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Agencies in this issue—



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FEDERAL REGISTER

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**A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1970, and specifies how they are affected.**

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# Rules and Regulations

## Title 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission

### PART 213—EXCEPTED SERVICE

#### Department of Health, Education, and Welfare

Section 213.3316 is amended to show that the position of Counselor is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (19) is added to paragraph (a) as set out below.

**§ 213.3316 Department of Health, Education, and Welfare.**

* * * * *

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

(19) Counselor.

* * * * *

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

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

[F.R. Doc. 70–11005; Filed, Aug. 20, 1970; 8:48 a.m.]

## Title 7—AGRICULTURE

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

### PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

#### Expenses and Rate of Assessment

On August 5, 1970, notice of rule making was published in the FEDERAL REGISTER (35 F.R. 12478) regarding proposed expenses and the related rate of assessment for the period November 1, 1969, through October 31, 1970, pursuant to the marketing agreement, as amended, and Order No. 919, as amended (7 CFR Part 919), regulating the handling of peaches grown in Mesa County, Colorado. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Administrative Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

**§ 919.209 Expenses and rate of assessment.**

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Administrative Committee during the period November 1, 1969, through October 31, 1970, will amount to $2,000.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each handler in accordance with § 919.41, is fixed at $0.01143 per hundredweight, or equivalent quantity of peaches in other containers or in bulk.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of peaches are now being made, (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment herein fixed shall be applicable to all assessable peaches handled during the aforesaid period; and (3) such period began on November 1, 1969, and said rate of assessment will automatically apply to all such peaches beginning with such date.

Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order.

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

Dated: August 17, 1970.

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

[F.R. Doc. 70–10986; Filed, Aug. 20, 1970; 8:47 a.m.]

### PART 925—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN IDAHO AND IN MALHEUR COUNTY, OREGON

#### Expenses and Rate of Assessment

On August 5, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 12478) regarding proposed expenses, and the related rate of assessment for the fiscal period July 1, 1970, through June 30, 1971, pursuant to the marketing agreement and Order No. 925 (7 CFR Part 925), regulating the handling of fresh prunes grown in designated counties in Idaho and in Malheur County, Oreg. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Idaho-Malheur County, Oreg., Fresh Prune Marketing Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

**§ 925.210 Expenses and rate of assessment.**

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Idaho-Malheur County, Oreg., Fresh Prune Marketing Committee during the fiscal period July 1, 1970, through June 30, 1971, will amount to $5,620.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each handler in accordance with § 925.41, is fixed at $0.01 per one-half bushel or equivalent quantity of fresh prunes.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of the current crop of fresh prunes grown in the designated production area are now being made; (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment herein fixed shall be applicable to all assessable prunes handled during the aforesaid period; and (3) such period began on July 1, 1970, and said rate of assessment will automatically apply to all such prunes beginning with such date.

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

Dated: August 17, 1970.

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

[F.R. Doc. 70–10987; Filed, Aug. 20, 1970; 8:47 a.m.]

## Title 9—ANIMALS AND ANIMAL PRODUCTS

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

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

[Docket No. 70–243]

### 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)(10) relating to the State of North Carolina, subdivision (ii) relating to Gates County is amended to read:

(e) * * *

(10) *North Carolina.* * * *

(ii) That portion of Gates County bounded by a line beginning at the junction of Secondary Road 1208 and the North Carolina-Virginia State line; thence, following Secondary Road 1208 in a southwesterly direction to Secondary Road 1202; thence, following Secondary Road 1202 in an easterly direction to U.S. Highway 13; thence, following U.S. Highway 13 in a southwesterly direction to Secondary Road 1221; thence, following Secondary Road 1221 in a generally southeasterly direction to U.S. Highway 158; thence, following U.S. Highway 158 in a southeasterly direction to Secondary Road 1217; thence, following Secondary Road 1217 in a northeasterly direction to Secondary Road 1225; thence, following Secondary Road 1225 in a southeasterly direction to Secondary Road 1220; thence, following Secondary Road 1220 in a northeasterly direction to North Carolina Highway 37; thence, following North Carolina Highway 37 in a northwesterly direction to Secondary Road 1303; thence, following Secondary Road 1303 in a northeasterly direction to Secondary Road 1300; thence, following Secondary Road 1300 in a southeasterly direction to U.S. Highway 158; thence, following U.S. Highway 158 in an easterly direction to Secondary Road 1318; thence, following Secondary Road 1318 in a northeasterly direction to Secondary Road 1320; thence, following Secondary Road 1320 in a generally southeasterly direction to North Carolina Highway 32; thence, following North Carolina Highway 32 in a southwesterly direction to U.S. Highway 158; thence, following U.S. Highway 158 in a generally southeasterly direction to the Gates-Pasquotank County line; thence, following the Gates-Pasquotank County line in a generally northwesterly direction to the Gates-Camden County line; thence, following the Gates-Camden County line in a northwesterly direction to the North Carolina-Virginia State line; thence, following the North Carolina-Virginia State line in a westerly direction to its junction with Secondary Road 1208.

* * * * *

(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 Gates County, N.C., 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 18th day of August 1970.

GEORGE W. IRVING, JR.,
*Administrator,*
*Agricultural Research Service.*

[F.R. Doc. 70-11020; Filed, Aug. 20, 1970; 8:49 a.m.]

# Title 12—BANKS AND BANKING

## Chapter VI—Farm Credit Administration

### SUBCHAPTER A—ADMINISTRATIVE PROVISIONS

### PART 604—INFORMATION AND RECORDS

Part 604 of Chapter VI of Title 12 of the Code of Federal Regulations is revised to read as follows:

**Subpart A—Information and Records Generally**

Sec.
604.7 General regulation.
604.8 Reports of Farm Credit examiners.
604.9 Lists of borrowers.
604.10 Data regarding borrowers and loan applicants.
604.11 Waiver of restriction.
604.12 Officer or employee summoned as a witness.
604.13 Request for advice.
604.14 Information regarding personnel.
604.15 Authority reserved to release information.
604.16 Official records generally.

**Subpart B—Availability of Records of the Farm Credit Administration**

604.17 Official records of the Farm Credit Administration.
604.18 Identification of records requested.
604.19 Request for records.
604.20 Service charge.

AUTHORITY: The provisions of this Part 604 issued under sec. 17, 39 Stat. 375, as amended, sec. 2, 42 Stat. 1459, sec. 4, 46 Stat. 13, as amended, sec. 6, 47 Stat. 14, as amended; 5 U.S.C. 552, 12 U.S.C. 665, 831, 1101.

NOTE: That part of each section number which follows the decimal is the same as the section number of the corresponding provision in the General Administrative Manual for the Farm Credit Administration.

### Subpart A—Information and Records Generally

**§ 604.7 General regulation.**

Except as necessary in performing official duties or as authorized by §§ 604.8–604.14, no one employed by FCA shall disclose information of a type not ordinarily contained in published reports or press releases regarding FCA or any banks or associations of the Farm Credit System or their borrowers or members. Information prepared for newspaper, publishing and broadcasting companies, and all new or revised publications should be cleared with the Information Division.

**§ 604.8 Reports of Farm Credit examiners.**

Reports of examinations of banks or associations made by Farm Credit examiners or Federal intermediate credit bank officials and other personnel who have been authorized by the Governor to make credit examinations may be disclosed only with the consent of the Chief Examiner of FCA. Consent is given for disclosing reports of regular examinations to the banks and associations involved or interested, but such disclosure of reports of special examinations shall be only by action or consent of the Chief Examiner in each instance. Consent is also given for disclosing reports of regular examinations to authorized representatives of FCA and, when requested for confidential use in official investigations of matters touched upon therein, to agents of the Federal Bureau of Investigation, Department of Justice; Bureau of the Chief Postal Inspector, Post Office Department; the Secret Service; the Internal Revenue Service; Office of the Inspector General, Department of Agriculture; and the General Accounting Office.

**§ 604.9 Lists of borrowers.**

The relationship between borrowers and the banks and associations in the cooperative Farm Credit System is confidential, and therefore no one employed by FCA shall release a list of borrowers from a Farm Credit bank or association unless such release is approved by the Governor, a deputy governor, or a service director having general supervision over the office or organization concerned.

**§ 604.10 Data regarding borrowers and loan applicants.**

Because the relationship between borrowers and the banks and associations in the cooperative Farm Credit System is confidential, FCA personnel shall hold in strict confidence all information regarding the character, credit standing, and property of borrowers and applicants for loans. They shall not exhibit or quote the following documents: loan applications; supplementary statements by applicants; letters and statements relative to the character, credit standing, and property

of borrowers and applicants; recommendations of loan committees; and reports of inspectors, fieldmen, investigators, and appraisers. This section is subject to the following exceptions:

(a) Examiners and other accredited representatives of FCA shall have free access to all information, records, and files.

(b) Accredited representatives of the offices named in § 604.8 may, at their request, be given information pertinent to their official investigations of individual cases, and may examine such portions of the records and files as contain the information.

(c) Full information concerning individual borrowers may be given for the confidential use of any bank or association of the Farm Credit System, or any Government agency, in response to inquiries made in contemplation of the extension of credit or the collection of loans. Such information as relates to the character and personal traits of a borrower shall be ascribed to reports from unnamed sources believed to be reliable, and shall be accompanied by the statement that no responsibility is assumed for the accuracy of such reports.

(d) Information may be given in confidence to reliable private institutions (lending and mercantile) concerning the amount, terms, and payment records of loans to individual borrowers, in response to inquiries made in contemplation of the extension of credit.

(e) Credit information concerning any borrower (including a cooperative association) may be given when the borrower consents in writing. In addition, opinions as to the ability of the borrower to meet his obligations may be given his creditors and prospective creditors without his consent upon the conditions that the opinion is to be held in strict confidence by the creditor or prospective creditor, is for the latter's private use, and is accompanied by a statement that no responsibility for its accuracy is assumed.

(f) The loan application and any supplementary statements signed by a borrower may be examined and their contents may be proved in court by the borrower who signed them, or by his accredited representative, or by the successor in interest of a deceased borrower.

(g) An unsuccessful loan applicant, or someone authorized to inquire in his behalf, may be informed of impersonal credit factors that cause the rejection of his application. However, if a loan is denied because of the applicant's personal shortcomings, no explanation may be given him or his representative which would tend to defame his character or betray the confidence of an informant. Examples of reasons that may be released to the applicant are: (1) Not enough projected net income to meet living expenses and pay present and proposed obligations on schedule, (2) inadequate security, or (3) unsatisfactory repayment record with the bank or association that acted on the application.

(h) In litigation between a borrower (or his successor in interest) and the United States or a bank or association of the Farm Credit System, any competent evidence may be introduced on behalf of either party with respect to any relevant statements made orally or in writing by or to the borrower or his successor.

### § 604.11 Waiver of restriction.

If it appears that justice would be served by releasing information in circumstances forbidden by § 604.10, the restrictions of that section may be waived as to a particular case by the Governor, a deputy governor, or the service director having general supervision over the Farm Credit System office or bank concerned. A recommendation for such waiver of § 604.10 may be submitted by any bank, association, or office concerned. Any such recommendation from a Federal land bank association or a production credit association shall be submitted through the appropriate Federal land bank or Federal intermediate credit bank, with the request that it be considered and forwarded to the Farm Credit Administration, if deemed advisable. Each such recommendation should be supported by a statement of facts and approved by counsel for the forwarding bank. The recommendation should be addressed to the General Counsel, Farm Credit Administration.

### § 604.12 Officer or employee summoned as a witness.

If an officer or employee is summoned as a witness in litigation to which neither the Government nor any Farm Credit organization is a party for the purpose of testifying and/or producing documentary evidence with respect to matters which he is forbidden by these regulations in this part to disclose, he shall arrange, if possible, with the attorney who obtained the summons, to be excused from testifying. If not excused, he shall appear in response to the summons but, before testifying or producing documentary evidence as to confidential information, he shall respectfully advise the court of these regulations against disclosing such information and respectfully request that its confidential nature be safeguarded. After so doing, he may then testify or produce documentary evidence as to such information only to the extent and under the conditions directed by the court.

### § 604.13 Request for advice.

Upon receiving any such summons, the officer or employee may request advice and assistance from the General Counsel of FCA or the district general counsel (or other designated attorney).

### § 604.14 Information regarding personnel.

Lists of employees shall not be released by an office or organization of the Farm Credit System without the approval of the Governor, a deputy governor, or a service director having general supervision over the office or bank concerned. This section is subject to the following exceptions:

(a) Taxing authorities shall be supplied, on request, with the names, addresses, and compensation of officers and employees of FCA. Field offices receiving any such requests should forward them to the Accounting and Budget Division.

(b) The Farm Credit Administration may release employees' names, addresses, positions, and spouses' names to reputable concerns for listing in local directories. The concern should use this information for directory purposes only. Employees wishing to do so should be allowed to withhold their names.

### § 604.15 Authority reserved to release information.

The provisions of §§ 604.7–604.14 shall not operate to limit or restrict the discretionary authority of the Governor or any deputy governor to release, or authorize the release of, information by or pertaining to FCA or any bank or association of the Farm Credit System.

### § 604.16 Official records generally.

The Farm Credit Administration and the several banks and associations under its supervision keep confidential the classes of records enumerated in §§ 604.8, 604.9, 604.10, and 604.14. Such records and other official records in the custody of the Farm Credit Administration may be made available as provided in §§ 604.16–604.20. Information contained in other official records in the custody of a particular bank or association may be made available to persons directly and properly concerned upon written application to the particular bank or association. Such application must identify the specific information sought and must show how the applicant is concerned therewith. Such application with respect to official records in the custody of a particular bank or association may be granted by the chief executive officer of the bank or association in accordance with the provisions of §§ 604.7–604.15.

## Subpart B—Availability of Records of the Farm Credit Administration

### § 604.17 Official records of the Farm Credit Administration.

Upon request, identified records of the Farm Credit Administration shall be made available for public inspection and copying, except exempt records which include the following:

(a) Records specifically required by executive order to be secret;

(b) Records related solely to the internal personnel rules and practices of the Farm Credit Administration, including matters which are for the guidance of agency personnel;

(c) Records which are specifically exempted from disclosure by statute;

(d) Commercial or financial information obtained from any person or organization and privileged or confidential;

(e) Interagency or intra-agency memorandums or letters which would not be available by law to a private party in litigation in which the United States, as real party in interest on behalf of the Farm Credit Administration, is a party, or from a bank or association supervised by the Farm Credit Administration to a private party in litigation with such bank or association if such memorandums or letters are records of such bank or association;

(f) Personnel and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Investigatory files compiled for law enforcement purposes, except to the extent available by law to a private party;

(h) Records of or related to examination, operating, or condition reports (other than published condition reports) of or related to the banks and associations under the supervision of the Farm Credit Administration which are prepared by, on behalf of, or for its use.

**§ 604.18 Identification of records requested.**

A member of the public who requests records from the Farm Credit Administration shall provide a reasonably specific description of the records sought so that such records may be located without undue search or inquiry. A record that is not identified by a reasonably specific description is not an identified record, and the request therefor may be declined.

**§ 604.19 Request for records.**

Requests for identified records should be directed to the Director of Information, Farm Credit Administration, Washington, D.C. 20578. Copies of such records may be obtained in person or by mail. Records will be available for inspection or copying during business hours on a regular business day at the offices of the Farm Credit Administration which are located in the South Agriculture Building, Washington, D.C.

**§ 604.20 Service charge.**

(a) The Farm Credit Administration furnishes a member of the public free of charge a reasonable quantity of information that has been printed or otherwise reproduced for the purpose of making it available to the public without charge.

(b) The Farm Credit Administration furnishes a member of the public free of charge information that is requested and is not exempt from disclosure when the information is readily available and can be furnished by the Farm Credit Administration without charge.

(c) When a request for information which may not be furnished under paragraphs (a) and (b) of this section is received, the Farm Credit Administration furnishes a copy of it at a fair and equitable fee when it is available to the public. In determining such fair and equitable fee, the Farm Credit Administration ascertains all costs necessary to recover the full cost to the Government including but not limited to, cost of employee service relating to research, reprodutcion, assembly, and authentication. The fee will be based on these costs and information under this paragraph will not be furnished until such fee is paid or arrangements for payment are made.

E. A. JAENKE,
*Governor,*
*Farm Credit Administration.*

[F.R. Doc. 70-10974; Filed, Aug. 20, 1970; 8:46 a.m.]

# Title 14—AERONAUTICS AND SPACE

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

[Airspace Docket No. 70-WE-41]

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

### Alteration of Control Zone and Transition Area

On June 27, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 10527) stating that the Federal Aviation Administration was considering amendments to Part 71 of the Federal Aviation Regulations that would alter the descriptions of the Rock Springs, Wyo., control zone and transition area.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received, and the proposed amendments are hereby adopted without change.

*Effective date.* These amendments shall be effective 0901 G.m.t., October 15, 1970.

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

Issued in Los Angeles, Calif., on August 3, 1970.

ARVIN O. BASNIGHT,
*Director, Western Region.*

In § 71.171 (35 F.R. 2054) the description of the Rock Springs, Wyo., control zone is amended to read as follows:

ROCK SPRINGS, WYO.

Within a 5.5-mile radius of the Rock Springs-Sweetwater County Airport (latitude 41°35'45" N., longitude 109°04'00" W.); within 3 miles each side of the Rock Springs ILS localizer east course, extending from the 5.5 radius zone to 9 miles east of the OM, and within 3.5 miles each side of the Rock Springs VORTAC 104° radial, extending from the 5.5 radius zone to 11.5 miles east of the VORTAC.

In § 71.181 (35 F.R. 2134) the description of the Rock Springs, Wyo., transition area is amended as follows:

ROCK SPRINGS, WYO.

That airspace extending upward from 700 feet above the surface within 9.5 miles north and 4.5 miles south of the 090° and 270° bearings from Rock Springs LOM, extending from 8 miles west to 18.5 miles east of the LOM; within 1 mile north and 6 miles south of the Rock Springs VORTAC 104° radial, extending from the VORTAC to 18.5 miles east of the VORTAC, and that airspare extending upward from 1,200 feet above the surface within a 23 mile radius of Rock Springs VORTAC extending clockwise from a line 5 miles northwest of and parallel to the Rock Springs VORTAC 026° radial to a line 6 miles south of and parallel to the VORTAC 104° radial.

[F.R. Doc. 70-10978; Filed, Aug. 20, 1970; 8:46 a.m.]

[Airspace Docket No. 70-WE-45]

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

### Alteration of Control Zone and Transition Area

On June 20, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 10156) stating that the Federal Aviation Administration was considering amendments to Part 71 of the Federal Aviation Regulations that would alter the descriptions of the Sheridan, Wyo., control zone and transition area.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received, and the proposed amendments are hereby adopted without change.

*Effective date.* These amendments shall be effective 0901 G.m.t., October 15, 1970.

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

Issued in Los Angeles, Calif., on August 3, 1970.

ARVIN O. BASNIGHT,
*Director, Western Region.*

In § 71.171 (35 F.R. 2054) the description of the Sheridan, Wyo., control zone area is amended to read as follows:

SHERIDAN, WYO.

Within a 5-mile radius of the Sheridan County Airport (latitude 44°46'25" N., longitude 106°58'15" W.); within 4 miles each side of the Sheridan VORTAC 312° and 327° radials, extending from the 5-mile radius zone to 11.5 miles northwest of the VORTAC, and within 3.5 miles each side of the Sheridan VORTAC, 139° radial extending from the VORTAC to 23 miles southeast of the VORTAC.

In § 71.181 (35 F.R. 2134) the description of the Sheridan, Wyo., transition area is amended to read as follows:

SHERIDAN, WYO.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Sheridan County Airport (latitude 44°46'25" N., longitude 106°58'15" W.); that airspace extending upward from 1,200 feet above the surface within 7 miles southwest and 10 miles northeast of the Sheridan VORTAC 138° and 318° radials, extending from 18.5 miles northwest to 34 miles southeast of the VORTAC.

[F.R. Doc. 70-10979; Filed, Aug. 20, 1970; 8:46 a.m.]

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[Airspace Docket No. 70-WE-47]

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

### Alteration of Control Zone and Transition Area

On June 19, 1970, a notice of proposed rule making was published in the

FEDERAL REGISTER (35 F.R. 10114) stating that the Federal Aviation Administration was considering amendments to Part 71 of the Federal Aviation Regulations that would alter the descriptions of the Modesto, Calif., control zone and transition area.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received, and the proposed amendments are hereby adopted without change.

*Effective date.* These amendments shall be effective 0901 G.m.t., October 15, 1970.

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

Issued in Los Angeles, Calif., on August 3, 1970.

ARVIN O. BASNIGHT,
*Director, Western Region.*

In § 71.171 (35 F.R. 2054) the description of the Modesto, Calif., control zone is amended to read as follows:

MODESTO, CALIF.

