrison County, W. Va.	20.0	15.325
C163-1162 D 3-12-70	Humble Oil & Refining Co., Post Office Box 2180, Houston, Tex. 77001.	Northern Natural Gas Co., Como Area, Beaver County, Okla.	Assigned	
C164-372 12-22-69 [2]	North American Royalties, Inc. (Operator) et al. (formerly Gordon Street, Inc. (Operator) et al.).	Tennessee Gas Pipeline Co., a division of Tenneco Inc., East Alligator Bayou Field, Chambers County, Tex.	15.0	14.65
C165-1198 [6] (C170-814) E 3-6-70 as amended 3-16-70	White Shield Oil & Gas Corp. (successor to Valor Production Co.), Post Office Box 2130, Tulsa, Okla. 74101.	Almos Gas Gathering Co., Linke Field, Bee County, Tex.	12.0	14.65
C165-1286 C 3-11-70	Rincon Oil & Gas Corp., 20 Pine St., New York, N.Y. 10015.	El Paso Natural Gas Co., acreage in Rio Arriba County, N. Mex.	13.0	15.025
C167-248 1-26-70 [2]	Beacon Gasoline Co., Post Office Box 396, Minden, La. 71055.	W. H. Hunt, Welcome Field, Columbia County, Ark.	[10] 0.25	15.025
C167-248 2-2-70 [2]	do	Pennzoil Producing Co., Welcome Field, Columbia County, Ark.	[10] 0.25	15.025
C167-248 3-5-70 [2]	do	Western States Producing Co., Welcome Field, Columbia County, Ark.	[10] 0.25	15.025
C169-114 C 3-9-70	Pan American Petroleum Corp., Post Office Box 591, Tulsa, Okla. 74102.	Texas Gas Transmission Corp., North Shongaloo-Red Rock Field, Webster Parish, La.	[11] 19.75	15.025
C170-428 3-18-70 [2]	Crownwell Oil Co., Inc. (formerly Crown Properties, Inc.)	Transcontinental Gas Pipe Line Corp., Humphreys and South Humphreys Fields, Terrebonne Parish, La.	[3] 23.55	15.025
C170-770 (G-3073) F 2-24-70	Petroleum Corp. of Texas (Operator) et al. (successor to Humble Oil & Refining Co.), Post Office Box 911, Breckenridge, Tex. 76024.	Texas Eastern Transmission Corp., Loma Alta Field, McMullen County, Tex.	[12] 14.9377	14.65
C170-813 A 3-6-70	N1-Gas Supply, Inc., East-West Tollway at Route 59, Post Office Box 190, Aurora, Ill. 60507.	Northern Illinois Gas Co., Elk City Area, Beckham and Washita Counties, Okla.	[13] 37.37	14.65
C170-829 B 3-6-70	Sun Oil Co., 1608 Walnut St., Philadelphia, Pa. 19103.	Transcontinental Gas Pipe Line Corp., Mission Valley Field, Victoria County, Tex.	Depleted	
C170-830 A 3-10-70	Beacon Resources Corp. (Operator) et al., 1000 Century Plaza, Wichita, Kans.	Cities Service Gas Co., DeGeer North East Field, Barber County, Kans.	15.0	14.65
C170-831 A 3-11-70	Hill Oil & Gas Co. (Operator) et al., 100 Southland Center, Dallas, Tex. 75221.	Panhandle Eastern Pipe Line Co., Mocane Tonkawa and Mocane Chester Fields, Beaver County; Avard Field, Woods County; and Gage Northeast Field, Ellis County, Okla.	[7] 18.0	14.65
C170-832 F 3-6-70 [14]	Earl E. Wall (successor to Humble Oil & Refining Co.) 4100 MacArthur Blvd., New Orleans, La. 70114.	Transcontinental Gas Pipe Line Corp., Lucy Field, St. Charles Parish, La.	20.625	15.025
C170-833 (C168-119) F 3-10-70	Texas Oil & Gas Corp., Operator (successor to Wessely Petroleum, Ltd.), 2700 Fidelity Union Tower, Dallas, Tex., 77002.	Colorado Interstate Gas Co., a division of Colorado Interstate Corp., Laverne Field, Harper County, Okla.	[15] 17.0	14.65
C170-834 A 3-11-70	Richard H. Forgey, 207 L & L Bldg., Tyler, Tex. 75701.	Texas Gas Transmission Corp., Welcome Field, Columbia County, Ark.	[15] 20.0	15.025
C170-835 A 3-12-70	Franks Petroleum, Inc. (Operator) et al., Post Office Box 7665, Shreveport, La. 71107.	United Fuel Gas Co., Egan Field, Acadia Parish, La.	21.25	15.025
C170-836 (G-5035) F 3-11-70	Franks Petroleum Inc. (successor to Shell Oil Co.).	Texas Gas Transmission Corp., Chalkley Field, Cameron Parish, La.	[3] 22.87	15.025
C170-837 A 3-10-70	Garner & Gawthrop, Inc.	Pennzoil United, Inc., Tennile District, Harrison County, W. Va.	12.0	15.325

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

See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser, field, and location	Price per Mcf	Pressure base
CI70-838..... B 3-12-70	Sun Oil Co.....	Texas Eastern Transmission Corp., Helen Gohlke Field, Victoria County, Tex.	Depleted.....	
CI70-839..... A 3-16-70	Gulf Minerals, Inc., 488 The Main Bldg., Houston, Tex. 77002.	United Gas Pipe Line Co., South Bancroft Field, Beauregard Parish, La.	[2] 20.0	15.025
CI70-840..... A 3-16-70	Ferguson Oil Co., Inc., Suite 1115, 100 Parke Avenue Bldg., Oklahoma City, Okla. 73102.	Panhandle Eastern Pipe Line Co., acreage in Meade County, Kans.	[3] 18.0	14.65
CI70-841..... A 3-16-70	Humble Oil & Refining Co.,[1] Post Office Box 2180, Houston, Tex. 77001.	El Paso Natural Gas Co., Sand Hills Gasoline Plant, Crane County, Tex.	[4] 14.5	14.65
CI70-842..... (G-10148) F 3-9-70	Clarke Oilfield Service Inc., Operator (successor to Gulf Oil Corp.), 107 West Fowler, Medicine Lodge, Kans. 67104.	Cities Service Gas Co., Rhodes Gas Field, Barber County, Kans.	[5] 14.0	14.65
CI70-843..... (G-10148) F 3-9-70	do.....	do.....	[5] 14.0	14.65
CI70-844..... A 3-9-70	Kingwood Oil Co., 100 Park Avenue Bldg., Oklahoma City, Okla. 73102.	Arkansas Louisiana Gas Co., Arkoma Area, Le Flore County, Okla.	15.0	14.65
CI70-845..... A 3-16-70	Wolpenn Gas Co., Inc., by Weiner Enterprise, 515 Empire Bldg., Pittsburgh, Pa. 15222.	Equitable Gas Co., acreage in Braxton County, W. Va.	27.0	15.325
CI70-846..... (G-18597) F 3-13-70	Jerome P. McHugh (successor to Thomas A. Dugan (Operator) et al.), 930 Petroleum Club Bldg., Denver, Colo. 80202.	El Paso Natural Gas Co., Fruitland Field, San Juan County, N. Mex.	12.6526	15.025
CI70-848..... B 3-17-70	Vincent & Welch, Inc., c/o J. Evans Attwell, Attorney, Vinson, Elkins, Searls & Connally, 2100 First City National Bank Bldg., Houston, Tex. 77002.	Valley Gas Transmission, Inc., Woodlawn Field, Jefferson Davis Parish, La.	[39]	
CI70-849..... A 3-18-70	Allen Beard, 804 Commerce Square, Charleston, W. Va. 25301.	United Fuel Gas Co., Coopers Creek Field, Kanawha County, W. Va.	28.0	15.325
CI70-852..... (CI67-794) F 3-16-70	Pan American Petroleum Corp. (successor to John Briggs), Post Office Box 591, Tulsa, Okla. 74102.	Northern Natural Gas Co., acreage in Ellis County, Okla.	[6] 18.89	14.65
CI70-853..... A 3-18-70	Mustang Exploration Co., Inc., Post Office Box 272, Louise, Tex. 77455.	Transcontinental Gas Pipe Line Corp., Trans-Tex Field, Wharton County, Tex.	17.0	14.65
CI70-854..... A 3-19-70	Walter Duncan, Post Office Box 211, LaSalle, Ill. 61301.	Arkansas Louisiana Gas Co., Northeast Hilldale Field, Garfield County, Okla.	[6] 19.0	14.65
CI70-855..... B 3-18-70	Houston Oil & Minerals Corp. (Operator) et al.	Texas Eastern Transmission Corp., West Weeatche Field, Goliad County, Tex.	Depleted.....	
CI70-856..... B 3-18-70	do.....	do.....	Depleted.....	
CI70-857..... A 3-18-70	Union Drilling, Inc., Post Office Box 281, Washington, Pa. 15301.	Cumberland & Allegheny Gas Co., Meade District, Upshur County W. Va.	25.0	15.325
CI70-858..... A 3-18-70	do.....	Cumberland & Allegheny Gas Company, Washington District, Upshur County, W. Va.	25.0	15.325

[1] Amendment to certificate filed to reflect change in corporate name.
[2] Rate in effect subject to refund in Docket No. RI65-361.
[3] Rate in effect subject to refund in Docket No. RI65-475.
[4] Includes 1 cent per Mcf minimum guarantee for liquids and tax reimbursement.
[5] Notice of application issued in Docket No. G-11495 et al., on May 20, 1960, and published in the FEDERAL REGISTER on May 26, 1960 (25 F.R. 4666).
[6] Application was erroneously assigned Docket No. CI70-847 as initial service. Docket No. CI70-847 is canceled and application will be treated as a petition to amend the certificate in Docket No. CI61-1461.
[7] Subject to upward and downward B.t.u. adjustment.
[8] Application was erroneously assigned Docket No. CI70-814 as a partial succession. Docket No. CI70-814 is canceled and application will be processed as a complete succession to Docket No. CI65-1196.
[9] Applicant requests authorization to gather and process the subject gas. The gas will be processed in Applicant's plant in North Louisiana and delivered to Texas Gas Transmission Corp. under FPC Gas Rate Schedules of the various producers.
[10] Gathering and transportation charge.
[11] Rate in effect subject to refund in Docket No. RI69-227.
[12] Reflects Texas tax increase.
[13] Includes 21.88 cents gas charge, 15.46 cents transportation charge and 0.03-cent service charge.
[14] Partially succeeds Humble Oil & Refining Co.'s FPC GRS No. 128.
[15] Rate in effect subject to refund in Docket No. RI68-234. Subject to upward and downward B.t.u. adjustment.
[16] Applicant proposes 20 cents per Mcf or area ceiling rate, whichever is higher.
[17] Contract provides for rate of 21.25 cents per Mcf; however, Applicant states its willingness to accept certificate at 20 cents per Mcf, adjusted for quality as prescribed in Opinion No. 546.
[18] Applicant agrees to accept permanent certificate conditioned as Opinion No. 468, as modified by Opinion No. 468-A.
[19] Rate in effect subject to refund in Docket No. RI65-599.
[20] Leases have terminated.
[21] Includes 2.89-cent upward B.t.u. adjustment. Subject to upward and downward B.t.u. adjustment.
[22] Subject to upward and downward B.t.u. adjustment. Also subject to reduction for compression, if required.

[F.R. Doc. 70-4135; Filed, Apr. 7, 1970; 8:45 a.m.]

[Docket No. G-3491, etc.]

PHILLIPS PETROLEUM CO. ET AL.

Findings and Order

MARCH 27, 1970.

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, making successors co-respondents, redesignating proceedings, requiring filing of agreements and undertakings, accepting agreement and undertaking for filing, and accepting related rate schedules and supplements for filing.

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

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

Lloyd G. Jackson, applicant in Docket No. CI62-821, proposes to continue the sale of natural gas heretofore authorized in said docket to be made pursuant to Ashland Oil & Refining Co. FPC Gas Rate Schedule No. 149. Said rate schedule will be redesignated as that of applicant. The presently effective rate under Ashland's rate schedule is in effect subject to refund in Docket No. RI67-245, and applicant has filed a motion to be made a co-respondent in said proceeding. Therefore, applicant will be made a co-respondent in the proceeding pending in Docket No. RI67-245; said proceeding will be redesignated accordingly; and applicant will be required to file an agreement and undertaking to assure the refund of any amounts collected by him in excess of the amount determined to be just and reasonable in said proceeding.

The Polumbus Corp., applicant in Docket No. CI68-1270, proposes to continue the sale of natural gas heretofore authorized in said docket to be made pursuant to E. A. Polumbus FPC Gas Rate Schedule No. 1. Said rate schedule will be redesignated as that of applicant. The presently effective rate under said rate schedule is in effect subject to refund in Docket No. RI67-169. Therefore, applicant will be made a co-respondent in said proceeding; the proceeding will be redesignated accordingly; and applicant will be required to file an agreement and undertaking to assure the refund of any amounts collected by it in excess of the amount determined to be just and reasonable in said proceeding.

William A. and Edward R. Hudson, et al., applicants in Docket No. CI70–440, propose to continue the sale of natural gas from their own interests heretofore authorized in Docket No. CI61–636 to be made pursuant to Continental Oil Co. (Operator) et al., FPC Gas Rate Schedule No. 180. Applicants have submitted an instrument of ratification of Continental's rate schedule as their own FPC gas rate schedule. The presently effective rate under Continental's rate schedule is in effect subject to refund in Docket No. RI69–653. Therefore, applicants will be made co-respondents in said proceeding; the proceeding will be redesignated accordingly; and applicants will be required to file an agreement and undertaking to assure the refund of any amounts collected by them in excess of the amount determined to be just and reasonable in said proceeding.

Paul E. Kloberdanz (Operator) et al., applicant in Docket No. CI70–576, proposes to continue in part the sale of natural gas heretofore authorized in Docket No. CI61–1091 to be made pursuant to Amerada Hess Corp. FPC Gas Rate Schedule No. 92. The contract comprising said rate schedule will also be accepted for filing as a rate schedule of applicant. The presently effective rate under Amerada's rate schedule is in effect subject to refund in Docket No. RI68–119. In his certificate application applicant requests to be made a co-respondent in said proceeding and indicates that he will be responsible for the total refund from the date that the increased rate was made effective; however, concurrently with the certificate application applicant has submitted an agreement and undertaking to assure the refund only of amounts collected by him. Therefore, applicant will be made a co-respondent in the proceeding pending in Docket No. RI68–119; the proceeding will be redesignated accordingly; and the agreement and undertaking will be accepted for filing.

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

After due notice by publication in the FEDERAL REGISTER, a notice of intervention by The People of The State of California and The Public Utilities Commission of The State of California was filed in Docket No. CI70–440, in the matter of the application filed on November 3, 1969, in said docket. The notice of intervention has been withdrawn and no other petitions to intervene, notices of intervention, or protests to the granting of any of the applications have been filed.

At a hearing held on March 26, 1970, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and petitions, as supplemented and amended, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

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

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

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

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

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the orders issuing certificates of public convenience and necessity in various dockets involved herein should be amended as hereinafter ordered and conditioned.

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

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

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

(9) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Lloyd G. Jackson should be made a co-respondent in the proceeding pending in Docket No. RI67–245, that said proceeding should be redesignated accordingly; and that he should be required to file an agreement and undertaking.

(10) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that The Polumbus Corp. should be made a co-respondent in the proceeding pending in Docket No. RI67–169, that said proceeding should be redesignated accordingly, and that The Polumbus Corp. should be required to file an agreement and undertaking in said proceeding.

(11) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that William A. and Edward R. Hudson, et al., should be made co-respondents in the proceeding pending in Docket No. RI69–653; that said proceeding should be redesignated accordingly; and that they should be required to file an agreement and undertaking.

(12) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Paul E. Kloberdanz (Operator) et al., should be made a co-respondent in the proceeding pending in Docket No. RI68–119; that said proceeding should be redesignated accordingly; and that the agreement and undertaking submitted by him in said proceeding should be accepted for filing.

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

The Commission orders:

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

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

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

certificates aforesaid shall not be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(D) The certificates issued herein and the amended certificates are subject to the following conditions:

(a) The rates for sales authorized in Dockets Nos. G–5010, G–20484, and CI61–548 shall be applicable area base rates prescribed in Opinion No. 468, as modified by Opinion No. 468–A, as adjusted for quality of gas, or the contract rates, whichever are lower. If the quality of the gas delivered by applicants deviates at any time from the quality standards set forth in Opinion No. 468, as modified by Opinion No. 468–A, so as to require a downward adjustment of the existing rate, a notice of change in rate shall be filed pursuant to section 4 of the Natural Gas Act: *Provided, however,* That adjustments reflecting changes in B.t.u. content of the gas shall be computed by the applicable formula and charged without the filing of notices of changes in rates. Within 45 days from the date of this order applicants in Dockets Nos. G–20484 and CI61–548 shall file rate schedule quality statements in the form prescribed in Opinion No. 468–A.

(b) The rate for the sale authorized in Docket No. CI70–440 shall be 18.5 cents per Mcf at 14.65 p.s.i.a. effective subject to refund and subject to the rate suspension proceeding in Docket No. RI69–653 with a refund floor of 16.5 cents per Mcf at 14.65 p.s.i.a., adjusted for quality consistent with Opinions Nos. 468 and 468–A. Within 45 days from the date of this order applicant shall file a rate schedule quality statement in the form prescribed in Opinion No. 468–A.

(c) The rate for the sale authorized in Docket No. CI70–611 shall be 15.94 cents per Mcf at 14.65 p.s.i.a., the applicable area rate prescribed in Opinion No. 468, as modified by Opinion No. 468–A, as reflected in applicant's rate schedule quality statement.

(d) The rate for the sale authorized in Docket No. G–16287 shall be 12 cents per Mcf at 14.65 p.s.i.a.

(e) The initial rate for the sale authorized in Docket No. CI70–127 shall be 16 cents per Mcf at 14.65 p.s.i.a.

(f) The initial rate for sales authorized in Dockets Nos. CI68–948, CI70–374, CI70–375, and CI70–604 shall be 15 cents per Mcf at 14.65 p.s.i.a. including tax reimbursement and subject to B.t.u. adjustment. In the event that the Commission amends its statement of general policy No. 61–1, by adjusting the boundary between the Oklahoma Panhandle area and the Oklahoma "Other" area, so as to increase the initial wellhead price for new gas, applicants thereupon may substitute the new rates reflecting the amounts of such increases and thereafter collect the new rates prospectively in lieu of the initial rate herein authorized in said dockets. Applicant in Docket No. CI70–604 shall file a billing statement reflecting the 15-cent rate as required by the regulations under the Natural Gas Act.

(g) The authorizations granted in Dockets Nos. CI70–374 and CI70–375 are issued with the understanding that the definition of "Area Price" in section 1.13 of each of applicant's contracts dated August 11, 1969, is not in conflict, and is consistent, with § 154.93 (b–1) of the Commission's regulations.

(h) The certificate issued in Docket No. CI70–647 is conditioned upon any determination which may be made in the proceeding pending in Docket No. R–338 with respect to the transportation of liquefiable hydrocarbons.

(i) Applicant in Docket No. CI70–576 shall submit either (1) copies of letters dated April 4, 1962, and April 27, 1967, from Amerada Hess Corp. to the Commission which were filed as Supplement Nos. 2 and 9, respectively, to Amerada's FPC Gas Rate Schedule No. 92, the former in compliance with Opinion No. 353 to provide for a full percentage downward B.t.u. adjustment for gas containing less than 1,000 B.t.u.'s per cubic foot, and the latter in compliance with Order No. 334–A to provide for a 5-year makeup period for gas paid for by the buyer but not taken; or (2) a statement by applicant as a supplement to his FPC Gas Rate Schedule No. 2 to effect the same result as the said Amerada letters.

(E) The certificates issued in Dockets Nos. CI68–1376, CI70–206, and CI70–667 involving the sales of gas by Appalachian Exploration & Development, Inc., to its affiliate, Mountain Gas Co., determine the rates which legally may be paid by the buyer to the seller, but is without prejudice to any action which the Commission may take in any rate proceedings involving either company.

(F) Within 30 days from the date of this order applicant in Docket No. CI68–665 shall file three copies of a sample billing statement for the first month's service as required by the regulations under the Natural Gas Act.

(G) Certificates are issued in Dockets Nos. CI70–440 and CI70–611 authorizing William A. and Edward R. Hudson et al., and Hondo Oil & Gas Co., respectively, to continue sales of natural gas previously covered by the certificate issued to Continental Oil Co. (Operator) et al., in Docket No. CI61–636.

(H) The order issuing a certificate in Docket No. CI61–636 is amended by deleting therefrom the interests of William A. and Edward R. Hudson, et al., and Hondo Oil & Gas Co.

(I) The orders issuing certificates in Dockets Nos. G–3491, G–5010, G–13103, G–14892, G–16287, G–18141, G–19145, G–20484, CI61–234, CI61–548, CI65–623, CI65–925, CI66–853, CI67–600, CI68–665, and CI69–1136 are amended by adding thereto or deleting therefrom authorization to sell natural gas as described in the tabulation herein.

(J) The authorization granted in Docket No. G–13103 in paragraph (I) above shall not be construed to relieve applicant of any refund obligations that may have incurred in the rate proceeding pending in Docket No. RI69–379.

(K) The orders issuing certificates in Dockets Nos. CI65–485 and CI67–286 are amended to include the interests of the nonsignatory operators. The certificate and related rate schedule in Docket No. CI65–485 is redesignated as Union Oil Company of California (Operator) et al.

(L) The orders issuing certificates in Dockets Nos. CI61–1091, CI66–1310, and CI70–112 are amended by deleting therefrom authorization to sell natural gas from acreage assigned to applicants in Dockets Nos. CI70–576, CI70–648, and CI70–647, respectively.

(M) The orders issuing certificates in Dockets Nos. CI62–821, CI66–853, CI67–11, and CI68–1270 are amended by substituting the successors in interest as certificate holders.

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

(O) The certificates heretofore issued in Dockets Nos. G–15161 and CI66–78 are terminated.

(P) Lloyd G. Jackson is made a corespondent in the proceeding pending in Docket No. RI67–245 and said proceeding is redesignated accordingly. Lloyd G. Jackson shall comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(Q) Within 30 days from the issuance of this order, Lloyd G. Jackson shall execute, in the form set out below, and shall file with the Secretary of the Commission an acceptable agreement and undertaking in Docket No. RI67–245 to assure the refund of any amounts collected by him, together with interest at the rate of 7 percent per anum, in excess of the amount determined to be just and reasonable in said proceeding. Unless notified to the contrary by the Secretary of the Commission within 30 days from the date of submission, such agreement and undertaking shall be deemed to have been accepted for filing. The agreement and undertaking shall remain in full force and effect until discharged by the Commission.

(R) The Polumbus Corp. is made a corespondent in the proceeding pending in Docket No. RI67–169 and said proceeding is redesignated accordingly. The Polumbus Corp. shall comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(S) Within 30 days from the issuance of this order, The Polumbus Corp. shall execute, in the form set out below, and shall file with the Secretary of the Commission an acceptable agreement and undertaking in Docket No. RI67–169 to assure the refund of any amounts collected by it, together with interest at the rate of 7 percent per annum, in excess of the amount determined to be just and reasonable in said proceeding. Unless notified to the contrary by the Secretary of the Commission within 30 days from the date of submission, such agreement and undertaking shall be deemed to have been accepted for filing. The agreement and undertaking shall remain in full force and effect until discharged by the Commission.

(T) William A. and Edward R. Hudson, et al., are made correspondents in the proceeding pending in Docket No. RI69–653 and said proceeding is redesignated accordingly. William A. and Edward R. Hudson, et al., shall comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(U) Within 30 days from the issuance of this order, William A. and Edward R. Hudson, et al., shall execute, in the form set out below, and shall file with the Secretary of the Commission an acceptable agreement and undertaking in Docket No. RI69–653 to assure the refund of any amounts collected by them, together with interest at the rate of 7 percent per annum, in excess of the amount determined to be just and reasonable in said proceeding. Unless notified to the contrary by the Secretary of the Commission within 30 days from the date of submission, such agreement and undertaking shall be deemed to have been accepted for filing. The agreement and undertaking shall remain in full force and effect until discharged by the Commission.

(V) Paul E. Kloberdanz (Operator), et al., is made a co-respondent in the proceeding pending in Docket No. RI68–119; said proceeding is redesignated accordingly; and the agreement and undertaking submitted by him in said proceeding is accepted for filing. He shall comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder. The agreement and undertaking shall remain in full force and effect until discharged by the Commission.

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

By the Commission,

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

Docket No. and date filed	Applicant	Purchaser, field, and location	FPC rate schedule to be accepted: Description and date of document	No.	Supp.
G-3491 D 1-15-70	Phillips Petroleum Co.	El Paso Natural Gas Co., Jal Field, Lea County, N. Mex.	Letter 11-6-69 [1] [2]	258	1 [3]
G-3999 C 1-28-69	Shell Oil Co. [4]	El Paso Natural Gas Co., Monahans Field, Winkler County, Tex.	Supplemental agreement 12-10-68.	17	18
G-13103 D 1-19-70	Aztec Oil & Gas Co.	Southern Union Gathering Co., Aztec Pictured Cliffs Pool, San Juan County, N. Mex.	Assignment 12-24-69 [2] [4]	7	39
G-14892 D 12-11-69	United States Smelting Refining & Mining Co.	El Paso Natural Gas Co., Ignacio Field, La Plata County, Colo.	Assignment 1-17-66 [2] [5]	8	18
G-16287 C 11-7-69	Texaco, Inc.	El Paso Natural Gas Co., West Panhandle Field, Wheeler, Collingsworth, and Gray Counties, Tex.	Supplemental agreement 2-9-59 [6] Supplemental agreement 12-3-59 [2] [7]	185 185	6 7
G-18141 C 12-9-69	Southern Petroleum Exploration, Inc.	El Paso Natural Gas Co., Dakota Formation, Rio Arriba County, N. Mex.	Supplemental Agreement 11-21-69 [8]	14	10
G-19143 C 1-15-70	J. Glenn Turner	El Paso Natural Gas Co., Basin Dakota Field, Rio Arriba County, N. Mex.	Supplemental agreement 12-8-69 [9]	7	28
G-20484 (CS66-119) C 1-8-70	Mobil Oil Corp.	El Paso Natural Gas Co., Jalmat Field, Lea County, N. Mex.	Assignment 5-1-69 [2] Letter agreement 11-3-69 [10]	210 219	8 9

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

See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser, field, and location	FPC rate schedule to be accepted: Description and date of document	No.	Supp.
			Effective date: 5-1-69		
CI61-234 C 12-11-69	Caulkins Oil Co. (Operator), agent for Caulkins Producing Co. et al.	El Paso Natural Gas Co., Dakota Formation, Rio Arriba County, N. Mex.	Supplemental agreement 9-22-69. [8]	3	3
CI61-548 (CS66-119) C 1-9-70	Mobil Oil Corp. (Operator) et al.	El Paso Natural Gas Co., Langlie-Mattix and Jalmat Field, Lea County, N. Mex.	Letter agreement 10-20-69. [11] Effective date: 5-1-69	249	9
CI62-821 E 12-1-69	Lloyd G. Jackson (successor to Ashland Oil & Refining Co.).	United Fuel Gas Co., acreage in Kanawha County, W. Va.	Ashland Oil & Refining Co., FPC GRS No. 149. Supplement No. 1 Notice of succession 10-27-69. Assignment 9-5-69 [12] Effective date: 9-1-69	9 9 9	 1 2
CI63-485 C 11-28-69 [13]	Union Oil Co. of California (Operator) et al.	El Paso Natural Gas Co., Red Hills Unit No. 1, Lea County, N. Mex.	Letter 11-25-69 [2]	154	
CI65-603 C 9-24-69	Consolidation Coal Co. et al.	United Fuel Gas Co., Maiden Spring District, Tazewell County, Virginia and Big Creek Districts, McDowell County, W. Va.	Supplemental agreement 7-24-69.	1	5
CI65-925 D 8-4-69	CRA International, Ltd. (Operator) et al.	Panhandle Eastern Pipe Line Co., acreage in Kiowa County, Kans.	Amendment 5-26-69 [2] [14]	2	2
CI66-833 C 10-14-69 D 10-14-69 E 11-5-69	Signal Oil & Gas Co., a division of The Signal Cos., Inc. (Operator) (successor to Service Gas Products Co. (Operator) et al.)	Panhandle Eastern Pipe Line Co., Aline Plant, Alfalfa, Woods, Major, and Dewey Counties, Okla.	Service Gas Products Co. (Operator) et al., FPC GRS No. 7. Supplement Nos. 1-4 Notice of succession 11-3-69. Amendment 8-11-69 [15] Letter agreement 8-11-69. [15] Assignment 10-31-69 [17] Effective date: 10-31-69	25 25 25 25 25	 1-4 5 6 7
CI67-11 E 12-22-69	Lear Petroleum Corp. (successor to J. M. Huber Corp.).	Panhandle Eastern Pipe Line Co., Mocane Field, Beaver County, Okla.	J. M. Huber Corp. FPC GRS No. 74. Supplement No. 1 Notice of succession (Undated). Assignment 10-1-69 [16] Effective date: 10-1-69	3 3 3	 1 2
CI67-286 1-16-70 [18]	Monsanto Co. (Operator) et al.	Arkansas Louisiana Gas Co., Arkoma Area, Sequoyah County, Okla.	Contract 9-18-69 [1] [19]	85	11
CI67-600 C 1-15-70	Texaco, Inc.	Northern Natural Gas Co., Gage Area, Ellis County, Okla.	Amendatory agreement 12-17-69 [4].	284	3
CI68-665 C 12-29-69	George Mitchell & Associates, Inc., et al.	Arkansas Louisiana Gas Co., acreage in Sequoyah County, Okla.	Amendatory 10-10-69 [8]	31	4
CI68-948 A 1-30-68 E 12-15-69	Paul E. Kloberdanz [20] (Operator) et al. (successor to Hall-Jones Oil Corp.).	Panhandle Eastern Pipe Line Co., Lenora Field, Dewey County, Okla.	Hall-Jones Oil Corp., FPC GRS No. 9. Supplement No. 1 Notice of succession 12-10-69. Amendment 1-24-68 Assignment 3-4-68 [21] Assignment 3-4-68 [22] Assignment 3-4-68 [23] Assignment 3-14-69 Assignment 5-28-69 [24] Assignment 5-28-69 [25] Effective date: 6-1-69	3 3 3 3 3 3 3 3 3 3	 1 2 3 4 5 6 7 8