Within a 5-mile radius of the Modesto City-County Airport, Modesto, Calif. (latitude 37°37'35'' N., longitude 120°57'15'' W.); within 2 miles each side of the Modesto VOR 302° radial, extending from the 5-mile radius zone to 8 miles northwest of the VOR; within 2 miles each side of the Modesto VOR 122° radial, extending from the 5-mile radius zone to 8 miles southeast of the VOR. 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.

In § 71.181 (35 F.R. 2134) for the description of the Modesto, Calif., transition area is amended by deleting all before " * * *; and that airspace extending upward from 1,200 feet * * * " and substituting therefor, "that airspace extending upward from 700 feet above the surface within 4.5 miles northeast and 9.5 miles southwest of the Modesto VOR 122° and 302° radials, extending from 18.5 miles northwest to 18.5 miles southeast of the VOR; * * *".

[F.R. Doc. 70-10980; Filed, Aug. 20, 1970; 8:46 a.m.]

[Airspace Docket No. 70-WE-52]

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

### Alteration of Control Zone and Transition Area

On June 27, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 10527) stating that the Federal Aviation Administration was considering amendments to Part 71 of the Federal Aviation Regulations that would alter the descriptions of the Worland, Wyo., control zone and transition area.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received, and the proposed amendments are hereby adopted without change.

*Effective date.* These amendments shall be effective 0901 G.m.t., October 15, 1970.

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

Issued in Los Angeles, Calif., on August 3, 1970.

ARVIN O. BASNIGHT,
*Director, Western Region.*

In § 71.171 (35 F.R. 2054) the description of the Worland, Wyo., control zone is amended to read as follows:

WORLAND, WYO.

Within a 5-mile radius of Worland Municipal Airport (latitude 43°58'10'' N., longitude 107°56'50'' W.), and within 3.5 miles each side of the Worland VOR 352° radial, extending from the 5-mile radius zone to 12 miles north of the VOR.

In § 71.181 (35 F.R. 2134) the description of the Worland, Wyo., transition area is amended to read as follows:

WORLAND, WYO.

The airspace extending upward from 700 feet above the surface within 4.5 miles east and 9.5 miles west of the Worland VOR 352° and 172° radials extending from 18.5 miles north to 6 miles south of the VOR; that airspace extending upward from 1,200 feet above the surface, within a 23-mile radius of the VOR.

[F.R. Doc. 70-10981; Filed, Aug. 20, 1970; 8:46 a.m.]

[Airspace Docket No. 70-SO-55]

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

### Alteration of Control Area and Reporting Point

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to redesignate Control 1153 and the Trout Oceanic reporting point.

The Jacksonville, Fla., radio beacon utilized in the designation and alignment of Control 1153 will be relocated to a new site during the month of September 1970. The relocated radio beacon (lat. 30°27'53'' N., long. 81°48'06'' W.) will also serve as the outer marker for the ILS system serving Jacksonville International Airport Runway 7/25.

Accordingly, action is taken herein to redesignate Control 1153 and the Trout Intersection reporting point. Since this amendment is minor in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than 30 days after publication.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 10, 1970, as hereinafter set forth.

1. In § 71.163 (35 F.R. 2046) Control 1153 is amended to read:

CONTROL 1153.

That airspace extending upward from 1,200 feet above the surface within 5 miles each side of the Jacksonville, Fla., radio beacon (lat. 30°27'53'' N., long. 81°48'06'' W.) 090° bearing, including the additional airspace within lines diverging at angles of 5° from the centerline extending from the radio beacon to the western boundary of the New York Oceanic CTA/FIR boundary, excluding the portion below 2,000 feet MSL outside the United States.

2. In § 71.209 (35 F.R. 2303) Trout INT is amended by deleting "30°23' N.," and substituting "30°21' N.," therefor.

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

Issued in Washington, D.C., on August 13, 1970.

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

[F.R. Doc. 70-10982; Filed, Aug. 20, 1970; 8:46 a.m.]

[Airspace Docket No. 70-WA-10]

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

### Designation of Terminal Control Area at Washington, D.C.

On June 5, 1970, Federal Register Document No. 70-7045 was published in the FEDERAL REGISTER (35 F.R. 8738) which amends Part 71 of the Federal Aviation Regulations, effective 0901 G.m.t., August 20, 1970, by designating the Washington, D.C., Terminal Control Area. On June 23, 1970, Federal Register Document No. 70-7896 was published in the FEDERAL REGISTER (35 F.R. 10202) which amended Federal Register Document No. 70-7045 in part by amending the boundary description of that portion of area A concerning the exclusion of that airspace below 1,500 feet MSL around the Washington-Virginia Airport (identified on the Washington VFR terminal area chart as "A1"). Subsequent to the publication of these documents, it was noted that the excluded area around the Washington-Virginia Airport does not provide sufficient airspace for airport traffic patterns on the north side of the airport. It was further noted that the altitudes prescribed for certain instrument approaches to Washington National Airport from the south are at or below

1,500 feet MSL at the outer marker. Therefore, in the interest of safety, action is taken herein to provide the additional airspace required.

Since a situation exists where safety requires immediate adoption of this amendment, it is found that notice and public procedure thereon are impracticable, and good cause exists for making this amendment effective on less than 30 days notice.

In consideration of the foregoing, Federal Register Document No. 70-7045, as amended by Federal Register Documents Nos. 70-7896 and 70-8951 (35 F.R. 10202, 11231) is amended, effective 0901, G.m.t., August 20, 1970, as hereinafter set forth.

1. In the boundary description of area A, "the Herndon, Va., 126° radial" is deleted and "a line running through the point of intersection of a 7-mile radius arc from the Washington VOR and the Herndon VOR 126° radial and lat. 38° 51'00'' N., long. 77°06'10'' W." is substituted therefor.

2. In the boundary description of area A, "thence along an arc 7 miles in radius from the Washington VOR, thence to lat. 38°48'50'' N., long. 77°10'30'' W.; to lat. 38°51'00'' N., long. 77°06'10'' W.;" is deleted and "thence along an arc 7 miles in radius from the Washington VOR to the Herndon VOR 126° radial, thence to lat. 38°51'00'' N., long. 77° 06'10'' W.;" is substituted therefor.

3. In the boundary description of area A, "a 5-mile radius of the Andrews, Md., VORTAC," is deleted and "a 5-mile radius of the Andrews, Md., VORTAC, including that airspace within 2 miles each side of the Washington National Airport ILS localizer south course extending from the 5-mile radius circle of the Washington VORTAC to the Washington National ILS outer marker, and" is substituted therefor.

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

Issued in Washington, D.C., on August 19, 1970.

T. McCORMACK,
*Acting Chief, Airspace and Air Traffic Rules Division.*

[F.R. Doc. 70-11103; Filed, Aug. 20, 1970; 8:49 a.m.]

# Title 18—CONSERVATION OF POWER AND WATER RESOURCES

## Chapter II—Tennessee Valley Authority

## PART 300—ETHICAL AND OTHER CONDUCT STANDARDS AND RESPONSIBILITIES OF EMPLOYEES AND SPECIAL GOVERNMENT EMPLOYEES

### Subpart B—Ethical and Other Conduct Standards and Responsibilities of Employees

APPENDIX

The Appendix to § 300.735-41(b) is revised to read as follows:

APPENDIX

As provided in § 300.735-41(b) employees in the following positions, which are described in § 300.735-41(a) (2) and (3) and which are in addition to the positions described in § 300.735-41(a)(1), must submit statements of employment and financial interests:

DIVISION OF LAW

Attorney (Procurement Contracts), Grade M-6.

DIVISION OF PERSONNEL

Chief, Employee Relations Branch, Grade M-7.
Assistant to the Chief, Employee Relations Branch (Contract Compliance), Grade M-6.
Employee Relations Officer (Contract Compliance), Grade M-5.

DIVISION OF FINANCE

Chief, Auditing Branch, Grade M-7.
Assistant to the Chief, Auditing Branch, Grade M-6.
Supervisor, Voucher Examining Section, Grade M-5.

DIVISION OF PURCHASING

Assistant to the Director of Purchasing, Grade M-7.
Chief, Fuels Procurement Branch, Grade M-7.
Chief, General Procurement Branch, Grade M-7.
Chief, Traffic Branch, Grade M-7.
Chief, Nuclear Procurement Branch, Grade M-6.
Chief, Procurement Planning Staff, Grade M-6.
Assistant Chief, Fuels Procurement Branch, Grade M-6.
Assistant Chief, General Procurement Branch, Grade M-6.
Assistant Chief, Traffic Branch, Grade M-6.
Supervisor, Eastern Section, Grade M-5.
Supervisor, Western Section, Grade M-5.
Supervisor, Electrical Section, Grade M-5.
Supervisor, General Traffic Section, Grade M-5.
Supervisor, Mechanical Section, Grade M-5.
Supervisor, Nuclear Equipment Section, Grade M-5.
Supervisor, Nuclear Fuels Section, Grade M-5.
Supervisor, Structural Section, Grade M-5.
Personnel Officer (Contract Compliance), Grade M-5.
Purchasing Agent, Grade M-5.

DIVISION OF PROPERTY AND SUPPLY

Chief, Computing Center, Grade M-7.
Chief, Office Service Branch, Grade M-7.
Chief, Transportation Branch, Grade M-7.
Assistant to the Director of Property and Supply, Grade M-6.
Assistant Chief, Computing Center, Grade M-6.
Assistant Chief, Land Branch, Grade M-6.
Assistant Chief, Office Service Branch, Grade M-6.
Supervisor, Aviation Section, Grade M-6.
Supervisor of Titles, Grade M-6.
Building Management Specialist, Grade M-5.

DIVISION OF RESERVOIR PROPERTIES

Chief, Property Administration Branch, Grade M-7.
Chief, Public Service Branch, Grade M-7.
Manager of Properties, Grade M-7.
Chief, Recreation Resources Branch, Grade M-6.
Manager of Properties, Grade M-6.
Manager of Properties, Grade M-5.
Assistant to the Director, Grade M-5.

LAND BETWEEN THE LAKES

Chief, Public Services, Grade M-6.
Chief, Resource Management, Grade M-6.
Administrative Officer, Grade M-5.

DIVISION OF WATER CONTROL PLANNING

Chief, Engineering Laboratory Branch, Grade M-7.
Chief, Hydraulic Data Branch, Grade M-7.
Chief, Maps and Surveys Branch, Grade M-7.

OFFICE OF ENGINEERING DESIGN AND CONSTRUCTION

*Office of the Manager of Engineering Design and Construction*

Assistant to the Manager of Engineering Design and Construction, Grade M-7.

*Division of Engineering Design*

Civil Engineer (Group Head), Civil Design Branch, Grade M-7.
Electrical Engineer (Group Head), Electrical Design Branch, Grade M-7.
Electrical Engineer (Staff Head), Electrical Design Branch, Grade M-7.
Mechanical Engineer (Group Head), Mechanical Design Branch, Grade M-7.
Mechanical Engineer (Staff Head), Mechanical Design Branch, Grade M-7.
Chief, Inspection and Testing Branch, Grade M-7.
Assistant Chief, Inspection and Testing Branch, Grade M-6.
Architect (Assistant to the Chief), Architectural Design Branch, Grade M-6.
Mechanical Engineer (Group Head), Civil Design Branch, Grade M-6.
Electrical Engineer (Group Head), Electrical Design Branch, Grade M-6.

*Division of Construction*

Chief, Construction Accounting Branch, Grade M-7.
General Construction Superintendent, Construction Services Branch, Grade M-7.
Construction Engineer, Browns Ferry Nuclear Plant Branch, Grade M-7.
General Construction Superintendent, Browns Ferry Nuclear Plant Branch, Grade M-7.
Construction Engineer, Cumberland Steam Plant Branch, Grade M-7.
General Construction Superintendent, Cumberland Steam Plant Branch, Grade M-7.
Project Manager, Allen Additions Branch, Grade M-7.
Construction Engineer, Racoon Mountain—Tims Ford Projects Branch, Grade M-7.
General Construction Superintendent, Racoon Mountain—Tims Ford Projects Branch, Grade M-7.
Construction Engineer, Sequoyah Nuclear Plant Branch, Grade M-7.
General Construction Superintendent, Sequoyah Nuclear Plant Branch, Grade M-7.
Assistant to the Director of Construction, Grade M-6.
General Construction Superintendent, Allen Additions Branch, Grade M-6.
Construction Engineer, Paradise Steam Plant Branch, Grade M-6.
Assistant General Construction Superintendent, Paradise Steam Plant Branch, Grade M-6.
Assistant to the Director of Construction (Safety), Grade M-5.

OFFICE OF POWER

*Office of the Manager of Power*

Chief, Financial Planning Staff, Grade M-7.
Chief, Management Services Staff, Grade M-7.
Supervisor, Power Stores Section, Grade M-6.
Assistant Supervisor, Power Stores Section, Grade M-5.

*Division of Power Resource Planning*

Chief, Fuels Planning Staff, Grade M-7.
Chief, Nuclear Engineering Branch, Grade M-7.
Chief, Power Research and Development Branch, Grade M-7.
Chief, Power Supply Planning Branch, Grade M-7.

Assistant Chief, Nuclear Engineering Branch, Grade M–6.
Supervisor, Fuels Economics Section, Grade M–5.
Supervisor, Fuels Engineering Section, Grade M–5.
Supervisor, System Development Section, Grade M–5.

*Division of Transmission Planning and Engineering*

Assistant to the Director of Transmission Planning and Engineering, Grade M–7.
Chief, Civil Engineering and Design Branch, Grade M–7.
Chief, Communication Engineering and Design Branch, Grade M–7.
Chief, Electrical Engineering and Design Branch, Grade M–7.
Chief, Transmission System Planning Branch, Grade M–7.
Assistant Chief, Civil Engineering and Design Branch, Grade M–6.
Assistant Chief, Communication Engineering and Design Branch, Grade M–6.
Assistant Chief, Transmission System Planning Branch, Grade M–6.
Supervisor, Design Review Section, Grade M–5.
Supervisor, Materials, Specifications and Procurement Section, Grade M–5.
Supervisor, Substation Projects Section, Grade M–5.
Supervisor, Transmission Line Engineering Section, Grade M–5.
Civil Engineer (Determination of Specifications), Grade M–5.
Electrical Engineer (Appraisal of Prospective Bidders), Grade M–5.

*Division of Power Construction*

Area Construction Manager, Grade M–7.
Assistant to the Director of Power Construction, Grade M–6.
Assistant Area Construction Manager, Grade M–6.
General Construction Superintendent, Grade M–5.
Construction Engineer, Grade M–5.

*Division of Power Production*

Chief, Hydroelectric Generation Branch, Grade M–7.
Chief, Plant Engineering Branch, Grade M–7.
Chief, Power Plant Maintenance Branch, Grade M–7.
Personnel Officer (Contract Enforcement), Grade M–6.

*Division of Power System Operations*

Chief, Transmission Maintenance and Test Branch, Grade M–7.

*Division of Power Marketing*

Assistant to the Director of Power Marketing, Grade M–7.
Chief, Direct Marketing Branch, Grade M–7.
Chief, Distributor Marketing Branch, Grade M–7.
District Manager, Grade M–7.
Assistant District Manager, Grade M–5.
Assistant to the Chief, Distributor Marketing Branch, Grade M–5.

OFFICE OF AGRICULTURAL AND CHEMICAL DEVELOPMENT

*Office of the Manager of Agricultural and Chemical Development*

Chemical Engineeeer (Contract Negotiation), Grade M–7.
Administrative Officer (Budgetary Control), Grade M–6.
Agriculturist (International Fertilizer Development), Grade M–6.
Chemical Engineer (International Fertilizer Development), Grade M–6.
Economist (International Fertilizer Development), Grade M–6.

*Division of Agricultural Development*

Chief, Agricultural Resource Development Branch, Grade M–7.
Chief, Soils and Fertilizer Research Branch, Grade M–7.
Chief, Test and Demonstration Branch, Grade M–7.
Assistant to the Director of Agricultural Development (Contract Negotiation and Compliance), Grade M–6.
Assistant Chief, Test and Demonstration Branch, Grade M–6.
Agricultural Economist (Contract Negotiation and Compliance), Grade M–6.
Agriculturist (Contract Negotiation and Compliance), Grade M–6.
Supervisor, Field Section, Grade M–6.
Supervisor, Process and Product Improvement Section, Grade M–6.
Administrative Officer (Budgetary Control), Grade M–5.

*Division of Chemical Development*

Chief, Applied Research Branch, Grade M–7.
Chief, Design Branch, Grade M–7.
Chief, Fundamental Research Branch, Grade M–7.
Chief, Process Engineering Branch, Grade M–7.
Electrical Engineer, Grade M–6.
Mechanical Engineer, Grade M–6.
Mechanical Engineer (Determination of Specifications), Grade M–5.
Personnel Officer (Contract Compliance), Grade M–5.

*Division of Chemical Operations*

Chief, Maintenance Branch, Grade M–7.
Supervisor, Procurement and Production Section, Grade M–5.
Personnel Officer (Contract Compliance), Grade M–5.

OFFICE OF HEALTH AND ENVIRONMENTAL SCIENCE

*Office of the Manager of Health and Environmental Science*

Chief, Safety Staff, Grade M–7.
Safety Engineer (Establishment and Enforcement of Safety Standards and Procedures Systems), Grade M–5.

*Division of Environmental Research and Development*

Assistant to the Director of Environmental Research and Development (Administration), Grade M–7.
Assistant to the Director of Environmental Research and Development (Program), Grade M–7.
Chief, Air Quality Branch, Grade M–7.
Chief, Environmental Biology Branch, Grade M–7.
Chief, Environmental Engineering Branch, Grade M–7.
Chief, Industrial and Radiological Hygiene Branch, Grade M–7.
Chief, Water Quality Branch, Grade M–7.
Assistant Chief, Air Quality Branch, Grade M–6.
Assistant Chief, Environmental Biology Branch, Grade M–6.
Assistant Chief, Water Quality Branch, Grade M–6.
Environmental Engineer (Determination of Public Health Engineering Specifications), Grade M–5.
Supervisor, Management Services, Grade M–5.

*Division of Medical Services*

Chief, Special Health Services Staff, Grade M–7.
Chief, Eastern Area Medical Service, Grade M–7.
Chief, Western Area Medical Service, Grade M–7.
Assistant to the Director of Medical Services, Grade M–6.
Chief, Dental and Health Education Staff, Grade M–6.

OFFICE OF TRIBUTARY AREA DEVELOPMENT

Assistant to the Director of Tributary Area Development, Grade M–7.
Assistant to the Director of Tributary Area Development, Grade M–6.

*Division of Forestry, Fisheries, and Wildlife Development*

Chief, Forest and Upland Wildlife Resources Branch, Grade M–7.
Supervisor, Forest and Habitat Revegetation Section, Grade M–6.

Dated: August 14, 1970.

TENNESSEE VALLEY AUTHORITY,
LYNN SEEBER,
*General Manager.*

[F.R. Doc. 70–11007; Filed, Aug. 20, 1970; 8:48 a.m.]

# Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

## PART 27—CANNED FRUITS AND FRUIT JUICES

### Canned Peaches Identity Standard; Amendment and Confirmation of Effective Date of Order Regarding Ascorbic Acid

In the matter of amending the definition and standard of identity for canned peaches to permit optional use of erythorbic acid or ascorbic acid in an amount no greater than necessary to preserve color:

An order in the above-identified matter was published in the FEDERAL REGISTER of May 16, 1970 (35 F.R. 7645). The order provided for the optional use of ascorbic acid at a level not to exceed 390 parts per million but did not provide for the use of erythorbic acid pending further study regarding the minimum amount necessary to accomplish the intended effect.

The only response to the order was a letter from the petitioner commenting on the ramifications of the ascorbic acid limitation. The petitioner emphasized that the experimental data submitted in the petition showed that ascorbic acid, added at a level of 390 parts per million, was effective in preserving the color of a single variety of canned peaches but did not establish that this amount would be equally effective in preserving the color of all varieties of peaches under all canning and storage conditions. The petitioner further contends that the order fails to take into account the amount of ascorbic acid naturally present in peaches and that this amount further restricts the amount of ascorbic acid that may be added. The petitioner urges that the safety of ascorbic acid and the limiting feature of its cost be taken into account in considering a request that § 27.2(a)(6) be changed to read "Ascorbic acid in an amount no greater than necessary to preserve color."

The Commissioner of Food and Drugs concludes that the petitioner's suggestion should be adopted and that the subject order, as changed, should be confirmed.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120), notice is given that no objections were filed to the above-identified order. Accordingly, the amendments to § 27.2, including the change set forth below, became effective July 15, 1970.

Section 27.2(a)(6) is changed to read as follows:

**§ 27.2 Canned peaches; identity; label statement of optional ingredients.**

(a) * * *

(6) Ascorbic acid in an amount no greater than necessary to preserve color.

* * * * *

Dated: August 12, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-10959; Filed, Aug. 20, 1970; 8:45 a.m.]

SUBCHAPTER C—DRUGS

## PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

### Spectinomycin Dihydrochloride Oral Solution

The Commissioner of Food and Drugs has evaluated the new animal drug applications filed by Amdal Co., Division of Abbott Labs., Abbott Park, North Chicago, Ill. 60064 (33-157V), and Diamond Labs., Inc., 2538 Southeast 43d Street, Des Moines, Iowa 50317 (41-629V), proposing the safe and effective use of spectinomycin dihydrochloride oral solution for the treatment of pigs as specified below. The applications are approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), the following new section is added to Part 135c:

**§ 135c.24 Spectinomycin dihydrochloride oral solution.**

(a) *Specifications.* The spectinomycin dihydrochloride pentahydrate used in manufacturing the drug is the antibiotic substance produced by growth of *Streptomyces flavopersicus* (var. Abbott) or the same antibiotic substance produced by any other means. The drug is packaged as an aqueous solution containing 50 milligrams of spectinomycin activity per milliliter.

(b) *Sponsors.* (1) Amdal Co., Division of Abbott Labs., Abbott Park, North Chicago, Ill. 60064.

(2) Diamond Labs., Inc., 2538 Southeast 43d Street, Des Moines, Iowa 50317.

(c) *Conditions of use.* (1) It is used for the treatment and control of infectious bacterial enteritis (white scours) associated with *E. coli* in pigs under 4 weeks of age.

(2) It is administered orally at the rate of 50 milligrams per 10 pounds body weight twice daily for 3 to 5 days.

(3) Do not administer to pigs over 15 pounds body weight or over 4 weeks of age. Do not administer within 21 days of slaughter.

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

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360(b))

Dated: August 13, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-10960; Filed, Aug. 20, 1970; 8:45 a.m.]

# Title 19—CUSTOMS DUTIES

## Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 70-183]

## PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

### Ecuador; Coastwise Transportation

On the basis of information obtained and furnished by the Department of State, it is found that the Government of Ecuador extends to vessels of the United States, in ports of Ecuador, privileges reciprocal to those provided in § 4.93(a)(1) of the Customs Regulations, with respect to empty cargo vans, empty lift vans, and empty shipping tanks. Therefore, vessels of the Government of Ecuador are permitted to transport coastwise empty cargo vans, empty lift vans, and empty shipping tanks under the conditions specified in the applicable proviso to section 27, Merchant Marine Act, 1920, as amended (46 U.S.C. 883).

Accordingly, § 4.93(b)(1) of the Customs Regulations is amended by the insertion of "Ecuador" in appropriate alphabetical order in the list of countries in that section.

(80 Stat. 379, sec. 27, 41 Stat. 999, as amended; 5 U.S.C. 301, 46 U.S.C. 883)

*Effective date.* This amendment shall become effective on the date of its publication in the FEDERAL REGISTER.

[SEAL] MYLES J. AMBROSE,
*Commissioner of Customs.*

Approved: August 13, 1970.

WILLIAM L. DICKEY,
*Acting Assistant Secretary of the Treasury.*

[F.R. Doc. 70-10983; Filed, Aug. 20, 1970; 8:46 a.m.]

# Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

## Chapter 8—Veterans Administration

### MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter 8 is amended as follows:

### PART 8-2—PROCUREMENT BY FORMAL ADVERTISING

1. In § 8-2.502, paragraph (a) is amended to read as follows:

**§ 8-2.502 Conditions for use.**

Two-step formal advertising will not be used by any Veterans Administration procurement activity unless its use has been approved by one of the following officials:

(a) Manager, Veterans Administration Marketing Center, for contracts entered into by a Marketing Division.

* * * * *

### PART 8-3—PROCUREMENT BY NEGOTIATION

2. In Subpart 8-3.2, §§ 8-3.200 and 8-3.203 are added to read as follows:

**§ 8-3.200 Scope of subpart.**

(a) Subject to the requirements and limitations prescribed in FPR 1-3.1, 1-3.2 and 1-3.3 and Subparts 8-3.1, 8-3.2 and 8-3.3, Veterans Administration contracting officers, acting within the scope of their authority, may negotiate contracts for the acquisition of supplies, equipment and services. Each such acquisition will cite the specific authority under which the procurement was negotiated.

(b) In those instances where a purchase in excess of $2,500 may be negotiated under more than one authority, the contracting officer will select the authority he deems most appropriate to accomplish the purchase and will include in the contract file complete justification for his selection.

**§ 8-3.203 Purchases not in excess of $2,500.**

Purchase of supplies, equipment and services authorized under the special procurement authorities cited in title 38, United States Code will, when the cost of each such transaction does not exceed $2,500, be negotiated under the authority contained in FPR 1-3.203.

NOTE: The limitation imposed upon open market transactions by 38 U.S.C. 1820(b) will be observed in all instances.

3. Section 8-3.204 is revised to read as follows:

**§ 8-3.204 Personal or professional services.**

Various sections of title 38, United States Code, authorize the Administrator to enter into contracts or agreements for

the purpose of acquiring personal or professional services. These authorizations do not, however, stipulate the manner in which such contracts or agreements are to be entered into, i.e., negotiation or formal advertising. Civilian agencies are, under authority of FPR 1–3.204, authorized to procure such services by negotiation. Therefore, when the services listed in this section are to be acquired by the Veterans Administration, a contract or agreement wil be negotiated by the contracting officer. These contracts or agreements will cite in addition to the authority to negotiate, FPR 1–3.204, the appropriate section of title 38 which authorizes the contract.

(a) Architect-engineer services when required in conjunction with construction (see Subparts 8–4.50 and 8–7.50 of this chapter) will cite as the authority for such negotiation FPR 1–3.204—38 U.S.C. 5002.

(b) Contracts with medical schools and clinics for the acquisition of scarce medical specialist services will be negotiated under authority of FPR 1–3.204—38 U.S.C. 4117.

(c) Contracts or agreements with medical schools and other medical installations having hospital facilities or with a Federal, State, or local hospital, public or private, in the medical community for:

(1) The mutual use or exchange of use of specialized medical resources when such an agreement will obviate the need for a similar resource to be provided in a Veterans Administration facility; or

(2) The mutual use, or exchange of use, of specialized medical resources in a Veterans Administration facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity

will be negotiated under authority of FPR 1–3.204—38 U.S.C. 5053.

(d) Each proposed contract or agreement and renewal or revision thereof in paragraphs (b) and (c) of this section will be forwarded to the appropriate Regional Medical Director (134) for approval prior to consummation. A recommendation by the station head as to the geographical limits to be applied to the medical community will accompany each proposed contract or agreement.

(e) Personal service contracts having an employer-employee relationship, except to the extent indicated in paragraph (b) of this section, will not be negotiated under this authority but will be consummated in accordance with MP–5, Parts I and II. The determination as to whether a contract is of this nature is primarily the responsibility of the appointing official; however, contracting officers should be alert to the following conditions or circumstances, which, if present, could result in an invalid contract if with:

(1) *An individual.* (i) The contract does not call for an end product which is adequately described in the contract.

(ii) The contract price or fee is based on the time actually worked rather than the results to be accomplished.

(iii) The services are to be of a continuing rather than a temporary or intermittent nature.

(2) *A concern.* (i) Office space, equipment, and supplies necessary for contract performance are to be furnished by the Veterans Administration.

(ii) Contractor-furnished personnel are to be integrated within the Veterans Administration organizational structure.

(iii) Contractor-furnished personnel are to be used interchangeably with Veterans Administration personnel to perform the same functions.

(iv) The Veterans Administration retains the right to control and direct the means and methods by which contractor-furnished personnel accomplish the work.

(f) If in the opinion of the contracting officer any of the conditions or circumstances in paragraph (e) of this section are present, he will, in consultation with the requester, resolve all such doubts seeking if necessary competent legal advice.

(g) Contracts or agreements for professional or technical services with private or public agencies not specifically authorized in any other section of title 38, United States Code may be acquired under 38 U.S.C. 213 and negotiated under FPR 1–3.204. Contracts of this nature must be performed on an independent contractor or task basis and are an approved resource of the agency for such services. The approval of the appropriate department or staff head will be secured before contracts of this nature are negotiated.

4. In § 8–3.207, paragraphs (b)(3), (c)(3), (d)(2)(i), and (e)(2)(i) are amended to read as follows:

**§ 8–3.207 Medicines or medical supplies.**

* * * * *

(b) *Drugs and chemicals.* * * *

(3) Manager, Veterans Administration Marketing Center.

* * * * *

(c) *Wheel chairs and hearing aids.* * * *

(3) Manager, Veterans Administration Marketing Center.

* * * * *

(d) *Medical equipment.* * * *

(2) * * *

(i) Manager, Veterans Administration Marketing Center.

* * * * *

(e) *Radiological and nuclear equipment and supplies.* * * *

(2) * * *

(i) Manager, Veterans Administration Marketing Center.

* * * * *

5. In § 8–3.209, paragraph (b)(3) is amended to read as follows:

**§ 8–3.209 Subsistence supplies.**

* * * * *

(b) * * *

(3) Manager, Veterans Administration Marketing Center.

* * * * *

6. Section 8–3.215 is revised to read as follows:

**§ 8–3.215 Otherwise authorized by law.**

Various sections of title 38, United States Code, authorize the Administrator to enter into certain contracts, and certain types of contracts, without regard to any other provision of law. Veterans Administration contracting officers entering into contracts by negotiation for any of the following items or services, estimated to cost in excess of $2,500, will cite, in addition to FPR 1–3.215, the appropriate section of title 38, United States Code as their authority to do so:

(a) Contracts for orthopedic and prosthetic appliances and related services. FPR 1–3.215—38 U.S.C. 5013.

(b) Contracts to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service. FPR 1–3.215—38 U.S.C. 4202.

(c) Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 5004(b)(1), provided that (1) the establishment, operation and maintenance of such facilities have been authorized by the Administrator or his designee; and (2) the station head determines in writing that operation by contract or lease is both desirable and warranted. FPR 1–3.215—38 U.S.C. 5004(b)(3).

(d) Contracts for laundry and other common services, such as the purchase of steam, may be negotiated with nonprofit, tax-exempt, educational, medical, or community institutions, when specifically approved by the Administrator or his designee and when such services are not reasonably available from private commercial sources. FPR 1–3.215—38 U.S.C. 5012.

(1) Contracts of this nature shall contain the clause in FPR 1–7.101–10, examination of records. They are also subject to the provisions of FPR 1–1.5 and Subpart 8–1.5 of this chapter, contingent fees; FPR 1–3.401, types of contracts; FPR 1–3.405–5 and § 8–3.405–5, cost-plus-a-fixed fee contract.

(2) Requests to enter into such contracts will be submitted to the appropriate Regional Medical Director (134) for approval by the Administrator or his designee.

(e) Contracts or agreements with public or private agencies for the services of translators. FPR 1–3.215—38 U.S.C. 213.

7. Section 8–3.801–3 is revised to read as follows:

**§ 8–3.801–3 Responsibility of other personnel.**

The Controller will provide advice, assistance or cost audits as provided in §§ 8–3.705, 8–3.809, and 8–3.813.

8. Section 8–3.805–1 is added to read as follows:

**§ 8–3.805 Selection of offerors for negotiation and award.**

**§ 8–3.805–1 General.**

FPR 1–3.805–1 states that competitive procurement is inappropriate when procuring research and development or special services (such as architect-engineer services) and cost reimbursement contracts. It is also inappropriate when procuring the services of labor relations arbitrators, and those related to the medical, paramedical and scientific fields,

whether the contract is with an individual or an organization.

(Sec. 205(c), 63 Stat. 390, as amended, 40 Stat. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c))

These regulations are effective immediately.

Approved: August 14, 1970.

By direction of the Administrator.

[SEAL] FRED B. RHODES,
*Deputy Administrator.*

[F.R. Doc. 70-10977; Filed, Aug. 20, 1970; 8:46 a.m.]

# Title 49—TRANSPORTATION

## Chapter X—Interstate Commerce Commission

### SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[No. MC-C-3437]

### PART 1047—EXEMPTIONS

### Motor Transportation of Property Incidental to Transportation by Aircraft

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 28th day of July 1970.

No. MC-C-3437: Motor Transportation of Property Incidental to Transportation by Aircraft; No. MC-C-3437 (Sub-No. 2): Weir Cook Municipal Airport, Indianapolis, Ind.—exempt zone; No. MC-C-3437 (Sub-No. 3): Atlanta Municipal Airport, Atlanta, Ga.—exempt zone.

It appearing, that on May 4, 1964, the Commission made and entered its report, 95 M.C.C. 71, and order in No. MC-C-3437, promulgating certain regulations with respect to motor transportation of property incidental to transportation by aircraft (49 CFR 1047.40);

It further appearing, that by joint petition filed September 25, 1968, Film Carrier Conference of The American Trucking Associations, Inc., and Air Freight Motor Carriers Conference request the Commission to reopen the proceeding in No. MC-C-3437 for the purpose of promulgation of additional or clarifying regulations;

It further appearing, that by joint petition filed April 18, 1968, in No. MC-C-3437 (Sub-No. 2), Air Freight Motor Carriers Conference, Film Carrier Conference of The American Trucking Associations, Inc., and Indiana Transit Service, Inc., request the Commission specifically to determine, pursuant to 49 CFR 1047.40(c), the zone surrounding Weir Cook Municipal Airport, Indianapolis, Ind., within which motor transportation of property is incidental to transportation by air and exempt from the Commission's economic regulation under section 203(b)(7a) of the Interstate Commerce Act;

It further appearing, that by joint petition filed August 16, 1968, in No. MC-C-3437 (Sub-No. 3), Air Freight Motor Carriers Conference, Film Carrier Conference of The American Trucking Associations, Inc., Theatres Service Co., and Benton Brothers Film Express, Inc., request the Commission specifically to determine, pursuant to 49 CFR 1047.40(c), the zone surrounding Atlanta Municipal Airport, Atlanta, Ga., within which motor transportation of property is incidental to transportation by air and exempt from the Commission's economic regulation under section 203(b)(7a) of the Interstate Commerce Act;

It further appearing, that investigation of the matters and things involved in the said petitions having been made, and said Commission having made and filed a report herein containing its findings of facts and conclusions thereon, which report is hereby made a part hereof:

*It is ordered*, That the petition in No. MC-C-3437 be, and it is hereby, denied.

*It is further ordered*, That § 1047.40 of the Code of Federal Regulations, as prescribed in the order entered in No. MC-C-3437 on May 4, 1964 (49 CFR 1047.40), be, and it is hereby, amended by the addition thereto of paragraph (d)(1) and (2) as follows:

**§ 1047.40 Motor transportation of property incidental to transportation by aircraft.**

* * * * *

(d) *Exempt zones and operations*—(1) *Weir Cook Municipal Airport (Indianapolis, Ind.)*. The area surrounding the Weir Cook Municipal Airport at Indianapolis, Ind., within which the transportation by motor vehicle, in interstate or foreign commerce, of property having a prior or subsequent movement by air, which transportation otherwise meets the requirements of section 1047.40(a) of this part, is exempt from economic regulation by the Interstate Commerce Commission pursuant to section 203(b)(7a) of the Interstate Commerce Act, includes Greencastle, Ind., points in the Greencastle, Ind., commercial zone, and those points within 25 miles of either the Weir Cook Municipal Airport or the city limits of Indianapolis, Ind., but does not include Terre Haute, Ind.

(2) *Atlanta Municipal Airport (Atlanta, Ga.)*. The area surrounding the Atlanta Municipal Airport at Atlanta, Ga., within which the transportation by motor vehicle, in interstate or foreign commerce, of property having a prior or subsequent movement by air, which transportation otherwise meets the requirements of section 1047.40(a) of this part, is exempt from economic regulation by the Interstate Commerce Commission pursuant to section 203(b)(7a) of the Interstate Commerce Act, includes Covington and Porterdale, Ga., points in the commercial zones of Covington and Porterdale, Ga., and those points within 25 miles of either the Atlanta Municipal Airport or the city limits of Atlanta, Ga. (embracing Conyers, Lithonia, and Oxford, Ga.), but does not include Eatonton, Madison, and Rutledge, Ga.

(52 Stat. 1029, 49 U.S.C. 303(b)(7a); 52 Stat. 1237, 49 U.S.C. 304(a)(6); 56 Stat. 285, 80 Stat. 383; 49 U.S.C. 1003, 5 U.S.C. 553, 559)

*It is further ordered*, That this order shall become effective on September 28, 1970, and shall continue in effect until the further order of the Commission.

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

By the Commission.

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

[F.R. Doc. 70-11015; Filed, Aug. 20, 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

### SUBCHAPTER B—HUNTING AND POSSESSION OF WILDLIFE

### PART 10—MIGRATORY BIRDS

### Open Seasons, Bag Limits, Possession, and Use of Feathers of Certain Migratory Game Birds; Correction

F.R. Doc. 70-9553 appearing on page 11996 in the issue of Saturday, July 25, 1970, is amended as follows:

1. In § 10.9, paragraph (a) on page 11997, a comma should be inserted after the words "tagged or not tagged".

2. In § 10.41, paragraph (a) on page 11997, the season dates for Delaware reading "Sept. 15–Nov. 13" should read "Sept. 5–Nov. 13."

3. In § 10.46, paragraph (b) on page 11998, the entry for Alabama Woodcock reading "Dec. 12–Feb. 15" should read "Dec. 13–Feb. 15."

4. In § 10.46, paragraph (b) on page 11998, the entry for Louisiana Woodcock reading "Nov. 26–Nov. 29" should read "Nov. 26–Nov. 29, Dec. 9–Feb. 7."

5. In § 10.51, on page 11999 the first entry for the Remainder of Alaska and Unimak Island reading "Sept. 1–Dec. 4" should read "Sept. 1–Dec. 14."

6. In § 10.53, paragraph (d)(2) on page 12000, the words "Fon du Lac" should read "Fond du Lac."

(40 Stat. 755; 16 U.S.C. 703 et seq.)

*Effective date.* Notice and public procedure having been found to be impractical and unnecessary, this amendment shall become effective upon publication in the FEDERAL REGISTER.

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

AUGUST 17, 1970.

[F.R. Doc. 70-10991; Filed, Aug. 20, 1970; 8:47 a.m.]

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

## PART 32—HUNTING

### Sand Lake National Wildlife Refuge, S. Dak.

On page 11303 of the FEDERAL REGISTER of July 15, 1970, there was published a notice of proposed amendment to 50 CFR 32.11. The purpose of this amendment is to provide public hunting of migratory game birds on certain areas of the National Wildlife Refuge System, as legislatively permitted.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections with respect to the proposed amendment. No comments, suggestions, or objections have been received. The proposed amendment is hereby adopted without change.

Since this amendment benefits the public by relieving existing restrictions on migratory game bird hunting, it shall become effective upon publication in the FEDERAL REGISTER.

(Sec. 7, 80 Stat. 929, 16 U.S.C. 715i; sec. 4, 80 Stat. 927, 16 U.S.C. 668dd (c), (d))

1. Section 32.11 is amended by the following addition:

§ 32.11 List of open areas; migratory game birds.

* * * * *

SOUTH DAKOTA

Sand Lake National Wildlife Refuge.

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

AUGUST 17, 1970.

[F.R. Doc. 70-10990; Filed, Aug. 20, 1970; 8:47 a.m.]

## PART 32—HUNTING

### Yazoo National Wildlife Refuge, Miss.

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

MISSISSIPPI

YAZOO NATIONAL WILDLIFE REFUGE

Public hunting of mourning doves on the Yazoo National Wildlife Refuge, Miss., is permitted only on the areas designated by signs as open to hunting. These open areas, comprising approximately 1,000 acres, are delineated on a map available at refuge headquarters, Route 1, Hollandale, Miss. 38748; and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State and Federal regulations and seasons covering the hunting of mourning doves, subject to the following special conditions:

(1) Hunting dates: September 14–19, 21–26, 1970.

(2) No hunters will be permitted within the hunting areas before 11:45 a.m. daily.

(3) Retrievers used by hunters will be kept under control at all times.

(4) All firearms must be encased and/or unloaded when outside designated hunting areas.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through September 26, 1970.

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

AUGUST 14, 1970.

[F.R. Doc. 70-10975; Filed, Aug. 20, 1970; 8:46 a.m.]

## PART 32—HUNTING

### Hatchie National Wildlife Refuge, Tenn.

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

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

TENNESSEE

HATCHIE NATIONAL WILDLIFE REFUGE

The public hunting of squirrels and raccoons on the Hatchie National Wildlife Refuge is permitted on the area designated by signs as open to hunting. This open area comprising 8,417 acres is delineated on a map available at the Refuge headquarters, Brownsville, Tenn. 38012; and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323.

Hunting shall be in accordance with all State and Federal regulations subject to the following conditions:

*Squirrels.* (1) The open season for squirrels is September 29 through October 29.

(2) Only .22 caliber rifles or shotguns incapable of holding more than three shells are permitted.

(3) Dogs are prohibited.