Docket No. and date filed	Applicant	Purchaser, field, and location	FPC rate schedule to be accepted: Description and date of document	No.	Supp.
CI68-1270 E 12-15-69	The Columbus Corp. (successor to E. A. Polumbus).	El Paso Natural Gas Co., East Boundary Butte Field, Apache County, Ariz.	E. A. Polumbus, FPC GRS No. 1.	1	
			Supplements Nos. 1-4	1	1-4
			Notice of succession 12-10-69.		
			Assignment 10-14-69 [27]	1	5
			Effective date: 10-1-69.		
CI68-1276 A 6-10-68	Appalachian Exploration & Development, Inc.	Mountain Gas Co., acreage in Kanawha County, W. Va.	Contract 5-7-68 [28]	4	
CI69-1136 C 1-19-70	J. S. Turner	United Gas Pipe Line Co., Flat Creek Field, Winn Parish, La.	Amendatory agreement 12-31-69.[3]	2	2
CI70-127 A 8-8-69	W. M. Wiseman et al.[29]	United Gas Pipe Line Co., Albrecht Field, Goliad County, Tex.	Contract 6-11-69	3	
CI70-157 A 8-15-69	Cumberland Gas Co.	Mountain Gas Co., Union District, Kanawha County, W. Va.	Contract 1-10-69	9	
CI70-181 A 8-25-69	Jesse M. Brooks and M. James Brooks, Jr., d.b.a. Brooks Oil Co.	Arkansas Louisiana Gas Co., Rodessa Field, Caddo Parish, La.	Contract 7-31-69	2	
CI70-206 A 8-27-69	Appalachian Exploration & Development, Inc.	Mountain Gas Co., Poca District, Kanawha County, W. Va.	Contract 8-6-69	17	
CI70-220 A 9-5-69	Patrick Oil & Gas Corp.	do.	Contract 5-15-69 [30]	1	
CI70-278 A 9-19-69	Charles R. Walbert (Operator) et al.	Cities Service Gas Co., acreage in Grady County, Okla.	Contract 8-27-69	2	
CI70-374 A 10-14-69 E 3-12-70 [31]	Signal Oil & Gas [32] Co., a division of The Signal Co., Inc., et al. (successor to Service Gas Products Co. et al.).	Panhandle Eastern Pipe Line Co., Northeast Trail Plant, Dewey County, Okla.	Contract 8-11-69	26	
			Assignment 10-31-69 [3] [33]	26	1
CI70-375 A 10-14-69 E 3-12-70 [31]	Signal Oil & Gas [32] Co., a division of The Signal Co., Inc. (Operator) (successor to Service Gas Products Co. (Operator)).	Panhandle Eastern Pipe Line Co., Aline Plant, Alfalfa, Major, and Woods Counties, Okla.	Contract 8-11-69	27	
			Letter agreement 8-11-69.[34]	27	1
			Assignment 10-31-69 [3] [33]	27	2
CI70-440 (CI61-636) A 11-3-69 [35]	William A. and Edward R. Hudson et al.	Transwestern Pipeline Co., Bell Lake Unit, Lea County, N. Mex.	Ratified 1-6-61	4	
			Contract 10-12-60 [36]	4	1
			Letter agreement 3-27-62	4	2
			Letter agreement 10-21-63	4	3
			Letter agreement 12-13-65	4	5
			Letter agreement 4-5-68 [7]	4	4
CI70-576 (CI61-1001) F 12-15-69	Paul E. Kloberdanz (Operator) et al. (successor to Amerada Hess Corp.).	Michigan Wisconsin Pipe Line Co., Lenora Field, Dewey County, Okla.	Contract 12-21-61 [3]	2	
			Assignment 9-26-67 [36]	2	1
			Assignment 9-26-67 [37]	2	2
			Assignment 3-4-68 [38]	2	3
			Assignment 3-4-68 [39]	2	4
			Assignment 3-4-68 [40]	2	5
			Assignment 3-14-69	2	6
			Assignment 5-28-69 [41]	2	7
			Assignment 5-28-69 [42]	2	8
			Effective date: 6-1-69.		
CI70-604 A 1-5-70	Getty Oil Co.[34]	Michigan Wisconsin Pipe Line Co., East Burnah Field, Dewey County, Okla.	Contract 12-22-69 [3]	170	
CI70-611 (CI61-636) A 1-5-70 [35]	Hondo Oil & Gas Co.	Transwestern Pipeline Co., Bell Lake Field, Lea County, N. Mex.	Ratified 1-6-61	5	
			Contract 10-12-60 [43]	5	1
			Letter agreement 10-21-63.[43]	5	2
			Quality statement 1-22-70.[3]	5	3
CI70-629 A 1-9-70	Pennzoil Producing Co. (formerly Union Producing Co.).	Tennessee Gas Pipeline Co., a division of Tennneco Inc., South Davis Field, Zapata County, Tex.	Contract 12-1-69 [3] [44]	274	

See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser, field, and location	FPC rate schedule to be accepted: Description and date of document	No.	Supp.
CI70-642 A 1-14-70	W. C. McBride, Inc.	Natural Gas Pipeline Co. of America, Grand Valley East Area, Beaver County, Okla.	Contract 10-1-69	29	
CI70-643 A 1-15-70	Royal Oil & Gas Corp.	United Fuel Gas Co., Center District, Gilmer County, W. Va.	Contract 12-3-69 [4]	16	
CI70-647 (CI70-112) F 1-14-70	Hill Oil & Gas Co. (successor to John H. Hill).	Panhandle Eastern Pipe Line Co., Northwest Six Mile Field, Beaver County, Okla.; and Southwest Cedardale Field, Woodward County, Okla.	Contract 7-14-69 [45]	1	
			Amendatory agreement 9-12-69.	1	1
			Assignment 12-30-69 [46]	1	2
			Effective date: 12-30-69.		
CI70-648 (CI66-1310) F 1-14-70	Samedan Oil Corp. (Operator) et al. (successor to Getty Oil Co. (Operator) et al.)	Northern Natural Gas Co., Keenan Field, Woodward County, Okla.	Contract 5-31-66 [45]	35	
			Assignment 7-18-69 [3] [45]	35	1
CI70-653 A 1-19-70	French Creek Gas Co.	Equitable Gas Co., Meade District, Upshur County, W. Va.	Contract 10-14-68 [3] [47]	2	
CI70-663 (CI66-78) B 1-21-70	Kerr-McGee Corp.	Northern Natural Gas Co., Northeast Ivanhoe Field, Beaver County, Okla.	Notice of cancellation 1-19-70.[3] [48]	84	1
CI70-663 (G-15161) B 1-22-70	Lamar Hunt (Operator) et al.	Natural Gas Pipeline Co. of America, Clayton Field, Live Oak County, Tex.	Notice of cancellation 1-19-70.[3] [48]	7	2
CI70-667 A 1-23-70	Appalachian Exploration & Development, Inc.	Mountain Gas Co., Union and Poca Districts, Kanawha County, W. Va.	Contract 12-18-69	19	

[1] Deletes the J. C. Estlack No. 1 Well from terms of contract. Well is no longer capable of producing gas against gathering system pressures.
[2] Effective date: Date of this order.
[3] By letter filed Feb. 28, 1969, Applicant agreed to accept permanent authorization conditioned as Opinion No. 468, as modified by Opinion No. 468-A.
[4] Buyer reassigns purchase rights in certain acreage to its parent company, Southern Union Gas Co., for resale in intrastate commerce.
[5] Deletes acreage assigned to C. F. Raymond.
[6] Corrects one lease description under basic contract dated Aug. 14, 1968 (FPC GRS No. 185) to show 100 percent ownership of interest rather than 75 percent (Lease No. 124371). Sale being rendered without prior Commission authorization.
[7] Dedicates subject acreage to the purchaser.
[8] Effective date: Date of initial delivery (Applicant shall advise the Commission as to such date).
[9] From George L. Buckles, et ux., to Mobil Oil Corp.
[10] Between Mobil and El Paso adding acreage acquired from Buckles to the Nov. 3, 1952, contract comprising Mobil's FPC GRS No. 230.
[11] Agreement between Mobil and El Paso adding acreage acquired from George L. Buckles under Docket No. CS66-119. The assignment whereby Mobil acquired the subject acreage is on file as Supp. No. 6 to Mobil's FPC GRS No. 249.
[12] From Ashland Oil & Refining Co. to Lloyd G. Jackson.
[13] Application to amend the certificate to cover Tenneco Oil Co.'s nonsignatory working interest.
[14] Deletes casinghead gas which could not be produced in commercial volumes. Applicant entered into percentage type agreement with Gas Marketing, Inc., who has been certificated in Docket No. CI69-862 to sell the gas to the same buyer.
[15] Adds acreage in Woods and Major Counties, and deletes Dewey County acreage which is included under Aug. 11, 1969, contract (FPC GRS No. 26) under Docket No. CI70-324. Effective dates: Date of initial delivery for the added acreage and date of this order for the deleted acreage.
[16] Provides method for determining respective volumes from Aline Plant which are to be sold under FPC GRS Nos. 25 and 27.
[17] From Service Gas Products Co. to Applicant.
[18] From J. M. Huber Corp. to Applicant.
[19] Amendment to the certificate filed to add interest of nonoperators.
[20] Between buyer and Thomas E. Berry, Thomas N. Berry & Co. and Martin C. Kelsey (nonoperators); adopts terms of Aug. 16, 1966, contract between buyer and Monsanto.
[21] Applicant states its willingness to accept a permanent certificate at 15 cents per Mcf plus B.t.u. adjustment. Contract provides for a rate of 18 cents per Mcf.
[22] From Hall-Jones to Prudential Funds, Inc., et al.
[23] From Hall-Jones to Herbert A. Johnson et al.
[24] From Hall-Jones to Howard Hall et al.

[1] From Hall-Jones et al to Paul Clements.
[2] From Paul Clements to Paul E. Kloberdanz.
[3] From E. A. Polumbus to The Polumbus Corp.
[4] Limited to production from above the base of the Newburg Formation.
[5] Contract provides for rate of 17 cents per Mcf; however, by letter filed Aug. 18, 1969, Applicant agreed to accept a permanent certificate at 16 cents per Mcf.
[6] Limited to production from below the base of the Oriskany Formation.
[7] Application filed by Service Gas Products Co. Signal filed an amendment to the application to succeed to Service Gas, as having acquired all assets of Service Gas Products Co.
[8] Contract rate is 18 cents per Mcf, subject to B.t.u. adjustment; however, Applicant states it is willing to accept a permanent certificate at 15 cents per Mcf, subject to B.t.u. adjustment.
[9] Applicant is requesting a certificate to cover its portion of a sale presently covered by Continental Oil Co.'s FPC GRS No. 180 and certificate in Docket No. CI61-636.
[10] On file as Continental Oil Co. FPC GRS No. 180.
[11] Also on file as Amerada Hess Corp. FPC GRS No. 92.
[12] From Amerada to Hall-Jones covering SE¼NE¼ 26°18'N. 18° W.
[13] From Amerada to Hall-Jones covering N½NE¼27°18'N. 18° W. and N½NE¼ 26°18' N. 18° W.
[14] By letter filed Mar. 9, 1970, Applicant advised willingness to accept a permanent certificate conditioned to an initial rate of 15 cents per Mcf including tax reimbursement.
[15] Applicant is requesting a certificate to cover its portion of a sale presently covered by Continental Oil Co. FPC GRS No. 180 and certificate in Docket No. CI61-636.
[16] On file as Continental's FPC GRS No. 180.
[17] Ratifies a June 3, 1963 letter agreement which limits dedicated reserves, contract quantity, and establishes Aug. 1, 1961, as date of initial delivery.
[18] Dedicates acreage from a depth of 4,000 feet to the 4th Hinnant Sand encountered at a depth of 8,300 feet to 8,355 feet.
[19] Between John H. Hill and Panhandle Eastern Pipe Line Co.; on file as John H. Hill FPC GRS No. 11.
[20] From John H. Hill to Hill Oil & Gas Co.
[21] Also on file as Getty Oil Co. (Operator) et al., FPC GRS No. 145.
[22] From Getty Oil Co. to Samedan Oil Corp. (Operator) et al. (covers depths from surface down to 9,750 feet).
[23] Sale being rendered without prior Commission authorization.
[24] Source of gas depleted.

Suggested agreement and undertaking:

BEFORE THE FEDERAL POWER COMMISSION

(Name of Respondent ----------)
Docket No. -------

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

(Name of respondent) hereby agrees and undertakes to comply with the refunding and reporting provisions of section 154.102 of the Commission's regulations under the Natural Gas Act insofar as they are applicable to the proceeding in Docket No. -------, and has caused this agreement and undertaking to be executed and sealed in its name by a duly authorized officer this ------- day of ---------- 19---.

(Name of Respondent)
By ----------
Attest:

[F.R. Doc. 70-4144; Filed, Apr. 7, 1970; 8:45 a.m.]

[Docket No. CP70-208]

TEXAS EASTERN TRANSMISSION CORP.

Notice Postponing Prehearing Conference and Date for Filing Testimony

MARCH 31, 1970.

Notice is hereby given that the prehearing conference scheduled to be held on April 1, 1970, in the above-designated matter is postponed until further notice. Furthermore, the date within which Texas Eastern Transmission Corp. may serve the direct testimony constituting its case-in-chief upon the Commission's staff and all parties to the proceeding is likewise postponed until further notice.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-4224; Filed, Apr. 7, 1970; 8:47 a.m.]

FEDERAL TRADE COMMISSION

DIRECTOR, BUREAU OF RESTRAINT OF TRADE, ET AL.

Delegation of Authority

Pursuant to the authority provided by Reorganization Plan No. 4 of 1961 (26 F.R. 6191), the Federal Trade Commission on March 26, 1970, amended its delegations of authority of January 17, 1962 (27 F.R. 481, at 482) and August 5, 1966 (31 F.R. 10556, at 10557), "In regard: Initiation of investigations," and its delegation of authority of December 23, 1969 (34 F.R. 20075), "In regard: The issuance of investigational subpoenas and extensions of time prescribed (a) for compliance with demands for access, subpoenas, or orders issued during the investigation of any matter and (b) for the filing of motions to limit or quash such subpoenas, demands for access, or orders," and made the following delegation of authority:

In regard: Initiation of investigations. The Commission delegates to the Director and Assistant Director, Bureau of Restraint of Trade; the Director and Assistant Director, Bureau of Deceptive Practices; the Director and Assistant Director, Bureau of Textiles and Furs; the Director and Assistant Director, Bureau of Industry Guidance; and the Attorneys in Charge and Assistant Attorneys in Charge of the Commission's field offices, severally and without power of redelegation, the authority to initiate investigations of alleged or suspected violations of any law, or provision thereof, which the Commission is empowered or directed to enforce; or the manner and form of compliance with final orders issued by the Commission.

In regard: The issuance of investigational subpoenas and extensions of time prescribed (a) for compliance with demands for access, subpoenas, or orders issued during the investigation of any matter and (b) for the filing of motions to limit or quash such subpoenas, demands for access, or orders. The Commission delegates to the Director and Assistant Director, Bureau of Restraint of Trade; the Director and Assistant Director, Bureau of Deceptive Practices; the Director and Assistant Director, Bureau of Textiles and Furs; the Director and Assistant Director, Bureau of Industry Guidance; the Director and Assistant Director, Bureau of Economics; and the Attorneys in Charge and Assistant Attorneys in Charge of the Commission's field offices, severally and without power of redelegation, the authority to issue investigational subpoenas; the authority, for good cause shown, to extend the time prescribed for compliance with any investigational subpoenas, demands for access, or orders issued during the investigation of any matter; and the authority to rule upon motions for extensions of time within which to file motions to limit or quash any such investigational subpoenas, demands for access, or orders.

Issued: April 3, 1970.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 70-4196; Filed, Apr. 7, 1970; 8:45 a.m.]

DELEGATION OF FUNCTIONS AND BUREAU OF FIELD OPERATIONS

Statement of Organization

The Federal Trade Commission hereby issues the following revised statement of organization as it relates to delegation of functions and the Bureau of Field Operations, published June 13, 1967 (32 F.R. 8442-8443), and corrected on June 17, 1967 (32 F.R. 8739).

SEC. 7. *Delegation of Function.* The Commission, under the authority provided by Reorganization Plan No. 4 of 1961, may delegate, by published order or rule, certain of its functions to a division of the Commission, a Commission field office, an individual Commissioner, a hearing examiner, or an employee or employee board.

SEC. 17. *Bureau of Field Operations.* (a) This bureau supervises the investigational activities of the Commission's field offices, and trial activities as delegated by the Commission, and has general administrative responsibility for the textile and fur field stations. Field offices are maintained at Washington (Falls Church, Virginia), New York, Cleveland, Chicago, San Francisco, Los Angeles, Seattle, New Orleans, Kansas City, Atlanta, and Boston.

Issued: April 3, 1970.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 70-4197; Filed, Apr. 7, 1970; 8:45 a.m.]

OFFICE OF EMERGENCY PREPAREDNESS

FEDERAL COORDINATING OFFICER

Appointment

Notice is hereby given that pursuant to the authority vested in me by the President under Executive Order 11495, November 18, 1969 (34 F.R. 18447, Nov. 20, 1969) to administer the Disaster Relief Act of 1969 (Public Law 91–79, 83 Stat. 125), I hereby appoint Leo C. McNamee, Jr., as Federal Coordinating Officer to perform the duties specified by section 9 of that act for Indiana State disaster number 247 with date of declaration, July 30, 1968, to be effective March 27, 1970.

This notice changes my designation of January 10, 1970 (35 F.R. 403, Jan. 20, 1970) with respect to the same disaster listed, naming Frank P. Bourgin as Federal Coordinating Officer.

Dated: April 2, 1970.

G. A. LINCOLN,
Director,
Office of Emergency Preparedness.

[F.R. Doc. 70–4228; Filed, Apr. 7, 1970; 8:47 a.m.]

TARIFF COMMISSION

[TEA–F–10, TEA–W–15, TEA–W–16, TEA–W–17, TEA–W–18]

PETITION OF BENSON SHOE CO. AND WORKERS' PETITIONS FOR DETERMINATIONS OF ELIGIBILITY TO APPLY FOR ADJUSTMENT ASSISTANCE

Notice of Investigation

On the basis of petitions filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the Benson Shoe Co., Lynn, Mass., and on behalf of the workers of the aforementioned Benson Shoe Co., the Dartmouth Shoe Co., Brockton, Mass.; the Hartman Shoe Co., Haverhill, Mass.; and the Lemar Shoes, Inc., Haverhill, Mass.; respectively, the U.S. Tariff Commission, on the 3d day of April 1970, instituted an investigation under section 301(c) (1) and (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 women's and misses' dress shoes with leather, vinyl or fabric uppers of the kinds produced by the aforementioned firms are being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to the Benson Shoe Co. and the unemployment or underemployment of a significant number or proportion of the workers of the aforementioned firms.

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: April 3, 1970.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[F.R. Doc. 70–4280, Filed, Apr. 7, 1970; 8:51 a.m.]

[TEA–W–19]

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

Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the workers of the Eagle Shoe Manufacturing Co., Everett, Mass., the U.S. Tariff Commission, on the 3d day of April 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 men's, youths', and boys' soled mocassins and cement-process footwear of leather of the kinds produced by Eagle Shoe Manufacturing Co., 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 petition filed in this case is available for inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, D.C., and at the New York City office of the Tariff Commission located in room 437 of the Customhouse.

Issued: April 3, 1970.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[F.R. Doc. 70–4281; Filed, Apr. 7, 1970; 8:51 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 3]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

MARCH 3, 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 Passengers, 1969 (49 CFR 1042.2(c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

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 1042.2(c)(9)) 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 PASSENGERS

No. MC–2890 (Deviation No. 82), AMERICAN BUSLINES, INC., 1501 South Central Avenue, Los Angeles, Calif. 90021, filed March 25, 1970. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From McConnellsburg, Pa., over U.S. Highway 522 to junction Interstate Highway 76, thence over Interstate Highway 76 to Breezewood, Pa., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From Philadelphia, Pa., over U.S. Highway 30 to Gettysburg, Pa., thence over U.S. Highway 15 to Emmitsburg, Md., thence over Maryland Highland 97 to the Maryland-Pennsylvania State line, thence over Pennsylvania Highway 16 to McConnellsburg, Pa., thence over U.S. Highway 30 to Pittsburgh, Pa., and return over the same route.

No. MC–67308 (Deviation No. 5) (Cancels Deviation Nos. 1 and 2), COLONIAL TRAILWAYS, 520 North Court Street, Montgomery, Ala. 36104, filed March 24, 1970. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and newspaper and light express* in the

same vehicle with passengers, over deviation routes as follows: (1) From Montgomery, Ala., over Interstate Highway 65 to junction Alabama Highway 21 near Atmore, Ala., (2) from Montgomery, Ala., over Interstate Highway 65 to junction Alabama Highway 47 near Bay Minette, Ala., thence over Alabama Highway 47 to Bay Minette, Ala., and (3) from Montgomery, Ala., over Interstate Highway 65 to junction Alabama Highway 225 near Bay Minette, Ala., thence over Alabama Highway 225 to junction U.S. Highway 31 near Mobile, Ala., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) From Montgomery, Ala., over U.S. Highway 80 to junction Alabama Highway 21, thence over Alabama Highway 21 to junction Interstate Highway 65, near Atmore, Ala., (2) from Montgomery, Ala., over the route described in (1) to junction Interstate Highway 65 and Alabama Highway 21, thence continuing over Alabama Highway 21 to junction U.S. Highway 31, thence over U.S. Highway 31 to Bay Minette, Ala., and (3) from Montgomery, Ala., over the route described in (2) to junction Alabama Highway 21 and U.S. Highway 31, thence over U.S. Highway 31 to junction Alabama Highway 225, near Mobile, Ala., and return over the same routes.

By the Commission.

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

[F.R. Doc. 70-4259; Filed, Apr. 7, 1970; 8:49 a.m.]

[Notice 12]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

APRIL 3, 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 89723 (Deviation No. 16), MISSOURI TRUCK LINES, INC., 210 North 13th Street, St. Louis, Mo. 63103, filed March 20, 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 Camden, Ark., over U.S. Highway 79 to junction U.S. Highway 167, thence over U.S. Highway 167 to junction Arkansas Highway 367, thence over Arkansas Highway 367 to Little Rock, Ark., 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 North Little Rock, Ark., over U.S. Highway 67 via Little Rock to Gurdon, Ark., and (2) from El Dorado, Ark., over Arkansas Highway 7 to Camden, Ark., thence over Arkansas Highways 4 and 24 to Chidester, Ark., thence over Arkansas Highway 24 to junction Arkansas Highway 53, thence over Arkansas Highway 53 to Gurdon, Ark., and return over the same routes, limited to service which is auxiliary to, or supplemental of, the rail service of the Missouri Pacific Railroad Co.

By the Commission.

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

[F.R. Doc. 70-4260; Filed, Apr. 7, 1970; 8:49 a.m.]

[Notice 33]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

APRIL 3, 1970.

The following publications are governed by the new § 1.247 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 61417 (Sub-No. 2) (Republication), filed October 31, 1969, published in the FEDERAL REGISTER issue of November 27, 1969, and republished this issue. Applicant: FIREPROFF STORAGE COMPANY, a corporation, 728 East Shiawassee Street, Lansing, Mich. 48902. Applicant's representative: Alan F. Wohlstetter, 1 Farragut Square South, Washington, D.C. 20006. By application filed October 31, 1969, as amended, to include Genessee and Wayne Counties, Mich., Fireproff Storage Co., a corporation, of Lansing, Mich., 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 in the manner and between the points as indicated below. An order of the Commission, Operating Rights Board, dated March 18, 1970, and served March 27, 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 Ingham, Livingston, Eaton, Barry, Shiawassee, Clinton, Ionia, Kent, Montcalm, Cratiot, Midland, Kalamazoo, Calhoun, Jackson, Washtenaw, Oakland, Macomb, Genessee, and Wayne Counties, Mich., 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 of unpacking, uncrating, and decontainerization of such traffic; 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 in the FEDERAL REGISTER of the application as originally published may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority without the requested limitation in our findings herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of the certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 93224 (Sub-No. 21) (Republication), filed October 7, 1969, published in the FEDERAL REGISTER issue of November 14, 1969, and republished this issue. Applicant: S & N FREIGHT LINE, INCORPORATED, Post Office Box 12147, Norfolk, Va. 23502. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington, D.C. 20005. By application filed October 7, 1969, as amended, S & N Freight Line, Incorporated, of Norfolk, Va., 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 paper, paper products, and pulpboard, from the plantsite and storage facilities of Union Camp Corp., located at or near Franklin, Va., to points in Virginia within 30 miles of Norfolk, Va.; subject to the restriction that carrier shall not transport shipments under the foregoing authority originating at the plantsite and storage facilities of

Union Camp Corp., located at or near Franklin, Va., and destined to points in North Carolina, South Carolina, Augusta and Savannah, Ga., and on traffic moving in foreign commerce.

A corrected order of the Commission, Operating Rights Board, dated March 6, 1970, and served March 31, 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 *paper, paper products, and pulpboard*, from the plantsite and storage facilities of Union Camp Corp., at or near Franklin, Va., to points in New Jersey, to Harrisburg, Wilkes-Barre, and Norristown, Pa., and those points in that part of Pennsylvania on and east of a line beginning at the Pennsylvania-Delaware State line, near Elgin, Pa., and extending along U.S. Highway 202 to the Pennsylvania-New Jersey State line, to Wilmington, Del., Baltimore and Salisburg, Md., to points in that portion of the New York, N.Y., commercial zone as defined by the Commission in the Fifth Supplemental Report in *Commercial Zones and Terminal Areas*, 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption provided by section 203(b)(8) of the act (the "exempt" zone), and to points in Nassau and Suffolk Counties, N.Y. (except points in Nassau County are within the New York, N.Y., commercial zone as defined by the Commission), restricted to the transportation of traffic originating at the plantsite and storage facilities of Union Camp Corp., at or near Franklin, Va., and destined to the indicated destination points; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements 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 134049 (Republication), filed September 19, 1969, published in the FEDERAL REGISTER issue of October 9, 1969, and republished this issue. Applicant: DONALD J. EXLINE, doing business as CORKY MILLS TRUCKING SERVICE, Dress Memorial Airport, Evansville, Ind. 47711. Applicant's representative: Donald W. Smith, 900 Circle Tower, Indianapolis, Ind. By application filed September 19, 1969, Donald J. Exline, doing business as Corky Mills Trucking Service, of Evansville, Ind., 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 general commodities, (1) between Weir Cook Airport, Indianapolis, Ind., on the one hand, and, on the other, points in Vanderburgh, Gibson, Warrick, and Spencer Counties, Ind., and Daviess and Henderson Counties, Ky., and (2) between the counties named in (1) above on the one hand, and, on the other, Dress Memorial Airport at or near Evansville, Ind., restricted to traffic having an immediately prior or subsequent movement by air. An order of the Commission, Operating Rights Board, dated March 13, 1970, and served March 25, 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 *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 Weir Cook Airport, near Indianapolis, Ind., and Dress Memorial Airport, near Evansville, Ind., on the one hand, and, on the other, points in Vanderburgh, Gibson, Warrick, Spencer, and Perry Counties, Ind., and Daviess and Henderson Counties, Ky., restricted to the transportation of traffic having an immediately prior or subsequent movement by air; 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 the 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.

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-10790. Authority sought for purchase by NEWMAN AND PEMBERTON CORPORATION, 2007 University Avenue NW., Knoxville, Tenn. 37921, of the operating rights of HORN TRANSFER LINE, INC., 3850 Tucker Avenue, Louisville, Ky. 40216, and for acquisition by J. R. NEWMAN, 317 Hartford Road, Knoxville, Tenn. 37920, of control of such rights through the purchase. Applicants' attorney: William P. Sullivan, 1819 H Street NW., Washington, D.C. 20006. 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 irregular routes, between Louisville, Ky., and points in Jefferson County, Ky., on the one hand, and, on the other, Jeffersonville and New Albany, Ind. Vendee is authorized to operate as a *common carrier* in Ohio, Michigan, Georgia, Kentucky, Maryland, Tennessee, Indiana, Missouri, Illinois, North Carolina, West Virginia, Alabama, Mississippi, New York, Pennsylvania, Florida, Arkansas, Louisiana, South Carolina, Virginia, and the Distirct of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-10791. Authority sought for control by CENTRAL MOTOR LINES, INCORPORATED, 324 North College Street, Post Office Box 1067, Charlotte, N.C. 28201, of NORTHERN FREIGHT LINES, INC., 405 South Prior Street, Gainesville, Ga. 30501, and for acquisition by ROBERT G. HAYES, and M. C. HAYES, both of 52 Spring Street NW., Concord, N.C. 28025, of control of NORTHERN FREIGHT LINES, INC., through the acquisition by CENTRAL MOTOR LINES, INCORPORATED. Applicants' attorneys: Daniel J. Sweeney, 1 North La Salle Street, Chicago, Ill. 60602, and Guy H. Postell, 1273 West Peachtree Street, Atlanta, Ga. 30309. Operating rights sought to be controlled: *General commodities*, excepting among others, dangerous explosives, household goods, and commodities in bulk, as a *common carrier* over regular routes, between points in Georgia, between Gainesville, Ga., and Commerce, Ga., serving all intermediate points, except Jefferson, Ga.; between Commerce, Ga., and junction Georgia Highway 52 and U.S. Highway 23, serving all intermediate points, and the off-route point of Homer, Ga.; between Dahlonega, Ga., and Gainesville, Ga., serving all intermediate points, between Cornelia, Ga., and Dahlonega, Ga., serving all intermediate points between Dahlonega and Clarkesville, Ga. (not including Clarkesville), and the off-route point of Helen, Ga.; *general commodities*, between Atlanta, Ga., and Tournapull, Ga., serving the intermediate points of Toccoa, Ga., and those between Toccoa and Atlanta; and off-route points within 15 miles of Atlanta; and *general commodities*, excepting among others, dangerous explosives, household goods, and commodities in bulk, over irregular routes between Greenville, S.C., on the one hand, and, on the other, points in Georgia within 100 miles of Greenville. Central Motor Lines, Inc., is authorized to operate as a *common carrier* in Illinois, North Carolina, Ohio, West Virginia, Indiana, New York, South Carolina, New Jersey, Maryland, and Virginia. Application has been filed for temporary authority under section 210a(b).

No. MC-F-10793. Authority sought for purchase by VON DER AHE VAN

LINES, INC., 600 Rudder Avenue, Fenton, Mo. 63026, of the operating rights of CARROLL VAN LINES, INC., 70 Bates Avenue, Quincy, Mass. 02109, and for acquisition by RUSSELL L. VON DER AHE, and MAYBELLE E. VON DER AHE, both also of Fenton, Mo., of control of such rights through the purchase. Applicants' attorney: Robert J. Gallagher, Suite 3020, The Empire Building, 350 Fifth Avenue, New York, N.Y. 10001. Operating rights sought to be transferred: *Household goods*, as defined by the Commission, as a *common carrier*, over irregular routes, between points in Indiana, Illinois, Iowa, Ohio, Michigan, Wisconsin, New York, Pennsylvania, Massachusetts, Kentucky, New Jersey, Minnesota, West Virginia, Maryland, Connecticut, and the District of Columbia. Vendee is authorized to operate as a *common carrier* in Ohio, Louisiana, Rhode Island, Connecticut, Massachusetts, Missouri, Texas, Vermont, Oklahoma, Nebraska, Illinois, Arkansas, Colorado, Alabama, Delaware, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Mississippi, Minnesota, New Mexico, New York, North Dakota, Pennsylvania, South Dakota, Tennessee, Virginia, Wisconsin, Utah, California, Idaho, Montana, Nevada, Oregon, Washington, Wyoming, South Carolina, North Carolina, Hawaii, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–10794. Authority sought for control and merger by HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road SE., Marietta, Ga. 30060, of the operating rights and property of BALL BROTHERS TRUCKING COMPANY, INC., Post Office Box 1349, Grand Prairie, Tex. 75050, and for acquisition by JIMMIE H. AYER, also of Marietta, Ga. 30060, of control of such rights and property through the transaction. Applicants' attorney: Robert E. Born, Post Office Box 6426, Station A, Marietta, Ga. 30060. Operating rights sought to be controlled and merged: *Machinery, equipment, materials and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and byproducts, and *machinery, materials, equipment and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling or pipelines, including the stringing and picking up thereof, as a *common carrier*, over irregular routes, between points in Kansas, Oklahoma, and Texas, between points in Louisiana, on the one hand, and, on the other, certain specified points in Texas, between points in Louisiana, on the one hand, and, on the other, certain specified points in Texas; *machinery, materials, supplies and equipment* incidental to, or used in, the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, between Wink, Tex., and points in Texas within 100 miles of Wink, on the one hand, and, on the other, points in Lea County, N. Mex.;

Machinery, materials, supplies, and equipment, incidental to, or used in, the construction, development, operations and maintenance of facilities for the discovery, development and production of petroleum, between warehouses and railroad sidings, on the one hand, and, on the other, oil well locations in Lea County, N. Mex., and that part of Texas west of U.S. Highway 81, between oil well locations in the above-specified territory; *machinery and equipment* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of sulphur and its products and *materials and supplies* (not including sulphur) used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of sulphur and its products, restricted to the transportation of shipments of materials and supplies moving to or from exploration, drilling, production, job, construction, plant (including refining, manufacturing, and processing plant) sites or storage sites, between points in Kansas, Oklahoma, and Texas, between Wink, Tex., and points in Texas within 100 miles of Wink, on the one hand, and, on the other points in Lea County, N. Mex.; between points in Lea County, N. Mex., and that part of Texas west of U.S. Highway 81 *machinery, equipment, materials, and supplies* used in or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, other than pipelines used for the transmission of natural gas, petroleum, their products and byproducts, water, or sewerage, restricted to the transportation of shipments moving to or from pipeline rights-of-way, between points in Kansas, Oklahoma, and Texas, between points in Louisiana, between points in Louisiana, on the one hand, and, on the other, certain specified points in Texas, between points in Louisiana, on the one hand, and, on the other, certain specified points in Texas, between Wink, Tex., and points in Texas within 100 miles of Wink, on the one hand, and, on the other, points in Lea County, N. Mex., between points in Lea County, N. Mex., and that part of Texas west of U.S. Highway 81. Home Transportation Co., Inc., is authorized to operate as a *common carrier* in all points in the United States (except Alaska and Hawaii). Application has been filed for temporary authority under section 210a(b).