(4) The hunting of crows, gray foxes, bobcats, and feral hogs is permitted during this hunt.

*Raccoons.* (1) The open season for raccoons will be October 15 through November 14.

(2) Hunting hours shall be from 7 p.m. to midnight.

(3) Axes, saws, or other cutting implements are prohibited.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 14, 1970.

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

AUGUST 14, 1970.

[F.R. Doc. 70-10976; Filed, Aug. 20, 1970; 8:46 a.m.]

# Proposed Rule Making

## CIVIL AERONAUTICS BOARD

[ 14 CFR Parts 207, 208, 212, 214, 249, 295, 399 ]

[Docket No. 22174]

### CHARTER REGULATIONS

### Supplemental Notice of Proposed Rule Making

AUGUST 18, 1970.

The Board by circulation of notice of proposed rule making EDR–183, PSDR–24, dated May 8, 1970, and publication at 35 F.R. 7587, gave notice that it had under consideration proposed amendments to Parts 207, 208, 212, 214, 249, and repeal of Part 295 of its economic regulations (14 CFR Parts 207, 208, 212, 214, 249, and 295) and amendment of its policy statements, Part 399 (14 CFR Part 399). The proposals embody substantial revision and extension of the charter regulations and include implementing, clarifying, and editorial amendments.

Interested persons were given an opportunity to participate in the proposed rule making through transmission of twelve (12) copies of written data, views, or arguments pertaining thereto to the Docket Section on or before June 15, 1970, with reply comments due on or before July 6, 1970. By EDR–183A/PSDR–24A, dated June 9, 1970, 35 F.R. 9218, the time for filing initial comments was extended to July 30, 1970, and for reply comments, to August 20, 1970.

Counsel for certain trunkline carriers has requested an extension of time for filing reply comments to September 21. It is claimed that certain of the initial comments contain intricate legal arguments and asserted facts which must be analyzed, communicated to clients, and thereafter answered. It is also maintained that initial comments were filed by 47 persons or groups of persons. Counsel for the member carriers of the National Air Carrier Association joins in the request. It also appears that Trans World Airlines and the American Society of Travel Agents approve of the request of the trunkline carriers and that the Association of Retail Travel Agents has no objection to the applied for extension.

The undersigned finds that good cause has been shown for an extension of 15 days for filing reply comments. This will provide a total five weeks for the submission of reply comments, a period which, in the judgment of the undersigned should be adequate. To grant the full extension requested might jeopardize the Board's ability to take final action before the end of the summer season.

Accordingly, pursuant to authority delegated in § 385.20(d) of the Board's organization regulations, the undersigned hereby extends the time for submitting reply comments to September 4, 1970.

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

By the Civil Aeronautics Board.

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

[F.R. Doc. 70–10998; Filed, Aug. 20, 1970; 8:47 a.m.]

## DEPARTMENT OF AGRICULTURE

### Consumer and Marketing Service

[ 7 CFR Part 948 ]

### IRISH POTATOES GROWN IN COLORADO

### Proposed Limitation of Shipments for Area No. 2 and Import Requirements for Red Skinned Round Type

Consideration is being given to the issuance of the limitation of shipments regulation for Area No. 2 Colorado, hereinafter set forth, which was recommended by the Area No. 2 Committee, established pursuant to Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR Part 948), regulating the handling of Irish potatoes grown in the State of Colorado. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

This notice is based on the recommendation and information sumitted by the Colorado Area No. 2 Potato Committee, established pursuant to said marketing agreement and order and other available information. The recommendation of the committee reflects its appraisal of the composition of the 1970 crop in Area No. 2 and of the marketing prospects for this season.

The grade, size, quality, and maturity requirements as provided herein are necessary to prevent potatoes of poor quality, or undesirable sizes from being distributed into fresh market channels. They will also provide consumers with good quality potatoes consistent with the overall quality of the crop, and maximize returns to the producers for the preferred quality and sizes.

The proposed regulations with respect to special purpose shipments for other than fresh market use, are designed to meet the different requirements for such outlets.

All persons who desire to submit data, views, or arguments in connection with this proposal may file the same in quadruplicate with the Hearing Clerk, Room 112, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 5 days after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). The proposed regulation is as follows:

§ 948.364 Limitation of shipments.

During the period September 7, 1970, through June 30, 1971, no person shall handle any lot of potatoes grown in Area No. 2 unless such potatoes meet the requirements of paragraphs (a) and (b) of this section, or unless such potatoes are handled in accordance with paragraphs (c), (d), (e), and (f) of this section. The maturity requirements specified in paragraph (b) shall terminate October 31, 1970, at 11:59 p.m. m.s.t.

(a) *Minimum grade and size requirements*—(1) *Round varieties.* U.S. No. 2, or better grade, 2⅛ inches minimum diameter.

(2) *Long varieties.* U.S. No. 2, or better grade, 2 inches minimum diameter or 4 ounces minimum weight.

(b) *Maturity (skinning) requirements*—(1) *Russet Burbank and Red McClure varieties.* For U.S. No. 2 grade not more than "moderately skinned" and for other grades not more than "slightly skinned."

(2) *All other varieties.* Not more than "moderately skinned."

(c) *Special purpose shipments.* (1) The grade, size, maturity, and inspection requirements of paragraphs (a), (b), and (f) of this section and the assessment requirements of this part shall not be applicable to shipments of potatoes for:

(i) Livestock feed;

(ii) Relief or charity; or

(iii) Canning, freezing, and "other processing" as hereinafter defined.

(2) The grade, size, maturity, and inspection requirements of paragraphs (a), (b), and (f) of this section shall not be applicable to shipments of seed pursuant to § 948.6 but such shipments shall be subject to assessments.

(d) *Safeguards.* Each handler of potatoes which do not meet the grade, size, and maturity requirements of paragraphs (a) and (b) of this section and which are handled pursuant to paragraph (c) of this section for any of the special purposes set forth therein shall,

(1) Prior to handling, apply for and obtain a Certificate of Privilege from the committee.

(2) Furnish the committee such reports and documents as requested, including certification by the buyer or receiver as to the use of such potatoes, and

(3) Bill each shipment directly to the applicable processor or receiver.

(e) *Minimum quantity.* For purposes of regulation under this part, each person may handle up to but not to exceed

1,000 pounds of potatoes without regard to inspection and the requirements of paragraphs (a) and (b) of this section, but this exception shall not apply to any shipment which exceeds 1,000 pounds of potatoes.

(f) *Inspection.* (1) No handler shall handle any potatoes for which inspection is required unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment. For purposes of operation under this part it is hereby determined pursuant to paragraph (d) of § 948.40, that each inspection certificate shall be valid for a period not to exceed 5 days following the date of inspection as shown on the inspection certificate.

(2) No handler may transport or cause the transportation by motor vehicle of any shipment of potatoes for which an inspection certificate is required unless each shipment is accompanied by, and made available for examination at any time upon request, a copy of the inspection certificate applicable thereto.

(g) *Definitions.* The terms "U.S. No. 2," "slightly skinned," and "moderately skinned" shall have the same meaning as when used in the U.S. Standards for Potatoes (§§ 51.1540–51.1556 of this title), including the tolerances set forth therein. The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat and cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, or dicing, or the application of material to prevent oxidation does not constitute "other processing." Other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 97, as amended, and this part.

(h) *Applicability to imports.* Pursuant to section 608e–1 of the act and § 980.1 of this chapter (7 CFR 980.1), Irish potatoes of the red skinned round type, except certified seed potatoes, imported into the United States during the period September 7, 1970, through June 30, 1971, shall meet the grade, size, and quality requirements specified in paragraph (a) of this section, and during the period September 7, 1970, through October 31, 1970, shall meet the maturity requirements of paragraph (b) of this section.

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

Dated: August 18, 1970.

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

[F.R. Doc. 70–11019; Filed, Aug. 20, 1970; 8:49 a.m.]

## [ 7 CFR Part 1134 ]

[Docket No. AO–301–A10]

## MILK IN WESTERN COLORADO MARKETING AREA

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

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

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 10th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and opportunity to file exceptions thereto are issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

*Preliminary statement.* The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Grand Junction, Colo., on December 16–17, 1969, pursuant to notices thereof which were issued October 15, 1969 (34 F.R. 17070), and October 23, 1969 (34 F.R. 17446).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on June 12, 1970 (35 F.R. 10024; F.R. Doc. 70–7644), filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

Based on exceptions to the recommended decision, some significant substantive changes are provided in the application of the order to producer-handlers and to vendors whom they supply. The issuance of this revised recommended decision will afford any person who may be affected by such changes from the recommended decision the opportunity to submit his exceptions to them.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby adopted and are set forth in full herein, subject to the following modifications:

1. Under the subheading "1. *Application of the order to producer-handler operations*", the third, eighth, 18th and 20th paragraphs are changed and eight new paragraphs are added immediately after the 20th paragraph.

2. Under the subheading "2. *The Class I price*", the seventh paragraph is changed.

3. Under the subheading "5. *Pool plant qualifications*", the seventh paragraph is changed.

The material issues on the record relate to:

1. Application of the order to producer-handler operations.
2. The Class I price.
3. The Class I butterfat differential.
4. Interest payments on overdue accounts.
5. Pool plant qualifications.
6. Classification changes.
7. Modification of net pool obligation computation applicable to a handler's inventory of packaged fluid milk products.

*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. *Producer-handler.* The quantities of fluid milk products that a producer-handler may receive from pool plants should not be changed. He may now receive from such plants the lesser of 5,000 pounds or 5 percent of his Class I sales during the month.

The producer-handler definition should, however, be rewritten to insure that producer-handler status is accorded only to a person who operates the farm(s) on which his "own-herd production" is produced at his sole risk and under his complete and exclusive management and control, who operates a plant at which the milk produced on his farm(s) is processed and packaged, and whose disposition of fluid milk products on his routes and at his stores includes only the milk produced on his farm(s) and allowable purchases from pool plants.

To effectuate the above, a producer-handler should be defined as follows:

Producer-handler means any person who is an individual, partnership or corporation and who meets all the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the conditions set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is his sole risk and under his complete and exclusive management and control;

(2) Each such farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control; and

(3) Only he and no other person (except a member of his immediate family, or a stockholder in the case of a corporate farm) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and is disposed of during the month in the marketing area on routes: *Provided*, That:

(1) No fluid milk products are received at such plant or by him at any other location except:

(i) From dairy farm(s) as specified in paragraph (a) of this section; and

(ii) From pool plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;

(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month to process, package, receive or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of on routes or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at this plant; and the utilization for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except that represented by nonfat solids used in that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

The proposal to revise the qualifications for obtaining producer-handler status was made by Western Colorado Milk Producers Association, the principal cooperative in the market. As proposed by the cooperative, the maximum purchases from pool plants allowed a producer-handler would be limited to a daily average of 100 pounds of packaged fluid milk products, about 3,000 pounds monthly. As indicated above, a producer-handler may now receive from pool plants bulk or packaged fluid milk products in a quantity that is not more than the lesser of 5,000 pounds or 5 percent of his Class I sales.

The cooperative's proposal would consider as one operation, for the purpose of determining producer-handler status, all processing and distribution operations maintained under the control of the same person. Also, the cooperative's proposal would limit a producer-handler's distribution to retail sales at his farm, deliveries to grocery stores and restaurants, and sales to any other outlet at which the fluid milk products purchased from the producer-handler are not offered for resale.

The cooperative's proposal to revise the standards whereby a handler may qualify for producer-handler status was opposed by the two producer-handlers in the market and by a handler with own-herd production who does not now qualify as a producer-handler.

The purpose of this proposal is to provide exemption from the pricing and pooling provisions of the order only to those handlers who rely basically on their own farm production and on limited purchases of fluid milk products from pool plants. The extensive record testimony was concerned primarily with incorporating in the order a producer-handler definition that would be suitable under current conditions in the Western Colorado market. It is particularly emphasized that such definition should be spelled out with greater specificity than the present definition.

The own-farm production of one producer-handler, whose plant is in Grand Junction, is about 550,000 pounds of milk monthly. His own-farm production, all of which is exempt from the pricing and pooling provisions of the order and practically all of which is utilized as Class I, is more than 20 percent of the total producer milk classified in Class I under the Western Colorado order.

The above producer-handler is a corporation with three principal stockholders. Two of the stockholders also own a controlling interest in another corporation, an ice cream plant in the marketing area, at Montrose, Colo. No fluid milk products for Class I use are processed or packaged at the ice cream plant.

In addition to the fluid milk products handled in the producer-handler's plant, the principal owners of both corporations control the disposition of substantial quantities of other fluid milk products on routes in the marketing area. A trailer truck operated by the ice cream plant, and partially owned by the producer-handler corporation, picks up packaged milk regularly at a pool plant in Grand Junction. These fluid milk products, which are packaged at the pool plant in cartons identical to those used by the producer-handler, are trucked to a parking lot at Montrose, where they are transferred to delivery trucks owned by the ice cream plant for delivery to retail and wholesale customers.

The total Class I disposition from the two plants (the producer-handler plant and the ice cream plant), which are controlled by the same persons, includes a quantity of fluid milk products received from pool plants that is substantially greater than the maximum allowable quantity that a handler may receive from pool plants to qualify for producer-handler status. In fact, a spokesman for the producer-handler operation testified that this was a means of maintaining the proportion of Class I that he had in the market previously as a regulated handler, while at the same time obtaining exemption from the order as a producer-handler on his own farm production.

The interlocking ownership of the producer-handler operation and the Class I disposition from the ice cream plant result in a market situation not covered by the present producer-handler provisions.

In providing the present limit on a producer-handler's receipts from pool plants (the lesser of 5,000 pounds or 5 percent of his Class I sales) it was not contemplated that a producer-handler, usually a family type operation, would obtain, as in this case, substantial quantities of fluid milk products for Class I purposes from sources other than his own farm production. The cooperative contended that according exemption as a producer-handler to a person who must depend on receipts from pool plants for a substantial quantity of fluid milk products for his Class I needs is not warranted under conditions in the Western Colorado market.

The spokesman for the persons controlling the producer-handler and ice cream plant operations proposed that a producer-handler be permitted unlimited purchases from pool plants. He did not explain, however, why such a provision would be appropriate in the Western Colorado order. If a producer-handler could rely on unlimited pool supplies to supplement his own production, he could utilize all his own production for Class I purposes without bearing any responsibility for the cost of maintaining his reserve supplies. In such circumstances, the producers regularly supplying the market would bear the burden of carrying the reserve supply for his needs and also the reserves not needed for Class I purposes by handlers fully regulated.

The present limit on the quantity of fluid milk products (the lesser of 5,000 pounds or 5 percent of the Class I sales) that a producer-handler may receive from pool plants during the month is reasonable under current conditions in the Western Colorado market. Although the producers proposed a relatively small reduction in the quantities of fluid milk products that a producer-handler be permitted to receive from pool plants, they presented no testimony to justify such a reduction. Also, there was no significant opposition to permitting a producer-handler to purchase some fluid milk products from pool plants.

Continuing to allow a producer-handler to receive from pool plants the lesser of 5,000 pounds or 5 percent of his monthly Class I sales will enable any distributor who relies basically on his own farm production for his Class I needs to qualify for exemption from the order as a producer-handler. Such a person may, of course, depend on pool plants as a regular source of various fluid milk products (e.g., buttermilk, cream) that are not processed or packaged in his own plant. Also, such an operation may occasionally, particularly in emergency situations, depend on pool plants for supplemental supplies. Under the conditions in the Western Colorado market, it may reasonably be concluded that enabling a handler with own-herd production to obtain limited quantities of fluid milk products from pool plants, as herein proposed, would not significantly affect the competitive position of handlers or producers.

In proposing greater specificity in spelling out the conditions which a handler must meet to qualify for producer-handler status, producers contended that the present order provisions make it possible for a person to obtain producer-handler status even though, in effect, he may not meet the basic requirements for such exempt status. Clarification of the order's producer-handler provisions is necessary to remove any uncertainty as to the conditions which must be met by a handler to qualify as a producer-handler. Providing the standards

adopted herein, by giving more specific meaning to the producer-handler definition in the order, will contribute substantially to orderly marketing in the Western Colorado area.

Thus, a producer-handler should be required to furnish proof, satisfactory to the market administrator, that the full maintenance of the milk-producing cows on his farm is his sole risk and under his complete and exclusive management and control. Further, each farm where his milk cows are maintained must be owned or operated by him, at his sole risk, and under his complete and exclusive management and control.

As a further safeguard, the definition should specify that (except for an individual who is a member of the producer-handler's immediate family, or a stockholder in the case of a corporate farm) no individual working on a farm of a producer-handler may own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced.

The total operation of a handler with own-farm production, whether conducted as one or more business units, should be taken into consideration in determining whether he qualifies as a producer-handler. Also, the fluid milk products handled at all stores operated by him, directly or indirectly, or by any vendor who controls or is controlled by him, should be considered as a receipt and a disposition by the handler in determining his producer-handler status. Otherwise, a handler with own-farm production whose purchases of fluid milk products from pool plants exceeded the maximum allowable to qualify as a producer-handler could unwarrantedly obtain producer-handler status by having such purchases made by a plant under his control established as a separate business unit, a store operated by him, or by a vendor controlled by him.

Thus, in determining whether a person qualifies as a producer-handler, all fluid milk products disposed of on routes or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, a stockholder) has a financial interest should be considered as having been received at his plant; and utilization for such plant should include all such route and store dispositions. Without such a provision the meaningfulness of the basic standards herein provided, and deemed appropriate, to qualify a person for producer-handler status in the Western Colorado market would be seriously diminished.

In its exceptions to the recommended decision, the principal cooperative in the market urged that in determining whether a person with own-farm production qualifies as a producer-handler, the total Class I disposition of any vendor who receives any fluid milk products from him during the month and the total receipts by the vendor from all sources be considered as a part of his receipts and disposition.

As herein provided, a vendor's total receipts and disposition are considered as a part of the producer-handler's receipts and disposition only if the handler has a financial interest in the vendor's operation, or controls or is controlled by him. The exceptions on the cooperative did not contend that the use of such vendor's receipts and disposition are inappropriate under current conditions in the market. Rather, the cooperative took the position that such standards possibly could be circumvented (and therefore not be meaningful). According to exceptor, this might be accomplished by altering legal arrangements between the producer-handler and his vendor or substituting some other operating arrangement in order to obtain an unwarranted exemption. If this were done, the cooperative claims, the change in the producer-handler definition provided by this decision would be nullified.

The exemption of a producer-handler from the pricing and pooling provisions of the order is based on the principle that he assumes the burden of disposing of that portion of his production that is surplus to his Class I needs. This enables the producer-handler to retain the full return from his Class I sales even though such sales are in competition with regulated handlers.

Inasmuch as a producer-handler's appropriate competitive relationship with other handlers and with other producers depends upon the producer-handler assuming the burden of his own surplus, an equitable relationship among the several groups would not be achieved if the producer-handler were allowed to dispose of his surplus and obtain the Class I price for such surplus. As long as the producer-handler has the advantage of enjoying the full benefit of his Class I use sales without sharing them in the pool with the Western Colorado order producers, he should not also receive additional Class I benefits from the pool, at the expense of these producers, for his surplus production.

Because fluid milk products (in bulk or packaged form) disposed of by a producer-handler to another handler are deemed to be surplus to the producer-handler's operation, they are allocated to the lowest use class at the transferee handler's plant. The order provides for a payment into the producer-settlement fund at the difference between the Class I and Class III prices on such milk allocated to Class I by the receiving handler. It is equally appropriate, under conditions in the Western Colorado market, that such payment also apply to a producer-handler's surplus production disposed of to a vendor.

A producer-handler supplying fluid milk products to a vendor who at the same time is obtaining fluid milk products from handlers regulated, fully or partially, by the Western Colorado order or by another order is, in effect, disposing of the production in excess of his own Class I distributional needs to the vendor. If the producer-handler's production is adequate only for his needs, a vendor must obtain his full supply from regulated handlers. Such purchases are decreased during those periods when the excess production of the producer-handler is obtained by the vendor for his Class I distribution. As a consequence, the surplus production of the producer-handler displaces Class I sales from regulated plants, and the quantity thus displaced must be disposed of in the lowest-priced class. The producers supplying the handlers on whom the vendor depends for his Class I requirements in excess of that received from the producer-handler thus must carry an additional burden of reserve supply. The producer-handler consequently gains Class I sales while not assuming the full risk of carrying his own surplus.

In view of the above, it is concluded that the disposition of the surplus production of a producer-handler to a vendor receiving fluid milk products from other handlers should be treated in the same manner as the disposition of a producer-handler's surplus to a regulated handler. This would be accomplished by providing that the vendor make payment to the producer-settlement fund at the difference between the Class I and Class III prices on such milk, as is now required of regulated handlers.