No. MC–F–10795. Authority sought for control by INTERNATIONAL UTILITIES OF THE U.S., INC., 1500 Walnut Street, Philadelphia, Pa., of PACIFIC INTERMOUNTAIN EXPRESS CO., 1417 Clay Street, Oakland, Calif. 94612, and for acquisition by INTERNATIONAL UTILITIES, INC., also of Philadelphia, Pa., of control of PACIFIC INTERMOUNTAIN EXPRESS CO., through the acquisition by INTERNATIONAL UTILITIES OF THE U.S., INC. Applicants' attorney and representatives: Roland Rice, 618 Perpetual Building, Washington, D.C. 20004, and J. G. Rubenstein, 1500 Walnut St., Philadelphia, Pa. 19102. Operating rights sought to be controlled: General commodities, with certain specified exceptions, and numerous other specified commodities, as a common carrier, over regular and irregular routes, from, to, and between specified points in the United States (except Alaska and Hawaii), with certain restrictions, serving various intermediate and off-route points, over numerous alternate routes for operating convenience only, as more specifically described in Docket No. MC–730 and Sub-numbers thereunder. This notice does not purport to be a complete description of all of the operating rights of the carrier involved. The foregoing summary is believed to be sufficient for purposes of public notice regarding the nature and extent of this carrier's operating rights, without stating in full, the entirety, thereof. International Utilities of the U.S., Inc., holds no authority from this Commission. However, its controlling stockholder controls Ryder Truck Lines, Inc., Post Office Box 2408, Jacksonville, Fla. 32203, which is authorized to operate as a *common carrier* in Ohio, Tennessee, Georgia, Alabama, Missouri, Kentucky, Illinois, Indiana, Wisconsin, North Carolina, Virginia, South Carolina, Florida, Louisiana, Texas, Mississippi, California, Arizona, Arkansas, Colorado, Delaware, Pennsylvania, New Jersey, Rhode Island, Connecticut, Massachusetts, West Virginia, Michigan Maryland, New York, and the District of Columbia and Chemical Leaman Tank Lines, Inc., 520 Lancaster Avenue, Downingtown, Pa. 19335, which is authorized to operate as a *common carrier* in all States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority under section 210a(b).

PASSENGERS

No. MC–F–10792. Authority sought for control and merger by THE SHORT LINE, INC., 27 Sabin Street, Providence, R.I. 02901, of the operating rights and property of INTERSTATE BUSSES CORPORATION, 27 Sabin Street, Providence, R.I. 02901, and for acquisition by GEORGE M. SAGE, 106 Nayatt Road, West Barrington, R.I., of control of such rights and property through the transaction. Applicants' attorney: S. Harrison, Kahn, Suite 733, Investment Building, Washington, D.C. 20005. Operating rights sought to be controlled and merged: Passengers and their baggage, and express and newspapers, in the same vehicle with passengers, as a *common carrier* over regular routes, between Providence, R.I., and Albany, N.Y., between Pittsfield, Mass., and Springfield, Mass., between Putnam, Conn., and Quinebaug, Conn., serving all intermediate points, between Centerdale, Town of North Providence, R.I., and Narragansett Park Race Track, Pawtucket, R.I., between North Woodstock, Conn., and

Southbridge, Mass., serving no intermediate points, between Worcester, Mass., and Springfield, Mass., serving all intermediate points; and the off-route points of Rochdale, North Brookfield, Ware, and Gilbertville, Mass.; and passengers and their baggage, and express and newspapers, in the same vehicle with passengers, in seasonal operation between March 1 and December 1, inclusive, of each year, between Greenville, R.I., and Providence, R.I., serving the intermediate points of Lincoln Race Track. The Short Line, Inc., is authorized to operate as a *common carrier* in all points in the United States (except Hawaii). Application has not been filed for temporary authority under section 210a(b).

By the Commission.

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

[F.R. Doc. 70-4261; Filed, Apr. 7, 1970; 8:49 a.m.]

[Notice 53]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 2, 1970.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of ex parte No. MC-67, (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

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

MOTOR CARRIERS OF PROPERTY

No. MC 42487 (Sub-No. 740 TA), filed March 26, 1970. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif. 94025. Applicant's representative: Robert M. Bowden (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum transformer oil*, liquid, in bulk, in tank vehicles, from Richmond, Calif., to Grand Island, Nebr., for 150 days. Supporting shipper: Standard Oil Co. of California, 225 Bush Street, San Francisco, Calif. 94120. Send protests to: Claud W. Reeves, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

No. MC 88594 (Sub-No. 15 TA), filed March 30, 1970. Applicant: CARLETON G. WHITAKER, INC., Route 17, Deposit, N.Y. 13754 (Delaware County). Applicant's representative: Martin Werner, 2 West 45th Street, New York, N.Y. 10036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Yogurt*, in vehicles equipped with mechanical refrigeration, from North Lawrence, N.Y., to Erie and Pittsburgh, Pa., for 150 days. Supporting shipper: Sealtest Foods, Division of Kraftco Corp., 20545 Center Ridge Road, Rocky River, Ohio 44116. Send protests to: Charles F. Jacobs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 518 Federal Building, Albany, N.Y. 12207.

No. MC 107295 (Sub-No. 338 TA), filed March 23, 1970. Applicant: PRE-FAB TRANSIT CO., 100 South Main Street, Farmer City, Ill. 61842. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing, roofing materials, wallboard, siding, insulation, and related accessories*, from the plantsite of Johns-Manville Products Corp., Madison, Ill., to points in Arkansas, Kentucky, Missouri, and Tennessee, for 180 days. Supporting shipper: Johns-Manville Products Corp., 1226 Bissell Street, Venice, Ill. 62090. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 476, 325 West Adams Street, Springfield, Ill. 62704.

No. MC 107295 (Sub-No. 343 TA), filed March 24, 1970. Applicant: PRE-FAB TRANSIT CO., 100 South Main Street, Farmer City, Ill. 61842. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel roofing*, from the plantsite of Wheeling-Pittsburgh Steel Corp. at Beech Bottom, W. Va., to points in Arkansas, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Oklahoma, and Texas, for 180 days. Supporting shipper: Wheeling-Pittsburgh Steel Corp., 1134 Market Street, Wheeling, W. Va. 26003. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 476, 325 West Adams Street, Springfield, Ill. 62704.

No. MC 107295 (Sub-No. 344 TA), filed March 24, 1970. Applicant: PRE-FAB TRANSIT CO., 100 South Main Street, Farmer City, Ill. 61842. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paving joints, compounds, siding, roofing, cement concrete curing compound*, from the plantsite of W. R. Meadows, Inc., at Elgin, and Hampshire, Ill., to points in Arkansas, Kentucky, Missouri, and Tennessee, for 180 days. Supporting shipper: W. R. Meadows, Inc., 2 Kimball Street, Elgin, Ill. 60120. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 476, 325 West Adams Street, Springfield, Ill. 62704.

No. MC 107496 (Sub-No. 774 TA), filed March 25, 1970. Applicant: RUAN TRANSPORT CORPORATION, Third and Keosauqua Way, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid feed supplement and mineral oil*, in bulk, from Fort Lupton, Colo., to Hereford, Tex., and points in New Mexico, for 150 days. Supporting shipper: Albers Milling Co., Division of Carnation Co., Carnation Building, 5045 Wilshire Boulevard, Los Angeles, Calif. 90036. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 113666 (Sub-No. 42 TA), filed March 25, 1970. Applicant: FREEPORT TRANSPORT, INC., 1200 Butler Road, Freeport, Pa. 16229. Applicant's representative: Andrew Smetanick (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay*, from Hutchins, Pa., to points in New York, for 180 days. Supporting shipper: Weaver Material Service, Inc., Post Office Box 1151, Jamestown, N.Y. 14701. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pa. 15222.

No. MC 113666 (Sub-No. 43 TA), filed March 25, 1970. Applicant: FREEPORT TRANSPORT, INC., 1200 Butler Road, Freeport, Pa. 16229. Applicant's representative: David W. Gilkey (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Pulverized clay* in conveyor type equipment, from points in Columbiana County, Ohio to Beaver Falls, Pittsburgh, Pa., for 180 days. Supporting shipper: Negley Refractories, Post Office Box 176, Negley, Ohio 44441. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pa. 15222.

No. MC 113678 (Sub-No. 377 TA), filed March 26, 1970. Applicant: CURTIS, INC., Post Office Box 16004, Stockyards Station, Denver, Colo. 80216. Applicant's representative: Oscar Mandel (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat packinghouses* (except comodities in bulk and hides), from Harlan, Iowa, to points in New York, New Jersey, Pennsylvania, and Massachusetts, for 180 days. Supporting shipper: Western Iowa Pork, Harlan, Iowa. Send protests to: District Supervisor, H. C. Ruoff, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, Colo. 80202.

No. MC 113908 (Sub-No. 204 TA), filed March 30, 1970. Applicant: ERICKSON

TRANSPORT CORPORATION, 2105 East Dale, Springfield, Mo. 65803. Applicant's representative: Turner White, 805 Woodruff Building, Springfield, Mo. 65806. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wine*, in bulk, in tank vehicles, from Canandaigua, N.Y., to Church Point, La., for 150 days. Supporting shipper: Canandaigua Industries Co., Inc., Canandaigua, N.Y. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 113908 (Sub-No. 205 TA), filed March 30, 1970. Applicant: ERICKSON TRANSPORT CORPORATION, 2105 East Dale, Springfield, Mo. 65803. Applicant's representative: Turner White, 805 Woodruff Building, Springfield, Mo. 65806. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lard*, in bulk, in tank vehicles, from St. Joseph, Mo., to Rogers, Ark., for 150 days. Supporting shipper: Armour and Co., 111 East Wacker Drive, Chicago, Ill. 60601. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 115379 (Sub-No. 36 TA), filed March 25, 1970. Applicant: JOHN D. BOHR, INC., Post Office Box 217, Annville, Pa. 17003. Applicant's representative: Christian V. Graf, 407 North Front Street, Harrisburg, Pa. 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Poultry byproduct meal*, in bulk, from Berlin, Md., to Battle Creek, Mich., for 150 days. Supporting shipper: Ralston Purina Co., Checkerboard Square, St. Louis, Mo. 63199. Send protests to: Robert W. Ritenour, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 508 Federal Building, Post Office Box 869, Harrisburg, Pa. 17108.

No. MC 116254 (Sub-No. 112 TA), filed March 30, 1970. Applicant: CHEM-HAULERS, INC., Post Office Box 245, Sheffield, Ala. 35660. Applicant's representative: L. Winston Biggs (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mixed spent acid*, in bulk, in tank vehicles, from St. Marks, Fla., to Bessemer, Ala., for 180 days. Supporting shipper: Olin Corp., East Alton, Ill. 62024. Send protests to: Clifford W. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 814, 2121 Building, Birmingham, Ala. 35203.

No. MC 119302 (Sub-No. 8 TA), filed March 24, 1970. Applicant: MILLER TRANSFER AND RIGGING CO., Post Office Box 6077, Akron, Ohio 44312. Applicant's representative: Edward Bowes, 744 Broad Street, Newark, N.J. 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brass and copper*, from Cleveland, Ohio, to Green Island, Lockport, Melville and New York, N.Y.; Dedham, and Attelboro, Mass., Bridgeport, Plainville and Waterbury, Conn.; Providence and Warwick, R.I.; *Brass and copper scrap*, from Green Island, Lockport, Melville, and New York, N.Y.; Dedham and Attelboro, Mass.; Bridgeport, Plainville and Waterbury, Conn.; Providence and Warwick, R.I., to Cleveland Ohio, for 180 days. Supporting shipper: Chas Brass and Coppér Co., Cleveland, Ohio. Send protests to: G. J. Baccei, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Building, 1240 East Ninth Street, Cleveland, Ohio 44199.

No. MC 123695 (Sub-No. 3 TA), filed March 24, 1970. Applicant: BRIGGS TRANS., INC., 1 Brownstone Avenue, Portland, Conn. 06480. Applicant's representative: Reubin Kaminsly, Suite 211, Society Plaza, 342 North Main Street, West Hartford, Conn. 06117. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gasoline*, in bulk, in tank vehicles, from Portland, Conn.; to Greenfield, Mass.; restricted to service to be performed under continuing contract or contracts with Cities Service Oil Co., of New York City, for 180 days. Supporting shipper: Cities Service Oil Co., Oil Center Building, Box 300, Tulsa, Okla. 74102. Send protests to: District Supervisor David J. Kernan, Bureau of Operations, Interstate Commerce Commission, 324 U.S. Post Office, 135 High Street, Hartford, Conn. 06101.

No. MC 124271 (Sub-No. 2 TA), filed March 30, 1970. Applicant: GENE ROMSBURG-ENTERPRISES, INC., South Water Street, Frederick, Md. 21701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Alumina*, in bulk, in dump vehicles, from Hawkins Point, Baltimore, Md., to plantsite of Eastalco Aluminum Co., Inc., plantsite near Buckeystown, Frederick County, Md., for 180 days. Supporting shipper: Aluminum Co., Buckeystown, Md. Send protests to: Robert D. Caldwell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 2218, 12th and Constitution Avenue NW., Washington, D.C. 20423.

No. MC 125474 (Sub-No. 26 TA), filed March 26, 1970. Applicant: BULK HAULERS, INC., Post Office Box 3601, Wilmington, N.C. 28401. Applicant's representative: Malvyn Rooks (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, from Acme, N.C., to points in South Carolina and Georgia, for 180 days. Supporting shipper: Kaiser Agricultural Chemicals, Division of Kaiser Aluminum & Chemical Corp., Post Office Box 246, Savannah, Ga. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Post Office Box 10885, Cameron Village Station, Raleigh, N.C. 27605.

No. MC 128273 (Sub-No. 64 TA), filed March 30, 1970. Applicant: MIDWESTERN EXPRESS, INC., Box 189, Fort Scott, Kans. 66701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from Cloquet and Brainerd, Minn., to points in Idaho, Montana, Oregon, Utah, and Washington, for 180 days. Supporting shipper: Northwest Paper Co., Avenue C and Arch Streets, Cloquet, Minn. 55720. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 501 Petroleum Building, Wichita, Kans. 67202.

No. MC 129713 (Sub-No. 3 TA), filed March 23, 1970. Applicant: CHESTERFIELD-STEEDE AND EDWIN-STEEDE, a partnership doing business as STEEDE TRUCKING, 194–55 111th Road, Hollis, N.Y. 11412. Applicant's representative: David Millner, 744 Broad Street, Newark, N.J. 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Scientific instruments and photographic equipment*, between Rockleigh, N.J., and New York commercial zone with the restriction that the operation authority herein and limited to a transportation service to be performed under contract with E. Leitz, Inc., of Rockleigh, N.J., for 150 days. Supporting shipper: E. Leitz, Inc., Rockleigh, N.J. Send protests to: Anthony Chiusano, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1807, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 129874 (Sub-No. 3 TA), filed March 20, 1970. Applicant: TYLER TRANSPORT LIMITED, Acton, Ontario, Canada. Applicant's repersentative: Frank J. Kerwin, Jr., 900 Guardian Building, Detroit, Mich. 48226. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Hides*, from points in Iowa and Ohio, Green Bay, Wis.; Rochelle and Rockford, Ill.; Memphis and Nashville, Tenn.; Evansville, Indianapolis, and Fort Wayne, Ind.; Detroit, Grand Rapids, and Lapeer, Mich.; Jacksonville, Fla.; St. Paul and Luverne, Minn.; New York and Buffalo, N.Y.; Altoona, Elizabethville, Greencastle and Pittsburgh, Pa.; Greenwood and Marion, S.C.; Kansas City, Butler, St. Louis, and Springfield, Mo.; Omaha, Nebr.; Tupelo, Miss.; and Atlanta and Savannah, Ga.; to points on the international boundary line between the United States and Canada located along the Niagara and St. Clair Rivers, under contract with Beardmore & Co., Ltd., of Acton, Ontario, Canada: (2) *Glue stock and tannery waste and scrap*, between the ports of entry on the international boundary line between the United States and Canada at the Niagara River and Gowanda, N.Y., and Curwensville, Pa., under a continuing contract or contracts with Beardmore & Co., Ltd., of Acton, Ontario, Canada, for 150 days. NOTE: Applicant states that it does not intend to expand its operating authority within the United States in (1) above, but seeks only to use the additional border crossing points at the Niagara and St. Clair Rivers in connection

with its Permit No. MC 129874 Sub 1. Supporting shipper: Beardmore & Co., Ltd., Acton, Ontario, Canada. Send protests to: George M. Parker, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 518 Federal Office Building, 121 Ellicott Street, Buffalo, N.Y. 14203.

No. MC 133565 (Sub-No. 3 TA), filed March 23, 1970. Applicant: FREE TRANSPORT, INC., 839 River Road, Edgewater, N.J. 07020. Applicant's representative: Charles J. Williams, 47 Lincoln Park, Newark, N.J. 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission's commodities in bulk, and commodities requiring special equipment), in containers or trailers, between points in the New York, N.Y., commercial zone, as defined by the Commission within which local operations may be conducted under the exempt provision of section 203(b)(8) of the act, on the one hand, and, on the other, Edgewater, and Weehawken, N.J., restricted to traffic having prior or subsequent movement by water, for 150 days. (NOTE: Applicant seeks specific authority to tack and combine at Edgewater and Weehawken, N.J., the authority sought herein with the temporary authority it now holds an MC 133565 Sub 1 TA). Supporting shippers: There are approximately 15 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Joel Marrows, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 902 Federal Office Building, 970 Broad Street, Newark, N.J. 07102.

No. MC 133713 (Sub-No. 3 TA), filed March 26, 1970. Applicant: UELAND TRUCKING, INC., Route 1, Box 25B, Shakopee, Minn. 55379. Applicant's representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry bulk fertilizer*, from the plantsites of and storage facilities utilized by St. Paul Ammonia Products, Inc., and Occidental Chemical Co., at Savage, Roseport, Pine Bend, and Minneapolis-St. Paul, Minn., to points in Minnesota, Iowa, North Dakota, South Dakota, and Wisconsin, for 180 days. Supporting shippers: St. Paul Ammonia Products, Inc., Post Office Box 418, South St. Paul, Minn. 55075; Occidental Chemical Co., Post Office Box 1185, Houston, Tex. 77001. Send protests to: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Court House, 110 South Fourth Street, Minneapolis, Minn. 55401.

No. MC 133755 (Sub-No. 5 TA), filed March 30, 1970. Applicant: MILLIS BROS. TRANSFER, INC., Post Office Box 112, Black River Falls, Wis. 54615. Applicant's representative: Daniel Pizzini, 104 Main Street, Black River Falls, Wis. 54615. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from St. Paul, Minn., to Reedsburg, Wis., for 150 days. Supporting shipper: Dailey's Distributing Co., Inc., 225 Railroad Street, Reedsburg, Wis. 53959. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 444 West Main Street, Room 11, Madison, Wis. 53703.

No. MC 134425 TA, filed March 20, 1970. Applicant: CHARLES W. YOUNG, JR., doing business as C. W. YOUNG & COMPANY, Route 559, Mays Landing, N.J. 08330. Applicant's representative: Robert B. Einhorn, 1540–47 Philadelphia Saving Fund Building, 12 South 12th Street, Philadelphia, Pa. 19107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Articles* which because of size or weight require the use of special equipment or handling, from the plantsites of Asphalt Heating, Inc., and Precipitation Associates of America, Inc., located at Keyport, N.J., and Belford, N.J., to points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, West Virginia, Maryland, Delaware, Virginia, North Carolina, Ohio, Indiana, Michigan, Illinois, Wisconsin, Minnesota, Florida, and Texas, for 180 days. Supporting shippers: (1) Asphalt Heating, Inc., Post Office Box 427, Keyport, N.J. 07735; (2) Precipitation Associates of America, Inc., 84 Railroad Avenue, Belford, N.J. 07718. Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 410 Post Office Building, Trenton, N.J. 08608.

No. MC 134432 TA, filed March 23, 1970. Applicant: DOUG'S HOUSE TRAILER TOWING LTD., 3030 St. George Street, Port Moody, British Columbia, Canada. Applicant's representative: Joseph O. Earp, 411 Lyon Building, Seattle, Wash. 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mobile homes and buildings* in sections, from Boise and Nampa, Idaho, Hermiston, Oreg., Woodland, Wash., and points in Lewis County, Wash., to ports of entry on the United States-Canada boundary line at or near Blaine and Sumas, Wash., for 180 days. Supporting shippers: A.B.C. Trailer Sales Ltd., 193 Cayer Street, Coquitlam, B.C.; Hastings Mobile Homes, Division of Hastings Trailer Sales Ltd., 5526 Kingsway, Burnaby 1, B.C.; Kingsway Trailer Wholesale Ltd., 5438 Imperial, Burnaby 1, B.C.; Pacific Mobile Home Co., 2667 Kingsway, Vancouver 16, British Columbia, Canada. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, Wash. 98101.

By the Commission.

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

[F.R. Doc. 70-4262; Filed, Apr. 7, 1970; 8:50 a.m.]

[Notice 54]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 3, 1970.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

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

MOTOR CARRIERS OF PROPERTY

No. MC 42710 (Sub-No. 10 TA), filed March 27, 1970. Applicant: BEN'S TRANSFER & STORAGE CO., INC., 1780 Second Street, Baker, Oreg. 97814. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ore*, in bin or hopper type equipment, from points in Baker County, Oreg., to points in Pershing County, Nev., for 180 days. Supporting shipper: Baker Assets Co., Post Office Box 149, Baker, Oreg. 97814. Send protests to: District Supervisor W. J. Huetig, Interstate Commerce Commission, Bureau of Operations, 450 Multnomah Building, 120 Southwest Fourth Avenue, Portland, Oreg. 97204.

No. MC 107527 (Sub-No. 46 TA), filed March 27, 1970. Applicant: POST TRANSPORTATION COMPANY, 3152 East 26th Street, Los Angeles, Calif. 90023. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in bulk, from Los Angeles, Calif., to Las Vegas, Nev., for 180 days. Supporting shippers: Walt Casey's Water Conditioning, 2661 Western, Post Office Box 14810, Las Vegas, Nev. 89114; Culligan, 17 East Wyoming Ave., Las Vegas, Nev. 89104. Send protests to: Robert G. Harrison, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 7708 Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

No. MC 108207 (Sub-No. 291 TA), filed March 30, 1970. Applicant: FROZEN FOOD EXPRESS, 318 Cadiz, Post Office Box 5888, Dallas, Tex. 75222. Applicant's representative: J. B. Ham (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen*

foods and frozen meats, from Rossville, Tenn.; to Phoenix, Ariz.; Little Rock and Jonesboro, Ark.; Brisbane, Glendale, Los Angeles, and Stockton, Calif.; Alton, Chicago, Decatur, Peoria, River Grove, Ill.; Lake Charles, Monroe, New Orleans, and Shreveport La.; Bay City, Detroit, Flint, Monroe, Southfield, South Holland, Mich.; Columbus and Jackson, Miss.; Kansas City, Lee's Summit and St. Louis, Mo.; Albuquerque, N. Mex.; Lawton and Tulsa, Okla.; Amarillo, Corpus Christi, Dallas, Fort Worth, Houston, Lubbock, Midland, Odessa Port Arthur, San Antonio, and Tyler, Tex. and Waukesha, Wis., for 180 days. NOTE: Carrier does not intend to tack authority. Supporting shipper: Menu Maker Food Service Co., Post Office Box 18127, 3796 Lamar Avenue, Memphis, Tenn. 38118. Send protests to: E. K. Willis, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 513 Thomas Building, 1314 Wood Street, Dallas, Tex. 75202.

No. MC 112520 (Sub-No. 214 TA), filed March 27, 1970. Applicant: McKENZIE TANK LINES, INC., New Quincy Road, Post Office Box 1200, Tallahassee, Fla. 32302. Applicant's representative: Sol H. Proctor, 1729 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, from Bainbridge, Ga., to points in Alabama, Florida, and Georgia, for 180 days. Supporting shipper: Monsanto Co., 800 North Lindbergh Boulevard, St. Louis, Mo. 63166. Send protests to: District Supervisor G. J. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 113535 (Sub-No. 13 TA), filed March 27, 1970. Applicant: A & W TRUCKING CO., INC., Rural Route 2, Box 370, Mosinee, Wis. 54455. Applicant's representative: Charles E. Nieman, 1160 Northwestern Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Dubuque, Iowa, to Milwaukee, Wis., for 150 days. Supporting shipper: Dubuque Packing Co., Dubuque, Iowa. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 444 West Main Street, Room 11, Madison, Wis. 53703.

No. MC 125470 (Sub-No. 9 TA), filed March 27, 1970. Applicant: MOORE'S TRANSFER, INC., Post Office Box 387, Osmond, Nebr. 68765. Applicant's representative: Einar Viren, 904 City National Bank Building, Omaha, Nebr. 68102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer, dry fertilizer materials and dry urea*, from points in Woodbury County, Iowa, to points in Nebraska, South Dakota, Kansas and Minnesota, for 150 days. Supporting shipper: Terra Chemicals International, Post Office Box 1821, Sioux City, Iowa. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 304 Post Office Building, Sioux City, Iowa 51101.

No. MC 128882 (Sub-No. 4 TA), filed March 27, 1970. Applicant: R. W. STEELE, doing business as R. W. STEELE TRUCKING COMPANY, 320 Heaslet Street, Clovis, N. Mex. 88101. Applicant's representative: Hugh T. Matthews, 630 Fidelity Union Tower, Dallas, Tex. 75201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Irrigation systems and parts thereof*, between Grant, Nebr., on the one hand, and, on the other, points in Texas and New Mexico under a continuing contract with Shur-Gro Irrigation Co., Inc., for 180 days. Supporting shipper: Shur-Gro Irrigation Co., Inc., 2280 North Prince, Clovis, N. Mex. 88101. Send protests to: William R. Murdoch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 10515 Federal Building, U.S. Courthouse, Albuquerque, N. Mex. 87101.

No. MC 134286 (Sub-No. 1 TA), filed March 27, 1970. Applicant: ARCTIC TRANSPORT, INC., 1005 West South Omaha Bridge Road, Council Bluffs, Iowa 51501. Applicant's representative: Charles J. Kimball, Post Office Box 2028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts*, as described in section A to appendix I, *Description in MC Certificates*, 61 M.C.C. 209 and 766, from South St. Joseph, Mo., to points in Ohio, Pennsylvania, New York, Massachusetts, Connecticut, Rhode Island, New Jersey, Maryland, and District of Columbia, for 180 days. Supporting shipper: Swift & Co., 115 West Jackson Boulevard, Chicago, Ill. 60604; (Leonard Bratek). Send protests to: Keith P. Kohrs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 705 Federal Office Building, Omaha, Nebr. 68102.

By the Commission.

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

[F.R. Doc. 70-4263; Filed, Apr. 7, 1970; 8:50 a.m.]

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PART II

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

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Milk in Greater Cincinnati and Certain Other Marketing Areas



Recommended Decision

THE NATIONAL ARCHIVES OF THE UNITED STATES * 1934 *

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1005, 1033, 1034, 1035, 1041]

[Dockets Nos. AO-166-A40, AO-166-A40-RO2, AO-175-A29, AO-175-A29-RO2, AO-176-A26, AO-176-A26-RO2, AO-72-A36, AO-72-A36-RO2, AO-177-A35, AO-177-35-RO2]

MILK IN GREATER CINCINNATI AND CERTAIN OTHER 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 Greater Cincinnati, Miami Valley, Ohio, Columbus, Ohio, Northwestern Ohio, and Tri-State marketing areas.

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

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 agreements and to the orders as amended, were formulated, was conducted at Columbus, Ohio, on June 2-6 and 10-13, July 8-10, and December 18, 1969, pursuant to notices thereof which were issued May 13, 1969 (34 F.R. 7811) and December 4, 1969 (34 F.R. 19507). The December 18, 1969, session was a reopening of the June-July hearing.

Pursuant to notices thereof which were issued November 26, 1969 (34 F.R. 19078), January 8, 1970 (35 F.R. 435) and January 29, 1970 (35 F.R. 2527), the June-July hearing was reopened for the limited purpose of considering the use of an economic formula for changing simultaneously the Class I prices under all Federal milk orders, including the Cincinnati, Miami Valley, Columbus, Northwestern Ohio, and Tri-State orders. The Class I price considerations dealt with in this decision are exclusive of the economic formula issue, which will be considered in a separate decision on all Federal orders.

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

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

2. Whether the marketing areas of the present Cincinnati, Miami Valley, Columbus, Northwestern Ohio, and Tri-State orders should be included under one order;

3. Whether the proposed merged marketing area should be expanded to include additional territory in Ohio, Indiana, Kentucky, and West Virginia;

4. If a single order is issued for the proposed merged and expanded marketing area, what its provisions should be with respect to:

(a) Milk to be priced and pooled;

(b) Classification of milk;

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

(d) Distribution of proceeds to producers; and

(e) Administrative provisions; and

5. Whether the order for the proposed merged and expanded marketing area should provide for payments to cooperative associations for marketwide services.

FINDINGS AND CONCLUSIONS

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

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

The marketing area specified in the proposed order, hereinafter referred to as the "Ohio Valley marketing area", includes contiguous territory in 61 Ohio counties, 20 West Virginia counties, 18 Kentucky counties, 2 Indiana counties and 2 Michigan counties. The specific territory in the proposed marketing area is set forth in the marketing area discussion.

Handlers distributing milk in the proposed marketing area operate plants located in Ohio, Kentucky, West Virginia, and Michigan. The distribution areas of handlers in one State overlap in many cases with the distribution areas of handlers located in other States.

Milk procurement by such handlers likewise involves the movement of milk in interstate commerce. Producers supplying these handlers are located in six States, and the farm-to-plant movements of their milk often entails interstate hauling. At times, milk is brought into the proposed Ohio Valley market from distant areas. Milk shipments originate in such States as Wisconsin, Iowa, Minnesota, and Illinois.

2. *Need for merger of orders.* Marketing conditions in the five marketing areas under consideration justify the issuance of a single order regulating the handling of milk in these areas. This single order is the most appropriate means of effectuating the declared policy of the Act.

The merger of the Cincinnati, Miami Valley, Columbus, Northwestern Ohio, and Tri-State orders, which for brevity shall be referred to herein as the five Ohio orders, was proposed by seven cooperative associations. These groups represent the major producer cooperatives in each of the regulated areas proposed for consolidation. In May 1969, their membership included about three-fourths of the 8,500 producers supplying the five order areas.

A merger of the Northwestern Ohio order with the other orders being considered was proposed also by a group of handlers regulated under the Northwestern Ohio order. In addition, major handlers in the other four areas supported a merger of the five orders.

When the Northwestern Ohio, Cincinnati, Columbus, Miami Valley, and Tri-State orders were issued, they regulated areas that were generally distinguishable as separate markets for particular groups of producers. However, changes in marketing practices in recent years have caused these areas to become interrelated in both the distribution and procurement of milk. In view of the marketing trends prevailing throughout these areas, it is reasonable to expect that the interrelationship of the several areas will become even more pronounced in the future.

Sales areas of handlers are no longer confined to the proximity of their plants. Better highways, improved transportation equipment, single-service containers, and the increasingly important supermarket business, for example, have encouraged the wide-spread distribution patterns now prevailing. In addition, handlers, in attempting to achieve greater efficiencies, have closed smaller-volume plants and concentrated their processing and packaging operations in larger, centrally located facilities. Distribution from these large plants often extends into several marketing areas as handlers move milk to the outlets formerly served by the smaller plants.

The extensive erosion of individual market boundaries that have prevailed historically is depicted by data on intermarket movements of milk. A study by The Ohio State University, which was entered in the record, analyzed the intermarket route distribution patterns in the five Ohio marketing areas for the period of October 1966 through September 1967. Similar information was presented at the hearing for March 1969 for the purpose of up-dating the earlier study.

During the 12-month study period, an average of 8.5 million pounds of the Columbus market's Class I milk was sold monthly on routes outside the Columbus marketing area. By March 1969, such monthly out-of-area sales had increased to 10.6 million pounds, or 28 percent of the Class I milk priced under the order. Nearly 8.3 million pounds of the latter

amount were sold on routes in the other four marketing areas under consideration.

Based on data for March 1969, the equivalent of 12 percent of the total Class I milk in the Columbus pool is sold as packaged fluid milk on routes in the Columbus marketing area by handlers in other Federal order markets. Most of this outside milk (4.1 million pounds) originated in the other four regulated areas included in the proposed merger.