The above payment would not be applicable to the fluid milk products received from a producer-handler by a vendor who depends upon him for his total supply, or by one in whose operation the producer-handler has a financial interest, or who controls or is controlled by him. As provided by this decision, the total receipts and disposition of such a vendor are considered a part of the producer-handler's receipts and disposition. The fluid milk products supplied such a vendor by a producer-handler are an integral part of the producer-handler's operation. The provisions relating to this kind of relationship limit the purchases that may be made from pool plants by such producer-handler and his vendor.

A hearing completed at Memphis, Tenn., on May 24, 1968, considered whether a producer-handler handling reconstituted skim milk should lose his exempt status. Amendments were made in 62 orders, including the Western Colorado order, effective January 1, 1970, on the basis of that record.

The findings in the October 13, 1969, decision (34 F.R. 16881) resulting from that hearing provide that the producer-handler definition of each order should preclude the use of reconstituted skim milk or unregulated milk in fluid milk products. The decision also finds that, since he is not subject to the pricing and pooling provisions of an order, a producer-handler using reconstituted skim milk or unregulated milk in any fluid milk product disposition thereby would disqualify himself from his exempt status as a producer-handler.

The findings in the aforesaid decision relative to precluding a producer-handler's using reconstituted skim milk in any fluid milk product are appropriate under current conditions in the Western Colorado market and are reaffirmed and adopted in this decision. Accordingly,

under the order modifications hereinafter set forth a producer-handler may no longer reconstitute any fluid milk products.

The addition of nonfat dry milk and similar products in fortified fluid milk products is a common practice among handlers. No purpose would be served by restricting producer-handlers in this regard, and they should be permitted to use nonfat milk solids in the fortification of fluid milk products without limit.

2. *Class I price.* The Class I price should be the basic formula price (Minnesota-Wisconsin manufacturing milk price) for the preceding month plus $2.

For 1969, the Western Colorado price averaged $6.55. For the same period the price herein proposed would have averaged $6.41. The Western Colorado Class I price is now determined by subtracting five cents from the Eastern Colorado order Class I price for the same month. Under the Eastern Colorado order, the Class I price is the basic formula price for the preceding month plus $2.30, and plus or minus a supply-demand adjustment. In 1969 when the supply-demand adjustment averaged minus 11 cents, the Eastern Colorado Class I price averaged $6.60, 19 cents above the $6.41 price that would have resulted from the Class I price formula for Western Colorado proposed by this decision.

The Class I price herein provided, the basic formula plus $2, was proposed by Western Colorado Milk Producers Association, a cooperative representing all but one of the approximately 75 producers on the market. The association contends that the present Class I price formula is not suitable under current conditions in the market, particularly since it is determined solely by the Eastern Colorado Class I price. The Western Colorado Class I price, the cooperative claims, should take into account more directly the supply and demand conditions of the Western Colorado market, while giving consideration to an appropriate alignment with Class I prices in all other markets in the region. Otherwise, it was claimed, handlers regulated by the Western Colorado order would be at a disadvantage in competing for sales with handlers regulated by these other orders.

The Western Colorado cooperative supplies, on a regular basis, not only Western Colorado handlers but also handlers under the Eastern Colorado order. In addition, the production of three of its members is shipped regularly to an unregulated bottling plant in northwestern Colorado. Milk not needed by its regular buyers is sold to plants under the Rio Grande and Central Arizona orders and to nonpool manufacturing plants at distant locations from the market.

In the 12 months through October 1969, when 38 million pounds of milk were pooled under the Western Colorado order, the cooperative marketed 57 million pounds of milk for its members. Of that amount, 34 million pounds were pooled under the Western Colorado order, 15 million pounds were sold to Eastern Colorado handlers and the remainder was shipped to plants in the Rio Grande and Central Arizona orders and to unregulated plants.

The 57 million pounds of milk marketed by the cooperative in the 12 months through October 1969 is approximately the same as the quantity it marketed in the corresponding period a year earlier. The total quantity of milk pooled under the Western Colorado order was 38 million pounds in the 12 months through October 1969, and 42 million pounds a year earlier. Class I utilization in the Western Colorado order pool was 24 million pounds in the year ending October 1969, and 29 million pounds for the prior year.

The decline in the quantities of milk pooled and classified in Class I under the Western Colorado order is due primarily to the change in status of a handler from pool plant operator to a producer-handler in July 1968. The development of own-herd production by the handler has displaced substantial quantities of producer milk previously purchased. The consequent loss of Class I sales to the pool has caused the Western Colorado cooperative to market a relatively large proportion of its members' production for manufacturing purposes as surplus.

Grand Junction, the principal city in the Western Colorado marketing area, is approximately 270 miles from Denver, 390 miles from Albuquerque, 300 miles from Salt Lake City, and 600 miles from Phoenix, the principal cities in the marketing areas of Eastern Colorado, Rio Grande, Great Basin, and Central Arizona orders, respectively.

The Class I differential of $2 proposed by the cooperative, and provided by this decision, compares with Class I differentials in the Eastern Colorado, Rio Grande, Great Basin, and Central Arizona orders of $2.30, $2.35, $2.25, and $2.52, respectively. Of these, only the Class I price under the Eastern Colorado order is subject to a supply-demand adjustment. In the other orders, the Class I price is computed by adding the Class I differential to the basic formula price for the preceding month, as is herein proposed for the Western Colorado order.

The present Western Colorado Class I price formula (Eastern Colorado Class I price minus 5 cents) is tending to attract substantially more milk for the market than can be marketed as Class I milk, and the cost of marketing the excess production has become economically burdensome to Western Colorado producers. Except for limited sales to an ice cream manufacturer, there are no ready outlets in the market for surplus producer milk.

It is not expected that the reduction in the Class I price proposed by this decision will achieve immediately a substantial drop in production for the market relative to its Class I needs. It should tend, however, to bring about a satisfactory balance between supply and sales within a reasonable period of time. In view of this, the level of the Class I price proposed by producers, and as proposed by this decision is, under current conditions, an appropriate basis for pricing Class I milk under the Western Colorado order. Also, it should be helpful in maintaining orderly marketing in the area by enabling Western Colorado handlers to compete on improved terms for Class I sales with handlers from other order markets, both inside and outside the marketing area.

A spokesman for a major cooperative in the Great Basin market which operates regulated plants under the Great Basin and Rio Grande orders, opposed reducing the Western Colorado Class I price. He claimed that it would disadvantage his cooperative in competing for fluid milk sales with Western Colorado handlers.

Salt Lake City and Albuquerque, the principal cities in the Great Basin and Rio Grande markets, are about 300 miles and 390 miles, respectively, from Grand Junction. Except for some sparsely populated places in southern Utah and southwestern Colorado, there is no overlapping of the sales areas of Western Colorado handlers and those of handlers regulated by the Great Basin and Rio Grande orders. Moreover, the rather limited areas where the Western Colorado handlers compete with milk under the Great Basin and Rio Grande orders are at great distance from the main centers of population under the respective orders and involve only small proportions of the milk regulated under each order. In any event the Western Colorado price has developed a substantial proportion of milk in the market which has no Class I outlet at this time.

It cannot be concluded, on the basis of the testimony presented, that the reduction in the Western Colorado Class I price herein proposed would provide any significant advantage to Western Colorado handlers in competing with Great Basin and Rio Grande order handlers.

3. *Class I butterfat differential.* The butterfat differential applicable to Class I milk should be 12 percent of the Chicago butter price for the preceding month (instead of 13 percent as now provided in the order).

In proposing a lower Class I butterfat differential, producers contended that the values now assigned to butterfat and skim milk in Class I products were first included in the order a number of years ago and do not reflect the current values.

In recent years the proportion of solids not fat in the fluid milk products in Class I has increased, and the proportion of butterfat has decreased. This has been evidenced by the increasing sales of skim milk items (plain, fortified and flavored skim and part skim milk, buttermilk, etc.) while sales of whole milk and cream have been declining. The change in the butterfat differential gives recognition to the changing value of butterfat in fluid milk products in Class I.

In the 12 months through October 1969, when the actual butter fat differential averaged 8.8 cents, the proposed differential would have averaged 8.1 cents. In the same 12-month period, when the Class I price averaged $6.52, the value of 3.5 pounds of butterfat in a hundred pounds of milk was $3.08 (35 times 8.8 cents). The skim milk portion of such hundred pounds of milk was valued at $3.50.

The proposed butterfat differential of 12 percent of the butter price would have valued the butterfat in a hundred pounds

of milk in the 12 months through October 1969 at $2.835 (35 times 8.1 cents). This is 23.5 cents less than the value of 3.5 pounds of butterfat in a hundred pounds of milk under the Western Colorado order in the same period. Had such a differential been in effect, however, the value of the skim milk portion of the milk would have been increased by 23.5 cents.

4. *Interest payments on overdue accounts.* The unpaid obligation of a handler to the market administrator should be increased one percent for each month or portion thereof beginning with the third day following the date by which such obligation is payable.

A cooperative proposed that handlers be required to pay interest on overdue accounts.

Prompt payment of monies due the market administrator, whether to the producer-settlement fund, for expense of administration or for marketing services, is essential to the operation of the order.

As herein provided, interest on unpaid obligations would be charged at the rate of 1 percent for each month or portion thereof beginning with the third day following the due date of an obligation and would be applied until the obligation is paid. The 3-day interval between the due date of an obligation and the time from which interest would be computed is a reasonable period of time to use as a basis for the payment of interest on overdue accounts.

The current scarcity of money and the relatively high rates of interest on commercial loans could provide an incentive for handlers to delay payments to the market administrator in lieu of borrowing needed money from other sources. Commercial loans in the area are available only at about 12 percent per annum on a secured loan. The rate adopted is reasonable in consideration of today's financial markets.

The interest payable on overdue accounts should be computed monthly on the unpaid balance, including any accrued interest. A handler who has not made payment when due to the market administrator has use of such money for the time beyond which it was due.

Some handlers may have unpaid obligations due the market administrator when the provision herein proposed would become effective. In consideration of the main purpose of the interest provisions, i.e., to obtain prompt payments for producers, there is no basis for differentiating between unpaid obligations resulting from milk handled in preceding months or in a future month. It is intended that the unpaid obligation of a handler at the time the interest payment provision herein proposed would become effective will be treated in the same manner as any unpaid obligation subsequently incurred by the handler.

If a handler refuses or fails to file a report from which his obligation is computed, interest should be charged on any payments due the market administrator as though the report was filed when due. Otherwise, handlers would be provided an incentive to be delinquent in filing their reports.

It was suggested that the market administrator be required to pay interest on any unpaid obligation to a handler. The order sets forth clearly the dates by which the market administrator must pay handlers any amount due them from the producer-settlement fund. He has no authority to delay such payments, the due dates of which are set forth in the order. There is no indication that the market administrator has at any time failed to make payments as required pursuant to the order and there would be no reason for him to make late payments if all handlers comply with order terms. Moreover, any such interest payments could come only from monies paid by other handlers for administrative purposes. The proposal is denied.

The order should not provide that a handler pay interest to producers or cooperatives on unpaid obligations for producer milk or that a handler's report be excluded from the market administrator's uniform price computation in any month because he is delinquent in making payment for producer milk. Except for the own-herd production of a pool plant operator, all producer milk in the pool is marketed by the Western Colorado Milk Producers Association, which collects from handlers for its members' deliveries.

The order is specific in prescribing the dates by which handlers must pay the cooperative for producer milk. Moreover, handlers apparently have not been delinquent in paying for producer milk by the dates specified in the order. Hence, there is no justification, under current conditions in the Western Colorado market, for specifying in the order that a handler must pay interest on unpaid obligations to producers or cooperatives or that a handler's report must be excluded from the uniform price computation because he is delinquent in making payment for producer milk.

5. *Pool plant qualifications.* The requirements for a plant to qualify as a distributing pool plant should not be changed.

A distributing pool plant is any plant in which fluid milk products are processed or packaged during the month and from which (1) at least 50 percent of its total receipts of Grade A milk (except receipts from a distributing pool plant) is disposed of as fluid milk products (except filled milk) on routes; and (2) at least 10 percent of its total receipts of Grade A milk or 2,000 pounds per day, whichever is less, is disposed of as fluid milk products (except filled milk) on routes in the marketing area.

As proposed by the principal cooperative in the market, a plant would be pooled if at least 50 percent of "any" receipts of Grade A milk (except receipts from a distributing pool plant) is disposed of as fluid milk products from "said plant or premises" on routes and at least 10 percent of its Grade A "disposition" or 2,000 pounds per day, whichever is less, is disposed of on routes in the marketing area during the month.

The cooperative's proposal could result in designating a plant used exclusively for manufacturing purposes (e.g., an ice cream manufacturing plant) as a distributing pool plant. As proposed, all fluid milk products received by the operator of a plant at any location for disposition to retail or wholesale outlets would be considered as a receipt at his plant; and the transfer to the vehicle of a plant operator at any location, or the delivery to the storage box or storage trailer of a handler at any location of fluid milk products for disposition to retail or wholesale outlets would be considered a receipt at, and a disposition from, his plant.

The proposal was made by the cooperative primarily to preclude the circumvention of the producer-handler provisions of the order. A handler who now qualifies as a producer-handler receives packaged fluid milk products from another handler at a parking lot near a manufacturing plant controlled by him. These fluid milk products are distributed to retail and wholesale outlets by delivery trucks owned by the manufacturing plant. Presently, the fluid milk products thus handled are not considered as a receipt of or a disposition by the producer-handler. Elsewhere in this decision provision is made to implement the producer-handler definition so that the total receipts of and the total disposition by a handler with own farm production at his plant and at all other locations will be considered in determining whether he qualifies for producer-handler status.

No purpose would be served by pooling a manufacturing plant based on distribution in the marketing area by the operator of that plant of fluid milk products which originated at another plant and were not received at the manufacturing plant. Such disposition must be accounted for under the order as a disposition on a route from the plant at which such fluid milk products were processed or packaged. The operator of that plant would be the responsible handler under the order for accounting for that disposition. Such plant could be a pool plant, an other order plant, a partially regulated distributing plant, or a producer-handler plant.

A vendor (a person who does not operate a plant but receives fluid milk products from a plant and resells them via a mobile delivery vehicle to retail and wholesale customers) is essentially the same as the operator of a manufacturing plant with respect to the distribution in the marketing area of packaged fluid milk products which originated at another plant and which were not handled in the manufacturing plant. The fluid milk products distributed by a vendor are considered as a disposition on a route from the plant at which they were processed or packaged.

Designating a vendor as a handler would enable the market administrator to obtain reports from him. Such a provision is necessary in order that the market administrator can determine that all fluid milk products distributed in the marketing area during the month from all plants and by distributors who do not operate plants are accounted for and to carry out the other terms of the order.

6. *Classification changes.* (a) No action should be taken at this time on the producers' proposal relating to the classification of "sterilized products in hermetically sealed containers."

As proposed by producers, the term "sterilized products in hermetically sealed containers," as used in the order to exclude products so designated from the Class I classification, would be changed to "sterile products in hermetically sealed containers." The purpose of the proposal is to clarify the present terminology so that only fluid milk products in containers that can assure sterility could be classified other than as Class I.

Producers indicated that they expect to join in a request for a hearing on a national or regional basis to consider a uniform classification plan under orders. Also, that such contemplated hearing on orders generally would provide a more appropriate basis for considering the classification of sterilized products in hermetically sealed containers than the limited testimony presented on the record of this hearing.

(b) Western Colorado handlers manufacture no yogurt in their plants. Some yogurt is distributed in the marketing area from plants outside the market.

The order does not include yogurt in the Class I classification. Neither does it explicitly state that the skim milk and butterfat used to produce yogurt shall be Class III. Producers proposed that the order should specify a Class III classification for yogurt until a hearing is held to consider the classification of yogurt in a uniform classification plan under orders. There was no opposition to the producers' proposal and no testimony was presented for classifying yogurt in a classification other than Class III. Accordingly, it is concluded that the order should, for the present, specify a Class III classification for yogurt.

7. *Inventory adjustment computation.* The net pool obligation computation adjustment applicable to a handler's inventory of packaged fluid milk products should be discontinued.

A handler's net pool obligation is now increased by the amount that the Class I price value for the current month of packaged fluid milk products in inventory at the end of the preceding month exceeds their Class I price value for the preceding month. When the current month's Class I price is less than that for the preceding month, the handler's net pool obligation on inventory of packaged fluid milk products is decreased.

Producers proposed that the above provision be deleted from the order. They claim that the elimination of this provision would simplify administration of the order. The effect of the provision has been insignificant. Since its inclusion in the order in May 1968, it has had little benefit for either producers or handlers. There was no opposition at the hearing to deleting the provision from the order.

Official notice is taken of the market administrator's monthly statistical summaries and uniform price announcements for May 1968–October 1969. In this 18-month period, the rate of adjustment on Class I packaged inventory was a plus amount in 7 months, a minus amount in 5 months, and zero in 6 months. The adjustment for the 18-month period increased the value of Class I milk in the pool an average of $7 per month. The value of Class I milk pooled averaged $137,000 per month during this period. The average net monthly adjustment of $7 affected the value of Class I milk pooled by $\frac{5}{1000}$ of 1 percent. Discontinuing this provision will tend to simplify order administration without adverse effect.

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

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

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which 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.

*Recommended marketing agreement and order amending the order.* The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Western Colorado marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. It is the same as the order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs on June 12, 1970, and published in the FEDERAL REGISTER on June 18, 1970 (35 F.R. 10024; F.R. Doc. 70–7644), subject to the following modifications in §§ 1134.11, 1134.13 (a)(3) and (b)(3), 1134.83, 1134.88, and to the addition of § 1134.63.

1. Section 1134.11 is revised as follows:

**§ 1134.11 Handler.**

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any person in his capacity as the operator of a partially regulated distributing plant;

(c) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant to a nonpool plant for the account of such cooperative association;

(d) A cooperative association with respect to milk of its member-producers which is delivered from the farm to the pool plant of another handler in a truck owned and operated by the association or by a hauler under contract to the association;

(e) A producer-handler or any person who operates an other order plant described in § 1134.61; or

(f) A vendor (any person who does not operate a plant but who engages in the business of receiving fluid milk products for resale and distributes to retail or wholesale outlets, via a mobile delivery vehicle, packaged fluid milk products received from any plant described in paragraph (a), (b), or (e) of this section).

2. Section 1134.13 is revised as follows:

**§ 1134.13 Producer-handler.**

"Producer-handler" means any person who is an individual partnership or corporation and who meets all the following condition:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the conditions set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is his sole risk and under his complete and exclusive management and control;

(2) Each such farm is owned or operated by him, at his sole risk, and under

his complete and exclusive management and control; and

(3) Only he and no other person (except a member of his immediate family, or a stockholder in the case of a corporate farm) employed on such farm(s) owns, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and is disposed of during the month in the marketing area on routes: *Provided,* That:

(1) No fluid milk products are received at such plant or by him at any other location except:

(i) From dairy farm(s) as specified in paragraph (a) of this section; and

(ii) By direct transfer from pool plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;

(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month to process, package, receive or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of on routes or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at his plant; and the utilization for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

3. Section 1134.16 is revised as follows:

**§ 1134.16 Fluid milk product.**

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, reconstituted milk or skim milk, fortified milk or skim milk (including "diet" foods), cream (sweet or sour), half and half, or any mixture in fluid form of milk or skim milk and cream (except ice cream mix, frozen dessert mixes, frozen cream, a product which contains 6 percent or more nonmilk fat or oil, aerated cream, eggnog, yogurt, cultured sour mixtures to which cheese or any food substance other than a milk product has been added in an amount not less than 3 percent by weight of the finished product), which are neither sterilized nor in hermetically sealed containers.

4. Section 1134.32 is revised as follows:

**§ 1134.32 Other reports.**

Each producer-handler, each handler pursuant to § 1134.11(f), each handler required to report under § 1134.61, and each handler making payments under § 1134.62(b) shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

5. Section 1134.51(a) is revised as follows:

**§ 1134.51 Class prices.**

(a) *Class I milk.* The Class I milk price shall be the basic formula price for the preceding month plus $1.80 and plus 20 cents;

* * * * *

6. Section 1134.53(a) is revised as follows:

**§ 1134.53 Butterfat differentials to handlers.**

(a) *Class I milk.* Multiply the Chicago butter price for the preceding month by 0.120.

* * * * *

7. A new § 1134.63 is added as follows:

**§ 1134.63 Obligation of a vendor on receipts from a producer-handler.**

Each vendor shall pay the market administrator for the producer-settlement fund on or before the 25th day after the end of the month at the difference between the value of the skim milk and butterfat in fluid milk products received from a producer-handler during the month at the Class I price applicable at the location of the producer-handler's plant (but not less than the Class III price) and its value at the Class III price subject to the following conditions:

(a) The quantities of skim and butterfat in fluid milk products on which payments shall be made pursuant to this section shall not exceed the vendor's Class I disposition in the marketing area during the month; and

(b) This section shall not apply to a vendor whose total Class I disposition is obtained from a producer-handler, or whose total receipts and disposition of fluid milk products are considered as a part of the receipts and disposition of the producer-handler pursuant to § 1134.13(b)(3).