For the Cincinnati market, the monthly out-of-area route sales increased from 10.4 million pounds in the October 1966–September 1967 period to 14.1 million pounds in March 1969. Of this latter amount, which was 32 percent of the total Class I sales by Cincinnati handlers, 10.1 million pounds were distributed in the other four marketing areas proposed to be merged.

With respect to route sales in the Cincinnati marketing area originating from other markets, the March 1969 data show that 4.6 million pounds were distributed on this basis, an increase from the 2.7 million pounds monthly in the earlier study period. The March 1969 sales were equivalent to about 10 percent of the Cincinnati market's pooled Class I milk. Of the 4.6 million pounds of in-area sales, handlers regulated under the Miami Valley and Columbus orders accounted for 3.3 million pounds. Northwestern Ohio and Tri-State handlers did not have sales in the Cincinnati marketing area.

Because of an expansion in the Miami Valley marketing area on September 1, 1967, a comparison of data for March 1969 relative to the earlier study period is not made. However, March 1969 data show that 10.9 million pounds, or 35 percent of the Class I milk in the Miami Valley pool, were sold on routes outside the Miami Valley marketing area. Approximately 6 million pounds were distributed in the four marketing areas proposed to be merged with the Miami Valley area.

Packaged Class I route sales in the Miami Valley marketing area which originated in other markets totaled 6.7 million pounds in March 1969. This was equivalent to over 21 percent of the Class I milk in the Miami Valley pool. Over 5.4 million pounds were sold by handlers in the Cincinnati, Columbus, and Northwestern Ohio markets. There were no reported sales by Tri-State handlers in the Miami Valley marketing area.

Monthly route sales outside the Tri-State marketing area by Tri-State handlers increased from 5.5 million pounds in the 1966–67 study period to 7.3 million pounds in March 1969. This latter amount was over 23 percent of the Class I milk in the Tri-State pool. The volume of route sales in the other four marketing areas under consideration by Tri-State handlers was rather limited in March 1969, totaling only 699,000 pounds. Such milk moved only into the Columbus and Miami Valley marketing areas. Tri-State handlers distributed 4.9 million pounds of Class I milk in other Federal order markets, primarily the Eastern Ohio-Western Pennsylvania area.

In March 1969, 9.3 million pounds of packaged Class I milk originating in other markets were sold on routes in the Tri-State marketing area. This was equivalent to 30 percent of the Class I milk in the Tri-State pool, and more than twice the 4.3 million pounds distributed monthly on this basis during the earlier 12-month study period. Handlers in the Cincinnati, Columbus, and Miami Valley markets distributed 6.1 million pounds of the 9.3 million pounds coming into the Tri-State marketing area. Northwestern Ohio handlers had no route sales in the Tri-State order area.

For the Northwestern Ohio market, monthly out-of-area route sales by Northwestern Ohio handlers have declined, from 5.1 million pounds in the 1966–67 study period to 4.2 million pounds in March 1969. March sales were about 13 percent of the total producer milk in Class I. Most of the out-of-area route sales in March 1969 were in nonregulated areas. Sales into the areas of the other four orders were limited, amounting to 123,000 pounds.

Route sales in the Northwestern Ohio marketing area from other markets in March 1969 were 10.1 million pounds, equivalent to over 31 percent of the Class I milk in the Northwestern Ohio pool. This was up from the average monthly route sales of 7.5 million pounds coming from other markets in the 12-month study period. In March 1969, 6.6 million pounds of Class I milk were distributed in the Northwestern Ohio area by handlers in the Columbus, Cincinnati, and Miami Valley markets. No sales by Tri-State handlers were reported.

With the "local" character of the five Ohio regulated areas rapidly diminishing, continuation of a separate regulatory plan for each of these areas is no longer practical or desirable. Separate markets within the proposed marketing area for particular groups of producers no longer exist as handlers regulated under one order distribute milk in areas regulated by other orders. In this circumstance, all producers supplying milk to the several parts of the proposed marketing area should share through a single market-wide pool the total proceeds of the Class I sales in the area and the burden of the reserve milk supplies normally associated with such sales.

The five order areas under consideration are characterized by a substantial overlapping of milksheds. In December 1968, for example, 48 Ohio counties were each a source of milk for handlers regulated under two or more of the five Ohio orders. Fourteen of these counties were each a source of milk for three of the regulated areas and six were each a procurement area for four of the order areas under consideration. These latter 20 counties accounted for 30 percent of the producers under the five Ohio orders that month. Some overlapping of procurement areas prevailed in other States, also, with six Indiana counties and four Kentucky counties each supplying milk to two of the five Ohio regulated areas in December 1968.

Each of the five Ohio areas is significantly involved in competition for milk supplies with at least one of the other regulated areas. Such competition for milk supplies in December 1968 existed in 20 counties for the Northwestern Ohio area, in 30 counties for the Cincinnati area, in 27 counties for the Miami Valley area, in 40 counties for the Columbus area, and in 25 counties for the Tri-State area.

With this substantial overlapping of procurement areas, any wide differences in the uniform prices under the separate orders result in much dissatisfaction and unrest on the part of those producers who are receiving the lowest prices. During 1968 and 1969, differences between the highest and lowest uniform prices under these orders were 30 cents or more per hundredweight in 18 of the 24 months.[1] Also, with the extensive intermarket competition, producer prices can change rapidly and unpredictably. In this circumstance, producers are unable to plan their future production programs with the certainty of marketing conditions needed for sound management decisions. The adoption of a single regulation for an area that has become a common market for the producers now under the separate orders would place all producers in the area on the same pricing basis.

The proposed merger would assist cooperatives in marketing the milk of their members in a more effective and efficient manner without the encumbrances that the separate orders exert on the marketing system. It is the practice of cooperatives to direct the movement of their members' milk and to enter into "full-supply" agreements with many handlers. In performing these functions, cooperatives often move members from one regulated area to another. Producers prefer, of course, to be associated with the area that nets them the highest return. However, overriding factors, such as plant consolidations, changes in handlers' supply requirements, and available surplus outlets, often cause cooperatives to move milk to a less remunerative area, even though the milk may eventually be distributed in the higher-priced market.

Differences in health requirements throughout the proposed marketing area are virtually nonexistent and thus are not an impeding factor in the adoption of a single order for the proposed Ohio Valley marketing area. The State of Ohio has reciprocity arrangements on health requirements with the neighboring States of Kentucky, West Virginia, Indiana, and Michigan, and there is full reciprocity among all political subdivisions within Ohio. Thus, health requirements present no limitation on the movement of milk throughout the proposed marketing area.

The cooperatives proposed that the order for the Ohio Valley marketing area continue the provisions of the Cincinnati order except for certain modifications considered necessary with the merger of

[1] Official notice is taken of the market administrator's monthly statistical releases issued in January 1970 for the Northwestern Ohio, Cincinnati, Miami Valley, Columbus, and Tri-State orders which show data for December 1969 that were not available at the hearing.

the orders. The order proposed herein generally carries out this concept. The Cincinnati order provisions have been appropriate for achieving the ends sought by the regulatory plan for the Cincinnati area. On the basis of the hearing evidence, it is found that these provisions, with certain modifications, will continue to be equally applicable for achieving orderly marketing conditions in the proposed Ohio Valley marketing area.

Many of the Cincinnati order provisions that would be continued are essentially the same as corresponding provisions in the other four orders included in the merger. The several significant differences that do exist in the corresponding provisions of these orders are noted in the decision.

On January 1, 1970, each of the five Ohio orders was amended to incorporate into its regulatory plan the treatment of filled milk. It was proposed at the merger hearing that any filled milk amendments, which at the time of the hearing were still under consideration by the Department, be included in the order for the proposed Ohio Valley marketing area.

The Assistant Secretary's October 13, 1969, decision on 64 milk orders, including the five Ohio orders, set forth the basis for integrating into the regulatory plan of all Federal orders the classification and pricing of filled milk. The findings and conclusions of that decision are equally applicable with respect to the handling of filled milk in the proposed Ohio Valley marketing area and are adopted in their entirety. The filled milk amendments adopted for the separate Ohio orders are incorporated in the proposed merged order.

The order proposed herein would continue the use of the part number for the present Cincinnati order, Part 1033. The amended Part 1033, upon issuance, would superseded Parts 1005, 1034, 1035, and 1041.

Although the present Ohio orders would no longer exist upon issuance of the Ohio Valley order, this merger action is not intended to preclude the completion of those procedures that would otherwise have existed under the separate orders with respect to milk handled prior to the effective date of the merger. Such procedures which would need to be carried out after the merger date include the announcement of certain prices, submission of reports, computation of uniform prices, payment of obligations, and vertification activities. The provisions of the merged order would apply only to that milk handled after the effective date of the merger.

3. *Expansion of the merged marketing area.* All territory now within the defined marketing areas of the Northwestern Ohio, Cincinnati, Miami Valley, Columbus, and Tri-State orders should be included in the marketing area of the merged order. The Ohio Valley marketing area should include also certain territory in 31 counties that is not now a part of any Federal order marketing area.

The additional areas proposed herein are (1) in Ohio, the counties of Adams, Auglaize, Brown, Darke, Hardin, Highland, Hocking, Knox, Logan, Mercer, Morgan, Noble, Perry, Ross, Shelby, Vinton, and Wyandot and the unregulated portions of Clinton and Pike Counties; (2) in Kentucky, the counties of Bracken, Robertson, and Mason and the unregulated portion of Lewis County; (3) in West Virginia, the counties of Calhoun, Gilmer, Mingo, Pleasants, Ritchie, and Wirt; and (4) in Indiana, the counties of Dearborn and Ohio.

The inclusion of this unregulated territory in the Ohio Valley marketing area was proposed by the seven cooperatives proposing the merger of the orders. Their proposal to include also certain other unregulated areas is denied. Such areas are Rowan and Carter Counties in Kentucky, the counties of Braxton, Clay, Nicholas, Greenbrier, Monroe, and Summers in West Virginia, and in Ohio, the counties of Williams, Defiance, and Paulding and the unregulated portions of Van Wert and Coshocton Counties.

In many of the new areas proposed herein to be in the marketing area, all of the Class I sales were reported to emanate from regulated sources. In Ohio, handlers that would be regulated under the proposed order are the only distributors of milk in Wyandot, Hardin, Logan, Shelby, Auglaize, Morgan, Perry, Hocking, and Vinton Counties. Such handlers also have most of the fluid milk sales in Noble County and 80–90 percent of such sales in Knox County. The remaining sales in these two counties are by handlers regulated under the Eastern Ohio-Western Pennsylvania order.

With respect to Logan, Shelby, and Auglaize Counties, the marketing situation just described for these areas is different from that depicted at the hearing. Handlers regulated under the five Ohio orders account for 87 percent of the total Class I sales in Auglaize County, 97 percent of the sales in Logan County, and 36 percent of the sales in Shelby County. An unregulated distributor at Sidney in Shelby County was reported to have the remaining sales in these counties. The milk sold by this distributor, who did not appear at the hearing, was reported to be received in most cases from dairy farmers and processed in his plant at Sidney.

Official notice is taken of the commercial fact that (1) the distributor at Sidney no longer receives milk from dairy farmers or processes and packages milk at his plant, and (2) such plant is now a distribution point for milk processed and packaged at a plant fully regulated under the Miami Valley order.

Handlers under the Ohio orders distribute about 86 percent and 50 percent, respectively, of the Class I milk sold in Mercer and Darke Counties. Handlers regulated by the Indiana order make the rest of the fluid sales in these counties.

Indiana handlers also compete with handlers under the Ohio orders in the proposed Indiana counties of Ohio and Dearborn. Seventy-six percent of the total Class I sales in Ohio County and 88 percent of the total sales in Dearborn County are by Ohio handlers. Indiana handlers account for the remaining sales in those areas.

In West Virginia, all of the Class I milk sold in Wirt and Calhoun Counties is distributed by handlers who would be subject to the merged order. Such handlers also have about 50 percent of the route sales in Gilmer County, 90 percent of the total sales in Ritchie County, and 85 percent of the sales in Pleasants County. The remaining Class I sales in these latter three counties are by Eastern Ohio-Western Pennsylvania order handlers.

An estimated 55–61 percent of the distribution in Mingo County, W. Va., is by handlers who would be regulated under the proposed order. The remainder of the distribution in the county is by handlers regulated under the Appalachian and Louisville-Lexington-Evansville orders.

These 21 counties in which all sales of Class I milk are from regulated sources are an integral part of the sales areas of handlers now regulated under the five Ohio orders. By extending regulation to these counties, the proposed marketing area would more nearly represent the total sales areas of the handlers who would be subject to the merged order. In addition, inclusion of these counties in the marketing area would insure price parity in a principal part of the sales areas of regulated handlers should an unregulated distributor choose to find outlets in such areas.

No objections were raised concerning the addition of the Ohio and Indiana counties in this 21-county group. Inclusion of the six West Virginia counties in the proposed area, however, was opposed by a handler who operates regulated plants under all five of the Ohio orders. Except for Greenbrier and Nicholas Counties, the handler also opposed the inclusion of the other West Virginia counties that are excluded. It was contended that any area expansion involving the West Virginia counties would insure the regulation under the merged order of a major Tri-State handler who has Class I distribution in both the proposed Ohio Valley marketing area and the Eastern Ohio-Western Pennsylvania marketing area. Opponent alleged that the handler in question was "waivering" between regulation under the Tri-State order and the Eastern Ohio-Western Pennsylvania order because of nearly equal sales in each marketing area. Opponent believed that the handler should be regulated under the latter order, although no specific reason for this position was given.

As indicated, the West Virginia counties of Pleasants, Ritchie, Wirt, Calhoun, Gilmer, and Mingo are an integral part of the sales areas of handlers that would be regulated by the Ohio Valley order. Although handlers are not now experiencing unregulated competition in these areas, these counties should be included in the Ohio Valley marketing area for the reasons previously stated.

The inclusion of certain areas in southern Ohio and northern Kentucky in the proposed Ohio Valley marketing

area probably would result in three presently unregulated distributors becoming fully regulated under the merged order. These areas in Ohio are Ross, Highland, Brown, and Adams Counties, the townships of Jefferson, Clark, Washington, and Green in Clinton County, and the townships of Perry, Mifflin, Benton, Pebbie, and Sun Fish in Pike County. The remaining portion of Clinton County is now in the Miami Valley marketing area, and the remainder of Pike County is in the Tri-State marketing area. The Kentucky areas include Bracken, Robertson, and Mason Counties and all but Magisterial Districts 2, 3, and 8 in Lewis County. These three Magisterial Districts are now in the Tri-State marketing area.

One of the unregulated distributors is located at Chillicothe in Ross County. Another distributor is located at Hillsboro in Highland County. The third one has a plant at Maysville in Mason County. All opposed regulation.

The cooperatives proposing the inclusion of this group of counties in the marketing area contended that the unregulated distributors are a disruptive factor for the regulated handlers who sell Class I milk in these proposed areas. This position was supported by regulated handlers who indicated that they are competitively disadvantaged on sales in these areas because the competing unregulated distributors do not purchase their milk on a classified price basis. Relatively low retail prices in the area were attributed to the unregulated distributors as well as a loss of route sales.

Handlers now regulated under the five Ohio orders have the majority of the Class I sales in each of these Ohio counties. The proportions of total Class I business in these counties by regulated handlers are: Ross County, 60–80 percent; Highland County, 52–77 percent; Clinton County, 90 percent; Brown County, 56–73 percent; Adams County, 45–70 percent; and Pike County, 68 percent.

Regulated sales in Highland County are made by at least two Cincinnati order handlers, three Miami Valley order handlers and one handler under the Columbus order. Unregulated sales in the county are by the Hillsboro distributor. His sales include milk bottled by the unregulated Ross County distributor.

The Hillsboro distributor also has sales of unpriced milk on routes in the unregulated portions of Clinton and Pike Counties.

At least one handler under each of the Cincinnati and Miami Valley orders has distribution in Adams and Brown Counties. Sales in Brown County are also made by a regulated Tri-State handler. Unregulated sales in these counties consist of distribution by the Maysville, Ky., distributor and by the Hillsboro distributor, whose sales also include limited quantities of milk bottled by the Chillicothe distributor. The Maysville distributor testified that he did not oppose the inclusion of these two counties in the Ohio Valley marketing area.

The Hillsboro distributor has 34 percent of his total fluid milk sales in his home county. The proportion of his total sales in other unregulated areas are: Ross County, 28 percent; Adams County, 17 percent; Brown County, 7 percent; Clinton County, 2 percent; and Pike County, 2 percent. The rest of his sales are in Fayette County which is in the Columbus marketing area. The distributor's obligations under the Miami Valley order as the operator of a partially regulated distributing plant are offset by purchases of regulated milk from a Cincinnati order handler.

This unregulated distributor indicated that he has a buying advantage relative to regulated handlers since he pays his 23 producers the Cincinnati order uniform price plus prevailing premiums. In 1968, his average price to producers was $5.67, 14 cents to 42 cents under the average order Class I prices in the nearby Cincinnati, Miami Valley, Columbus, and Tri-State regulated areas. He stated that about 95 percent of his milk was used in Class I products.

In opposing any marketing area expansion that would include his sales area, the Hillsboro distributor contended that there are no disorderly marketing conditions in the southern Ohio area and that his producers are satisfied with the prices which he is paying. Moreover, he contended, this area is not related to the nearby regulated areas from an economic or marketing standpoint.

The Chillicothe distributor has route sales only in Ross County where his plant is located. He also bottles milk for the Hillsboro distributor who in turn packages milk (about 1.5 million pounds per year) in paper containers for sale by the Chillicothe dealer. This dealer indicated that he and the Hillsboro distributor account for 40 percent of the total Class I route sales in Ross County. The other 60 percent of the sales in the county are by handlers regulated under the Cincinnati, Miami Valley, Columbus, and Tri-State orders.

The Chillicothe distributor purchases milk from eight producers. He testified that they are paid the Columbus order uniform price plus any premiums prevailing in the area. His average pay price in 1968 was $5.71 per hundredweight, which was 10 cents to 38 cents under the average Class I prices that year under the Cincinnati, Miami Valley, Columbus, and Tri-State orders. The distributor, who has mostly a Class I operation, claimed that the buying advantage that he has on raw milk relative to regulated handlers is offset by the higher operating costs attendant to his relatively small business.

The Chillicothe distributor opposed any area expansion that would include Ross, Highland, Adams, and Brown Counties and the unregulated portions of Clinton and Pike Counties. Among other reasons, he claimed that regulation of his plant would result in additional costs for him that would eventually force him out of business.

The Maysville, Ky., distributor opposed the inclusion in the marketing area of Bracken, Robertson, and Mason Counties and the unregulated portion of Lewis County for essentially the same reasons as were presented by the Chillicothe distributor. About 70 percent of his fluid milk distribution is in these Kentucky areas. Another 12 percent of his sales is in Brown and Adams Counties, Ohio, that are proposed to be a part of the Ohio Valley marketing area. The remaining 18 percent of his total route sales is in Fleming County, Ky., an area that was not under consideration at the hearing.

Regulated sales in these proposed Kentucky areas are by two handlers under the Cincinnati order and a Miami Valley order handler. Two of these handlers urged the regulation of the Maysville distributor because of his lower cost of milk for fluid use.

Estimates on the proportion of route sales by regulated and unregulated distributors differed somewhat with respect to Mason County where the Maysville distributor is located. Opponent claimed that his sales in Mason County are 65 percent of the total county sales. Proponents, on the other hand, contended that the proportion of total sales by regulated handlers is as much as 74 percent. For the other counties, there was general agreement that regulated handlers have 55 percent of the total sales in Bracken County, about one-half of the sales in Lewis County, and 10 percent or less of the sales in Robertson County. The remaining sales in these areas are by the Maysville distributor. Thus, with the regulation of this dealer, all fluid milk sales in these Kentucky areas would be by handlers under the merged order.

The Maysville distributor processes only fluid milk products. He indicated that he pays the 23 dairy farmers supplying him milk approximately the uniform price of the Cincinnati or Tri-State orders. The distributor is now partially regulated under the Tri-State order on the basis of his limited sales in the regulated portion of Lewis County. His monetary obligations under the Tri-State order because of such sales are offset by his purchases of Class I milk from a Cincinnati order handler.

Regulation of these Ohio and Kentucky areas involving the three unregulated distributors is necessary to assure the handlers who would be regulated under the merged order that they will not be subjected to competition in their primary areas of distribution by unregulated dealers who have a significant buying advantage on their milk supplies for fluid use. With the exception of Robertson County, presently regulated handlers have the majority of the sales in each of these several unregulated counties. In this situation, these handlers should not be subjected to the competitive pressures that unregulated dealers are able to exert because of not being required to purchase their milk on a classified basis. Orderly marketing will be promoted by the application of classified pricing to all fluid milk distributed in these contiguous Kentucky-Ohio areas.

As previously noted, presently regulated handlers have only a limited share

of the sales in Robertson County. However, this county should be included in the marketing area since the remaining sales in the county are by the Maysville distributor who would become regulated under the merged order.

The maintenance of orderly marketing for producers and handlers now associated with the five Ohio orders does not require the inclusion of Rowan and Carter Counties, Ky., in the Ohio Valley marketing area. Cooperatives proposed these areas for the purpose of fully regulating a distributor located at Morehead in Rowan County. Their spokesman contended that this distributor's unregulated status provides him a competitive advantage on fluid milk sales relative to competing regulated handlers.

Proponents claimed that a majority of the fluid milk sales in Rowan and Carter Counties are by regulated handlers. The Morehead distributor indicated, on the other hand, that his route sales in Rowan County are 76 percent of the total county sales and in Carter County, 60 percent of the total. He testified that he competes in Rowan County with two Tri-State handlers and a Cincinnati order handler. His competition in Carter County is with two Tri-State handlers.

None of these regulated handlers testified as to specific disorderly marketing conditions in the two counties. However, one handler, in referring to the unregulated status of the Morehead distributor, indicated that he wanted all his competitors to be on the same regulated basis that applies to him.

The Morehead distributor has route sales in 13 unregulated Kentucky counties. H stated that about 15 percent of his total sales are in Rowan and Carter Counties, although other data he presented indicate that this proportion may be much higher. He also has limited sales in Magoffin County, Ky., which is in the Tri-State marketing area. Such sales cause him to be partially regulated under the Tri-State order. This distributor opposed any area expansion involving Carter and Rowan Counties, claiming that the additional costs that he would experience as a regulated handler would jeopardize his competitive position since he is already incurring relatively high costs in servicing his largely rural sales area.

This distributor receives milk from 46 dairy farmers, paying them a price based on the Tri-State order uniform price for the Charleston-Huntington district less 45 cents per hundredweight for hauling and less 7 cents more for certain service charges. He indicated that his Class I utilization averages about 90 percent of his receipts.

A representative of dairy farmers shipping milk to the Morehead distributor appeared at the hearing in opposition to the inclusion of these two counties in the marketing area. He claimed that regulation of this distributor would not benefit the shippers since they are presently receiving as much for their milk as they could receive under any Federal order.

The marketing situation described at the hearing with respect to Rowan and Carter Counties makes difficult any conclusion at this time that regulation of these areas is necessary to carry out the intent of the Act. It does not appear that these areas are primary sales areas for regulated handlers. Although the Morehead distributor is not buying milk on a classified price basis, there was no showing that this distributor is now a disruptive factor with respect to a significant share of regulated Class I sales.

Similar reasons prevail in concluding that Braxton, Clay, Nicholas, Greenbrier, Monroe, and Summers Counties in West Virginia also should be excluded from the proposed marketing area. This marketing area expansion proposed by the cooperatives would result in the regulation of distributors located at Ronceverte in Greenbrier County, at Summersville in Nicholas County, and at Lowell in Summers County. There is also a producer-handler operation in Summers County at Talcott.

Little or no concern was expressed by witnesses about the unregulated status of the latter three distributors, none of whom appeared at the hearing. The Lowell distributor was described as receiving milk from two or three dairy farmers and selling this along with his own production mainly in his home county, and to a limited extent in Monroe and Greenbrier Counties. The Talcott distributor's sales apparently are confined to Summers County where he is located.

The Summersville distributor has route sales in th proposed counties of Nicholas, Clay, Braxton, Greenbrier, and Summers, and also in Webster County which was not under consideration at this hearing. The record does not indicate the proportion of his total sales in each of these counties. This distributor also has Class I sales in Fayette County, which is in the Tri-State marketing area. Such sales cause him to be a partially regulated handler under the Tri-State order. In addition to his own production, he receives milk from eight dairy farmers. The representative for the proponent cooperatives testified that the distributor is paying his shippers nearly the Tri-State Class I price and is not a disruptive factor to regulated handlers in the competition for fluid milk sales.

The unregulated status of the Ronceverte distributor, on the other hand, was described as the cause of disorderly marketing conditions in this general area of West Virginia. Witnesses testified that regulation of this distributor was necessary so that all persons distributing milk in the area would have the same basic cost for their Class I milk purchased from dairy farmers.

The Ronceverte distributor testified in opposition to the regulation of Greenbrier, Monroe, Summers, and Nicholas Counties. In addition to his sales in these four counties, he also distributes milk in Pocahontas County, which was not under consideration at this hearing. Most of his route sales, he indicated, are in Greenbrier, Monroe, and Pocahontas Counties. A more detailed breakdown of the proportion of his total sales in each county was not presented at the hearing. He stated that three Tri-State handlers were his main competitors.

Opposition to the regulation of the Ronceverte distributor was expressed also by one of the dairy farmers who ship milk to this dealer.

About 80–85 percent of this distributor's receipts are sold as fluid milk products. Except for 2 or 3 months, he pays a "flat" price to his 13 shippers for all milk received. During the heavy production months he declares a certain portion of the deliveries as surplus (12 percent in May 1968 and 7 percent in June 1968, for example) and pays a lower price than is paid for the other receipts. His "flat" price approximates the Tri-State uniform price for the Charleston-Huntington district.

Of the total Class I sales in Greenbrier County, 39–46 percent was reported to be by handlers under the Tri-State and Cincinnati orders. An additional 6 percent of the sales was by Appalachian order handlers, and the remainder by unregulated distributors.

The sales breakdown described for Monroe County was: Tri-State handlers, 30–40 percent of the total county sales; Appalachian handlers, 20–30 percent; and unregulated distributors, 40 percent.

Tri-State and Cincinnati handlers were reported to have the majority of the route sales in Summers County. Of the total sales, 10–17 percent was attributed to Appalachian handlers and 15–31 percent was estimated to be made by unregulated distributors.

In Nicholas County, about 55–60 percent of the total sales is by unregulated distributors. Tri-State handlers accounted for 34–44 percent of the total and the remaining sales emanated from the Eastern Ohio-Western Pennsylvania market.

Although there was testimony that all of the Class I sales in Clay and Braxton Counties were by regulated handlers, other witnesses indicated that the Summersville distributor had sales in those counties.

As many as seven different handlers (regulated under the Tri-State, Appalachian, and Cincinnati orders) were reported to be distributing milk in one or more of these six counties. Support for the regulation of these particular counties was expressed by only two of the handlers. One limited his testimony on this issue to a general indorsement of the regulation of all of the West Virginia counties proposed by the cooperatives. The other handler limited his support to the inclusion in the marketing area of only Greepbrier and Nicholas Counties since it was believed that this would cause the Ronceverte and Summersville distributors to become regulated under the Ohio Valley order. He indicated that although he was not experiencing any competitive problems with respect to the Summersville distributor there were certain advantages for an unregulated distributor who was not subject to the regulatory program and the auditing

procedures connected with it. The regulated handler testified, though, that he had lost Class I sales in Greenbrier County and that retail prices in that area were low relative to those prevailing in his local sales area in the marketing area. The record is silent on whether or not the sales in these six counties by each of the regulated handlers is a significant proportion of their total Class I business.

It cannot be concluded from this record that the several regulated handlers distributing milk in these six counties are experiencing disorderly marketing conditions to a degree that warrants the inclusion of these areas in the proposed Ohio Valley marketing area.

The cooperatives' proposal would extend the marketing area to include also the Ohio counties of Williams, Defiance, Paulding, and the unregulated portion of Van Wert. The Northwestern Ohio marketing area now includes the city of Delphos in Van Wert County.

There are five unregulated distributors in these areas, none of whom appeared at the hearing. Their operations were described by the cooperatives' spokesman.

A distributor at Van Wert in Van Wert County, who receives milk from three dairy farmers, is the only unregulated distributor selling milk in that county. His sales were estimated to be 10 percent of the total Class I sales in the county.

Unregulated fluid milk sales are made in the other three counties by a distributor at Defiance in Defiance County. It was estimated that of the total Class I sales in each county this distributor accounted for 34 percent in Defiance County, 16 percent in Paulding County, and 7 percent in Williams County. The distributor, who is supplied by 24 dairy farmers, is partially regulated under the Northwestern Ohio order on the basis of sales in the marketing area.

There are three unregulated distributors in Williams County. The distributor at Bryan receives milk from four dairy farmers, the one at West Unity produces his own supply, and the one at Edgarton has one shipper. The latter distributor is partially regulated under the Indiana order.

Proponents indicated that the unregulated distributors might have as high as 60 percent of the total Class I sales in Williams, Defiance, and Paulding Counties.

The five unregulated distributors were described as paying their shippers approximately the Northwestern Ohio uniform price for the milk disposed of in fluid uses. Regulation of these distributors is necessary, proponents contended, because of their competition with regulated handlers who are subject to classified prices.

The area expansion involving these four counties was supported by nine Northwestern Ohio order handlers. Their spokesman, who operates a regulated distributing plant at Findley, Ohio, indicated that he found the Bryan and Defiance distributors to be a disturbing factor in the retail market.

The limited evidence in the record concerning this four-county area does not permit a proper evaluation of the proposal for extending regulation to these counties. More information on the distribution patterns of regulated and unregulated sellers in the area, for instance, would be helpful in analyzing the alleged competitive problems. Each of the four counties is bordered on the east by the Northwestern Ohio marketing area and on the west by the Indiana marketing area. Proponents indicated that both Northwestern Ohio and Indiana handlers have Class I sales in the four-county area. However, the record is lacking in any indication of how extensive the sales of Indiana handlers are. With Fort Wayne, a major distribution center in the Indiana market, being as close to the four-county area as Toledo, it is reasonable to expect that this area may be an important sales area of Fort Wayne handlers. Reasonable evidence on the amount of Class I business in these counties by Northwestern Ohio handlers was generally lacking also.

In view of the lack of sufficient evidence on the record concerning Williams, Defiance, Paulding, and Van Wert Counties, these areas should not be included in the Ohio Valley marketing area.

Cooperatives proposed that Adams Township in Coshocton County, Ohio, be included in the Ohio Valley marketing area. The remainder of the county is presently in the Columbus marketing area. The only fluid milk sales reported to be made in Adams Township are by a Tuscarawas County handler regulated under the Eastern Ohio-Western Pennsylvania order. Since this township is not a part of the sales area of Ohio Valley handlers, it should not be included in the marketing area of the proposed order.

Although some of the route disposition of handlers to be regulated under the Ohio Valley order will extend beyond the boundaries of the counties proposed for regulation, it is neither practical nor reasonable to extend 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 will encompass the great bulk of the fluid milk sales of handlers to be regulated.

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

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

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

The following principal definitions included in the proposed order would serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are: "Route disposition," "plant," "distributing plant," "supply plant," "pool plant," and "nonpool plant." Definitions of persons include: "producer," "handler," and "producer-handler." Definitions relating to milk and milk products include "producer milk," "fluid milk product," and "other source milk." A number of these definitions were of particular issue at the hearing and are discussed below.

Plant. A "plant" definition should be provided for the purpose of designating the type of milk handling facilities to which the order provisions would apply. A plant would be the land, buildings, and equipment constituting a single operating unit which contains stationary holding facilities and which handles or processes bulk milk or milk products. Separate intermediary distribution points used in the disposition of packaged fluid milk products would not be plants. Similarly, separate reload points used for transshipping farm bulk tank milk would not be plants. However, if such distribution points or reload points are on the premises of a plant, they would be considered a part of the plant operation. This is necessary since otherwise it cannot be assured that the operations at these ancillary facilities are in all instances and respects separate from the plant operation. Such assurance is required because of the different pricing treatment under the order that would apply to milk handled through the various types of facilities.

A "plant" definition of generally similar scope is now contained in the Cincinnati, Miami Valley, and Northwestern Ohio orders. The Tri-State and Columbus orders do not define a "plant."

Distributing plant and supply plant. Because of the differences in marketing practices and functions between distributing plants and supply plants, separate performance standards should be provided for them. Defining such types of plants would facilitate this.

A "distributing plant" would be a plant in which milk approved by a duly constituted health authority for fluid consumption, or filled milk, is processed or packaged and from which Class I milk is distributed on routes in the marketing area.