8. Section 1134.70(c) is revised as follows:

**§ 1134.70 Computation of net pool obligation of each pool handler.**

* * * * *

(c) Add the amounts computed under subparagraphs (1) and (2) of this paragraph:

(1) Multiply the difference between the appropriate Class III price for the preceding month and the appropriate Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I under § 1134.46(a)(6) and the corresponding step of § 1134.46(b), for the current month; and

(2) Multiply the difference between the appropriate Class III price for the preceding month and the appropriate Class II price for the current month by the hundredweight of skim milk and butterfat subtracted from Class II milk under § 1134.46(a)(6) and the corresponding step of § 1134.46(b);

* * * * *

9. Section 1134.71(a) is revised as follows:

**§ 1134.71 Computation of uniform price.**

* * * * *

(a) Combine into one total the values computed under § 1134.70 for all handlers who filed the reports prescribed by § 1134.30 for the month and who made the payments under § 1134.84 for the preceding month;

* * * * *

10. Section 1134.83 is revised as follows:

**§ 1134.83 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers under §§ 1134.61, 1134.62, 1134.63, 1134.84, and 1134.86 and out of which he shall make all payments under §§ 1134.85 and 1134.86: *Provided,* That any payments due to any handler shall be offset by any payments due from such handler.

11. Section 1134.88 is revised as follows:

**§ 1134.88 Expense of administration.**

As his pro rate share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that classified under § 1134.43(b), but excluding, in the case of a cooperative association which is a handler under § 1134.11(d), milk which was received at the pool plant of another handler) and such handler's own production;

(b) Other source milk allocated to Class I under § 1134.46(a) (4) and (8) and the corresponding steps of § 1134.46(b);

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area which exceeds Class I milk received during the month at such plant from pool plants and other order plants; and

(d) Class I milk disposed of by a vendor in the marketing area on which a payment to the producer-settlement fund is due pursuant to § 1134.63.

12. A new § 1134.88a is added as follows:

**§ 1134.88a Interest payments.**

The unpaid obligation of a handler pursuant to §§ 1134.84, 1134.86, 1134.87, and 1134.88 shall be increased 1 percent for each month or portion thereof beginning with the third day following the date by which such obligation was payable: *Provided,* That:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously made pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Signed at Washington, D.C., on August 18, 1970.

JOHN C. BLUM,
*Deputy Administrator,*
*Regulatory Programs.*

[F.R. Doc. 70-11017; Filed, Aug. 20, 1970; 8:48 a.m.]

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## [7 CFR Part 1136]

[Docket No. AO-309-A15]

## MILK IN GREAT BASIN MARKETING AREA

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

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

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 10th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and opportunity to file exceptions thereto are issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

*Preliminary statement.* The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Salt Lake City, Utah, November 19-21, 1969, pursuant to notice thereof which was issued October 22, 1969 (34 F.R. 17335).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on May 27, 1970 (35 F.R. 8572; F.R. Doc. 70-6811), filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

Based on exceptions to the recommended decision, some significant substantive changes are provided in the application of the order to producer-handlers and to vendors whom they supply. The issuance of this revised recommended decision will afford any person who may be affected by such changes from the recommended decision the opportunity to submit his exceptions to them.

The material issues, findings, and conclusions, rulings, and general findings of the recommended decision are hereby adopted and are set forth in full herein, subject to the following modifications:

1. Under the subheading "1. *Marketing area*", the 9th paragraph is changed.

2. Under the subheading "2. *Application of the order to producer-handler operations*", paragraphs 3, 14, 16, and 22 are changed and nine new paragraphs are added immediately after the 22d paragraph.

3. Under subheading "6. *Classification changes*", four paragraphs are added immediately after the 12th paragraph.

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

1. The marketing area.
2. Application of order to producer-handler operations.
3. Modification of approved plant definition.
4. Exempting some distributing plants from regulation.
5. Division of producer milk.
6. Classification changes.
7. The Class I butterfat differential.
8. Location differentials.
9. Computation of net pool obligation.
10. Payments out of the producer-settlement fund.
11. Interest payments on overdue accounts.
12. Application of order to cooperative associations.
13. Administrative and conforming 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. *Marketing area.* Preston and Malad City, Idaho, and the Utah counties of Rich and Cache (except the city of Logan) should be deleted from the marketing area.

The marketing area presently includes the 21 northernmost Utah counties, Elko and White Pine Counties in Nevada, two Idaho cities (Preston and Malad City) and the town of Evanston in Wyoming. The 1960 census population of the marketing area was 879,000.

The several proposals at the hearing would remove from the marketing area Preston and Malad City, Idaho, and the Utah counties of Cache and Rich and add to it eight counties in southern Utah. No testimony was presented at the hearing on the latter proposal. Hence, no action is taken on it in this decision.

Except for the city of Logan in Cache County, the territory proposed to be deleted from the marketing area is basically rural. Of the 39.8 thousand population in Cache County in 1960, 18.7 thousand were in Logan. In Rich County, the 1960 census population was 1.7 thousand. The 1960 census populations for Preston and Malad City were 3.6 and 2.3 thousand, respectively.

The proposal to remove Preston and Malad City from the marketing area was made by two Idaho distributors who rely primarily on their own production for their needs. The Class I distribution by these handlers is within a limited geographical area and a substantial portion of the total Class I sales in Preston and Malad City is from their plants. The remaining Class I distribution in these cities is from the plants of the two principal cooperatives under the order.

The proposal to remove Cache and Rich Counties from the marketing area was made by a group of handlers whose distribution is within these counties and who rely basically on their own-herd production as a source of supply. The proposal to drop these two counties and the two Idaho cities from the marketing area was opposed by the two major cooperatives in the market. Although the cooperatives have some distribution in all the territory herein proposed to be deleted from the marketing area, their sales in these places, except for the city of Logan, are relatively insignificant compared to their overall sales throughout the marketing area.

Cache and Rich counties and Preston and Malad City were added to the marketing area effective January 1, 1966. That action resulted from testimony presented at a hearing by the two major cooperatives under the order in support of the proposal submitted by them. The testimony at that hearing indicated that the cooperatives were, by a wide margin, the major distributors in each of these four geographical areas then proposed to be included in the marketing area. The handlers who now propose the exclusion of these areas from the marketing area claim that the cooperatives do not now have as high a proportion of the sales in these areas as indicated at the earlier hearing.

The handlers requesting the removal of proposed territory from the marketing area have relatively small operations. They rely basically on their own-herd production as a source of supply. The nature of their operations in the relatively sparsely populated areas wherein they operate is substantially different from that of the great majority of regulated handlers. The latter usually have their plants in the major cities in the marketing area or they distribute over a wider area.

Proponents claim that the order has worked a hardship on them because the procurement and marketing conditions under which the relatively small distributors in the area operate are significantly different from those that prevail in the remainder of the present marketing area. They claim further that regulation under an order is not necessary to maintain orderly marketing in this basically rural area.

Those who would be directly affected by the marketing area revision are those distributors who rely primarily on their own farm production for their needs. With the removal of the territory herein proposed from the marketing area they would have greater flexibility in their operations, which are principally local.

The testimony for removing Cache County from the marketing area was directed primarily to the more rural parts of the county wherein the proponents operate. Unlike the remaining portion of Cache County, the city of Logan is served primarily by regulated handlers who are among the principal distributors in the remainder of the marketing area. No testimony was presented on the record to show that marketing conditions in Logan are in any way different from those in the remainder of the marketing area, which is served by the same handlers who are the principal distributors in Logan. Accordingly, there is no basis in this record to take Logan out of the marketing area.

2. *Producer-handler.* The quantities of fluid milk products that a producer-handler may receive from pool plants should not be changed. He may now receive from such plants the larger of 3,000 pounds, or 5 percent of his Class I sales, during the month.

The producer-handler definition should, however, be rewritten to insure that producer-handler status is accorded only to a person who operates the farm(s) on which his "own-herd production" is produced at his sole risk and under his complete and exclusive management and control, who operates a plant at which the milk produced on his farm(s) is processed and packaged, and whose disposition of fluid milk products on his routes and at his stores includes only the milk produced on his farm(s) and allowable purchases from pool plants.

To effectuate the above, a producer-handler should be defined as follows:

"Producer-handler" means any person who is an individual, partnership or corporation and who meets all the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the conditions set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is his sole risk and under his complete and exclusive management and control;

(2) Each such farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control; and

(3) Only he and no other person (except a member of his immediate family, or a stockholder in the case of a corporate farm) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and is disposed of during the month in the marketing area on routes: *Provided,* That:

(1) No fluid milk products are received at such plant or by him at any other location except:

(i) From dairy farm(s) as specified in paragraph (a) of this section; and

(ii) From pool plants in an amount that is not in excess of the larger of 3,000 pounds, or 5 percent of his Class I sales, during the month;

(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month to process, package, receive or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of on routes or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at his plant; and the utilization for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

There were a number of proposals considered at the hearing to change the producer-handler definition; no testimony was presented for retaining the present definition. The extensive record testimony was concerned basically with incorporating in the order a producer-handler definition that would be suitable under current conditions in the Great Basin market. It was particularly emphasized that such definition should be spelled out with greater specificity than the present definition.

The proposal of an association of about 40 producer-handlers would amend the present producer-handler definition to require that the milk produced by him as a dairy farmer is produced at a facility owned by him. The purpose of this proposal is to provide explicit language in the order to exclude the leasing of cows and other facilities for milk production as they relate to qualifying a distributor for producer-handler status.

A handler with own-farm production proposed that a producer-handler be permitted to buy fluid milk products from pool plants without limit. Proponent claimed that this would provide a producer-handler more flexibility in his processing operation and enable him to avoid the considerable cost of expanding his production facilities. A cooperative opposing this proposal contended that once a producer-handler develops "new" sales outlets with fluid milk products purchased from pool plants he would expand his own-herd production. As a consequence, the cooperative claimed, the Class I sales thereby gained by a producer-handler would be lost to the pool.

Another handler with own-farm production proposed that a producer-handler's source of supply be limited to his own-farm production, and that his distribution be limited to retail sales at the farm.

He contended that the present producer-handler definition, by unwarrantedly enabling some distributors with own-farm production to qualify as producer-handlers, has provided such distributors an advantage, in both procurement and sales, over regulated handlers.

A cooperative proposed that a producer-handler be limited in his purchases from pool plants to the lesser of 3,000 pounds, or 5 percent, of his monthly Class I sales. This would require a producer-handler to rely more than at present on his own resources to balance his production and Class I sales.

The spokesman for another cooperative proposed that producer-handler status be accorded only those who rely exclusively on own-farm production for their Class I needs. He also proposed that the producer-handler definition be limited to a "family operation." No proposed definition of a family operation was put forward at the hearing, however, and there is no basis in the record on which to define such term precisely.

The approximately 60 producer-handlers under the Great Basin order currently sell about 12 percent of the total Class I sales in the market, the same proportion that their sales have been of the total Class I sales in the market over the past several years.

The present order provisions make possible ready claims of producer-handler status by persons who may, or may not, meet the basic requirements for exempt status as such. Clarification of the order's producer-handler provisions was supported by both producers and handlers as a necessary step to remove any uncertainty as to the conditions which must be met by a handler to qualify as a producer-handler.

One problem arising from the present producer-handler definition concerns those handlers who have leased cows and other facilities for milk production. Another problem relates to receipts of fluid milk products from pool plants at locations other than the producer-handler's plant. Some handlers who had lost their exempt status as producer-handlers contend that the order is not clear about leasing arrangements and what are considered the receipts and dispositions of a handler to be used in determining his producer-handler status.

The present order provides, and should continue to provide, that the operation of a producer-handler's entire facilities for milk production, processing, and distribution shall be under his complete and exclusive control and at his sole risk. Experience in this market is that handlers have purchased milk from dairy farmers through the device of leasing arrangements on cows as a means of circumventing the order to obtain exempt status as producer-handlers. In such cases, it cannot be said that a "producer-handler" operates at his sole risk and under his complete and exclusive management and control his production facilities.

Thus, a producer-handler is required to furnish proof satisfactory to the market administrator that the full maintenance of milk-producing cows on his farm is his sole risk and under his complete and exclusive management and control. Further, each farm where his milk cows are maintained must be owned or operated by him, at his sole risk, and

under his complete and exclusive management and control.

As a further safeguard, the definition should specify that (except for an individual who is a member of the producer-handler's immediate family or a stockholder in the case of a corporate farm) no individual employed on a farm of a producer-handler owns fully or partially either the cows producing the milk on the farm or the farm on which it is produced.

In conjunction with the changes herein proposed, the present limit on the quantity of fluid milk products (the larger of 3,000 pounds or 5 percent of his Class I sales) the producer-handler may receive from pool plants would be retained. This limit is reasonable under current conditions in the Great Basin market. There was no significant opposition to permitting a producer-handler to purchase some fluid milk products from pool plants.

Continuing to allow a producer-handler to receive from pool plants up to 3,000 pounds or 5 percent of his monthly Class I sales will enable the relatively small distributors, who have historically operated as producer-handlers, to retain producer-handler status. Although such distributors rely primarily on own-farm production for their needs and handle their reserve supplies, some depend on pool plants as a regular source of various fluid milk products (e.g., buttermilk, cream) that are not processed or packaged in their own plants. Also, these operations must occasionally, particularly in emergency situations, depend on pool plants for supplemental supplies. The record does not show that enabling such handlers with own-herd production to obtain limited quantities of fluid milk products from pool plants, as herein proposed, has adversely affected the competitive position of regulated handlers or producers.

Some handlers with own-herd production have engaged in procurement and distribution practices that enable them to obtain from pool plants more than the maximum quantities of fluid milk products (the larger of 3,000 pounds or 5 percent of his Class I sales) permitted a producer-handler in order to obtain exemption as a producer-handler.

The only sales outlet from the plant of at least one handler with own-herd production is a single vendor, who also receives packaged fluid milk products on a regular basis from a pool plant. Another handler distributes on routes not only the fluid milk products obtained from his own-herd production and processed at his plant, but also the packaged fluid milk products from pool plants that he receives at another location. The above are some representative practices which have been used by handlers to circumvent the order's provisions in attempting to achieve producer-handler status.

The various means whereby a handler with own-herd production may obtain exemption as a producer-handler by an arrangement with a vendor, and whereby a producer-handler may evade the intent of the regulation by receiving fluid milk products from pool plants at locations other than the pool plant and his own plant, tend to defeat the purpose for which the producer-handler provision is included in the order.

The total operation of a handler with own-farm production, whether conducted as one or more business units, should be taken into consideration in determining whether he qualifies as a producer-handler. Also, the fluid milk products handled at all stores operated by him, directly or indirectly, or by any vendor who controls, or is controlled by, him should be considered as a receipt and a disposition by the handler in determining his producer-handler status. Otherwise, a handler with own-farm production whose purchases of fluid milk products from pool plants exceed the maximum allowable to qualify as a producer-handler could unwarrantedly obtain producer-handler status by having such purchases made by a plant under his control established as a separate business unit, a store operated by him, or by a vendor who controls, or is controlled by, him.

Thus in determining whether a person qualifies as a producer-handler, all fluid milk products disposed of on routes or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest should be considered as having been received at his plant; and utilization for such plant should include all such route and store dispositions. Without such a provision the meaningfulness of the basic standards herein provided, and deemed appropriate, to qualify a person for producer-handler status in the Great Basin market would be seriously diminished.

The recommended decision provided for considering the total receipts and disposition of any vendor receiving any fluid milk products from a handler with own-farm production as a receipt and disposition by such a handler in determining his producer-handler status. The producer-handlers who filed exceptions to this provision contended that it could result in a person's losing his producer-handler status because of purchases made from other sources by a vendor over whose operation he has no control. They claimed that unless a handler with own-farm production is affiliated with or has a financial interest in a vendor's operation, he is not in a position to exercise any control over the quantities of fluid milk products that a vendor may obtain from other sources.

As indicated above, the total operation of a handler with own-farm production should be taken into consideration in determining whether he qualifies as a producer-handler. Unless a vendor is affiliated with the producer-handler operation, the fluid milk products obtained by the vendor from other sources may not appropriately be considered as part of the producer-handler's operation. In view of this, it is concluded that a vendor's receipts and disposition should be considered as a part of the receipts and disposition of a handler with own-farm production only if such handler has a financial interest in, or otherwise controls (or is controlled by) the vendor.

The exemption of a producer-handler from the pricing and pooling provisions of the order is based on the principle that he assumes the burden of disposing of that portion of his production that is surplus to his Class I needs. This enables the producer-handler to retain the full return from his Class I sales even though such sales are in competition with regulated handlers.

Inasmuch as a producer-handler's appropriate competitive relationship with other handlers and with other producers depends upon the producer-handler assuming the burden of his own surplus, an equitable relationship among the several groups would not be achieved if the producer-handler were allowed to dispose of his surplus and obtain the Class I price for such surplus. As long as the producer-handler has the advantage of enjoying the full benefit of his Class I use sales without sharing them in the pool with the Great Basin order producers, he should not also receive additional Class I benefits from the pool, at the expense of these producers, for his surplus production.

Because fluid milk products (in bulk or packaged form) disposed of by a producer-handler to another handler are deemed to be surplus to the producer-handler's operation, they are allocated to the lowest use class at the transferee handler's plant. The order provides for a payment into the producer-settlement fund at the difference between the Class I and Class III prices on such milk allocated to Class I by the receiving handlers. It is equally appropriate, under conditions in the Great Basin market, that such payment also apply to a producer-handler's surplus production disposed of to a vendor.

A producer-handler supplying fluid milk products to a vendor who at the same time is obtaining fluid milk products from handlers regulated, fully or partially, by the Great Basin order or by another order is, in effect, disposing of the production in excess of his own Class I distributional needs to the vendor. If the producer-handler's production is adequate only for his needs, a vendor must obtain his full supply from regulated handlers. Such purchases are decreased during those periods when the excess production of the producer-handler is obtained by the vendor for his Class I distribution. As a consequence, the surplus production of the producer-handler displaces Class I sales from regulated plants, and the quantity thus displaced must be disposed of in the lowest-priced class. The producers supplying the handlers on whom the vendor depends for his Class I requirements in excess of that received from the producer-handler thus must carry an additional burden of reserve supply. The producer-handler consequently gains Class I sales while not assuming the full risk of carrying his own surplus.

In view of the above, it is concluded that the disposition of the surplus production of a producer-handler to a vendor receiving fluid milk products from other handlers should be treated in the same manner as the disposition of a producer-handler's surplus to a regulated handler. This would be accomplished by providing that the vendor make payment to the producer-settlement fund at the difference between the Class I and Class III prices on such milk, as is now required of regulated handlers.

The above payment would not be applicable to the fluid milk products received from a producer-handler by a vendor who depends upon him for his total supply, or by one in whose operation the producer-handler has a financial interest, or who controls or is controlled by him. As provided by this decision, the total receipts and disposition of such a vendor are considered a part of the producer-handler's receipts and disposition. The fluid milk products supplied such a vendor by a producer-handler are an integral part of the producer-handler's operation. The provisions relating to this kind of relationship limit the purchases that may be made from pool plants by such producer-handler and his vendor.

A hearing completed at Memphis, Tenn., on May 24, 1968, considered whether a producer-handler handling reconstituted skim milk should lose his exempt status. Amendments were made in 62 orders, including the Great Basin order, effective January 1, 1970, on the basis of that record.

The findings in the October 13, 1969, decision (34 F.R. 16881) resulting from that hearing provide that the producer-handler definition of each order should preclude the use of reconstituted skim milk or unregulated milk in fluid milk products. The decision also finds that, since he is not subject to the pricing and pooling provisions of an order, a producer-handler using reconstituted skim milk or unregulated milk in any fluid milk product disposition thereby would disqualify himself from his exempt status as a producer-handler.

The findings in the aforesaid decision relative to precluding a producer-handler's using reconstituted skim milk in any fluid milk product are appropriate under current conditions in the Great Basin market and are reaffirmed and adopted in this decision.

As now provided in the order, a producer-handler may use limited quantities of nonfat milk solids to fortify, or to reconstitute into, fluid milk products. The addition of nonfat dry milk and similar products in fortified fluid milk products is a common practice among handlers. No purpose would be served by restricting producer-handlers in this regard, and they should be permitted to use nonfat milk solids in the fortification of fluid milk products without limit.

3. *Approved plant.* The more descriptive term "fluid milk plant" should replace "approved plant" in the order and should be defined to include any plant from which fluid milk products are disposed of on routes in the marketing area and any milk receiving or processing plant from which milk or skim milk is shipped to a plant with route disposition in the marketing area. The present requirement that a plant must either receive milk from dairy farmers or possess the approval of a duly constituted health authority for the processing or packaging of Grade A fluid milk products to qualify as an approved plant should be deleted from the order.