A "supply plant" would be a plant from which a fluid milk product approved by a duly constituted health authority for fluid consumption, or filled milk, is transferred to a pool plant.

Pool plant. Essential to the operation of a marketwide pool is the establishment of minimum performance requirements to distinguish between those plants substantially engaged in serving the fluid needs of the regulated market and those plants which do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. The pooling standards for distributing plants and supply plants that are contained in the attached order would carry out this concept under the present marketing conditions.

To qualify as a pool plant, the Class I route sales from a distributing plant during the month should be not less than 50 percent of the plant's total receipts of fluid milk products approved for fluid consumption. The plant's route sales in the marketing area during the month should be not less than 15 percent of its total route disposition.

In determining if either of the qualifying percentages have been met, the route disposition of the plant should include packaged fluid milk products transferred as Class I milk to other plants. Such percentage computations should be exclusive, however, of filled milk receipts and sales and of packaged fluid milk products received from other plants if priced as Class I milk under any Federal order. Also, the 50 percent requirement should be exclusive of bulk fluid milk products received at the distributing plant by transfer or diversion from other plants as Class II or Class III milk.

The pooling standards for distributing plants should accommodate several special situations. A distributing plant that fails to dispose of 50 percent of its receipts on routes during the month should not be disqualified as a pool plant for this particular reason if this requirement was met in the preceding month. A distributing plant with route disposition only on the campus of The Ohio State University at Columbus should be required to meet the 50 percent route sales requirement only for the months of January, February, October, and November. Also, a handler operating more than one distributing plant in the market should be permitted to consider these plants as a unit for the purpose of meeting the 50 percent requirement.

These pooling standards for distributing plants, with the exception of the unit pooling provision, were proposed by the seven cooperatives advocating the merger. They are essentially the same as the pooling standards contained in the Cincinnati order, except for the special provision accommodating the university campus sales which is contained in the Columbus order. Although the pooling standards proposed by the cooperatives for distributing plants differ in various respects from those provided in the other four orders, they carry out the concept common to all of these orders that a pool distributing plant is one primarily engaged in the distribution of fluid milk products and associated with the market, as evidenced by its total route disposition and its route disposition in the marketing area.

Because of the differences in the pooling provisions of the several orders, a handler objected to the use of the Cincinnati order pooling provisions under the merged order and proposed instead the Miami Valley order pooling requirements for distributing plants. The Miami Valley provisions differ from the requirements proposed for the merged order in two respects. First, a distributing plant's route sales of fluid milk products that were "custom-packaged" at another plant are credited under the Miami Valley order for pool qualification purposes to the distributing plant rather than to the plant that processed and packaged the milk, as proposed herein. Second, the minimum total route disposition requirement under the Miami Valley order for the distributing plant is less than 50 percent of receipts for several months—45 percent for February and March and 40 percent for April, May, June, and July.

The handler requesting the Miami Valley pooling standards operates six distributing plants that are presently regulated under four of the five Ohio orders involved. Two are pooled under the Miami Valley order, two under the Columbus order, and one each under the Northwestern Ohio and Tri-State orders. The handler pointed out that specialized operations are carried on at the two Miami Valley order distributing plants. The New Bremen plant, in addition to processing and packaging fluid milk products, also manufactures a number of products, including cottage cheese, sour cream, and sour cream products (dips). These cultured products are transferred to his other regulated Ohio distributing plants at Dayton, Lima, Zanesville, and Westerville. His other Miami Valley distributing plant at Dayton custom-packages milk in gallon paper containers for the New Bremen plant.

The handler claimed that under the distributing plant pooling requirements proposed by producers, his New Bremen plant would not be able to qualify as a pool plant in all months without a major change in its operations. The proportion of total route disposition relative to receipts at the plant would be less than 50 percent at times because of the plant's manufacturing activities and because the sale of the custom-packaged milk would not be credited to the plant for qualifying purposes. The handler urged that the pooling provisions for the merged order accommodate the specialized operations at his plants that have been regularly pooled under the Miami Valley order.

The pooling standards under the five orders, which regulated distributing plants in these areas are now meeting, vary somewhat from one order to another. Nevertheless, the present pooling requirements were established for the same purpose, namely, to distinguish between those plants that are serving the fluid needs of the market and those that are not. The intent of the proposed merger is not the exclusion from the pool of those regulated plants that are now regularly serving the separately regulated marketing areas.

The "unit" pooling provision proposed herein should be included in the proposed order to accommodate the operations of the multiple-plant operator just described. Under this provision, two or more distributing plants of a handler could be considered as a unit for the purpose of meeting the 50 percent total route sales requirement. Such handler would need to file with the market administrator prior to the period for which unit pooling is desired a written request for such unit pooling.

Although having chosen to support the use of the Miami Valley pooling requirements for the merged order, the multiple-plant operator indicated that the unit pooling concept was a possible alternative. It is concluded that such a provision is reasonable for the Ohio Valley market. The handler's total operation, if meeting the 50 percent pooling requirement for a distributing plant, would be serving the Class I market to the same minimum degree as the pool distributing plants having their total fluid milk and manufacturing operations in a single plant.

A supply plant, to qualify for pooling, should transfer to pool distributing plants during the month at least 50 percent of the milk approved for fluid consumption (excluding that diverted from other plants) which it physically receives from dairy farmers and cooperatives acting as bulk tank handlers. Any route disposition of fluid milk products (except filled milk) which the plant may have should also count toward the 50 percent disposition requirement.

If a supply plant is pooled under the order in each of the immediately preceding months of September through March, it should be designated as a pool plant for the months of April through August irrespective of its shipments to pool distributing plants. The plant would have nonpool status during these months if such were elected by the plant operator, or if the milk received at the plant did not continue to meet the proper health requirements.

These pooling standards for supply plants are practically the same as those now contained in the Cincinnati order

and are quite similar to those in the Northwestern Ohio order. The Cincinnati and Northwestern Ohio orders are the only two of the five Ohio orders under which supply plants of the type being considered at this point are now qualifying as pool plants. All of such plants are proprietary plants. The one at Covington, Ohio, is pooled under the Cincinnati order and the two at Belle Center and Defiance, Ohio, are pooled under the Northwestern Ohio order.

A supply plant at Dayton that is operated by a cooperative association qualifies as a pool plant under the Miami Valley order under a different type of pooling standard. This situation will be described later.

Cooperatives proposed that a pool supply plant be required to ship at least 65 percent of its receipts from producers to pool distributing plants in each of the months of September through February and 35 percent of such receipts in each of the other months. No automatic pooling would be permitted under their proposal.

The cooperatives considered the more stringent pooling requirements necessary because of the different pricing structure which they were proposing for the enlarged market. Proponents pointed out that the three supply plants would be located within the proposed Ohio Valley marketing area where no location differentials would apply. It was their position that with the removal of the location differentials presently applicable at such plants any less stringent pooling requirements could result in producer milk supplies being attracted to these plants solely for manufacturing purposes.

The handler operating two of the three regulated supply plants (at Covington and Belle Center) proposed the adoption of the pool supply plant provisions of the Cincinnati order, which, as indicated, are essentially the same as proposed herein for the merged order. He supported these provisions to assure continued pooling of his two supply plants which have been qualifying under these or very similar shipping requirements. The handler contended that milk from the two supply plants is available at all times to meet the demands of the fluid market.

The Belle Center plant was described as a receiving station for graded and ungraded milk delivered from farms in cans. It also receives surplus milk from handlers under other orders. The producer milk that is not shipped to Northwestern Ohio order distributing plants is moved to the handler's Covington plant. The Belle Center plant has no manufacturing facilities. A minus location adjustment of 4.5 cents per hundredweight currently applies to Class I milk at this plant.

The Covington plant, in addition to its supply function, has manufacturing facilities for handling both graded and ungraded milk. Deliveries from the farm are in cans. The plant is a major outlet for milk not needed for fluid use, with such milk being received at times from the Northwestern Ohio, Cincinnati, Miami Valley, Columbus, Louisville-Lexington-Evansville, and Indiana markets. Class I milk at this plant is now subject to a minus location adjustment of 13 cents per hundredweight.

The operator of the supply plant at Defiance proposed the adoption of the supply plant pooling requirements provided under the Northwestern Ohio order. The principal difference between these requirements and those proposed for the merged order relates to the months involved in qualifying for automatic pool status. Under the Northwestern Ohio order, a supply plant that meets the 50 percent shipping requirement during each of the preceding months of September through December is designated a pool plant for the months of January through August. The handler maintained that these pooling standards would facilitate the continued pooling of his plant under the merged order in the same manner as it has been regularly pooled under the Northwestern Ohio order. He claimed that milk supplies at his plant are always available to the market for fluid use.

The Defiance plant, at which a minus 7.5-cent location adjustment now applies, is a manufacturing plant that receives both graded and ungraded milk in bulk tanks and cans from dairy farmers. Milk is shipped from the plant to Northwestern Ohio distributing plants and the supply plant regularly receives surplus milk which Northwestern Ohio handlers do not need.

The more stringent pooling standards proposed by the cooperatives are not supportable at this time. Their claim for the higher shipping requirements was based on anticipated conditions under the proposed merger rather than on any problems being experienced currrently in the separately regulated areas. The three supply plants, as indicated by their regulated status under the Northwestern Ohio and Cincinnati orders, have been supplying the regulated areas to the extent that was considered necessary under those orders. The operators of these plants stressed that they are always ready to make milk available to distributing plants. This was not refuted by any witness at the hearing. Their shipments to regulated handlers have not been limited to the minimum quantities and months required for pooling of their plants. Continuation under the merged order of the 50 percent shipping requirement that now applies to these supply plants should assure that supply plants pooled under the order are adequately associated with the market.

The cooperatives proposed that supply plant shipments be required each month throughout the year. However, the demand for supply plant milk is less during the flush production months than during other months. Requiring qualifying shipments during these months of heavy production when they are not needed for fluid use would result in the uneconomical movement of milk. Thus, no minimum shipments should be required in such months for a plant that has demonstrated its association with the market.

For the present five-market area, the Class I utilization of all receipts at pool plants is generally the lowest in the months of April through August. It would be during these months when distributing plants would have the least need for supplemental milk from supply plants. Thus, any supply plant that has made the required shipments during the months of September through March should be accorded pool plant status irrespective of shipments during the April–August period.

The cooperatives' concern about the availability of milk at supply plants that would be pooled under the merged order is not unreasonable. If the minimum shipping requirements are set too low, supply plants could keep milk at their plants for manufacture when it is to their advantage to do so rather than make the milk available to distributing plants when needed for fluid use. Including in the pool milk primarily acquired for manufacturing purposes can dissipate the proceeds of the higher-valued Class I utilization of the market otherwise returnable to those producers who regularly furnish the market's fluid needs.

It is difficult, of course, to determine at this time what effect the removal of the location adjustments now applicable at the supply plants in the proposed area may have on the allocation of the available milk supplies in the Ohio Valley market to the various regulated plants. It is possible that reconsideration of the supply plant pooling standards may be necessary after some experience has been gained under the merged order.

The pooling provision in the Miami Valley order for a supply "equalization" plant operated by a cooperative association should be continued under the merged order. This provision permits such a plant to be pooled if, during the month, more than 50 percent of the producer milk of the members of the cooperative is either delivered directly from their farms to pool distributing plants of other handlers or transferred to such pool plants from the cooperative's plant.

Presently, only one plant, at Dayton, would qualify under this provision. This plant assists the principal cooperative in the Miami Valley area in allocating supplies of member milk to distributing plants in response to their fluctuating needs and is used to manufacture milk that is unneeded for fluid use on weekends, holidays, and during the heavy production months. Its receipts and shipments fluctuate widely as handlers' demands vary. The efficient allocation and movement of milk to distributing plants that this balancing plant permits does not make it possible, however, for this plant to qualify for pooling under the normal shipping requirements prescribed for supply plants.

This pooling provision for a cooperative's equalization plant has contributed to the orderly marketing of producer milk in the Miami Valley marketing area. It should promote the orderly and economical marketing of milk equally as well in the Ohio Valley market.

Route disposition. "Route disposition" should be defined as a delivery, either directly or through any distribution facility (including disposition from a plant store or by a vendor or vending machine), of a fluid milk product classified as Class I, except a delivery to a plant. However, for the single purpose of determining the pool status of a distributing plant, packaged fluid milk products transferred from such plant to another plant should be considered as route disposition of the transferor plant. Such transfers should be considered as route disposition in the marketing area to the extent of the in-area route disposition of the transferee plant. This proposed definition carries out essentially the same concept of what constitutes route sales that is now reflected in the corresponding provisions in the Cincinnati, Miami Valley, and Northwestern Ohio orders.

Handler. The "handler" definition in the proposed order is patterned on the corresponding provisions of the Cincinnati, Miami Valley and Tri-State orders. The definition contains an additional handler category not provided in the Columbus and Northwestern Ohio orders. This category would include any cooperative association with respect to producer milk which is delivered for its account from the farm to the pool plant of another handler in a tank truck or trailer owned or operated by, or under contract to, the cooperative.

Requiring the cooperative to be the handler for milk handled in this manner affords a practicable basis of accounting for such milk. Once milk from a producer has been commingled with milk of other producers in a tank truck, there is no further opportunity to measure, sample, or reject the milk of any indvidiual producer whose milk is included in the load. A similar situation prevails when the milk of an individual producer is delivered in a tank truck to two or more plants. The operator of a pool plant to which bulk tank milk is delivered has an opportunity to determine only the weight and butterfat test of the total load.

If a tank truck picking up milk at the farm is operated under the supervision of a cooperative association, it is the association that determines the weight and butterfat content of each producer's milk. Handlers have no control and generally take no part in determining the weight and butterfat tests of milk at the farm. In some instances, handlers may not even know from which farms their milk is shipped.

The milk delivered by the cooperative as a bulk tank handler would be considered as a receipt of producer milk by the operator of the pool plant at which it was physically received. The pool plant operator's obligation for such milk to the producer-settlement fund and to the administrative expense fund would be the same as for producer milk received directly from the farm of an individual producer.

In some instances, as discussed elsewhere in this decision, differences between the quantities of producer milk determined at the farm and ascertained as physically received by the operator of the pool plant would be considered a receipt of producer milk by the cooperative. For such differences the cooperative (instead of the pool plant operator) would be required to settle with the producer-settlement fund and administrative expense fund.

Producer-handler. The "producer-handler" definition in the five orders is basically the same and should be continued in the proposed order. However, the present orders differ somewhat as to the quantity of milk that a producer-handler may receive to supplement his own production and as to the allowable sources of such milk.

The cooperatives proposed that a producer-handler be permitted to receive milk from pool plants and other order plants, but not more than 2,500 pounds in any month. This limitation is now provided in the Miami Valley order. The other four orders place no volume limitation on receipts from plants. The Tri-State and Columbus orders permit supplemental receipts only from pool plants. Other Federal order plants may also be a source of milk under the Northwestern Ohio and Miami Valley orders. The Cincinnati order has no source limitation regarding plants.

A producer-handler should be permitted to purchase fluid milk products from pool plants and other order plants without losing his producer-handler status. The provision, customary in Federal orders, that classifies such purchases as Class I is included in the proposed order. Thus, any such purchases by a producer-handler could not be from a lower-price source than is available to his regulated competitors, as might be the case if he were permitted to purchase fluid milk products from unregulated plants.

The volume limitation proposed by cooperatives is not necessary to maintain orderly marketing conditions in the Ohio Valley market. Producer-handlers were not described as a disruptive factor in this market. The absence of such a limitation in four of the five Ohio orders has caused no problems and the limitation appears unneeded for the enlarged market.

Producer milk. The basic provisions of the "producer milk" definition proposed by the cooperatives should be adopted for the merged order. The purpose of this definition is to delineate that milk of a producer that is to be pooled and priced under the order.

The producer milk definition proposed herein would also establish which milk is the producer milk of each handler who handles the milk. This would define for each handler the producer milk for which he is responsible with respect to reports, classification, payments, and administrative assessments.

The producer milk of a pool plant operator would include the milk that is physically received at his plant directly from a producer (except that received as a diversion from another pool plant). Also included would be milk received at his plant from a cooperative acting as a bulk tank handler. However, any difference between the quantity of milk received from producers by the cooperative, as based on farm tank measurements, and that claimed to be received by the plant operator would be producer milk reported by the cooperative. In addition, milk which a handler receives from producers and diverts from his pool distributing plant to another plant (other than a producer-handler plant) would also be his producer milk.

A cooperative association, other than as a plant operator, could have producer milk for which it is accountable in two situations. One would be where, as just described, not all of the milk which it receives from producers is claimed to be received by the operator of the plant to which delivered. In the other situation, milk received from producers which the cooperative diverts for its account from the pool distributing plant of another handler to a nonpool plant that is not a producer-handler plant would be producer milk of the cooperative.

The proposed producer milk definition would establish several conditions that would apply to producer milk diverted from pool distributing plants to other plants. Milk of a producer could be diverted only if at least 2 days' production of the producer is physically received during the month at the plant from which his milk is diverted. During the months of September through February, the quantity of milk of a producer diverted to nonpool plants, measured in terms of days of production, could not exceed the quantity of the producer's milk physically received at pool plants. Any "overdiversions" would not be considered to be producer milk. If the diverting handler fails to designate the deliveries to nonpool plants that are not producer milk, no milk diverted by him to nonpool plants would be producer milk.

For pricing purposes, diverted milk would be deemed to have been received by the diverting handler at the location of the plant to which the milk was diverted. However, milk diverted from a pool distributing plant to other plants should be priced at the plant from which diverted if at least one-half of the producer's milk pooled under the order during the month, as measured by days of production, is physically received at pool plants located in the same price zone in the marketing area. This exception is appropriate in view of the proposed establishment within the marketing area of three pricing zones, as described in detail under the Class I price discussion.

Any diversions between plants in the marketing area that are located in different pricing zones would involve changes in the price received by the producers whose milk is diverted. In some cases this could impede the orderly allocation of supplies among handlers. In those instances where producer returns would be lowered, cooperatives might be reluctant to divert milk normally associated with plants in one price zone that may be needed occasionally at plants in a lower price zone. This problem can be avoided by pricing such diverted milk at the plant from which diverted.

These conditions relating to diverted milk were in most respects proposed by the cooperatives. While differing somewhat from the corresponding diversion provisions in each of the five orders, a reconciliation of the several producer milk definitions is, of course, necessary for the merged order. The various diversion provisions advocated by the cooperatives, which were not opposed at the hearing, are reasonable in light of the marketing conditions in the Ohio Valley area.

Although not proposed at the hearing, the merged order should continue the provision in the Tri-State order regarding milk diverted to an other order plant. Unless it is diverted for manufacturing purposes, producer milk should not include any milk moved from a farm directly to an other order plant. Such milk's eligibility to be pooled under a Federal order would more appropriately be determined at the other order plant where received. In fact, diversion to such plants, if permitted unconditionally, possibly could result in the pricing and pooling of the same milk under two orders.

Providing for the diversion of producer milk to an other order plant for manufacturing purposes would contribute to orderly marketing by facilitating the movement of milk for this purpose. In some instances, a pool plant operator or cooperative may find that the most accessible outlet for unneeded supplies is an other order plant.

For this same reason, the order should contain corollary provisions regarding milk diverted to an Ohio Valley pool plant from an other order plant. Handlers under other orders may divert surplus milk to Ohio Valley pool plants for manufacturing. If such milk is designated as Class II or Class III milk under the Ohio Valley order, it should not be producer milk under this order unless the other order does not pool and price the milk.

To facilitate the accountability of producer milk, the producer milk definition should provide that if milk is delivered by a pool plant operator in the same tank truck to more than one plant, the entire load shall be deemed to have been received at the first pool plant where milk is withdrawn from the truck. The remaining milk that is delivered to other plants would be treated as a transfer of milk from the first plant.

(b) *Classification of milk.* Each of the orders to be merged provides for the classification of milk according to use, including specific rules for milk moved from one plant to another. Also, each order sets forth a procedure for allocating a handler's receipts from various sources to the different classes in order to determine the classification of producer milk. The classification provisions of the separate orders differ in several respects, though, and various modifications were proposed by cooperatives and handlers. These are discussed below.

Classes of utilization. The merged order should provide for three classes of utilization.

Class I milk should include all skim milk and butterfat disposed of in the form of milk, skim milk, low fat milk, milk drinks, eggnog, buttermilk, filled milk, and mixtures of cream and milk or skim milk containing less than 10.5 percent butterfat, including milk shake mixes containing less than 15 percent total milk solids. All such products or mixtures, including those that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted, should be in this class whether in fluid or frozen form. These proposed Class I products would be designated in the order as "fluid milk products." Yogurt, frozen desserts, frozen dessert mixes, dietary products, and infant formulas in hermetically sealed metal or glass containers, and evaporated or condensed milk or skim milk in plain or sweetened form, products that otherwise could be encompassed by the products just listed, should not be fluid milk products.

Class I milk should include also packaged fluid milk products that are in a plant's inventory at the end of the month. In addition, any skim milk and butterfat specifically not accounted for in Class II or Class III (other than shrinkage within the limits permitted) should be included in Class I.

Most of the products proposed herein to be Class I milk are now classified as Class I under each of the separate orders. The Northwestern Ohio and Tri-State orders do not include any milkshake mixes in Class I, and under the Miami Valley order eggnog is not a Class I item.

The present orders include certain additional products in Class I that would not be so classified under the Ohio Valley order. Each order now includes sour cream and half and half as Class I items. Sweet cream, except in frozen, aerated or sterilized form, is also a Class I product under each of the five orders.

In addition to the products proposed herein as Class I items, the cooperatives proposed that Class I milk include half and half and fluid sweet cream, whether in aerated or sterilized form. Proponents stated that the type of package used, method of processing the product, or health requirements should have no bearing on the classification of these items. They pointed out that fluid cream not in aerated or sterilized form is now a Class I product under each of the orders to be merged. It was their contention that sterilizing the cream and putting it in hermetically sealed containers, or packaging the cream in pressurized cans, does not warrant a different classification for the product.

A number of handlers now regulated under the Ohio orders proposed that the fluid milk product definition in the merged order be patterned after the corresponding definition in the Indiana order. Of particular concern to these handlers was the classification of eggnog, aerated cream, sterilized cream, and certain milk shake mixes, items that are Class II products under the Indiana order but which the cooperatives proposed be in Class I under the Ohio Valley order. The handlers stressed that their proposal would establish for the Ohio Valley order a category of Class I products that would be reasonably comparable with that applicable to competing handlers in the neighboring Indiana and Eastern Ohio-Western Pennsylvania markets.

The operator of an unregulated milk plant at Washington Court House, Ohio, proposed that sterilized cream products and aerated cream be considered as Class III rather than Class I products. He claimed that a Class I classification of these products, which he distributes throughout Ohio, would make them noncompetitive with nondairy cream substitutes, particularly in view of the relatively high processing and packaging costs associated with the handling of sterilized products. He also pointed to the fact that the State of Ohio does not require that sterilized products be made from Grade A milk, a basis that has been commonly used for determining which milk products should be in Class I.

The products proposed herein to be in Class I are those for which handlers in the Ohio Valley area require a regular and dependable supply of high quality milk. In general, they are bulky, highly perishable products that are processed on a day-to-day basis. They are products that are consumed by the public in fluid form.

Most of these proposed Class I products are required by health authorities having jurisdiction in the proposed marketing area to be made from bottling grade (inspected) milk. Handlers who are also processing in the few fluid items not requiring inspected milk nevertheless use graded milk for such items since health regulations do not permit them to process graded and ungraded milk in the same facilities. It is this market for inspected milk for which the regulatory plan is intended to assure an adequate supply of pure and wholesome milk.

Delineation of this Class I category of products is necessary for the purpose of insuring a price to producers for milk used in Class I that is considerably above the manufacturing milk price. This is necessary because of the cost of getting inspected milk produced and delivered to the market in the quantities required.

Fluid cream, including aerated and sterilzed cream, and half and half should not be Class I products. The classification of these products will be discussed later relative to the Class II milk classification.

The proposed order should continue the provision now in the five Ohio orders that all nonfat milk solids used by a handler be accounted for on a skim milk equivalent basis. Certain fluid milk products are often modified by the addition of nonfat dry milk. In accounting for the total skim milk used by the handler, the normal quantity of water originally associated with the solids added to the modified product would be included in his receipts of milk.

Questions were raised at the hearing about the present and proposed methods of classifying the skim milk equivalent of solids added to a Class I product. The proposed order should provide that the weight of the modified product to be classified in Class I be the weight of an equal volume of the same product made without the addition of the nonfat milk solids. Thus, the increase in the volume of the fluid milk product that is due to the addition of the nonfat milk solids would be classified in Class I at the same weight of the product before modification. The skim milk equivalent of the solids added, less the weight represented by the volume increase of the product due to the added solids, would be classified as Class III milk. This classification procedure is commonly used under Federal orders and its use here would be equally in keeping with the purposes of the classified pricing plan.

Inventories of fluid milk products at the end of each month enter into the accounting for a handler's current receipts and utilization. Such inventories in packaged form should be Class I. This is the case now under the Cincinnati and Miami Valley orders, and the cooperatives proposed that this be continued. Certain handlers under the other orders, which now classify both bulk and packaged month-end inventories of fluid milk products in the lowest class, objected to this on the basis that handlers would have additional funds tied up in inventories of fluid milk products. It is reasonable, nevertheless, that ending inventories of fluid milk products in packaged form be classified as Class I milk. This classification would conform with the ultimate utilization of most of the packaged inventory.

Under this arrangement, it is necessary to insure that ending inventories of packaged fluid milk products are accounted for on the basis of the Class I price prevailing in the month of actual disposition. If the Class I price increases over the previous month's price (at which the inventories were first accounted for), the handler should be charged the difference between the Class I price for the current month and the Class I price for the preceding month on the quantity of ending inventory classified as Class I in the preceding month. If the current Class I price is less than that for the preceding month, however, the handler would receive a corresponding credit.

Since the ultimate use of month-end inventories of bulk fluid milk products is not necessarily apparent, such inventories should be classified in Class III. In the following month they would be subtracted under the allocation procedure from any available Class III milk. If they are allocated to the higher classes, the higher use value of the inventories would be reflected in the returns to producers.

The proposed order provides that the inventories of packaged fluid milk products on hand at the beginning of the month be allocated to the pool plant's Class I utilization before the allocation of all other receipts, except receipts of packaged fluid milk products from other order plants. This recognizes the previous month's accounting for such inventories at the Class I price. This preferential allocation should apply to those plants that were fully regulated in the preceding month under either the Ohio Valley order or any other order providing for a similar allocation of beginning inventories. In the case of plants not so regulated, the packaged inventories should be allocated, along with bulk inventories, to available milk in the lower classes before allocating receipts of other source milk and producer milk that are permitted a pro rata share of the plant's Class I utilization.

This procedure will preserve the priority assignment of producer milk to the plant's current Class I utilization. Such procedure is necessary also to accommodate under the first month's operation of the merged order the present differences in the five orders in classifying ending inventories of fluid milk products in packaged form and in bulk form.

To insure the integrity of the classification plan, skim milk and butterfat not accounted for in Class II or Class III utilizations, other than allowable shrinkage, should be classified as Class I. Otherwise, a handler could gain a cost advantage by not fully accounting for the disposition of the milk handled in his plant. In view of this, it is necessary that the Class II and Class III utilizations be explicitly set forth in the order.

Four of the five orders to be merged provide for only two classes of utilization. The proposed Ohio Valley order would have three classes. Class III would correspond generally with the present Class II under the four orders and a new intermediate classification, Class II, would be established.

Class II milk should include all skim milk and butterfat disposed of as fluid cream (including aerated cream and sterilized cream) or as mixtures of cream and milk or skim milk containing 10.5 percent or more butterfat, such as half and half. Frozen desserts and milk shake mixes would be excluded, however. Any month-end packaged inventory of fluid cream or these mixtures would be included in Class II. Class II should include also skim milk and butterfat used to produce yogurt, sour cream, sour mixtures such as dips and dressings, cottage cheese, cottage cheese curd, pancake mixes, and puddings. Milk, skim milk, or cream disposed of in bulk to any commercial food processing establishment for the manufacture of packaged food products for consumption off the premises likewise should be classified as Class II milk. These are milk utilizations for which producers should receive a higher return than for milk used in such manufactured products as butter, nonfat dry milk and hard cheese, but which are not competitive at the Class I price level.

The Cincinnati, Columbus and Northwestern Ohio orders, which now provide for only two classes of milk, classify milk used in cottage cheese as Class II milk. Under the Miami Valley order, cottage cheese is also a Class II product, but the price for skim milk used to produce cottage cheese is 20 cents over the price that applies to skim milk in the other Class II products.

The Tri-State order provides for three classes of milk, with Class II including only skim milk and butterfat used in cottage cheese. The Tri-State Class II price is 15 cents over the Class III price. Effective January 1, 1970, the 15-cent differential over the Class III price was temporarily suspended on the basis of the December 18, 1969, session of the hearing on which this decision is based. Official notice is taken of this suspension (35 F.R. 219).

Sweet and sour cream and half and half are now Class I products under each of the separate orders. At the time of the hearing, these orders also included yogurt in Class I.

Milk used in pancake mixes, puddings, and sour mixtures commonly known as "dips" is now classified in the lowest class under each of the five orders. A similar classification applies under all but the Miami Valley order to dispositions to commercial food processors. The Miami Valley order classifies fluid milk products sold to food processors as Class I milk.

The cooperatives advocating the merged order proposed that the Class II products be cottage cheese, sour cream, and yogurt. They pointed out that these products have similar characteristics in that they all go through a souring process and have a thick consistency. Proponents contended that handlers nevertheless rely upon producers for a regular supply of high quality milk for making these products and that producers should be compensated to the extent possible for making such milk available for these uses.

A number of handlers in the Ohio Valley area opposed an intermediate classification of products priced at a level above the Class III price. Opposition centered on the inclusion of cottage cheese in the Class II category. Handlers contended that this could seriously jeopardize their competitive position for cottage cheese sales relative to handlers in neighboring markets. They noted particularly the nearby Indiana and Eastern Ohio-Western Pennsylvania markets, where cottage cheese is now priced at the Class III price level adopted herein for the merged order.

All items proposed herein as Class II products constitute an important and continuous outlet for reserve supplies of producer milk. Handlers process these products on a regular basis and demand an adequate supply of high quality milk at all times for such uses. There is little, if any, relationship between the volume of the proposed Class II products made and the amount of reserve milk available in the market, as in the case of butter and nonfat dry milk, for instance. In addition to the Class I requirements of the market, producers are generally expected to produce sufficient supplies of milk for these Class II products. This undoubtedly is due in part to the fact

that many of the proposed Class II products, including cottage cheese, yogurt, sour cream, half and half, and cream (other than sterilized cream) must be made from inspected milk if sold throughout much of the proposed marketing area.

The proposed Class II products should not be priced at the same level as those products proposed herein to be in Class III. The regular demand by handlers for a high quality supply of milk from producers for these Class II items warrants that such milk be priced above the Class III price. The classified pricing plan of the merged order should reflect this situation by providing for a third class of utilization.

Classifying the several types of cream items, including aerated cream, sterilized cream and half and half, in Class II places in the same price category a group of generally competing products. Light cream and half and half are used principally by consumers in coffee. Whipping cream, sterilized cream and aerated cream are used as dessert toppings.

Presently, fluid cream and half and half are Class I products under the separate orders and sterilized and aerated cream are in the lowest class. This classification scheme results in wide disparity in pricing to handlers for products that are competing in the same trade channels for the same consumers. The manner in which sterilized cream and aerated cream are processed and packaged does not change significantly the similar purposes of use of these cream items and thus does not constitute a basis for classifying them differently from the other cream items.

As noted earlier, the Cincinnati and Miami Valley orders now classify ending inventories of packaged fluid milk products in Class I. Thus, in the last month that these separate orders are effective, handlers will have paid the Class I price for most fluid cream items, sour cream, and half and half that are in packaged form. Since such packaged products in opening inventory would be classified in Class II under the merged order, the handlers under these two orders should receive a credit on such products in the first month that the Ohio Valley order is effective. Such credit would be at the difference between the Cincinnati or Miami Valley Class I price applicable to these products in the preceding month and the Ohio Valley Class II price for the current month. This price adjustment is necessary to assure that these proposed Class II products will be priced at the same level to handlers whether they enter into the month's accounting as beginning inventory or are made from current receipts of producer milk.

As in the case of ending inventories of bulk fluid milk products, the ultimate use of month-end inventories of bulk cream is not usually apparent. Such inventories of bulk cream thus should be classified in Class III, with the final classification to be determined the following month through the allocation procedure.