A cooperative proposed the fluid milk plant definition herein provided in order that any plant (including a manufacturing milk plant) from which fluid milk products are disposed of on routes in the marketing area would be required, as a handler, to report to the market administrator. The basis for the proposal was that some such plants could, without the knowledge of the market administrator, distribute fluid milk products obtained from unregulated sources outside the marketing area into the marketing area.

To insure the integrity of the regulation, it is essential not only that all plants from which fluid milk products are distributed in the marketing area report to the market administrator, but also that the market administrator be authorized to receive reports from a person with such disposition who does not operate a plant. At least one plant with Class I sales on routes in the marketing area is not, under the present provisions of the order, required to report to the market administrator.

Some persons who do not operate plants purchase packaged fluid milk products on a regular basis from producer-handlers or pool plants and, as vendors, resell them via their own delivery vehicles to retail and wholesale customers. The fluid milk products distributed by a vendor are considered as a route sale from the plant at which they were processed and packaged.

Including in the fluid milk plant category all plants from which any fluid milk products are distributed in the marketing area, as herein provided, would require them to report their receipts and utilization to the market administrator each month. Also, designating as a handler any person who does not operate a plant, but who distributes to retail or wholesale outlets packaged fluid milk products received from a fluid milk plant (as herein defined), would enable the market administrator to obtain reports from such person. Such changes are necessary in order that the market administrator can determine that all fluid milk products distributed in the marketing area from all plants and by distributors who do not operate plants during the month are accounted for and to carry out the other terms of the order.

In conjunction with his proposal to revise the approved plant definition, a spokesman for the cooperative emphasized the need of having the pooling requirements apply equally to all plants from which a significant amount of fluid milk products is distributed in the marketing area. This can best be accomplished by specifying in the pool plant definition that a fluid milk plant will qualify as a pool plant when not less than 50 percent of the fluid milk products (except filled milk) approved by a duly constituted health authority for fluid consumption that are physically received at such plant, or diverted as producer milk to a nonpool plant, is disposed of on routes.

As now provided in the order, there must be disposed of on routes not less than 50 percent of the receipts of producer milk (including that diverted to nonpool plants) and receipts of fluid milk products from pool supply plants. The requirement that at least 15 percent of such plant's total fluid milk products disposition must be on routes in the marketing area would not be changed. The change herein provided will insure that any plant from which a significant quantity of fluid milk products is distributed in the marketing area on routes would be subject to the order in the same manner as any other handler irrespective of the source from which the fluid milk products handled at his plant were received.

4. *Exempt distributing plant.* A proposal to provide exemption for a plant that distributes not more than an average of 100 pounds of Class I milk per day in the marketing area for the month should not be adopted. The proposal was made primarily to allow (free from regulation) the distribution of some yogurt in the marketing area if the product were classified as Class I under another proposal made by proponent. Since no action is taken in this decision on that proposal, the corollary proposal to exempt certain plants from regulation is denied.

5. *Diversion of producer milk.* A cooperative should be permitted to divert monthly to nonpool plants up to 25 percent of its producer members' deliveries to all pool plants in March through August and up to 20 percent in September through February. Similarly, a pool plant operator should be permitted to divert monthly to nonpool plants up to 25 percent of producer milk (exclusive of that received from producer members of a cooperative) physically received at his plant in March–August and 20 percent in September–February.

A cooperative may now divert up to 25 percent of its producer members' deliveries to all pool plants in any month. The operator of a pool plant may divert up to 25 percent of producer milk received from producers who are not members of a cooperative. In practice, however, the pool plant operator has been permitted to divert up to 33⅓ percent of the milk physically received at his plant. This resulted because the 25 percent diversion allowance is now applied against a total of the producer milk physically received at a pool plant plus that diverted to nonpool plants during the month.

Producers proposed a change in the base amounts to which the percentage of producer milk that may be diverted by cooperatives for their members and by pool plant operators for nonmembers would be applied. They also proposed a revision in monthly percentages of producer milk physically received at a pool

plant that may be diverted each month.

In the Great Basin market, the cooperatives representing a major portion of the producers on the market exercise responsibility for diverting their members' milk to nonpool plants. Milk not needed by handlers can, of course, be most economically handled by moving it directly from the farm to nearby manufacturing plants. The greatest efficiency in this regard is achieved by diverting the milk from the farms of producers nearest the manufacturing plants. This can be accomplished most practicably in this market if the diversion is in terms of a reasonable percentage of the aggregate quantity of milk delivered to pool plants by the cooperative, as herein provided.

A pool plant operator whose sole source of supply is principally from nonmember producers has no less need for diversion than a cooperative whose members supply other pool plants. It is appropriate, therefore, that such a handler be permitted to divert nonmember supplies on the same percentage basis as that allowed a cooperative.

The quantities of producer milk diverted to nonpool plants vary seasonally. They are usually greater in March through August, when production for the market relative to its Class I needs is significantly greater than in the remaining 6 months of the year, September through February. In the 12 months through September 1969, producer milk pooled averaged 37.2 million pounds monthly. Of that amount, 33 million pounds were delivered directly to pool plants; the remainder, 4.2 million pounds (13 percent of the milk delivered to pool plants) was diverted to nonpool plants. The amounts diverted in the 12-month period ranged from a high of 6.7 million pounds in July 1969 (20 percent of producer deliveries to pool plants) to a low of 2.3 million pounds in November 1968 (7 percent of producer deliveries to pool plants).

The major cooperatives in the market contend that the present diversion provisions are inappropriate under current conditions. These provisions, they claim, have encouraged the association of milk with the market solely for manufacturing purposes at the expense of producers who regularly supply the market and on whom the market depends for its Class I needs.

The two major cooperatives in the market maintain their own Class I operations and are the principal suppliers of handlers in the market, both by direct delivery from the farms of producer members and by transfer from the cooperatives' plants. Member milk not needed for Class I purposes is utilized by the cooperative for manufacturing purposes.

A substantial amount of the manufacturing of reserve supplies of milk by these cooperatives is at pool plants. Some is by transfer from pool plants to nonpool manufacturing plants. One cooperative indicated that its monthly diversions of producer milk to nonpool plants are about 4 percent of its member milk received at pool plants. No testimony was presented by the second cooperative regarding the quantity of producer milk it diverts to nonpool plants.

A handler who receives milk from nonmember producers opposed any change in the order that would reduce or limit the quantity of milk that may be diverted from pool plants. The handler operates a plant that is basically a Class I operation. He has associated with his plant substantial quantities of milk that are diverted directly from producers' farms to a manufacturing plant. The quantities of milk transferred or diverted from this plant to the manufacturing plant are between 45 and 50 percent of the producer milk pooled by the handler.

Permitting monthly diversions to nonpool plants of 25 percent in March–August, and 20 percent in September–February, of the milk physically received at pool plants will be fully adequate in insuring the maintenance of a reserve supply for the market. Also, it will tend to safeguard the pool from exploitation by handlers utilizing substantial quantities of milk only for manufacturing purposes, which supplies are not needed or intended for the Class I market and therefore are not part of the necessary reserve to meet fluctuating Class I requirements.

Unless it must be diverted for manufacturing purposes, producer milk should not include any milk moved from a farm directly to an other order plant. Such milk's eligibility to be included under a Federal order would more appropriately be determined at the other order plant where received. In fact, diversion to such plant, if permitted unconditionally, could result in the pricing and pooling of the same milk under two orders.

Providing for the diversion of producer milk to an other order plant for manufacturing purposes will contribute to orderly marketing. In some instances, a pool plant operator may find that his most desirable outlet for this purpose is an other order plant. Specifying under the order that such milk may be diverted if a Class III classification (or comparable utilization under the other order) is designated for such milk pursuant to the other order will tend to insure the integrity of both orders.

Only that milk from dairy farmers genuinely associated with the market by being received and utilized at a pool plant should be eligible for diversion to nonpool plants. Otherwise, it cannot be said that such dairy farmers are supplying the Class I needs of the market. Therefore, it is provided that at least 6 days' production of a producer must be received at a pool plant during the month to qualify any of his production in the same month for diversion within the limits described above. A producer shipping on an every-other-day basis would under this standard be required, in effect, to ship only 3 days. The requirement herein adopted is sufficient to establish a producer's continuing association with the fluid market and still permit the necessary flexibility in diverting milk not needed for fluid use.

At least three deliveries of a producer must now be received at a pool plant during the month to qualify any of his production for diversion in the same month. Since shipments from producers' farms to pool plants are usually on an every-other-day basis, deliveries on 3 days usually include the production for 6 days. It is more appropriate, therefore, to specify that not less than 6 days' production (instead of three deliveries) of a producer must be received at the pool plant to qualify his milk for diversion on other days of the month. Otherwise, the producer who ships on a daily basis would have an unwarranted advantage over the great majority of producers shipping on an every-other-day basis.

As proposed by cooperatives representing a major portion of producers in the market, that producer milk diverted to nonpool plants should be priced at the location of the plant to which diverted instead of at the location of the pool plant to which it is customarily delivered. Pricing milk at the pool plant from which diverted could, in effect, subsidize at the expense of producers generally the more distant producers when the latter's milk is diverted to distant manufacturing plants rather than delivered to the market center. This is because the distant producers would receive the f.o.b. (zero zone) market uniform price on milk which is not moved to the market and on which the full cost charge for the farm to market haul has not been incurred.

It would not be practicable to allow the diversion of milk to producer-handler plants or to exempt distributing plants. To do so would be inconsistent with the basis for exempting the operators of such plants from the provisions of the order.

A producer-handler depends primarily on his own-farm production and supplementary supplies from pool plants for his needs. A person with own-herd production who relies also on milk moved directly from the farm of a producer cannot be distinguished in his operations from other handlers who are fully regulated because they receive milk from producers.

Exempt distributing plants are not subject to any of the provisions of the order with respect to their sources of supply. Hence, milk moved from any farm directly to an exempt distributing plant would not be subject to the pricing and pooling provisions of the order.

As now provided in the order, any fluid milk products transferred from a pool plant to a producer-handler plant or an exempt distributing plant is classified as Class I. This provision, the basis for which was established at previous hearings, is continued in the order.

In addition to providing for diversion to a nonpool plant, the order now provides that producer milk may be diverted "to a receiving facility not approved for handling milk for fluid consumption located at another pool plant." A cooperative's spokesman testified that since there are at present no such facilities in the market, this provision serves no purpose. Moreover, it is unlikely that

the provision will prospectively serve any useful or desirable purpose in the order. It therefore is deleted from the producer milk definition.

6. *Classification changes.* (a) Month-end inventories of packaged fluid milk products (now in Class III) should be classified in Class I. The proposed classification, which usually conforms with the ultimate utilization of packaged fluid milk products in inventory, will result in fewer audit adjustments in classification and handler obligations than if classified in Class III, as now provided in the order. It will not result, however, in an increase in handlers' costs.

A handler who operates a plant that varies between nonpool and pool status from month-to-month will be required to allocate first to a lower-priced class the fluid milk products in inventory at the beginning of each month as they change from nonpool to pool status. This requirement and the classification of month-end inventories of packaged fluid milk products in Class I will provide sufficient safeguards to prevent the exploitation of the pool (by varying his month-end inventories) by the operator of the plant that may be a pool plant and a nonpool plant in successive months.

Month-end inventories of bulk fluid milk products should continue to be classified in Class III. In the following month, they would be subtracted under the allocation procedures from any available Class III milk. A higher use value of such fluid milk products allocated to Class I would be reflected in returns to producers in the following month.

Although packaged fluid milk products in inventory are items which have been prepared specifically for Class I disposition, the ultimate utilization of bulk fluid milk products in inventory may differ substantially between plants and even from month-to-month at the same plant. Under these circumstances, continuing to classify and price month-end inventories of bulk fluid milk products in Class III, as now provided in the order, will facilitate the accounting procedures in the handling of such month-end inventories.

The order should specify that all fluid milk products on hand at the beginning of the month at a plant which was a nonpool plant in the preceding month should be allocated to any available Class III utilization of the plant during the month. This procedure will preserve the priority of assignment to current receipts of producer milk to the current Class I utilization at the plant.

For the first month that the change herein proposed would be effective, packaged fluid milk products on hand at the beginning of the month at a plant that was a pool plant in the preceding month would be allocated to Class I, and bulk fluid milk products would be allocated to Class III. Since the order would have priced the packaged fluid milk products in Class III in the preceding month (as closing inventory), the order should provide that a handler's net pool obligation be increased in the amount by which the value at the Class I price for the current month of the fluid milk products in beginning inventory allocated to Class I exceeds the value of such products at the Class III price in the preceding month. The above adjustment will insure that all fluid milk products disposed of by a handler during the month will be priced at the Class I price applicable for the month, whether such fluid milk products originated as closing inventory in the preceding month or as a receipt at the handler's plant in the current month.

(b) No change should be made in the order provisions applicable to the classification of shrinkage at a pool plant.

The order now provides for classifying in Class III up to 2 percent of the skim milk and butterfat in fluid milk products received during the month from producers and from other plants. Shrinkage at a plant beyond the maximum allowed in Class III is Class I.

A cooperative which operates several pool plants proposed that shrinkage percentage be based on the total utilization at all pool plants of a handler instead of on a plant basis as now provided in the order. Proponent requested the proposed change because the manner in which the cooperative's records of interplant shipments are maintained may result in an overage at one plant and a shortage at another during the same month.

The shrinkage provisions in the order were established on the basis that a plant which is operated in a reasonably efficient manner and for which acceptable records of receipts and utilization are maintained should not have plant losses in excess of the maximum provided for classification in Class III. The allocation of shrinkage on a plant basis, which is commonly provided in Federal orders, is designed to strengthen the classified pricing scheme and encourages the maintenance of adequate records and the efficient handling of milk.

To allow the combining of plants for the computation of shrinkage would provide an unwarranted advantage to the multiple plant operator over the single plant operator. A handler operating several plants could avoid a Class I classification on excess shrinkage in one plant at which his utilization was not fully accounted for by offsetting the excess shrinkage against an overage at another plant, even though the respective condition at each plant resulted from unrelated actions.

Each handler, whether operating one or more plants, is required by the order to maintain complete and accurate records of the movements of fluid milk products between his plant(s) and other plants. Because two plants are owned by the same handler does not justify the maintenance of records that are less complete than those required of a single plant operator.

In connection with its proposal to allocate the shrinkage of a handler with two or more plants on a system (instead of on a plant) basis, the cooperative proposed that such handler file one report for his entire operations and that the allocation provisions be applied to his entire operation as a unit.

Since the order will continue to provide for the allocation of shrinkage on a plant basis, it is necessary to obtain a report of each pool plant's operation. The proposal to provide for one report for a multiple plant handler's total operation, instead of reporting for each of his pool plants, is therefore denied.

The order should provide, however, that the allocation provisions [and the computation of a handler's net pool obligation] be on a system basis. As now provided in the order, a handler's allocation is applied on a system basis only if fluid milk products received during the month from an unregulated supply plant or an other order plant are allocated to Class I. Otherwise, the order provides that each handler's allocation shall be on an individual plant basis.

Applying the allocation provisions on a system basis would not change the obligation of a multiple plant handler to the pool or otherwise provide him any advantage over other handlers. It would, however, simplify the application of the order provisions to a multiple plant handler and facilitate the market administrator's computation of the monthly uniform price. That is, such handler's total receipts at all his pool plants would be assigned in accordance with the allocation provisions of the order against the total utilization at such plants. In turn, one net pool obligation would be computed for the multiple plant handler on the basis of this single allocation.

(c) Skim milk and butterfat in fluid milk products delivered in bulk form to and used at a commercial food processing establishment (other than a milk plant) in the manufacture of bakery products, candy, or packaged food products (other than milk products) exclusively for consumption off the premises should be Class III.

The order now provides a Class III classification for skim milk and butterfat (1) disposed of in bulk to a commercial candy manufacturer who does not dispose of fluid milk products for consumption either on or off the premises, and (2) disposed of to a commercial bakery (solely for the purpose of processing into bakery products) in the form of a flavored cream-sugar product containing at least 8 percent by weight of sugar. The containers used in this latter disposition must bear the label "bakery cream."

A handler proposed allowing a Class III classification for "bakery cream" on such cream disposed of to any bakery instead of only to a "commercial bakery", as now provided in the order. The present provision, it was claimed, in effect gives special consideration to one outlet in the market and, as such is unwarranted.

As proposed by the handler, a Class III classification for bakery cream would be permitted on sales of such cream to any bakery whether it was operated separately or in connection with a commissary or restaurant. If the bakery were operated in connection with a commissary or restaurant, the handler's proposal would have the "bakery cream" delivered to the restaurant classified in

Class III and other fluid milk products delivered there classified in Class I.

The commercial food establishments included in this category can substitute concentrated milk products (e.g., condensed milk, butter, nonfat dry milk) in place of fluid milk products in their food operations. A Class III classification for fluid milk products delivered in bulk form to and used at commercial food processing establishments, as herein adopted, is basically the same as that provided for similar circumstances in a number of other Federal orders.

(d) The skim milk and butterfat used by a handler to produce frozen dessert mixes should be specifically designated as Class III milk.

Ice cream and ice cream mixes are among the named products now in the Class III category. Mixes used to produce frozen desserts such as ice milk and sherbets, although technically not ice cream mix, are usually characterized as such. The sales outlets for these frozen desserts are the same as for ice cream mixes, and they are customarily included in the same classification as ice cream mixes in the orders when utilized for commercial freezing.

A producer witness suggested designating explicitly a Class III classification in the Great Basin order for the skim milk and butterfat used to produce all frozen dessert mixes. Such a provision, as herein provided, will remove any uncertainty that may arise regarding the classification of frozen dessert mixes under the Great Basin order.

(e) The skim milk in cottage cheese dumped or disposed of for livestock feed should be Class III. All skim milk used to produce cottage cheese is now Class II.

Not all cottage cheese produced by a handler is sold. Some skim milk used to produce cottage cheese ends up in "spoiled batches" and as "route returns." Dumping such products or selling them for livestock feed usually represents the only means of disposing of such skim milk.

The skim milk in all fluid milk products dumped or disposed of for livestock feed is Class III, which classification is equally appropriate for the skim milk in cottage cheese so disposed of.

(f) No action should be taken at this time on the producers' classification proposals relating to yogurt and "sterilized products in hermetically sealed containers."

As proposed by producers, the term "sterilized products in hermetically sealed containers", as used in the order to exclude products so designated from the Class I classification, would be changed to "sterile products in hermetically sealed containers." The purpose of the proposal is to clarify the present terminology so that only fluid milk products in containers that can assure sterility could be classified other than as Class I.

Skim milk and butterfat used to produce yogurt is now classified as Class III under the Great Basin order. Producers argued that yogurt should be Class I because it is Class I in some Federal orders.

Producers indicated that they expect to request a hearing on a national or regional basis to consider a uniform classification plan for all orders on all dispositions of skim milk and butterfat. Moreover, producers stated that their contemplated hearing for all orders would provide a more appropriate record as a basis for considering yogurt and sterilized products in hermetically sealed containers than the limited testimony presented on the record of the Great Basin hearing.

(g) A handler's proposal to classify cream in Class II (instead of Class I) should be denied. The change was requested primarily to improve the handler's position in selling cream in competition with cream substitutes.

Elsewhere in this decision, provision is made for lowering the Class I butterfat differential from 13.5 to 12 percent of the butter price. This will result in a substantial reduction in the cost to handlers of cream sold for fluid use. Any reclassification of milk for fresh cream would more appropriately be considered at a general hearing on the classification of cream and related products in all their forms.

(h) The mileage limitation on the transfer of fluid milk products to nonpool plants should be deleted from the order. A Class I classification is now applicable on such transfers to nonpool plants that are more than 525 miles from Salt Lake City. The cooperative proposing the change contended that although the provision may have once served a purpose, it is neither a useful nor desirable provision under current market conditions.

In the past, the provision was a means of insuring the classification of fluid milk products transferred to plants without requiring the market administrator to travel long distances to verify their use. Currently, it is not unusual to ship fluid milk products for manufacturing purposes to nonpool plants at distant locations from the market. With better roads and improved facilities for moving large quantities of milk in bulk, plants at distant locations from the market are, at times, the most practicable and economically feasible outlets for fluid milk products that are not needed in the market for Class I purposes. Moreover, there are now other Federal order markets within which, or close to which, any nonpool plant to which a shipment might be made from the Great Basin market would be located. In such case, verification of the utilization could be made in cooperation with the market administrator of the nearest order.

Removing the mileage limitation provision as it applies to the classification of milk moved from pool plants to nonpool plants, as herein proposed, will facilitate the marketing of milk that is not needed for fluid purposes, thereby contributing to orderly marketing.

7. *Class I butterfat differential.* The butterfat differential applicable to Class I milk should be 12 percent of the butter price for the preceding month (instead of 13.5 percent as now provided).

In proposing a lower Class I butterfat differential, producers contended that the values now assigned to butterfat and skim milk in Class I products were instituted in the order a number of years ago and do not currently reflect the values of these components of milk.