Class III milk should include all skim milk and butterfat used to produce butter, nonfat dry milk, dry whole milk, dry whey, dry buttermilk, casein, cheese (except cottage cheese and cottage cheese curd), frozen cream, milk shake mixes containing 15 percent or more total milk solids, frozen desserts, frozen dessert mixes, dietary products and infant formulas in hermetically sealed metal or glass containers, evaporated or condensed milk or skim milk in plain or sweetened form, and any product containing 6 percent or more nonmilk fat (or oil). These products represent in general the residual uses of milk in the market that is not needed for those products proposed herein as Class I and Class II products.

Class III should apply also to those products otherwise considered as Class I and Class II products that are dumped, spilled or disposed of for animal feed. Month-end inventories of bulk fluid milk products and bulk cream, and the skim equivalent of the nonfat milk solids added to a fluid milk product that was not classified as Class I, likewise should be Class III.

As under the separate orders, the proposed merged order should permit the classification of a limited amount of shrinkage in the lowest class. The maximum shrinkage allowance in Class III at each pool plant should be 2 percent of the milk received directly from individual producers, plus 1.5 percent of the bulk fluid milk products received by transfer from other pool plants. The same allowance should apply to receipts of bulk fluid milk products from other order plants and unregulated supply plants, exclusive of the quantity for which Class II or Class III classification is requested.

As described earlier in this decision, a cooperative would be the handler for milk delivered from producers' farms to the pool plant of another handler in a tank truck operated by, or under contract to, the cooperative. The plant operator receiving the milk from the cooperative would account for this milk in the same manner as a receipt from individual producers. In this situation, however, the full 2 percent allowance for shrinkage in Class III should be permitted the plant operator only if he purchases the milk on the basis of farm weights and has so notified the market administator. Otherwise, the maximum Class III shrinkage allowance for the plant operator should be 1.5 percent and the cooperative should be the responsible handler for any difference between the farm weights and the weight at which the plant operator purchased the milk. Of this difference, up to 0.5 percent of the producer milk at farm weights should be allowed as Class III shrinkage to the cooperative. Any such difference in excess of the maximum allowable Class III shrinkage of 0.5 percent should be Class I milk.

In the case of milk diverted from a pool plant to another plant by a cooperative or a proprietary handler, the plant operator receiving the milk in his plant should be allowed up to 2 percent Class III shrinkage on the milk if it is purchased on the basis of farm weights. With this purchase arrangement, the handler picking the milk up at the farm should not be allowed any shrinkage on the milk. If the milk is purchased on some other basis, the handler receiving the milk in his plant should be allowed 1.5 percent Class III shrinkage and the handler picking up the milk at the farm should be allowed up to 0.5 percent Class III shrinkage as measured by the farm weights.

The shrinkage provisions proposed herein are generally similar to those provided in the Cincinnati order, which the cooperatives proposed be adopted.

Interplant movements. The provisions in the attached order concerning the classification of milk transferred or diverted from a pool plant to another plant are basically the same as the corresponding provisions in the five orders to be merged. The proposed order includes also, though, certain provisions found only in the Cincinnati order which relate to movements of bulk milk between pool plants. The cooperatives proposed the continuation of these provisions.

One such provision adopted herein provides that milk transferred or diverted in bulk to a pool supply plant shall be assigned to the supply plant's Class II and Class III utilization that remains after assigning all other source receipts, shrinkage and beginning inventories of fluid milk products. The other provision adopted herein provides that bulk milk transferred or diverted between pool distributing plants may be classified by agreement between the handlers involved. However, such "agreed on" classification is not allowed if the producer milk at the transferee plant exceeds 115 percent of the remaining Class I milk at the plant after the allocation to the plant's utilization of other source receipts, shrinkage and beginning inventories of fluid milk products. In this case, the movements of bulk milk are allocated first to any available Class III use at the transferee plant.

The 115 percent factor was objected to by a handler who claimed that this percentage was too low to give him the flexibility in supply sources that is required by his fluctuating Class I disposition. He contended that a factor of 125 percent was more reasonable.

Official notice is taken of the April 23, 1968, decision of the Assistant Secretary (33 F.R. 6352) supporting the inclusion of these provisions in the Cincinnati order. At that time, it was found that the operator of a pool plant could increase the Class I location adjustment credits on milk received from a supply plant simply by transferring or diverting milk from his plant to another plant at an "agreed on" Class I classification. Such credits, if excessive, are detrimental to producers in that they reduce the money in the pool that is available for distribution to producers. Continuation of these provisions in the merged order is appropriate for the same reason.

Another handler opposed the restrictions on classification by agreement between the handlers involved on the basis that this would delay the submission of

monthly reports of receipts and utilization to the market administrator. However, this was not shown to be a valid problem requiring different provisions than those proposed herein.

A handler objected to the continued use of a transfer provision now standard in most orders. This provision, as adopted herein, specifies that if the form in which any fluid milk product transferred to an other order plant is not defined as a fluid milk product under the other order, the transferred product shall be classified according to the classification provisions of the Ohio Valley order. The handler contended that this would keep an Ohio Valley handler from competing in another market for sales of a fluid milk product when the product for which he must pay the Class I price is not similarly priced in the other market.

The handler is proposing in effect price discrimination between producer milk sold inside and that sold outside the marketing area. This goes to the problem of establishing a Class I price that would induce an adequate supply of quality milk for the Ohio Valley market. Such price should bring forth a sufficient supply for the Ohio Valley marketing area but not necessarily to fulfill the requirements of outside markets.

There is no basis in this price determination for discriminating between milk sold inside and outside the marketing area. The milk sold outside by a regulated plant is processed in the same plant and is produced under similar conditions as milk sold in the marketing area. Thus, the milk moving through the regulated handler's plant, whether it is sold inside or outside the marketing area, is part of the same supply and demand situation upon which the price level determination must be made.

If the price to farmers were higher for milk sold inside than for milk sold outside the marketing area, returns for disposition in the area would bear the burden of providing the incentive for milk production for both. To the extent such discrimination in pricing at the procurement level is reflected in higher prices to consumers inside than outside the marketing area, consumers in the marketing area would be subsidizing consumers outside the marketing area.

Allocation. The system of allocating a handler's receipts of milk to the various classes of utilization under the merged order should be basically unchanged from that now used under the separate orders. The allocation provisions of these orders are based on the findings and conclusions of the June 19, 1964 (29 F.R. 9002), and October 13, 1969 (34 F.R. 16881), decisions of the Assistant Secretary issued with respect to most of the Federal orders applicable throughout the country. These decisions dealt with the treatment under the various orders of milk which is not subject to classified pricing under any order, receipts of milk at pool plants from other order plants, and filled milk.

A handler opposed the inclusion in the merged order of certain allocation provisions which are standard in most orders and which cooperatives proposed be continued. One provision specifies that if a handler receives packaged fluid milk products from an other order plant, 2 percent of such receipts shall be allocated to the lowest class. The handler contended that this down-allocation of some of the packaged receipts results in his having to pay in effect a premium on the milk because his purchase price (which is outside the scope of the order) does not reflect the lower value of the down-allocated portion of his purchase. The handler opposed also any down-allocation of bulk receipts from other order plants. He claimed that this makes it uneconomical for a handler to import milk supplies from other regulated markets.

The June 1964 decision set forth the reasons for the necessary treatment under Federal orders generally of milk received at pool plants from other order plants. It is necessary that the same allocation system be used under the merged order so that it will be coordinated with the applicable regulations on all movements of milk between Federal order markets. The findings and conclusions of the June 1964 decision as they relate to a handler's receipts from all nonpool sources are equally applicable under current conditions in the proposed marketing area.

The merged order should provide, however, that there be no pool obligation on milk received at a pool plant from an unregulated supply plant if such milk has been priced, in effect, as Class I milk under this or any other Federal order. Bulk milk could be transferred, for example, from a pool plant under this or another order to a non-federally regulated plant and, on the basis of its ultimate utilization, classified and priced as Class I milk. The unregulated plant, in turn, could transfer bulk or packaged milk to an Ohio Valley pool plant. To the extent that this milk has been priced, in effect, as Class I milk under a Federal order, the Ohio Valley handler receiving the milk should not have any pool obligation on such milk. On any unpriced milk received from an unregulated supply plant, the Ohio Valley handler would continue to have an obligation to the producer-settlement fund at the difference between the Class I price and the weighted average price, as now required under the separate orders.

(c) *Class prices, butterfat differentials, and location differentials—Class I price.* The Class I price under the proposed Ohio Valley order should be a basic formula price plus a stated Class I differential of $1.50, and plus an additional 20 cents. Such Class I price should apply at plants located in a "Central" pricing zone within the proposed marketing area. The Class I price should be increased 5 cents at plants in a "Southeastern" in-area pricing zone and decreased 5 cents at plants in a "Northwestern" in-area pricing zone. In 1969, the Class I prices for the Central, Southeastern, and Northwestern Zones would have averaged $6.11, $6.16 and $6.06, respectively.

Cooperatives proposed that the Ohio Valley order continue to use the basic formula price now used under the separate orders. This would include the present "flooring" of such price at $4.33.

The present basic formula price is based on pay prices for manufacturing grade milk at plants in the heavy milk production States of Minnesota and Wisconsin. Such pay prices are used in setting Class I prices under all other Federal orders and their continued use here, along with the $4.33 "floor", will assist in achieving adequate supplies for the market.

Cooperatives also proposed that a Class I differential of $1.75 apply throughout the entire Ohio Valley marketing area. This, they claimed, was the average price differential (including supply-demand adjustments) prevailing under the five orders combined during a recent period when milk supplies were in reasonable balance with the Class I requirements of regulated handlers. They contended also that the resulting Class I prices at major milk consuming centers such as Cincinnati, Dayton, and Columbus would be at a reasonable level in relation to the cost of milk brought to these cities from alternative supply areas, particularly from Wisconsin.

Three handlers regulated under the Cincinnati order proposed the use of four pricing zones within the marketing area. Zone 1 would include all points in the marketing area (e.g., Toledo, Cincinnati, Dayton, and Columbus) within 320 miles of Chicago. The more distant zones, as measured from Chicago, would be 321–370 miles (Coshocton and Zanesville, Ohio), 371–420 miles (Portsmouth and Marietta, Ohio), and 421 miles and over (Charleston, W. Va.). The Class I differentials proposed for the four zones are $1.64, $1.72, $1.80, and $1.88, respectively.

In supporting the latter proposal, the spokesman for the three handlers emphasized in particular the large size of the marketing area being proposed by the cooperatives and the consequent need for several pricing zones. The levels of zone prices, he indicated, should take into account the cost of obtaining alternative milk supplies from surplus production areas such as in Wisconsin. Support for this particular zone pricing arrangement was expressed also by two major handlers at Coshocton and Columbus.

A somewhat similar zone pricing arrangement was suggested at the hearing by a producer association whose members are mainly associated with markets other than those involved in the proposed merger. Its concern was primarily with the alignment of the Ohio Valley Class I price with the Class I prices in the neighboring Appalachian and Louisville-Lexington-Evansville Federal order markets. According to the association's spokesman, the pricing zones should be structured in such a way as to have increasingly higher prices

applying at locations from Toledo southeastward to Charleston. Under its scheme, Class I differentials of $1.70 and $2.04 would apply at the Toledo and Charleston locations, respectively.

Tri-State handlers at Charleston, Beckley, Marietta, and Portsmouth opposed the zone pricing schemes just described. They claimed that such pricing structures for their areas would place them at a price disadvantage relative to their principal competitors who would be in the lower price zones.

The Class I price differentials now applicable under the five Ohio orders are: Northwestern Ohio—$1.70, Columbus—$1.45, Miami Valley—$1.44, Cincinnati—$1.50, and Tri-State—$1.75 for the Charleston-Huntington district and $1.67 for the Athens-Scioto district. These figures include the "plus 20 cents" that each order now adds to the stated Class I differential in computing the Class I price.

Class I differentials in the Columbus, Miami Valley and Cincinnati areas are subject monthly to supply-demand adjustments. Until recently, prices in the Tri-State and Northwestern Ohio areas were similarly adjusted. The supply-demand adjustment provisions were removed from these two orders effective May 1, 1969, and September 1, 1968, respectively.

The cooperatives proposed that the effect of the supply-demand adjustors on prices under the separate orders be recognized in establishing the Class I price level for the merged order. In 1968, supply-demand adjustments averaged +32.5 cents under the Cincinnati and Miami Valley orders, +12 cents under the Columbus order, +5 cents under the Northwestern Ohio order, and −6.5 cents under the Tri-State order. Supply-demand adjustments in 1969 averaged +28 cents under the Cincinnati and Miami Valley orders and +18 cents under the Columbus order.

With the effective supply-demand adjustments, the weighted average Class I differential for the five-market area for both 1968 and 1969 was $1.70 ($1.50 plus 20 cents).

The Class I price for the Ohio Valley order should be established at a level which, in conjunction with the Class II and Class III prices, would result in returns to producers sufficient to insure an adequate quantity of pure and wholesome milk for the market, including the necessary market reserves. Under present marketing conditions in the Ohio Valley area, the Class I pricing plan adopted herein should meet this criterion.

The average Class I utilization of producer milk in the five regulated areas combined was 76 percent in 1968, and 74 percent in 1969. Proponent cooperatives indicated that this utilization represented a satisfactory balance between producer milk supplies and the Class I requirements of regulated handlers. In view of this adequacy of supplies, measured by handler demands, returns to producers under the proposed Ohio Valley order should be maintained at the same average level as under the separate orders. Had the proposed order been in effect in 1968 and 1969, the Class I price adopted herein, together with the proposed Class II and Class III prices, would have resulted in approximately the same total returns that producers in the five areas combined actually received under the present orders.

As is the case with most Federal orders, each of the separate orders now provides that 20 cents shall be added to the stated Class I price differential in computing the monthly Class I price. The merged order should continue to express the Class I price computation in this manner as a matter of uniformity among orders.

Although cooperatives proposed that a single Class I price differential apply throughout the entire Ohio Valley marketing area, location price zones within the proposed marketing area will assist in assuring that not only will milk supplies be adequate in total but also that each segment of the marketing area will be adequately supplied.

A "Central Zone" should include all territory in the marketing area not specified below as being in the other in-area location price zones. The Central Zone would be the "base" zone for announcing the Class I and uniform prices.

The Central Zone would include all plants now regulated under the Cincinnati, Miami Valley and Columbus orders except the Miami Valley pool plant at New Bremen, Ohio, and the Columbus order pool plants at Zanesville, Dresden, and Crooksville, Ohio. Included also would be plants at Ashland and Russell, Ky., and at Portsmouth, Waverly, and Wheelersburg, Ohio, that are now pooled under the Tri-State order. The three presently unregulated plants at Chillicothe and Hillsboro, Ohio, and at Maysville, Ky., that would be newly regulated under the Ohio Valley order likewise would be in the Central Zone.

A "Northwestern Zone" should include that portion of the marketing area in Michigan and in the Ohio counties of Allen, Auglaize, Crawford, Fulton, Hancock, Hardin, Henry, Logan, Lucas, Marion, Mercer, Morrow, Putnam, Richland, Sandusky (Woodville and Madison Townships only), Seneca, Van Wert (city of Delphos only), Wood, and Wyandot. This zone would encompass the present Northwestern Ohio marketing area and the plants that were regulated under the Northwestern Ohio order at the time of the hearing. Also in this zone would be a plant at New Bremen that is presently a Miami Valley order pool plant.

The Class I price to be applicable at plants in the Northwestern Zone should be the Central Zone Class I price less a location adjustment of 5 cents per hundredweight.

A "Southeastern Zone" should include that part of the marketing area in West Virginia, in the Kentucky counties of Floyd, Johnson, Lawrence, Magoffin, Martin, and Pike, and in the Ohio counties of Athens, Coshocton (except Adams Township), Guernsey (except Oxford, Londonderry, and Millwood Townships), Meigs, Morgan, Muskingum, Noble, Perry, and Washington. The applicable Class I price for this zone should be the Central Zone Class I price plus a location adjustment of 5 cents.

Plants located within the proposed Southeastern Zone include those at Charleston, Beckley, and Parkersburg, W. Va., and at Athens, Marietta, Waterford, and Coshocton, Ohio, which are now pooled under the Tri-State order. Included also are the previously mentioned Zanesville, Dresden, and Crooksville plants that are presently regulated under the Columbus order.

To carry out the objective of assuring adequate supplies, it is essential to establish a proper Class I price relationship between the Ohio Valley market and nearby markets as well as among the various segments of the Ohio Valley area. It is necessary that milk for Class I use in this market be competitively priced with milk supplies for other nearby markets and with milk that may be distributed in the Ohio Valley area in competition with local producer milk.

The proposed Ohio Valley area is bordered by five Federal order marketing areas. The milkshed of the Ohio Valley market overlaps extensively with the areas from which each of the neighboring markets draws its milk supplies. The distribution areas of Ohio Valley handlers and handlers in the surrounding markets also overlap, with handlers under other orders selling in the Ohio Valley area. In these circumstances, it is essential to the orderly marketing of producer milk that the Class I prices in the Ohio Valley area be coordinated closely with the Class I prices in the nearby markets, with consideration given not only to the cost of transporting milk between such markets and the various segments of the Ohio Valley market but also to the opportunities available to Ohio Valley producers to move their milk to alternative outlets. Thus, opportunity costs as well as actual transportation costs play a part in the availability of milk to handlers.

Relatively high Class I prices in the Ohio Valley market not only could encourage additional supplies to attach to the Ohio Valley area (usually at the expense of neighboring markets) but also might cause Ohio Valley handlers to lose fluid milk sales to other markets. The latter, in turn, could mean a disruptive loss of Class I sales for those producers who are regular suppliers of milk for the Ohio Valley market. If the Class I prices paid by Ohio Valley handlers result in producer returns substantially under the returns to farmers in the nearby markets, on the other hand, such handlers could experience difficulty in attracting an adequate supply of milk for their Class I needs.

The Class I prices in the surrounding markets, as well as those for the separately regulated areas proposed to be merged, were established to recognize such intermarket relationships. In order to continue this pricing concept under the proposed merger, the Class I prices throughout the Ohio Valley area must

be in proper relationship with the price structure for the region.

It is concluded that the establishment of location price zones within the proposed marketing area, in conjunction with the Class I price levels proposed, will provide the proper price relationships not only among the segments of the Ohio Valley area but also with the nearby markets. The following table shows the Class I price levels for the proposed Ohio Valley order and for orders in surrounding markets, as expressed for different locations in terms of a price differential over the basic formula price.

Order	Class I price differential
Ohio Valley:	
(Central Zone)	$1.70
(Southeastern Zone)	1.75
(Northwestern Zone)	1.65
Southern Michigan (Detroit)	1.60 [1]
Indiana:	
(Fort Wayne)	1.43
(Indianapolis)	1.47
Louisville-Lexington-Evansville	1.49
East Ohio-West Pennsylvania:	
(Cleveland)	1.87
(Wheeling)	1.97
Appalachian	2.13

[1] A direct delivery differential of 8 cents per hundredweight applies to all producer milk received at the Detroit location, thereby increasing the cost of Class I milk to handlers by this amount.

Because of the competitive situations among handlers who would be regulated under the merged order, the difference between Class I prices in adjoining in-area price zones should be limited to 5 cents. There is substantial competition, both for milk supplies and route sales, between plants that would be in adjoining price zones. Because plants are dispersed throughout each of the zones, handlers in many cases need only to extend their procurement and sales areas a relatively short distance from their plants before overlapping the procurement and sales areas of handlers in a neighboring zone. A price difference between zones of more than 5 cents per hundredweight could adversely affect the competitive balance among Ohio Valley handlers that is necessary for orderly marketing of producer milk.

Although, as previously stated, the cooperatives proposed a single Class I price level for the entire marketing area, a 5-cent per hundredweight higher price in the eastern and southeastern portions of the marketing area was contemplated by them. Their proposal included a direct delivery differential of 5 cents (which is described later in detail in this decision) to apply on all producer milk received at plants located in what is proposed herein as the Southeastern Zone and in certain additional nearby territory. While the direct delivery differential is denied, the 5-cent higher Class I price for the Southeastern Zone is warranted for the reasons previously stated.

The Class I price level under the order should not be substantially higher than the cost of obtaining quality milk on a regular basis from alternative sources. This will tend to assure producers in the Ohio Valley area of a continuing outlet for their milk. If a significant price advantage exists long enough, handlers customarily relying on local supplies will recognize the advantage of another supply and be encouraged to change their buying arrangements.

The Chicago milkshed has been a major source of supplemental supplies for the markets here to be merged as well as for many other markets throughout much of the United States. Class I prices gradually increase the more distant the markets are from the Chicago area, as a reflection of the increasing cost of moving milk from the Midwest to the distant markets. This accounts generally for the graduated levels of prices in the markets surrounding the Ohio Valley market and lends further support to the need for a gradation of Class I prices west to east across the Ohio Valley marketing area.

As an example of such milk movements, the spokesman for the major cooperative in the Cincinnati area testified that during a 6-month period in 1968–69 his organization imported 5 million pounds of milk from Madison, Wis., which is in the Chicago milkshed. The cooperative paid a transportation cost of 63 cents per hundredweight for moving the milk over the 435-mile distance. This is virtually equivalent to the transportation rate of 1.5 cents per hundredweight for each 10 miles provided in the location differential provisions.

The Class I price differential under the Chicago Regional order, which uses the same basic formula price proposed herein, is $1.12 at Madison. Based on the order minimum price at Madison plus transportation, the cost of this alternative supply to Cincinnati handlers would be just slightly more than the Ohio Valley Class I price for producer milk.

The Class I price under the proposed Ohio Valley order should not be subject to a supply-demand adjustor. While three of the five orders involved in the proposed merger now contain supply-demand adjustment provisions, cooperatives proposed that such provisions not be continued under the merged order. No objections were raised at the hearing.

The mobility of milk under today's marketing conditions tends to make questionable the possibility that a supply-demand adjustor in this market would be a useful pricing factor. None of the orders for the five surrounding markets contains a supply-demand adjustor. To include a supply-demand adjustor in the Ohio Valley order Class I price provisions could make for disparate pricing with nearby markets and could impede orderly marketing.

Class II price. The Class II price should be the basic formula (Minnesota-Wisconsin manufacturing milk price) for the month plus 10 cents. In 1969, the Class II price adopted herein would have averaged $4.52.

As indicated earlier in the discussion on classification of milk, the regular demand by handlers for a high quality supply of milk from producers for use in the proposed Class II products warrants that such milk be priced above the Class III price adopted herein. The Tri-State and Miami Valley orders already reflect this pricing concept in their classified price structure. Under the Tri-State order, milk used in cottage cheese is priced 15 cents over the Class III price of that order, which is the Minnesota-Wisconsin manufacturing milk price. As noted earlier, this 15-cent differential was temporarily suspended on January 1, 1970, in recognition of certain manufacturing class price levels prevailing at the time in nearby markets. The Miami Valley order now prices skim milk used in cottage cheese at 20 cents over the proposed Class III price.

Cooperatives proposed that the Class II price be the Class III price adopted herein, plus 20 cents. They contended that producer milk supplied to handlers in the Ohio Valley area for their proposed Class II uses (cottage cheese, sour cream, and yogurt) is worth at least that much over the Class III price to the handlers. Handlers, on the other hand, claimed that as long as there are markets nearby, such as the Indiana and Eastern Ohio-Western Pennsylvania markets, where no intermediate class price applies, they will be competitively disadvantaged on the sale of Class II products.

Making producer milk available to handlers for Class II uses warrants at least a minimum compensation to producers of 10 cents over the Minnesota-Wisconsin manufacturing milk price. As noted in the classification discussion, the products proposed herein as Class II items are processed by handlers on a regular basis. Producers are generally expected by handlers to produce adequate supplies of high quality milk for such uses and to deliver the milk to central points in the market for processing. The Class I price should not compensate alone for the costs involved in inducing the necessary supplies for these regular outlets for producer milk. The Class II price should bear a reasonable portion of these costs.

Other than the local producer supply, there are no dependable sources of graded milk for Class II use within the normal milkshed for the market. The only nearby milk of the necessary quality is attached to other fluid milk markets surrounding the Ohio Valley area and would be available only sporadically to Ohio Valley handlers. Graded milk supplies are usually available from more distant heavy production areas such as in Wisconsin. However, the value of such milk in that area would be expected to be no less than the Minnesota-Wisconsin manufacturing price for ungraded milk. With the additional cost of transporting the milk to the Ohio Valley area, the cost of such milk would be in excess of the Class II price adopted herein.

Class III price. The Class III price should be the basic formula price (Minnesota-Wisconsin manufacturing milk price), but not to exceed a butter-nonfat dry milk formula price. This is the present surplus milk price under the Northwestern Ohio, Cincinnati, Miami Valley,

and Columbus orders. Cooperatives proposed that it be continued under the merged order, and no other proposal was presented. In 1969, such price averaged $4.25 per hundredweight.

The proposed Class III price has facilitated the disposal of milk not needed for Class I use under the separate orders. There was no testimony that this is an unsatisfactory price level at this time. Such price should result in the orderly disposition of surplus milk in the Ohio Valley market.

Butterfat differentials. The Class I butterfat differential under the merged order should be 12 percent of the Chicago butter price for the preceding month. The Class II and Class III butterfat differentials should be 12 percent and 11.5 percent, respectively, of the Chicago butter price for the current month.

The Class I and Class III butterfat differentials are presently used under each of the separate orders. Although the differential rates should be continued, as cooperatives proposed, their application should be somewhat different under the merged order in view of the changed classification of various products. With the inclusion of all cream products in Class II, the Class II differential should be at the rate indicated rather than at the Class III rate which cooperatives proposed. This is commensurate with the fact that Class II uses are not residual uses and that Class II milk thus carries a higher value than Class III milk, as indicated earlier in the decision.

The butterfat differential to producers should be the average of the Class I, Class II and Class III butterfat differentials weighted by the proportion of butterfat in producer milk assigned to each class. This procedure for computing producer butterfat differentials, which was proposed by the cooperatives, is currently provided in four of the five orders to be merged and will be equally appropriate for the remainder of the market. The present producer differential under the Tri-State order, being 12 percent of the Chicago butter price for the month, is only slightly at variance with the other markets. The adopted method of computing the producer butterfat differential will assure producers that their returns reflect the market utilization of butterfat in each of the respective classes.

Location differentials at plants outside the marketing area. In addition to the location price adjustments already described for plants in the marketing area, the merged order should provide for the appropriate adjustment of Class I and uniform prices at plants located outside the marketing area.

The Class I and uniform prices at plants outside the marketing area should be based on the respective prices for the nearest in-area zone, as measured from designated points in the marketing area. For this purpose, the city halls of Cincinnati, Coshocton, Dayton, Lima, Marietta, and Toledo, Ohio, Ashland and Maysville, Ky., and Beckley and Charleston, W. Va., are appropriate locations from which to make such determinations.

Competition in procurement and/or sales of an out-of-area plant that is nearer the Northwestern Zone than the Southeastern Zone, for example, is mainly with plants in the Northwestern Zone rather than with Southeastern Zone plants. Consequently, the price at such a plant should be related to the price for such nearest in-area zone.

For plants located outside the marketing area and 60–70 miles from the nearest of the designated measuring points, the Class I and uniform prices at such plants should be 11 cents less than the price at the applicable meauring point. At plants beyond the 70-mile limit, such prices should be reduced an additional 1.5 cents for each 10 miles or fraction thereof that such plants are more than 70 miles from the nearest of the designated cities.

Each of the orders to be merged uses the same location differential rate of 1.5 cents per 10 miles adopted herein for adjusting prices at plants beyond the first location differential zone. The orders vary, however, as to the distance from the designated measuring points to the first zone and as to the differential for that zone.

Under the Cincinnati order, location differentials first apply at plants 50–60 miles from Cincinnati. The Class I and uniform prices in this zone presently are reduced 10 cents. The Miami Valley location differential is 9 cents per hundredweight at plants outside the marketing area and 50–60 miles from the nearest of Dayton, Piqua, Springfield, Urbana, or Wilmington, Ohio. In the Columbus area, the location differential is 15 cents for plants 80–90 miles from the nearer of Columbus or Zanesville, Ohio.

The Tri-State location differential is 15 cents per hundredweight at plants outside the marketing area and 100–110 miles from the nearest of Ashland, Paintsville, and Pikeville, Ky., Coshocton, Gallipolis, Jackson, Portsmouth, and Marietta, Ohio, and Bluefield, Charleston, Hinton, Huntington, and Williamson, W. Va.

Under the Northwestern Ohio order, the Class I and uniform prices at plants located outside an 18-county area in Ohio (Allen, Auglaize, Crawford, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Morrow, Ottawa, Richland, Sandusky, Seneca, Wood, and Wyandot Counties) and more than 40 miles from Toledo and 15 miles from Mansfield, Marion, and Lima, Ohio, are reduced at the rate of 1.5 cents for each 10 miles that such plants are from the nearest of these cities. No location differentials apply at plants nearer Cleveland than the distance between Cleveland and Mansfield.

Cooperatives proposed that under the merged order location differentials apply at plants outside the marketing area and 65 miles or more from the nearest highway intersection with the boundary of the marketing area. For plants in a 65–100 mile zone, the location differential would be 15 cents. An additional 1.5 cents per 10 miles would apply under their proposal at plants beyond the 65–100-mile zone.

The principal basis for proposing this particular location differential structure was to assure that no location differential would apply at Goshen, Ind. The major cooperative in the Northwestern Ohio area operates a nonpool manufacturing plant at Goshen and diverts substantial quantities of milk from distributing plants to this facility. As proposed by the cooperatives, milk would be priced at the location of the plant to which diverted. The cooperative contended that milk diverted to the Goshen plant should not be priced lower than producer milk delivered to area distributing plants since the diverted milk is a part of the total supply for the Class I market.

Because of its bulky, perishable nature, milk moved considerable distances incurs a relatively high transportation cost. Thus, milk delivered directly from farms to plants distant from the urban center is worth less, or has less utility, to a handler than milk which is delivered to his distributing plant located in or near the urban center. Providing location differentials based on the cost of moving milk to the market is necessary to insure uniform pricing to all handlers at the market, regardless of the plant location where the milk is received from producers, and to reflect its proper value at the latter location. Such location value will be affected, of course, by actual transportation costs to market, and by the alternative market opportunities available to the producer. The location differential provisions adopted herein are needed to carry out this concept for the Ohio Valley market.

The order should insure, however, that producers will not bear the cost of unnecessary transfers of milk from a distant pool plant to a pool distributing plant at the market center for Class I use when the distributing plant already has adequate supplies of producer milk. Since the distant plant would receive a location differential credit on milk so moved, the total pool proceeds available for distribution to all producers could be affected adversely.

The limitations on allowable location differential credits now contained in the Cincinnati order, which cooperatives proposed be continued for the larger market, are adopted herein. Under such provisions, milk received at a pool distributing plant from another pool plant would be assigned to the remaining Class I milk at the transferee plant, after the allocation of other source receipts, beginning inventory, and shrinkage, on a pro rata basis with the aggregate receipts of producer milk at the transferee plant. Such assignment would be made first to receipts of milk from plants at which the applicable Class I price is not less than the Class I price at such pool distributing plant. Further assignments would then be made to receipts of milk from plants at which the applicable Class I price is lower than the price at the transferee plant, in sequence beginning with the plant having the highest Class I price.

Because of variations in daily Class I demand at distributing plants, some milk moved to such plants and intended for Class I use may not be so utilized. The proposed manner for determining the allowable location differential credit recognizes this situation. The assignment to Class I of interplant transfers pro rata with producer receipts provides a reasonable margin for handlers in balancing receipts with day-to-day bottling requirements.

Each of the orders to be merged provides that a pool plant operator's obligation to the producer-settlement fund shall include payment for fluid milk products received from an unregulated supply plant if they are allocated to Class I. The handler's payment is determined by charging him at the Class I price for the milk involved and giving him a credit on such milk at the uniform price. Both prices are adjusted for the location of the unregulated supply plant. The adjustment of the uniform price, though, is limited to not less than the lowest class price. No limitation is applied currently to the Class I price adjustment.

In the merged order, a limitation on the Class I price adjustment should be provided. Otherwise, the Class I price adjustment could result under certain conditions in the handler receiving a payment from the producer-settlement fund on the Class I milk obtained from the unregulated supply plant. Such payment could result when the location differential at the distant plant is greater than the difference between the Class I and Class III prices. In this circumstance, producers under the order, in effect, would be giving the handler a credit sufficient to reduce his cost for the distant milk below its value for manufacturing use at the point of purchase.

A similar situation now exists with respect to the obligation of the operator of a partially regulated distributing plant or an other order plant. In certain cases, the handler's obligation includes a payment to the producer-settlement fund at the difference between the Class I price applicable at his plant and either the "weighted average" price or the Class III price. For the reasons stated above, the proposed order should provide that the Class I price, as adjusted for location, not be less than the Class III price in computing the obligation of these handlers.

A so-called "direct delivery differential" should not be adopted. The proponent cooperatives stated that producers whose milk is delivered to pool plants located in a 50-county area should receive an additional 5 cents per hundredweight over the uniform price for their milk. The effect of this proposal on handlers would be to increase their cost of producer milk used in each class 5 cents per hundredweight over the applicable class prices.

The proposed 50-county area includes primarily the present Tri-State marketing area, with the exception of Pike County, Ohio. Included also are the additional West Virginia counties that the cooperatives proposed be added to the marketing area, plus Rowan and Carter Counties, Ky., and Coshocton, Muskingum, Guernsey, Noble, Morgan, and Perry Counties, Ohio. Considering only those plants that are expected to be regulated under the merged order, this differential would apply at three plants now pooled under the Columbus order, and at all but one (in Pike County, Ohio) of the pool plants under the Tri-State order.

Although the 5-cent differential was proposed for a large geographical area, the alleged need for the differential centered for all practical purposes on the problem of a supply for the relatively large distributing plant at Coshocton, Ohio, which now is pooled under the Tri-State order. A representative of one of the proponent cooperatives that is a major supplier of Tri-State handlers testified that his cooperative was having no trouble in furnishing adequate supplies of milk to other handlers at Charleston, Marietta, and Beckley, which are in the Tri-State marketing area. Tri-State handlers at these locations corroborated this testimony.

The Coshocton plant, which receives milk from about 400 producers, first became operational in 1968. At that time, the plant operator closed his distributing plant at Athens, Ohio, which had been pooled under the Tri-State order and moved that plant's operations to the new Coshocton facility. Also, distributing plants which this handler operated at Cleveland and Clarksburg were likewise closed and their operations consolidated at Coshocton. Distribution is made from this plant into the Tri-State, Columbus, Miami Valley, and Eastern Ohio-Western Pennsylvania marketing areas.

The consolidation of processing and packaging operations at the Coshocton plant necessitated a substantial rearrangement of hauling routes by cooperatives to get adequate milk supplies delivered from farms to the plant. A representative of the cooperative that formerly supplied the Clarksburg plant testified that over 300 producers were shifted among various plants in the Eastern Ohio-Western Pennsylvania market in order to follow the Class I sales of the former Clarksburg plant that were moved to the Coshocton plant. The witness indicated that the hauling costs for the cooperative's members who were shifted to the Coshocton plant are nine cents per hundredweight higher than formerly. This added expense is presently being borne by the cooperative.

The representative of another cooperative supplying the Coshocton plant testified that to follow the former Athens plant's Class I sales, the cooperative considered it necessary to shift milk that had been going to the Athens plant to Coshocton. In addition to increased hauling rates of 2 to 7 cents per hundredweight being paid by individual producers, the cooperative is paying haulers an additional 13 cents per hundredweight on such movements of milk. The witness indicated that because of distance it was not economically feasible to shift to Coshocton all the milk formerly associated with the Athens plant. Some milk was redirected to the Cincinnati area, with producers experiencing a 4-cent higher hauling cost than previously. Other milk was shifted to a nearby Marietta plant, which permitted some milk already associated with the Marietta plant to be shifted to Coshocton.

Proponents claimed that the higher hauling costs being experienced in getting milk to the Coshocton plant warrants the 5-cent differential which they proposed.

The handler operating the Coshocton plant opposed such a payment on the basis that this differential is not necessary to attract sufficient milk to his plant. He pointed to the fact that the cooperatives were adequately supplying his plant on a continuing basis. He contended further that there are many more producers within a reasonable distance of his plant than are needed to furnish his supply.

The hauling problems encountered by proponents in supplying the Coshocton plant, while serious to the producers and cooperatives affected, are not to be unexpected in a period of transition caused by plant closings and consolidations. For many years, distributing plants were relatively numerous and producers seldom had to ship their milk any great distance. More recently, the consolidation of processing operations in large, centrally located facilities have required many producers to move their milk much farther, and at greater hauling cost, in order to continue participating in a Class I market. Such is the case described by proponents.

The marketing situation presented relative to the direct delivery differential proposal indicates that it is not a matter of individual plants being unable to attract sufficient milk for their Class I needs, but rather a case of producers being unable to find Class I outlets at the same hauling cost. For the reasons stated earlier in this decision, the Class I price that would be applicable in much of this 50-county area would be higher than elsewhere in the marketing area. Under this pricing, Southeastern Zone plants should be able to attract adequate milk supplies for Class I use. Handlers operating plants in this zone should not be required under the order to pay producers an additional 5 cents per hundredweight over the proposed Class I price, as well as over the Class II and Class III prices, as cooperatives proposed.

With the application of a single order to the now separately regulated areas, cooperatives should be able to realize greater efficiencies than presently in moving their members' milk to market outlets. It is reasonable to expect that cooperatives, as they strive to attain the highest returns possible for their members, would actively seek to maximize such hauling efficiencies.

(d) *Distribution of proceeds to producers.* A marketwide pool should be used under the merged order as a means of distributing to producers the total proceeds from the sale of their milk. Such an arrangement, as presently under the separate orders, would assure a producer supplying the regulated market a return for his milk based on his pro rata share of the total Class I sales in

the market. The uniform, or "blend," price that a producer would receive for each month's deliveries would be a price based on the overall utilization of all producer milk received at the pool plants of all regulated handlers during the month. The base zone for the announced uniform price would be the Central Zone.

The separate orders have varying provisions concerning the computation of the uniform price and distribution of the pool proceeds. These are discussed below relative to the proposed merged order.

"Louisville" plan. The Ohio Valley order should continue the seasonal production incentive plan now used under four of the five orders to be merged. The purpose of the plan, commonly referred to as the "Louisville" plan, is to encourage a more even seasonal pattern of milk production.

Identical Louisville plan provisions are now included in the Cincinnati, Miami Valley, Columbus, and Tri-State orders. Under the plans, returns to producers are adjusted by deducting specified amounts per hundredweight of producer milk delivered in the months of April, May, June, and July, and adding such money in the computation of uniform prices for milk delivered in the following months of September, October, November, and December. The deductions are 6 percent of the average basic formula price of the preceding calendar year, but not more than 25 cents per hundredweight. One-fourth of the money collected in the April–July period is included in the uniform price computed for each of the months of September through December.

In addition to continuing these provisions, the proposed order should provide that the Louisville plan payments include any interest earned on the money while it is held in the producer-settlement fund. The money deducted may be invested by the market administrator in bank accounts or securities approved for this purpose. Any interest earned should be included in the uniform price computation for milk delivered in December.

Continuation of the Louisville plan under the merged order was proposed by the cooperatives advocating the merger. The plan was specifically endorsed by the cooperative representing over 80 percent of the producers supplying Northwestern Ohio handlers. The Northwestern Ohio order presently does not provide for any type of seasonal incentive plan.

As under the present four orders, a Louisville plan would serve a useful purpose in the proposed Ohio Valley market. Milk production per producer in this area is highest in the April–July period and lowest in the September–December period. This seasonal pattern does not coincide with the more even demand for Class I milk. Matching production with demand would promote the efficient marketing of producer milk.

The Assistant Secretary's decision issued March 22, 1968 (33 F.R. 5040), of which official notice is here taken, sets forth the basis for the current provisions of the Louisville plans now applicable under the separate orders. The rates of "takeout" and "payback" established at that time have been satisfactory for these regulated areas. Such rates should be equally appropriate for the Ohio Valley market.

Payments to producers. Payments to producers and cooperative associations at the uniform price for milk deliveries should be made by the market administrator.

Different methods of paying producers are now provided under the orders to be merged. Payments to producers and cooperatives under the Miami Valley, Tri-State, and Northwestern Ohio orders are made directly to them by handlers. Under the Columbus order, handlers have the option of making payments to producers who are not members of a cooperative, or of paying all the money to the market administrator who then pays such producers. For milk received from members of a cooperative, handlers under the Columbus order make all payments to the market administrator. The market administrator then pays the cooperative or its members. In the Cincinnati area, handlers make a partial payment to producers and cooperatives for milk delivered during the first half of the month. The remainder of their obligations for producer milk is paid to the market administrator who then pays producers and cooperatives the balance of the money due them.

Under any payment method it is necessary, in paying the uniform price to all producers, that part of the money paid by handlers with higher than market average Class I utilization be used in paying producers supplying other handlers with less than average Class I utilization. Four of the orders accomplish this exchange of money through an "equalization" fund operated by the market administrator. Handlers with the higher than market average Class I utilization pay any excess of the value of their producer milk over its value at the uniform price into this fund. Other handlers receive from the fund payments which are included in the uniform price they pay to producers.

Cooperatives proposed that the payments to all producers in the expanded market be handled in the same manner as under the Cincinnati order. Under the cooperatives' proposal, each handler would make partial payments to producers on the 27th day of the month for milk received during the first 15 days of the month at a rate of $3.50 per hundredweight. The remainder of the handler's obligation for the month for producer receipts would be paid to the market administrator, subject to deductions authorized by producers and deductions for partial payments previously made.

Proponents urged continuation of the Cincinnati payment plan primarily on the basis that it is working satisfactorily in the Cincinnati area and that it offers several advantages, relative to the payment plans under the other orders, which they believe will be beneficial for the Ohio Valley market.

Of the approximately 60 proprietary handlers in the proposed Ohio Valley area, only four testified against the adoption of the Cincinnati payment plan. The basis of their opposition was that (1) no substantial increase in administrative efficiency could be expected, (2) there is no widespread problem of handlers failing to pay producers promptly, (3) the risk of loss to producers would not be reduced, and (4) the proposed payment plan would interfere with normal handler-producer relationships.

Only one method of payment can be adopted, of course, for the merged order, and changes in present payment methods necessarily will apply for some producers and handlers under whichever method might be employed. Although both types of payment plans have proved satisfactory methods for paying producers and cooperatives, there are factors to be considered that support extending the application of the Cincinnati plan to the enlarged market.

In some instances, at least, the proposed payment method will represent a savings in accounting and administrative work. Where handlers have been paying an individual check to each producer, they can, under the proposed system, pay the entire obligation with one check to the market administrator. The producer payroll of each handler, rather than being kept by the handler, would be an original record of the market administrator and would not require an audit as in the case when the handler makes the payment to the producer. Any saving in auditing or administrative functions, whether extensive or small, favors direct payment by the market administrator to producers and cooperatives.

Although late payments by handlers in these markets to be merged have not been a burdensome problem, the payment plan here adopted should aid in insuring timely payments to producers. Under this plan, the fact of payment to producers is a matter of the market administrator's immediate knowledge. When handlers pay producers directly, on the other hand, a failure to make full payment to producers by the dates specified in the order does not become known to the market administrator immediately. Discouragement of delinquent payments is beneficial not only to producers, of course, but also to each handler who should have maximum assurance that all other handlers under the order are paying by the required dates the minimum class prices for their producer milk.

Moreover, the plan is self-policing in that payment would not be made by the market administrator to those producers delivering their milk to a handler who fails to pay his obligation to the producer-settlement fund. Such producers consequently are made aware immediately when their handler fails in his payment and have opportunity to consider other arrangements for their milk pending enforcement action.

An additional benefit to producers of the proposed payment plan is that it will reduce pressure on a cooperative to grant credit to a handler who is delinquent in paying the cooperative the uniform

price for milk received from member-producers. Extension of credit by a cooperative should be minimized if the handler's payment must be made directly to the market administrator.

While some handlers claim that making payments by a handler directly to individual producers aids in maintaining good relations with producers, the proposed payment method does not interfere with various other means a handler may use to foster producer relationships. Where there is a full supply contract between the handler and a cooperative, this question, of course, does not arise. Full supply contracts are prevalent in this market.

As previously stated, the cooperatives' proposal would provide that partial payments be made by handlers to producers for milk delivered during the first 15 days of the month. This feature of the payment plan would be the same as now used under the Cincinnati order, but is not adopted herein. Under the adopted plan, each handler would be required to make a partial payment to the market administrator at not less than $3.50 per hundredweight for milk received during the first 15 days of the month. Such payment would be due by the 25th day of the same month. The market administrator, in turn, would distribute these partial payments by the 28th day of the same month to producers who do not receive their payments through a cooperative association. Payments to a cooperative would be made by the market administrator a day earlier. The benefits of having the market administrator pay producers and cooperatives can be realized even more fully if partial payments, as well as final payments, are made by the market administrator.

Handlers' partial and final payments to the market administrator would be subject to deductions authorized in writing by producers. The market administrator, in paying producers and cooperative associations, would take these deductions into account in his payments from the producer-settlement fund.

Final payment by the handler to the market administrator for all producer milk received during the month would be required by the 14th day of the following month. Final payments would be made by the market administrator to cooperatives by the 16th day of the month following the month of delivery and to individual producers who do not receive payments through a cooperative by the 17th day of the following month.

The various dates proposed herein for making final payments for producer milk will result in producers receiving the returns from their milk deliveries as soon as possible after the submission of handler reports and the computation of the uniform price. Reports of receipts and utilization for the previous month would be required of handlers by the sixth day of the month. The market administrator would be required to announce the uniform price by the 12th day of the month. These particular dates are necessary to permit handlers time for preparing their reports and the market administrator time to receive such reports and compute the uniform price.

(e) *Administrative provisions—Marketing services deductions.* The maximum deduction from producer payments for marketing services furnished by the market administrator should be 6 cents per hundredweight. This is the current maximum rate under four of the five orders to be merged. The Columbus order provides for a 5-cent maximum deduction.

The 6-cent rate should provide the market administrator with sufficient funds to conduct a marketing service program for those producers not receiving such services from a cooperative association. If experience indicates that marketing services can be performed at a lesser rate, provision is made whereby the Secretary may adjust the rate downward without the necessity of a hearing.

Administrative assessment. The maximum rate of payment by handlers for the cost of administering the proposed order should be 4 cents per hundredweight. Such payments are required if the market administrator is to perform the necessary functions of administering the order.

Currently, the maximum rates are 4 cents for the Tri-State order, 3 cents for the Northwestern Ohio order, and 2 cents for the Cincinnati, Miami Valley, and Columbus orders. The adopted maximum rate of administrative assessment will bring the rate more in line with that in other Federal orders. Most Federal orders, several of which are applicable in markets comparable in size to the proposed Ohio Valley area, provide for maximum rates of either 4 or 5 cents per hundredweight. Such rates have been found adequate but not excessive, in providing the necessary funds to successfully administer the respective orders. If experience indicates that the administration of the Ohio Valley order can be performed at a lesser rate, the order provides that the Secretary may adjust the rate downward without the necessity of a hearing.

Interest payments on overdue accounts. No provision is made in the proposed order for the payment of interest on obligations due the market administrator. Although such interest payments are provided currently under the Tri-State and Columbus orders, proponents of the merged order did not support similar provisions for the Ohio Valley order.

Merger of administrative expense, marketing service, and producer-settlement funds. To accomplish the merger of the five Ohio orders effectively and equitably, the assets in the administrative expense funds which have accrued under the separate orders should be combined. Similar procedure should be carried out with respect to each of the marketing services and producer-settlement fund reserves. Any liabilities of such funds under the individual orders should be paid from the new funds so created. Similarly, obligations which are due the funds under the separate orders should be paid to the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. All handlers currently regulated under the separate orders are expected to continue to be regulated under the merged order. It is equitable to combine the monies accumulated under the separate funds and to pay any liabilities of each of the present funds from the consolidated fund.

The money accumulated in the marketing service funds of the separate orders is that paid by producers for whom the market administrator is performing such services as verifying the tests and weights of producer milk and furnishing market information. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the expanded market. The consolidation of the assets in the separate marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged order.

The producer-settlement fund balances in the five orders should be combined so that the producer-settlement fund under the merged order may be continued without interruption. The producers currently supplying the five separately regulated areas are expected to continue to supply milk for the Ohio Valley market. Thus, monies now in the separate producer-settlement funds would provide a working reserve in computing the uniform prices of the producers who will benefit from the merged order. The combined fund would also serve as a contingency fund from which money would be available for meeting obligations (resulting from audit adjustments and otherwise) accruing under one or the other of the separate funds.

5. *Cooperative service payments.* The proposed Ohio Valley order should not provide for payments from pool proceeds to a cooperative association or federation of cooperatives in compensation for marketwide services of assumed benefit to all producers on the market.

Such payments, referred to as "cooperative payments", were proposed by the seven producer associations proposing the five-order merger. These groups contended that cooperatives are providing, at the expense of their members, certain marketing services which benefit all producers on the market. Such services, they stated, were of general benefit in that they promote orderly marketing and assist in improving and stabilizing prices to producers. Proponents maintained that producers not belonging to qualified cooperatives should be required to bear a portion of the cost of performing these services. Otherwise, such nonmember producers would continue to have a favorable position in the market relative to members of cooperatives.

As a means of apportioning such costs among all producers, it was proposed that money be deducted from the total

pool proceeds due producers, for payment to those cooperatives or federations of cooperatives performing specified marketwide services. Up to 2 cents per hundredweight of all producer milk in the pool could be paid a cooperative or federation if it performed all the following types of services:

1. Supplying handlers with their total Class I needs, which would entail making available both local producer supplies and any supplemental supplies to be purchased in other markets;

2. Participating in all Federal milk order activities, such as determining the need for order amendments, formulating proposals, and participating in hearings;

3. Conducting a comprehensive educational program, through producer meetings and regularly issued publications, that is directed to all producers on the market; and

4. Continuously analyzing marketing conditions and data and disseminating the resulting information to all producers.

Up to 1 cent per hundredweight of all pool milk could be paid to a cooperative or federation if it operates a pool manufacturing plant that is determined to be benefiting all producers on the market through its supply balancing, and surplus disposal, functions.

As envisioned by proponents, payments to a cooperative or federation from the producer-settlement fund would be made only as the expenses for these marketwide services are actually incurred. Payment to the cooperative would be contingent upon the market administrator's determination that the marketing services for which reimbursement is sought are within the scope of the services outlined in the provisions of the order.

To be eligible for cooperative payments, proponents proposed that a cooperative should have as members at least 40 percent of the producers supplying the market. A similar representation would be required of a federation.

The only organization in the proposed Ohio Valley market that would be able to meet this 40 percent membership requirement at this time is a federation whose members are the seven proponent cooperatives. The collective membership of these federated cooperatives accounts for about three-fourths of the producers associated with the proposed Ohio Valley area. In terms of producer-members associated with each of the five presently regulated areas, two of the federated groups are the principal cooperatives in the Cincinnati area, one is the major cooperative in the Miami Valley area, and another is the major cooperative in the Northwestern Ohio area. Three other groups are the principal cooperatives in the Tri-State area, and one of these also is the major cooperative in the Columbus area.

Having been formed only a short time, the federation's activities up to the time of the hearing had been limited to preparing for, and appearing at, the hearing. Proponents maintained, though, that having organized as a federated group, the member cooperatives are in position to make available the necessary personnel and milk handling facilities that would be required by the federation for carrying out a marketing service program of marketwide scope.

In support of cooperative payments, proponents cited various marketing activities which the individual cooperatives are now performing and described how such activities benefit nonmember producers on the market.

The major cooperative in the Cincinnati area claimed that nearly one-third of its annual expenses (excluding those incurred in supply management activities noted later) is spent on services that benefit the approximately 200 nonmember producers who are on farm routes completely serviced by the cooperative, and in some cases all nonmembers in the Cincinnati area. Services provided include testing for brucellosis, pesticides and antibiotics, meetings with health authorities, handlers, and milk haulers, and producer contacts by fieldmen. The cooperative indicated it is not reimbursed by nonmembers for such services.

Proponents claimed further that cooperatives must, and do, undertake the function of allocating available supplies among handlers and providing handlers with their total milk supply at all times. Otherwise, handlers would develop producer supplies on their own to meet their year-round needs. This, proponents claimed, could lower the Class I utilization of the market, thereby lowering the returns to all producers—members and nonmembers alike since the market would need to carry additional supplies on this basis.

The experience of the Cincinnati cooperative was cited also to support proponents' position of how certain procurement activities benefit all producers. In providing Cincinnati handlers with their total milk supply, the cooperative spent in 1968 about $400,000 in moving producer milk to the market from distant reload points and in obtaining supplemental other source milk. Although much of this expense was recovered through overorder prices paid by handlers, the cooperative still had to bear about $90,000 of the expenses incurred. Proponents maintained that a cooperative should be reimbursed through cooperative payments for such expenses since this type of supply management benefits all producers on the market through a better utilization of the milk.

Supply management activities are being carried on also by other major cooperatives in the Ohio Valley area. These consist of moving producer milk from farms to distributing plants in the quantities and at the times needed and of disposing of unneeded supplies through their own manufacturing plants and other available outlets. Nonmembers and small cooperatives, proponents claimed, are not able to provide this marketing service for themselves, but benefit nevertheless from the higher producer returns which result from the efforts of the larger cooperatives.

The major cooperative in the Miami Valley regulated area operates a pool plant at Dayton which proponents expect would qualify for the "one-cent" cooperative payment provided in their proposal. The plant, which manufactures nonfat dry milk, serves as a balancing plant for the Miami Valley market area, and to some extent for the Cincinnati and Columbus areas. In may 1969, about 25 percent of the milk received at the plant from handlers for surplus disposal was that of producers who were not members of the cooperative operating the plant. Proponents claimed that the plant operates at a loss because the balancing function precludes maximum, and thus economical, use of the manufacturing operation. The 1968 operating loss was described as $97,775.

Proponents maintained that such operating losses should be shared, through cooperative payments, by nonmembers who benefit along with members from the improved market Class I utilization, and thus higher prices to producers, that results from the balancing function of the plant.

In further support of cooperative payments, proponents stated that cooperatives play the key role in milk order hearings. They pointed out that cooperatives must, and do, continually analyze the market situation, make hearing proposals when necessary in response to changed marketing conditions, and participate in the hearing proceedings. Although the related costs are borne entirely by cooperatives, they contended nonmembers share fully in the benefits of the Federal order.

The marketing activities for which reimbursement is requested are activities which the major cooperatives in the Ohio Valley area are pursuing and would continue to pursue, in the interest of their own members. In the case of each of these cooperatives, the producer-members have banded together voluntarily to market their milk at joint risk and expense in the expectation that by joint action they will derive improved returns. The expenses incurred for various marketing activities are merely those which its members consider necessary for attaining the highest possible returns for their milk.

Actually, many of these expenses are recovered through charges to handlers for providing the various marketing services which they demand. Many handlers rely entirely upon cooperatives for their total milk supply. They want the milk delivered to their plants in the quantities and at the times that fit their processing and distributing operations. The 4- and 5-day bottling weeks and the heavy mid-week bottling schedules of handlers place a substantial burden on cooperatives in handling milk that is produced daily. Cooperatives are called upon sporadically for supplemental supplies and are expected to have such milk available. Charges for handling and transportation and other markups over class prices are a matter of common trade practice in these situations.

Proponents claimed, though, that to the extent that they are unable to achieve full recovery of marketing expenses their members are placed in an inequitable relationship with nonmembers

who are not incurring the same marketing costs. Producers in the proposed Ohio Valley area not belonging to any cooperative association represent about 15 percent of all area producers, a relatively small proportion of the total. The unrecovered expenses described by proponents, spread over the milk of all producers as compared to member milk of cooperatives, would represent a minimal per hundredweight saving to member-producers. Any incidental benefits that may accrue to the relatively few nonmembers on the Ohio Valley market from activities currently engaged in by cooperatives in the direct interest of their members cannot be construed, under the conditions in this market, as a reason for requiring by law that all producers must share the cost of such activities.

The important positions which the cooperatives have acquired in their respective segments of the proposed Ohio Valley market are the direct result of the enterprise and initiative that they have shown individually in advancing the interests of their member producers. Each of the cooperatives, in performing activities such as balancing supplies, handling the market's reserves, and participating in Federal order actions, is acting as any alert, intelligent, organized participant in the market would be expected to do. Where cooperatives can achieve and retain, as voluntary organizations, a dominant market position, as the proponent cooperatives have, without outside help in the collection of income for the normal range of cooperative services, it would not be sound to provide assistance in the form of a subsidy by regulation. In such circumstances, assistance of this kind could hardly strengthen such cooperatives in the long run, and it could actually weaken them through their increased dependence on the regulation and the supervision that follows from providing such funds as a public function.

There is no historical or current situation that warrants the application of cooperative payment provisions in the proposed Ohio Valley market. The cooperatives in this area are strong, successful organizations that have been carrying on various marketing activities on behalf of their members for many years. No condition was shown which supports a need to provide cooperative payments in this market.

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.

(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 each of the aforesaid marketing areas, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

Recommended Marketing Agreement and Order Amending the Orders

The 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 and consolidating the orders, as amended, regulating the handling of milk in the Cincinnati, Miami Valley, Columbus, Northwestern Ohio, and Tri-State marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

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1033.6 Ohio Valley marketing area.
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1033.15 Producer milk.
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1033.17 Producer-handler.
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Market Administrator

Sec.

1033.25 Designation.
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Reports, Records, and Facilities

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1033.40 Skim milk and butterfat to be classified.
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Effective Time and Suspension or Termination

1033.80 Effective time.
1033.81 Suspension or termination.
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Miscellaneous Provisions

1033.90 Agents.
1033.91 Separability of provisions.
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Definitions

§ 1033.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1033.2 Department.

"Department" means the U.S. Department of Agriculture or any other Federal agency authorized to perform the functions of the U.S. Department of Agriculture.

§ 1033.3 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the United States authorized to exercise the powers or perform the duties of the said Secretary of Agriculture.

§ 1033.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 1033.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) Has full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or milk products for its members; and

(c) Has its entire organization and all of its activities under the control of its members.

§ 1033.6 Ohio Valley marketing area.

The "Ohio Valley marketing area" hereinafter called the "marketing area", means all the territory, by designated zones, within the boundaries of the following geographical units, including all waterfront facilities connected therewith and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within the listed geographical units:

(a) The "Northwestern Zone" shall include the following territory:

OHIO COUNTIES

Allen.	Morrow.
Auglaize.	Putnam.
Crawford.	Richland.
Fulton.	Sandusky (Woodville and Madison Townships only).
Hancock.	Seneca.
Hardin.	Van Wert (city of Delphos only).
Henry.	Wood.
Logan.	Wyandot.
Lucas.	
Marion.	
Mercer.	

MICHIGAN COUNTIES

Lenawee (Blissfield, Deerfield, Ogden, Palmyra, and Riga Townships only).
Monroe (except Ash, Berlin, Dundee, Exeter, London, and Milan Townships).

(b) The "Central Zone" shall include the following territory:

OHIO COUNTIES

Adams.	Greene.
Brown.	Hamilton.
Butler.	Highland.
Champaign.	Hocking.
Clark.	Jackson.
Clermont.	Knox.
Clinton.	Lawrence.
Darke.	Licking.
Delaware.	Madison.
Fairfield.	Miami.
Fayette.	Montgomery.
Franklin.	Pickaway.
Gallia.	Pike.
Preble.	Union.
Ross.	Vinton.
Scioto.	Warren.
Shelby.	

KENTUCKY COUNTIES

Boone.	Harrison.
Boyd.	Kenton.
Bracken.	Lewis.
Campbell.	Mason.
Grant.	Pendleton.
Greenup.	Robertson.

INDIANA COUNTIES

Dearborn.	Ohio.

(c) The "Southeastern Zone" shall include the following territory:

OHIO COUNTIES

Athens.	Meigs.
Coshocton (except Adams Township).	Morgan.
Guernsey (except Oxford, Londonderry, and Millwood Townships).	Muskingum.
	Noble.
	Perry.
	Washington.

KENTUCKY COUNTIES

Floyd.	Magoffin.
Johnson.	Martin.
Lawrence.	Pike.

WEST VIRGINIA COUNTIES

Boone.	Mingo.
Cabell.	Pleasants.
Calhoun.	Putnam.
Fayette.	Raleigh.
Gilmer.	Ritchie.
Jackson.	Roane.
Kanawha.	Wayne.
Lincoln.	Wirt.
Logan.	Wood.
Mason.	Wyoming.

§ 1033.7 Fluid milk product.

"Fluid milk product" means the following products or mixtures in either fluid or frozen form, including such products or mixtures that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted: Milk, skim milk, lowfat milk, milk drinks, eggnog, buttermilk, filled milk, and mixtures of cream and milk or skim milk containing less than 10.5 percent butterfat, including milk shake mixes containing less than 15 percent total milk solids. The term "fluid milk product" shall not include yogurt, frozen desserts, frozen dessert mixes, dietary products and infant formulas in hermetically sealed metal or glass containers, and evaporated or condensed milk or skim milk in plain or sweetened form.

§ 1033.8 Route disposition.

"Route disposition" means a delivery, either directly or through any distribution facility (including disposition from a plant store or by a vendor or vending machine), of a fluid milk product classified as Class I pursuant to § 1033.41(a), except a delivery to a plant. However, for the single purpose of determining the qualification of a distributing plant as a pool plant pursuant to § 1033.12(a), packaged fluid milk products transferred as Class I milk from the distributing plant to another plant shall be considered as route disposition of the transferor plant and shall be considered as route disposition in the marketing area to the extent of in-area route disposition of the transferee plans.

§ 1033.9 Plant.

(a) Except as provided in paragraph (b) of this section, "plant" means the land and buildings, together with their surroundings, facilities, and equipment, constituting a single operating unit or establishment which contains stationary holding facilities and which is operated for the bulk handling or processing of milk or milk products (including filled milk).

(b) The term "plant" shall not include distribution points (separate facilities used primarily for the transfer to vehicles of packaged fluid milk products moved there from processing and packaging plants) or bulk reload points (separate facilities at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant). If a distribution point or bulk reload point is on the premises of a plant, it shall be considered a part of the plant operation.

§ 1033.10 Distributing plant.

"Distributing plant" means a plant in which fluid milk products approved by a duly constituted health authority for fluid consumption, or filled milk, are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1033.11 Supply plant.

"Supply plant" means a plant from which a fluid milk product approved by a duly constituted health authority for fluid consumption, or filled milk, is transferred to a pool plant during the month.

§ 1033.12 Pool plant.

"Pool plant" means a plant specified in paragraph (a), (b), or (c) of this section that is not an other order plant or a producer-handler plant.

(a) A distributing plant with:

(1) Route disposition in the marketing area during the month of not less than 15 percent of its total route disposition, such route disposition in both cases to be exclusive of packaged fluid milk products received from other plants if priced as Class I milk under this or any other Federal order and of route disposition of filled milk; and

(2) Route disposition during the month of not less than 50 percent of its total receipts of fluid milk products (excluding bulk fluid milk products received by transfer or diversion from other plants as Class II or Class III milk) that are approved by a duly constituted health authority for fluid consumption, subject to the following further conditions:

(i) Both such route disposition and receipts shall be exclusive of filled milk and of package fluid milk products received from other plants if priced as Class I milk under this or any other Federal order;

(ii) A distributing plant that does not meet such percentage requirement in the current month shall not be disqualified under this subparagraph as a pool plant

if such percentage was met in the preceding month;

(iii) Two or more distributing plants of a handler may be considered as a unit for the purpose of meeting such percentage requirement if the handler files with the market administrator prior to the period for which unit pooling is desired a written request for such unit pooling; and

(iv) A distributing plant with route disposition only on the campus of the Ohio State University at Columbus, Ohio, shall be required to meet such percentage requirement only for the months of January, February, October, and November.

(b) A supply plant from which during the month the total quantity of fluid milk products (except filled milk) transferred to and physically received in a plant(s) qualified under paragraph (a) of this section, plus route disposition within the marketing area from the supply plant, is not less than 50 percent of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is received from dairy farmers (excluding any such milk received by diversion from other plants) and from handlers described in § 1033.16 (c). A plant that was qualified under this paragraph in each of the months of September through March shall be a pool plant for the immediately following months of April through August unless the milk received at the plant does not continue to meet such requirements of a duly constituted health authority, or the plant operator files with the market administrator prior to any such month a written request that the plant be designated as a nonpool plant. Such nonpool plant status shall be effective, beginning with the first month following such notice, until the plant qualifies under this section on the basis of shipments.

(c) A plant, other than a distributing plant, that is approved by a duly constituted health authority to handle milk for fluid consumption and is operated by a cooperative association, if during the month more than 50 percent of the producer milk of members of such cooperative association is delivered directly from their farms, or transferred from such plant, to plants of other handlers qualified under paragraph (a) of this section. If the cooperative association files with the market administrator prior to any month a written request for nonpool status for such plant, the plant shall be a nonpool plant for such month and for each of the next 11 months in which it does not qualify pursuant to paragraph (b) of this section on the basis of shipments.

§ 1033.13 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of such plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

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

(c) "Partially regulated distributing plant" means a distributing plant that is not an other order plant or a producer-handler plant.

(d) "Unregulated supply plant" means a supply plant that is not an other order plant or a producer-handler plant.

§ 1033.14 Producer.

(a) "Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk approved, by farm permit or other approval, by a duly constituted health authority for fluid consumption, which milk is received at a pool plant or diverted within the limitations of § 1033.15 from a pool distributing plant to another pool plant or to a nonpool plant that is not a producer-handler plant. The term "producer" shall not include any such person with respect to milk that is received at a pool plant by diversion from an other order plant if a Class II or Class III classification is designated under this order for such milk, and such milk is subject to the pricing and pooling provisions of another order issued pursuant to the Act.

§ 1033.15 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer which is:

(a) With respect to a handler described in § 1033.16(a):

(1) Received at the handler's pool plant directly from the producer, excluding any such milk received by diversion from another pool plant. If milk is delivered in the same tank truck to more than one plant, the entire load shall be deemed to have been received at the first pool plant where milk is withdrawn from the tank truck;

(2) Received at the handler's pool plant under the conditions described in § 1033.16(c); and

(3) Diverted for the handler's account from a pool distributing plant to another pool plant or a nonpool plant that is not a producer-handler plant, subject to the further conditions set forth in paragraph (d) of this section;

(b) With respect to a handler described in § 1033.16(b), diverted for such handler's account from the pool distributing plant of another handler to a nonpool plant that is not a producer-handler plant, subject to the further conditions set forth in paragraph (d) of this section; and

(c) With respect to a handler described in § 1033.16(c), received by the handler from the producer's farm in excess of the producer's milk that is received at pool plants pursuant to paragraph (a)(2) of this section. Such producer milk of the handler shall be deemed to have been received by the handler at the location of the pool plant to which the greatest quantity of the milk on tank truck or trailer load was delivered.

(d) The following conditions shall apply to milk of a producer diverted from a pool distributing plant to another pool plant or a nonpool plant that is not a producer-handler plant:

(1) Not less than 2 days' production of the producer must be physically received during the month at such pool distributing plant;

(2) In any month of September through February, the quantity of milk of any producer diverted to nonpool plants that exceeds the quantity of such producer's milk physically received at pool plants, as measured by days of production, shall be deemed not to have been received by the diverting handler and shall not be producer milk. The diverting handler shall designate such deliveries to nonpool plants that are not producer milk pursuant to this subparagraph. If the handler fails to make such designation, no milk diverted by him to nonpool plants shall be producer milk;

(3) Except as provided in subparagraph (4) of this paragraph, diverted milk shall be deemed to have been received by the diverting handler at the location of the plant to which diverted;

(4) If at least one-half of a producer's milk pooled under the order during the month, as measured by days of production, is physically received at pool plants located in the same price zone in the marketing area, such producer's milk diverted from a pool distributing plant to another plant shall be deemed to have been received by the diverting handler at the location of the pool plant from which diverted; and

(5) Milk diverted to an other order plant shall be producer milk only if a Class II or Class III classification is designated for such milk pursuant to the provisions of another order issued pursuant to the Act, and such milk is not subject to the pricing and pooling provisions of the other order.

§ 1033.16 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted for its account from a pool distributing plant of another person to a nonpool plant that is not a producer-handler plant;

(c) Any cooperative association with respect to producer milk which is delivered for its account from the farm to the pool plant of another person in a tank truck or trailer owned or operated by, or under contract to, such cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) Any person defined in § 1033.17; and

(f) Any person in his capacity as the operator of an other order plant described in § 1033.56.

§ 1033.17 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no fluid milk products from sources other than his own farm production, pool plants, and other order plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing, packaging, and distribution business are the personal enterprise and risk of such person.

§ 1033.18 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Fluid milk products and bulk cream from any source except producer milk, fluid milk products and bulk cream from pool plants, and fluid milk products and bulk cream in inventory at the beginning of the month;

(b) Products, other than fluid milk products and Class II products listed in § 1033.41(b) (1) and (3), from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for pursuant to § 1033.32.

§ 1033.19 Chicago butter price.

"Chicago butter price" means the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-score bulk creamery butter at Chicago as reported for the month by the Department.

§ 1033.20 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

MARKET ADMINISTRATOR

§ 1033.25 Designation.

The agency for the administration of this part shall be a market administrator selected by the Secretary. The administrator shall be entitled to compensation determined by the Secretary, and shall be subject to removal at the Secretary's discretion.

§ 1033.26 Powers.

The market administrator shall have the following powers with respect to this part:

(a) Administer this part in accordance with its terms and provisions;

(b) Make rules and regulations to effectuate the terms and provisions of this part;

(c) Receive, investigate, and report complaints of violations to the Secretary; and

(d) Recommend amendments to the Secretary.

§ 1033.27 Duties.

The market administrator shall perform all the duties necessary to administer the terms and provisions of this part, including, but not limited to, the following:

(a) Execute and deliver a bond to the Secretary within 45 days after he enters upon his duties. Such bond shall be:

(1) Effective as of the date he enters upon his duties;

(2) Conditioned upon the faithful performance of his duties; and

(3) In an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of persons necessary to enable him to administer the terms and provisions of this part;

(c) Obtain a bond in a reasonable amount and with surety satisfactory to the market administrator covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of funds provided by the administrative assessment the cost of:

(1) His bond and the bonds of his employees;

(2) His own compensation; and

(3) All other expenses incurred in the maintenance and functioning of his office, except expenses specifically associated with the performance of marketing services;

(e) Keep books and records which will clearly reflect the transactions provided for in this part, and upon request by the Secretary surrender them to:

(1) His successor; or

(2) Such other person as the Secretary may designate;

(f) Submit his books and records to examination by the Secretary;

(g) Furnish the information and reports requested by the Secretary;

(h) Announce publicly, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such act, has not filed the reports or made the payments required by this part;

(i) Verify the reports and payments of each handler by audit and such other investigation deemed necessary;

(j) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information concerning the operation of the order and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information;

(k) On or before the dates specified, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate the following:

(1) The fifth day of each month, the Class I price pursuant to § 1033.51(a) and the Class I butterfat differential pursuant to § 1033.52(a), both for the current month, and the Class II and Class III prices pursuant to § 1033.51 (b) and (c) and the Class II and Class III butterfat differentials pursuant to § 1033.52 (b) and (c), all for the preceding month; and

(2) The 12th day after the end of each month, the uniform price computed pursuant to § 1033.61, and the producer butterfat differential computed pursuant to § 1033.73;

(l) On or before the 12th day after the end of each month:

(1) Provide each pool handler with a written statement of his obligations under this part; and

(2) Report to each cooperative association the class utilization of milk received at each pool plant during the month from producers who have authorized such association to receive payments for them under § 1033.72(c). For the purpose of this report, the milk so received shall be prorated to each class in the proportions that the total receipts of producer milk at such plant were used in each class, adjusted to eliminate transfers of fluid milk products to other pool plants;

(m) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1033.46(a)(12) and the corresponding step of § 1033.46(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(n) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1033.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in the verification of such report; and

(o) Furnish to each handler operating a pool plant who has shipped fluid milk products and bulk cream to an other order plant the classification to which the skim milk and butterfat in such fluid milk products and bulk cream were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

REPORTS, RECORDS, AND FACILITIES

§ 1033.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, reports of receipts and utilization for such month shall be made to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(a) Each handler operating a pool plant shall report for each of his pool plants:

(1) Receipts of skim milk and butterfat contained in or represented by:

(i) Producer milk, showing in the case of milk received directly from each producer the pounds and butterfat test and the number of days of production involved for each producer;

(ii) Fluid milk products and bulk cream from other pool plants;

(iii) Other source milk, with the identity of each source; and

(iv) Products listed in § 1033.41(b)(1) from other plants;

(2) Inventories of fluid milk products and products listed in § 1033.41(b)(1) at the beginning and the end of the month, showing separately such inventories in bulk form and in packaged form;

(3) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately:

(i) Total route disposition and route disposition in the marketing area, showing separately such disposition of filled milk inside and outside the marketing area; and

(ii) Transfers and diversions to other plants; and

(4) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk and butterfat contained in milk from producers for which it is the handler pursuant to § 1033.16 (b) or (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds and butterfat test of the milk and the number of days of production involved;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to subparagraph (1) of this paragraph; and

(3) Such other information with respect to its receipts and utilization of skim milk and butterfat administrator may prescribe; and

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of bottling grade milk from dairy farmers shall be reported in lieu of receipts of producer milk. Such report shall include a separate statement showing the amount of reconstituted skim milk in route disposition in the marketing area.

§ 1033.31 Other reports.

(a) Each producer-handler shall report to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator.

(c) On or before the 25th day of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, his receipts of producer milk during the first 15 days of the month.

(d) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1033.57(a) shall report to the market administrator, in the detail and on forms prescribed by the market administrator, his payroll for such month for dairy farmers from whom he received bottling grade milk. Such payroll shall show for each dairy farmer the total pounds of milk received from him, the average butterfat content thereof, and the rate and net amount of the payment made to such dairy farmer, together with the amount and nature of any deductions involved.

(e) On or before the 22d day after the end of each month, each cooperative association with respect to milk of each member producer shall submit to the market administrator the association's completed producer payroll which shall list the pounds of milk received, the average butterfat content thereof, and the rate and net amount of payment, together with the amount and nature of any deductions involved.

§ 1033.32 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data for each month, with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

(d) Payments to the producer-settlement fund, including the amount and nature of any deductions authorized by producers and the disbursement of money so deducted.

§ 1033.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such books and records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1033.40 Skim milk and butterfat to be classified.

The skim milk and butterfat required to be reported pursuant to § 1033.30 shall be classified each month in accordance with §§ 1033.41 through 1033.46.

§ 1033.41 Classes of utilization.

Subject to §§ 1033.43 and 1033.44, skim milk and butterfat shall be classified in the following classes:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as provided in paragraphs (b) and (c) of this section;

(2) In inventory of packaged fluid milk products at the end of the month; and

(3) Not accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of as fluid cream (including aerated cream and sterilized cream) or as mixtures of cream and milk or skim milk containing 10.5 percent or more butterfat;

(2) In packaged inventory at the end of the month of the products listed in subparagraph (1) of this paragraph;

(3) Used to produce yogurt, sour cream, sour mixtures (such as dips and dressings), cottage cheese, cottage cheese curd, pancake mixes, and puddings; and

(4) Disposed of in bulk as milk, skim milk, or cream to any commercial food processing establishment (other than a milk or filled milk plant) for the manufacture of packaged food products (other than milk products and filled milk) for consumption off the premises.

(c) *Class III milk.* Class III milk shall be:

(1) Skim milk and butterfat used to produce butter, nonfat dry milk, dry whole milk, dry whey, dry buttermilk, casein, cheese (except cottage cheese and cottage cheese curd), frozen cream, milk shake mixes containing 15 percent or more total milk solids, frozen desserts, frozen dessert mixes, dietary products and infant formulas in hermetically sealed metal or glass containers, evaporated or condensed milk or skim milk in plain or sweetened form, and any product containing six percent or more nonmilk fat (or oil);

(2) Skim milk and butterfat in fluid milk products and products listed in paragraph (b) (1) and (3) of this section that are dumped, spilled, or disposed of for animal feed;

(3) Skim milk and butterfat in inventory of bulk fluid milk products and bulk cream at the end of the month;

(4) Skim milk represented by the nonfat milk solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(5) Skim milk and butterfat, respectively, in each pool plant's shrinkage, but not in excess of:

(i) Two percent of producer milk physically received at the plant (except

that received from a handler described in § 1033.16(c));

(ii) Plus 1.5 percent of producer milk received from a handler described in § 1033.16(c) and of milk diverted to such plant from another pool plant, except that if the plant operator receiving such milk files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(iii) Plus 0.5 percent of producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the other plant purchases such milk on the basis of farm weights, no percentage shall apply;

(iv) Plus 1.5 percent of bulk fluid milk products received by transfer from other pool plants;

(v) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II or Class III classification is requested by the operators of both plants;

(vi) Plus 1.5 percent of bulk fluid milk products received from unregulated supply plants exclusive of the quantity for which Class II or Class III classification is requested by the handler; and

(vii) Less 1.5 percent of bulk fluid milk products transferred to other plants;

(6) Skim milk and butterfat, respectively, in shrinkage of other source milk assigned pursuant to § 1033.42(b)(2); and

(7) Skim milk and butterfat, respectively, in shrinkage of milk from producers that is diverted from a pool plant to a nonpool plant by a cooperative association acting as a handler pursuant to § 1033.16(b) or in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1033.16(c), but not in excess of 0.5 percent of the receipts of milk from producers, exclusive of such receipts for which farm weights are used as the basis of receipt at the plant to which delivered.

§ 1033.42 Shrinkage.

The market administrator shall:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, at each pool plant; and

(b) If other source milk is received at the pool plant, shrinkage at such plant shall be prorated between:

(1) Skim milk and butterfat, respectively, in the receipts used in the computations pursuant to § 1033.41(c)(5); and

(2) Skim milk and butterfat, respectively, in other source milk in bulk fluid form, exclusive of that specified in § 1033.41(c)(5).

§ 1033.43 Interplant movements.

Skim milk or butterfat in the form of a fluid milk product or bulk cream shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred or diverted from a pool plant by the operator of such plant to another pool plant, subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after the computations pursuant to § 1033.46(a)(12) and the corresponding step of § 1033.46(b);

(2) If the transfer or plant received during the month other source milk to be allocated pursuant to § 1033.46(a)(6) and the corresponding step of § 1033.46(b), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1033.46(a)(11) or (12) and the corresponding steps of § 1033.46(b), the skim milk and butterfat so transferred or diverted up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(4) Skim milk and butterfat transferred or diverted in bulk to a pool supply plant from another pool plant shall be assigned in sequence beginning with Class III to the milk remaining in each class at the transferee plant after the computations pursuant to § 1033.46(a)(12) and the corresponding step of § 1033.46(b); and

(5) If the producer milk received during the month at the transferee plant exceeds 115 percent of the remaining Class I milk at such plant after the computations pursuant to § 1033.46(a)(12) and the corresponding step of § 1033.46(b), skim milk and butterfat transferred or diverted in bulk between pool distributing plants shall be assigned in sequence beginning with Class III to the milk remaining in each class at the transferee plant after the computations pursuant to § 1033.46(a)(12) and the corresponding step of § 1033.46(b);

(b) As Class I milk, if transferred from a pool plant to a producer-handler plant, if Class II or Class III utilization is requested by the operators of both plants, such classification shall be as Class II or Class III milk to the extent of such utilization at the transferee plant;

(c) As Class I milk, if transferred as packaged fluid milk products to a nonpool plant that is not an other order plant or a producer-handler plant;

(d) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1033.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any route disposition in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to such receipts from other order plants, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of bottling grade milk for such nonpool plant;

(ii) Any route disposition in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts of fluid milk products from plants fully regulated by such order, next pro rata to such receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of bottling grade milk for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute regular sources of supply of bottling grade milk for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool plants and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred or diverted shall be classified as Class II milk to the extent that Class II utilization is available and the remainder as Class III milk; and

(e) As follows, if transferred or diverted to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request

in the reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of the Class II or Class III utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk and butterfat allocated to the other class shall be classified as Class III milk; and

(6) If the form in which any fluid milk product transferred to another order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1033.41.

§ 1033.44 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be classified as Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise. In the case of milk received from producers by a handler described in § 1033.16 (c) for delivery to a pool plant, such handler shall have the burden of proving the classification of skim milk and butterfat in the milk specified in § 1033.15(c), and the operator of such pool plant shall have the burden of proving the classification of skim milk and butterfat in the milk specified in § 1033.15 (a)(2).

(b) If verification by the market administrator discloses that the original classification of skim milk or butterfat was incorrect, such skim milk or butterfat shall be reclassified.

§ 1033.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors all reports submitted pursuant to § 1033.30 and shall compute for each handler the pounds of skim milk and butterfat in each class, subject to the following conditions:

(a) The skim milk contained in any product utilized, produced, or disposed of by a handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(b) If a handler with two or more pool plants has no fluid milk products to be assigned under § 1033.46(a) (11) or (12) and the corresponding steps of § 1033.46 (b), allocations under § 1033.46 shall be determined separately for each of his pool plants. Otherwise, the market administrator shall combine the receipts and utilization in each of the respective classes at all pool plants of such handler for purposes of § 1033.46; and

(c) The classification, allocation, and pool obligation with respect to producer milk for which a cooperative association is the handler pursuant to § 1033.16 (b) and (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1033.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1033.45, the market administrator shall determine the classification of producer milk for each handler (or each pool plant, if applicable) as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III milk pursuant to § 1033.41(c)(5);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (6)(v) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in inventory of packaged fluid milk products at the beginning of the month: *Provided*, That this subparagraph shall apply only to a plant that was fully regulated in the immediately preceding month under this order or any other Federal order providing for a similar allocation of beginning inventories of packaged fluid milk products;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in packaged products listed in § 1033.41(b)(1) that are received from other plants or in inventory at the beginning of the month;

(6) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product or bulk cream;

(ii) Receipts of fluid milk products (except filled milk) and bulk cream for which bottling grade certification is not established and receipts of fluid milk products and bulk cream from unidentified sources;

(iii) Receipts of fluid milk products and bulk cream from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants that were not subtracted pursuant to subparagraph (2) of this paragraph; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant;

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in bulk cream received from nonpool plants that were not subtracted pursuant to subparagarph (6)(iii) of this paragraph;

(8) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II and Class III (beginning with Class III) but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (6)(iv) of this paragraph:

(*a*) For which the handler requests Class II or Class III classification; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts of fluid milk products from other pool handlers, and receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (6)(v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (6)(v) of this paragraph, in excess of similar transfers to such plant, if Class II or Class III classification was requested by the operator of such plant and the handler;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory of fluid milk products and bulk cream at the beginning of the month that were not subtracted pursuant to subparagraph (4) of this paragraph;

(10) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(11) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (2), (6)(iv), and (8)(i) of this paragraph;

(12) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant that are in excess of similar transfers to the same plant and that were not subtracted pursuant to subparagraphs (6)(v) and (8)(ii) of this paragraph:

(i) In series beginning with Class III, the pounds determined my multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1033.27(m) or the percentage that the Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remainder of such receipts;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk cream received from other pool plants according to the classification of such products pursuant to § 1033.43(a); and

(14) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

MINIMUM PRICES

§ 1033.50 Basic formula price.

The basic formula price shall be the price per hundredweight for manufacturing grade milk f.o.b. plants in Wisconsin and Minnesota, as reported on a 3.5 percent butterfat basis by the Department for the month. For the purpose of computing Class I prices, the basic formula price shall not be less than $4.33.

§ 1033.51 Class prices.

Subject to the provisions of §§ 1033.52 and 1033.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the preceding month plus $1.50, plus 20 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month, but not to exceed a price computed as follows:

(1) Multiply the Chicago butter price by 4.2;

(2) Multiply by 8.2 the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

§ 1033.52 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices calculated pursuant to § 1033.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I milk.* Multiply the Chicago butter price for the preceding month by 0.12.

(b) *Class II milk.* Multiply the Chicago butter price for the month by 0.12.

(c) *Class III milk.* Multiply the Chicago butter price for the month by 0.115.

§ 1033.53 Location differentials.

(a) The Class I price for producer milk and other source milk (for which a location adjustment is applicable) at a plant that is outside the Central Zone shall be adjusted as follows:

(1) At a plant in the Southeastern Zone, the Class I price shall be increased 5 cents;

(2) At a plant in the Northwestern Zone, the Class I price shall be decreased 5 cents;

(3) At a plant outside the marketing area and 60 miles or less from the city hall of the city listed below that is nearest such plant, the Class I price shall be the Class I price applicable at the location of such nearest city hall:

OHIO	
Cincinnati.	Lima.
Coshocton.	Marietta.
Dayton.	Toledo.
KENTUCKY	
Ashland.	Maysville.
WEST VIRGINIA	
Beckley.	Charleston.

(4) At a plant outside the marketing area and more than 60 miles from the city hall of each of the cities listed in subparagraph (3) of this paragraph, the Class I price shall be the Class I price applicable at the location of the nearest city hall of such cities, less 11 cents and less an additional 1.5 cents for each 10 miles or fraction thereof in excess of 70 miles that such plant is located from such nearest city hall; and

(5) For the purpose of this paragraph, distances shall be measured by the shortest hard-surfaced highway distance as determined by the market administrator.

(b) For the purpose of computing location differential credits, fluid milk products received at a pool distributing plant from other pool plants shall be assigned to the remaining Class I milk at the transferee plant, after the assignments pursuant to § 1033.46(a) (1) through (12) and the corresponding steps of § 1033.46 (b), on a prorata basis with the aggregate receipts of producer milk at such transferee plant. Such assignment shall be made first to receipts of fluid milk products from plants at which the applicable Class I price is not less than the Class I price at such pool distributing plant, and then to receipts of fluid milk products from plants with lower Class I prices in sequence beginning with the plant having the highest Class I price.

§ 1033.54 Use of equivalent prices.

If for any reason a price quotation or factor required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price or factor determined by the Secretary to be equivalent to the price or factor that is required.

APPLICATION OF PROVISIONS

§ 1033.56 Plants subject to other Federal orders.

(a) Except as specified in § 1033.31 and in paragraph (b) of this section, the provisions of this part shall not apply to a distributing plant or a supply plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless the following conditions are met:

(1) The plant is qualified as a pool plant pursuant to § 1033.12 during the current month and the preceding month; and

(2) A greater volume of fluid milk products, except filled milk, is disposed of from such plant as route disposition in the Ohio Valley marketing area and to pool plants qualified on the basis of route disposition in the Ohio Valley marketing area than is disposed of from such plant as route disposition in the marketing area regulated pursuant to the other order and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

(b) Each handler operating a distributing plant described in paragraph (a) of this section that is regulated under an order providing for individual handler pooling shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to the route disposition in each marketing area; and

(2) Compute the value of the quantity of reconstituted skim milk assigned in subparagraph (1) of this paragraph to route disposition in this marketing area at the Class I price under this part applicable at the location of the other order plant (not to be less than the Class III price) and subtract its value at the Class III price.

§ 1033.57 Obligation of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1033.30(c) and 1033.31(d) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1033.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1033.60(g) and a credit in the amount specified in § 1033.71 (b) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in subdivision (ii) of this subparagraph.

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1033.30(c) and 1033.31(d) similar reports for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1033.12(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation deduct the sum of:

(i) The gross payments made by such handler for bottling grade milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph; and

(ii) Payments to the producer-settlement fund of another order issued pursuant to the Act under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat in the plant's route disposition in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant (not to be less than the Class III price) subtract its value at the weighted average price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant (not to be less than the Class III price) less the value of such skim milk at the Class III price.

Computation of Uniform Price

§ 1033.60 Computation of the net pool obligation of each handler.

The net pool obligation of each handler described in § 1033.16 (a), (b), and (c) for each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of producer milk in each class as computed pursuant to § 1033.46(c) by the applicable class price and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage deducted from each class pursuant to § 1033.46(a)(14) and the corresponding step of § 1033.46(b) by the applicable class price;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I or Class II price for the current month, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1033.46(a)(9) and the corresponding step of § 1033.46(b);

(d) Add the amount obtained from multiplying the difference between the Class I price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1033.46(a)(4) and the corresponding step of § 1033.46(b). If the Class I price for the current month is less than the Class I price for the preceding month, the result shall be a minus amount;

(e) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable in the preceding month to the following products and the Class II price for the current month by the hundredweight of skim milk and butterfat in the products listed in § 1033.41(b) (1) and (3) that were in Class I inventory at the end of the preceding month under the Greater Cincinnati (this Part 1033) and Miami Valley (Part 1034 of this chapter) Federal orders;

(f) Add the amount obtained from multiplying the difference between the Class I price at the pool plant and the Class III price, both for the current month, by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1033.46(a) (6) and (7) and the corresponding steps of § 1033.46 (b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1033.46(a)(6) (iv) and (v) and the corresponding steps of § 1033.46(b)(6) the Class I price shall be adjusted to the location of the transferor plant (but not to be less than the Class III price); and

(g) Add the amount obtained from multiplying the Class I price adjusted for the location of the nearest nonpool plants from which an equivalent volume was received, but not to be less than the Class III price, by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1033.46(a)(11) and the corresponding step of § 1033.46(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order.

§ 1033.61 Computation of the uniform price.

For each month the market administrator shall compute the uniform price per hundredweight as follows:

(a) Combine into one total the values computed pursuant to § 1033.60 for all handlers who filed the reports prescribed by § 1033.30 for the month and who made the payments required pursuant to § 1033.71 for the preceding month;

(b) Subtract, if the average butterfat content of the milk specified in paragraph (f) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent, the amount obtained by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential pursuant to § 1033.73, and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the total value of the minus location differentials computed pursuant to § 1033.74(a);

(d) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1033.74(a);

(e) Add an amount representing not less than one-half of the unobligated balance in the producer-settlement fund;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(g);

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers at plants located in the Central Zone;

(h) For the months specified in paragraphs (i) and (j) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (e) of this section the amount obtained by multiplying the hundredweight of milk specified in paragraph (f)(2) of this section by the weighted average price;

(i) Subtract for each of the months of April, May, June, and July the amount obtained by multiplying the hundredweight of producer milk specified in paragraph (f)(1) of this section by a rate that is equal to 6 percent of the average basic formula price (computed to the nearest cent) for the preceding calendar year but not to exceed 25 cents;

(j) Add for each of the months of September, October, and November one-fourth of the total amount subtracted pursuant to paragraph (i) of this section for the preceding period of April through July, and add for the month of December the remainder of such total amount plus any interest earned on such total amount;

(k) Divide the amount resulting from the computations pursuant to paragraphs (h), (i), and (j) of this section by the hundredweight of producer milk specified in paragraph (f)(1) of this section; and

(l) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers at plants located in the Central Zone.

PAYMENTS FOR MILK

§ 1033.70 Producer-settlement fund.

The market administrator shall maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1033.56(b), 1033.57, 1033.71, and 1033.77 shall be deposited in this fund, and all payments made pursuant to §§ 1033.72 and 1033.77 shall be made out of this fund;

(b) All amounts subtracted pursuant to § 1033.61(i) shall be deposited in this fund and shall remain therein as an obligated balance until withdrawn for the purpose of effectuating § 1033.61(j); and

(c) The difference between the amount added pursuant to § 1033.61(e) and the amount resulting from the subtraction pursuant to § 1033.61 (g) or (l) shall be deposited in, or withdrawn from, this fund, as the case may be.

§ 1033.71 Payments to the producer-settlement fund.

(a) On or before the 25th day of the month, each handler shall pay to the market administrator an amount determined by multiplying the hundredweight of producer milk received by him during the first 15 days of the month by $3.50, less proper deductions and charges authorized in writing by producers from whom he received milk.

(b) On or before the 14th day after the end of the month, each handler shall pay to the market administrator an amount equal to his net pool obligation computed pursuant to § 1033.60 less:

(1) The amount obtained from multiplying the weighted average price applicable at the location of the plants from which the other source milk is received (not to be less than the Class III price) by the hundredweight of other source milk for which a value is computed pursuant to § 1033.60(g);

(2) Payments made pursuant to paragraph (a) of this section for such month; and

(3) Proper deductions and charges authorized in writing by producers from whom he received milk, except that the total deductions and charges made under this section for the month for each producer shall not be greater than the total value of the milk received from such producer during the month.

§ 1033.72 Payments from the producer-settlement fund.

(a) On or before the 28th day of the month, the market administrator shall make payment, subject to paragraph (c) of this section, to each producer for milk received from such producer during the first 15 days of the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71 (a) at the rate of $3.50 per hundredweight, less the authorized deductions and charges made by the handlers with respect to such milk;

(b) On or before the 17th day after the end of the month, the market administrator shall make payment, subject to paragraph (c) of this section, to each producer for milk received from such producer during the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71 (b) at the uniform price per hundredweight as adjusted pursuant to §§ 1033.73, 1033.74, and 1033.75, less:

(1) Payments made pursuant to paragraph (a) of this section for such month; and

(2) Authorized deductions and charges made by the handlers with respect to such milk;

(c) In making paymenis to producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the day prior to the dates specified in such paragraphs, to each cooperative association for all producers who market their milk through the association and who are certified to the market administrator by the association as having authorized the association to receive such payment an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section;

(d) If the market administrator does not receive the full payment required of a handler pursuant to § 1033.71, he shall reduce uniformly per hundredweight his payments to producers for milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete the payments to producers on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler; and

(e) If the unobligated balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, except those payments due producers as described in paragraph (d) of this section, the market administrator shall reduce uniformly per hundredweight his payments to producers and shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the funds become available.

§ 1033.73 Butterfat differential to producers.

The uniform price for producer milk shall be increased or decreased for each one-tenth percent that the butterfat content of the milk is above or below 3.5 percent, respectively, at the rate determined as follows:

(a) Compute the percentage of the total butterfat in producer milk assigned to each class pursuant to § 1033.46;

(b) Multiply each such percentage figure by the butterfat differential for the respective class pursuant to § 1033.52; and

(c) Add into one total the values obtained in paragraph (b) of this section, rounding the result to the nearest even one-tenth cent.

§ 1033.74 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk at a plant outside the Central Zone shall be the Central Zone uniform price adjusted according to the location of the plant at the rates set forth in § 1033.53(a); and

(b) For the purpose of computations pursuant to § 1033.71(b)(1), the weighted average price shall be adjusted at the rates set forth in § 1033.53(a) that are applicable at the location of the nonpool plant from which other source milk was received.

§ 1033.75 Marketing services.

(a) The market administrator, in making payments to each producer pursuant to § 1033.72, shall deduct 6 cents

per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk (except a handler's own farm production) of such producer for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association as determined by the Secretary.

(b) The moneys deducted pursuant to paragraph (a) of this section shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

§ 1033.76 Expense of administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 14th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) His producer milk (including such handler's own farm production);

(b) Other source milk allocated to Class I pursuant to § 1033.46(a) (6), (7), and (11) and the corresponding steps of § 1033.46(b); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

§ 1033.77 Correction of errors.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due the market administrator from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred following the fifth day after such notice. Any monies found to be due a handler from the market administrator shall be paid promptly to such handler except that the market administrator shall offset any monies due a handler against monies due from such handler.

EFFECTIVE TIME AND SUSPENSION OR TERMINATION

§ 1033.80 Effective time.

The provisions of this part, or any amendments to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1033.81 Suspension or termination.

The Secretary shall suspend or terminate any or all of the provisions of this part whenever he finds that such provision(s) obstructs or does not tend to effectuate the declared policy of the Act. In any event, this part shall terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 1033.82 Continuing powers, duties, and obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under this part, the final accrual or ascertainment of which requires acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination. If the Secretary so directs, any such acts required to be performed by the market administrator shall be performed by such other person, persons, or agency as the Secretary may designate, if the Secretary so directs. The market administrator, or such other person as the Secertary may designate, shall:

(a) Continue in such capacity until discharged by the Secretary;

(b) From time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the market administrator, or such other person, to such person as the Secretary shall direct; and

(c) If so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

§ 1033.83 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part, the market administrator, or such person as the Secretary may designate, shall liquidate, if so directed by the Secretary, the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1033.90 Agents.

The Secretary, by designation in writing, may name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 1033.91 Separability of provisions.

If any provision of this part, or its application to any persons or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

§ 1033.92 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of this part shall terminate 2 years after the last day of the month during which the market administrator receives the handler's monthly utilization report of receipts and utilization on which such obligation is based, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) on which such obligation is based; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producers or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representative all books and records required by this part to be made available, the market administrator, within the 2-year period provided for in paragraph (a) of this section, may notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his representative.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Unless a handler files a petition pursuant to section 8c(15)(A) of the Act for a review of the validity of any such handler's obligation within the 2-year period specified in this paragraph, any obligation on the part of the market administrator to revise or rescind such handler's obligation or to pay money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the obligation involved in the claim (including deduction or offset by the market administrator) was due and payable under this part.

Signed at Washington, D.C., on April 3, 1970.

ROY W. LENNARTSON,
Administrator.

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