In recent years the proportion of solids not fat in the fluid milk products in Class I has increased, and the proportion of butterfat has decreased. This has been evidenced by the increasing sales of skim milk items (plain, fortified, and flavored skim and part skim milk, buttermilk, etc.) while sales of whole milk and cream have been declining. The change in butterfat differential gives recognition to the changing value of butterfat in fluid milk products in Class I.

In the 12 months through September 1969 the proposed differential would have averaged 8.1 cents. The actual average butterfat differential for the same period was 9.1 cents. In the 12 months through September 1969, when the Class I price averaged $6.58, the value of 3.5 pounds of butterfat in a hundred pounds of milk was $3.185 (35 times 9.1 cents). The skim milk portion of such hundred pounds of milk was valued at $3.395.

The proposed butterfat differential of 12 percent of the butter price would have valued the butterfat in a hundred pounds of milk in the 12 months through September 1969 at $2.835 (35 times 8.1 cents). This is 35 cents less than the value of 3.5 pounds of butterfat in a hundred pounds of milk under the Great Basin order in the same period. Had such a differential been in effect, the value of the skim milk portion of the milk would have been increased by 35 cents.

As a corollary change to the reduction in Class I butterfat differential adopted herein, the Class I differential should be reduced 3 cents. This will maintain the price of Class I milk, at its average butterfat test, at its present level.

While the butterfat content in producer milk is relatively close to the average butterfat content of whole milk sold as Class I, it is substantially above the average test of all Class I milk. This is because fluid skim milk and low fat milk items are an increasing proportion of Class I sales at the expense of whole milk and cream.

In the 12 months through September 1969 producer milk deliveries averaged 3.65 percent butterfat. In the same period the butterfat in producer milk classified in Class I averaged 3.2 percent.

The order price for the Class I milk of 3.2 percent butterfat sold by handlers in the 12 months through September 1969 averaged $6.307. This is computed by subtracting from the average $6.58 Class I price for 3.5 percent milk, 3 points of butterfat at 9.1 cents per point. At the lower butterfat differential adopted in this decision, the adjustment for butterfat would have been 8.1 cents per point for such period. The reduction of 3 cents in the Class I differential offsets the change in butterfat adjustment, keeping the Class I price at the same level.

The handler who proposed that the Class I price differential be adjusted to give consideration to the change in the Class I butterfat differential also proposed that the Class I pricing formula of the order be changed so that the Class I price would be moved upward or downward only in brackets of stated amounts, such as 15 or 20 cents. This proposal was not opposed by producers. However, both proponent and producers indicated that since a national hearing is considering such a bracketing system for all orders, no action should be taken on the proposal at this time.

8. *Location differentials.* The plant location differential provisions should be changed to establish Ogden and Provo, Utah, as the basing points for computing the differentials. Under the proposed change, Elko, Nev., and Price, Vernal and Richfield, Utah, would be discontinued as basing points.

The order now provides for reducing the Class I and uniform prices at plants 100 or more miles from the nearest of the city halls in Ogden, Price, Richfield, and Vernal, Utah, and Elko, Nev., at the rate of 15 cents at plants within 100–110 miles, plus an additional 1.5 cents for each additional 10 miles. The present basing points for computing location differentials are established on each of the four sides of the marketing area near the perimeter, that is, at Price and Vernal on the eastern side; at Ogden on the northern side; at Elko, Nev., on the western side; and at Richfield, Utah, on the southern side.

A cooperative proposed to remove Elko, Nev., and Price and Vernal, Utah, as basing points for computing location adjustments, and further proposed that Roosevelt, Utah, be added as a basing point along with Ogden and Richfield, Utah. Roosevelt is about 30 miles west of Vernal. Such proposal would provide also for no adjustment within 200 miles of a basing point, a minus adjustment of 30 cents per hundredweight for plants located 200–210 miles distant, plus 1.5 cents for each additonal 10 miles. Under a corollary proposal considered at the hearing, any diverted producer milk would be priced at the location of the plant to which diverted.

In proposing that Elko, Nev., be removed as a basing point for computing location differentials, proponent contended that it is too far away from the center of the market to function effectively as a basing point. The reason given for deleting Price and Vernal as basing points was that no pool plants are located there.

The problem of location pricing at hand is essentially one of recognizing the need for basing points that will assist in pricing milk to meet the need for supplies at main centers of the market where the great bulk of the supply is processed for Class I distribution.

Fluid milk products are bulky and perishable, and incur a relatively high transportation cost when they are moved a considerable distance. The location differential provisions should facilitate economic movement when milk is received for Class I purposes from plants located a distance from the center of the market where the milk is processed. The rates applicable to such movement should be applied from appropriate basing points to accomplish this objective, and to assist in bringing about uniformity in prices to all handlers. Such adjustment to prices reflect the lesser value (place utility) of milk when such milk is moved a considerable distance to the market from an outlying plant, or when it is diverted to an outlying location as producer milk in lieu of being brought to the market center.

Since location differentials, sometimes called "zone differentials," apply only to plant locations, no differential is applicable when the milk is received directly from the farm at the processing plant in the market center. The transportation or hauling cost on the latter milk is paid for by the individual producer through negotiation with haulers. The hauling rate is not fixed by the order.

As previously stated, when milk is received at a plant located a considerable distance from the market, the handler rather than the producer incurs the additional cost of moving that milk from the outlying plant to the central market for processing. Under these conditions, and in the absence of an opportunity cost created elsewhere for the milk, the value of producer milk delivered to a plant located at a distance from the market is reduced in proportion to the distance, and the cost of transporting such milk, from the plant of first receipt to the plant at the market center.

An important aspect of establishing basing points for computing location differentials is to identify the major consumption centers in the marketing area. Population for the Great Basin marketing area is centered on a north-south axis primarily between Ogden and Provo, Utah. The 1960 population for the Utah portion of the marketing area (the major component) was about 837,000.[1] The north-south axis from Cache County south through Sevier County accounted for about 652,000, or 78 percent of the total. More significantly, about 76 percent of the population for the marketing area is concentrated in the Ogden, Salt Lake City, and Provo, Utah, area which comprises Weber, Davis, Salt Lake City, and Utah Counties. Salt Lake City is the principal population center of the marketing area.

The cities of Ogden, Salt Lake City, and Provo, Utah, are the principal centers from which fluid milk products are regularly distributed by handlers within a radius of 150 miles in various directions. Ogden is about 35 miles north of Salt Lake City and Provo is 43 miles south of Salt Lake City. They represent the north-south extremities, respectively, of the heaviest population area within which the bulk of the market's fluid milk sales are made to consumers. For this reason, these cities should be established as basing points in place of those now provided in the order. No adjustment would apply at any outlying plant within 150 miles of these cities because this is an area within which it is more feasible to receive direct-ship milk for Class I use rather than to receive it first at a supply plant or receiving station. Virtually all milk regularly received at Class I processing plants in this market is received as direct-ship milk.

At one time there was a pool distributing plant at Winnemucca, Nev., in the extreme western part of the marketing area, about 327 miles from Ogden. Official notice is taken of the market administrator's monthly uniform price announcements since April 1969, which make clear that the Winnemucca plant discontinued its pool plant status some months ago. No other Nevada plants are pool plants under this order. There being no regulated disposition into the marketing area from the Winnemucca area, and such area being essentially rural, the basing point at Elko, Nev., does not serve the basic purpose indicated and should be discontinued. Its continued use as a basing point would distort the place value of producer milk at outlying points in relation to the price level at the centers of consumption.

For milk received at a plant located 150–160 miles from the nearer of the city halls of Ogden or Provo, Utah, the Class I and uniform prices should be reduced 22 cents per hundredweight. The present rate of 1.5 cents for each 10 miles or fraction thereof, beyond the 160 miles herein provided, should be retained. This rate reasonably represents the cost of transporting milk over long distances in substantial amounts. Location adjustments (or zone differentials) should assure that needed milk will move to bottling plants but at the same time not encourage uneconomic handling of milk at the expense of the pool.

During the past year, a regulated handler operating a pool plant at Salt Lake City has bought milk from Idaho producers associated with a cooperative association at Meridian, Idaho. Such milk sometimes is received at a distant plant by diversion from the Salt Lake City plant when not needed there. When diverted the milk continues to be included in the Great Basin pool as producer milk. On diversion, the milk is received either at the Boise plant or Caldwell plant which are about 236 miles and 262 miles respectively from Elko, Nev., in Idaho. Under proponent's proposal to remove Elko, Nev., as a basing point, any location differential applicable to milk diverted to plants at Boise and Caldwell would be computed from Ogden, Utah, which is about 327 miles from Boise, Idaho.

Because this diverted milk would be priced at the location of the plant to which diverted and the adjustment would be computed from the Ogden basing point, the effect of the revised provisions would be to apply to the minimum uniform price applicable to milk diverted to the Boise location an adjustment of about 47 cents. Such distant supplies of milk when diverted to a plant close to the source of production do not incur

[1] Official notice is taken of the U.S. Census of Population, 1960 for Utah, issued by the Bureau of the Census, U.S. Department of Commerce.

transportation cost to market and therefore should not receive a price as if delivered to the market center.

In view of the change provided herein for the "no differential" zone, it is not necessary to establish Roosevelt, Utah, as a basing zone for computing location differentials.

9. *Computation of net pool obligation.* The net pool obligation computation applicable to receipts from unregulated supply plants should be modified.

A pool plant operator's obligation to the producer-settlement fund includes a payment on fluid milk products received from unregulated supply plants that are allocated to Class I. The handler's payment is determined by charging him at the Class I price and crediting him at the uniform price. The prices used are those applicable at the location of the unregulated supply plant, except that an adjustment to the uniform price is limited so that it may be not less than the Class III price. No such limitation applies in adjusting the Class I price by the location adjustment applicable at the location of the unregulated supply plant.

A cooperative proposed that the adjustment to the Class I price be limited in the same way as is the adjustment to the uniform price.

Under certain conditions (e.g., when the unregulated supply plant is at a great distance from the marketing area), the unlimited Class I price adjustment could result in the pool plant operator receiving a payment from the producer-settlement fund on Class I milk obtained from the unregulated supply plant. This would occur when the location adjustment applicable at a distant supply plant was greater than the difference between the Class I and Class III prices. In this circumstance, producers under the order would be paying from the pool, an unwarranted subsidy to the pool plant operator for importing milk from a distant plant. A payment out of the pool on such milk would be contrary to the intent of the compensatory payment on unregulated milk for the purpose of protecting the classified pricing plan by maintaining reasonable price parity between fully regulated milk and milk not so regulated.

The same limitation should apply to the uniform price when adjusted for the location of the unregulated supply plants from which fluid milk products are received at a pool plant. This would be accomplished by providing that, for the purpose of computing a pool plant operator's obligation on receipts from unregulated supply plants, the location adjustments to both the Class I and uniform prices shall be limited so that they may be not less than the Class III price.

No net pool obligation charge should be made on fluid milk products received at a pool plant from an unregulated supply plant when such fluid milk products have been priced as Class I under this or any other Federal order. When an unregulated supply plant makes Class I purchases from a regulated plant under any order, the obligation to the order pool at the Class I price has been met; and there is no justification for an additional charge. On any unpriced milk received from an unregulated supply plant, the Great Basin order will continue to provide for payment to the producer-settlement fund at the difference between the Class I and uniform prices.

10. *Payments out of the producer-settlement fund.* The order provisions applicable to payments from the producer-settlement fund should not be changed.

A cooperative proposed that any handler who receives payment from the fund, and in turn fails to pay his producers the full uniform price value for their milk, should receive no further payments from the fund in the event he does not complete his payments to producers in a prior month for which he received payment from the producer-settlement fund.

The basic purposes of the order are to fix minimum prices that all handlers must pay for producer milk in accordance with the manner in which it is used and to return to producers the uniform price based on the utilization of all producer milk in the market.

Money is paid into the producer-settlement fund by those handlers whose obligation for producer milk received during the month is more than the amount they are required to pay producers for such milk at the uniform price. A handler whose utilization is below the average for the market, and whose obligation for producer milk received during the month is therefore less than the uniform price value, receives payment of the difference from the producer-settlement fund. This equalization process enables all handlers to pay their producers the uniform price for milk delivered.

No testimony was presented to show that any handler who received payment from the producer-settlement fund had failed to pay his producers the full uniform price value for their milk. If a handler fails to pay his producers the full uniform price value for their milk by the dates specified in the order, he is in violation of the order. Should this occur, whether he receives payment from, or makes payment to, the producer-settlement fund, he is subject to customary legal procedures to obtain compliance.

While ostensibly the proposed change might serve an enforcement function under certain conditions, it is difficult to conclude that the withholding by the market administrator of monies due producers (through a handler) in the current month necessarily would aid producers. The proposal also involves points of enforcement procedure which were not explored on the record. In matters of enforcement, the facts of each case bear on the nature of the violation, the extent of the violation, and the appropriate means of correcting it. The proposal therefore is denied.

11. *Interest payments on overdue accounts.* The unpaid obligation of a handler to the market administrator should be increased one percent for each month or portion thereof beginning with the third day following the date by which such obligation is payable.

A handler proposed that handlers be required to pay interest on overdue accounts whether owed to the producer-setlement fund, the marketing services fund or for the expense of administration.

Prompt payment of monies due the market administrator, whether to the producer-settlement fund, for expense of administration or for marketing services, is essential to the operation of the order.

As herein provided, interest on unpaid obligations would be charged at the rate of 1 percent for each month or portion thereof beginning with the third day following the due date of an obligation and would be applied until the obligation is paid. The 3-day interval between the due date of an obligation and the time from which interest would be computed is a reasonable period of time to use as a basis for the payment of interest on overdue accounts.

The current scarcity of money and the relatively high rates of interest on commercial loans could provide an incentive for handlers to delay payments to the market administrator in lieu of borrowing needed money from other sources unless the current rate is increased. Commercial loans in the area are available only at about 12 percent per annum on a secured loan. The rate adopted is reasonable in consideration of today's financial markets.

The interest payable on overdue accounts should be computed monthly on the unpaid balance, including any accrued interest. A handler who has not made payment when due to the market administrator has use of such money for the time beyond which it was due.

Some handlers may have unpaid obligations due the market administrator when the provision herein proposed would become effective. In consideration of the main purpose of the interest provision, i.e., to obtain prompt payments for producers, there is no basis for differentiating between unpaid obligations resulting from milk handled in preceding months or in a future month. It is intended that the unpaid obligation of a handler at the time the interest payment provision herein proposed would become effective will be treated in the same manner as any unpaid obligation subsequently incurred by the handler.

If a handler refuses or fails to file a report from which his obligation is computed, interest should be charged on any payments due the market administrator as though the report was filed when due. Otherwise, handlers would be provided an incentive to be delinquent in filing their reports.

A handler suggested that the market administrator be required to pay interest on any unpaid obligation to a handler. The order sets forth clearly the dates by which the market administrator must pay handlers any amount due them from the producer-settlement fund. He has no authority to delay such payments, the due dates of which are set forth in the order. There is no indication that the market administrator has at any time failed to make payments as required pursuant to the order and there would be

no reason for him to make late payments if all handlers comply with order terms. Moreover, any such interest payments could come only from monies paid by other handlers for administrative purposes. The proposal is denied.

12. *Application of order to cooperative associations.* The order's provisions as they apply to cooperative associations should not be changed.

A handler proposed that the order be revised so that the order would not differentiate between a cooperative association marketing the milk of its members and a proprietary handler in the representation of producers. A principal purpose of the proposal is to enable a handler to act on behalf of his producers in the same manner as if the handler was a cooperative association acting on behalf of its members.

The provisions in the Great Basin order applicable to cooperative associations were established on the basis of testimony substantiating the inclusion of these provisions in the order. Although the proponent proposed removing the various references to "cooperative association" from the order, he provided no basis for changing any specific provisions now applicable to a cooperative association.

The handler stated that the order provisions relative to cooperative associations in the order are not in accordance with law. Section 608c(15)(A) of the Act provides specific procedures that must be followed by a handler in challenging the legality of an order provision. Proponent's contention, that the provisions of the order as they refer to cooperative associations are illegal, is appropriately resolved in accordance with such section of the Act rather than through public hearing procedure.

13. *Miscellaneous and conforming changes.* In §§ 1136.31 and 1136.32 reference is made to "the second proviso of § 1136.11(a)." The latter provision is no longer in the order, and the reference to it in the aforesaid sections should be deleted.

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

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

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate and 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.

*Recommended marketing agreement and order amending the order.* The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Great Basin marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. It is the same as the order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs on May 27, 1970, and published in the FEDERAL REGISTER on June 3, 1970 (35 F.R. 8572; F.R. Doc. 708-6811), subject to the following modifications in §§ 1136.8(a)(3) and (b)(3), 1136.9, 1136.43, 1136.44, 1136.70, 1136.81, and 1136.86 and to the addition of § 1136.63.

1. Section 1136.6 is revised as follows:

**§ 1136.6 Great Basin marketing area.**

"Great Basin marketing area" hereinafter called the "marketing area" means all the territory, including all Government reservations and installations and all municipalities, within the places listed below:

UTAH COUNTIES

| | |
|---|---|
| Box Elder. | Morgan. |
| Cache (city of Logan only). | Salt Lake. |
| Carbon. | Sanpete. |
| Daggett. | Sevier. |
| Davis. | Summit. |
| Duchesne. | Tooele. |
| Emery. | Uintah. |
| Grand. | Utah. |
| Juab. | Wasatch. |
| Millard. | Weber. |

NEVADA COUNTIES

| | |
|---|---|
| Elko. | White Pine. |

WYOMING COUNTY

Uinta (town of Evanston only).

2. Section 1136.8 is revised as follows:

**§ 1136.8 Producer-handler.**

"Producer-handler" means any person who is an individual, partnership or corporation and who meets all the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the conditions set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is at his sole risk and under his complete and exclusive management and control;

(2) Each such farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control; and

(3) Only he and no other person (except a member of his immediate family or a stockholder in the case of a corporate farm) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and is disposed of during the month in the marketing area on routes: *Provided*, That:

(1) No fluid milk products are received at such plant or by him at any other location except:

(i) From dairy farm(s) as specified in paragraph (a) of this section; and

(ii) From pool plants in an amount that is not in excess of the larger of 3,000 pounds, or 5 percent of his Class I sales, during the month;

(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month to process, package, receive, or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of on routes or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at his plant; and the utilization

for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

3. Section 1136.9 is revised as follows:

**§ 1136.9 Handler.**

"Handler" means:

(a) Any person in his capacity as the operator of one or more (1) pool plants, (2) partially regulated distributing plants, or (3) other fluid milk plants described in § 1136.10(a);

(b) Any cooperative association with respect to milk diverted for its account as described in § 1136.13;

(c) A cooperative association with respect to the milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it wishes to be the handler for the milk. In this case the milk is received from producers by the cooperative association; and

(d) A vendor (any person who does not operate a plant but who engages in the business of receiving fluid milk products for resale and distributes to retail or wholesale outlets, via a mobile delivery vehicle, packaged fluid milk products received from any plant described in paragraph (a) or (b) of this section).

4. Section 1136.10 is revised as follows:

**§ 1136.10 Fluid milk plant.**

"Fluid milk plant" means a plant:

(a) In which milk or milk products (including filled milk) are processed or packaged and from which any fluid milk product is disposed of during the month on routes in the marketing area, or

(b) In which milk is received or processed and from which milk or skim milk is shipped during the month to a plant described in paragraph (a) of this section.

**§§ 1136.11, 1136.12, 1136.16 [Amended]**

4a. In §§1136.11, 1136.12, and 1136.16, "approved plant" is changed to "fluid milk plant" in each place it appears in such sections.

5. In § 1136.11(a), "equal to not less than 50 percent of the receipts during the month at such plant of producer milk, producer milk diverted therefrom by the plant operator and receipts at the plant of fluid milk products, except filled milk, from plants described pursuant to paragraph (b) of this section," is changed to "of not less than 50 percent of the fluid milk products approved by a duly constituted health authority for fluid consumption that are physically received at such plant or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13."

6. Section 1136.13 is revised as follows:

**§ 1136.13 Producer milk.**

"Producer milk" means only that skim milk and butterfat contained in milk from producers (in an amount determined by weights and measurements for individual producers, as taken at the farm in the case of milk moved from the farm in a tank truck) which is:

(a) Received from the producers at a pool plant but not including milk of producers for which another person is the handler pursuant to § 1136.9(c): *Provided,* That milk received at a pool plant by diversion from a plant at which such milk would be fully subject to pricing and pooling under the terms and provisions of another order issued pursuant to the Act shall not be producer milk;

(b) Received by a cooperative association which is defined as a handler pursuant to § 1136.9(c);

(c) Diverted from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant or an exempt distributing plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the location of the plant to which diverted;

(2) Not less than 6 days' production of the producer whose milk is diverted is physically received at a pool plant;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account only the milk of member producers: *Provided,* That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at all pool plants from member producers in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;

(5) The operator of a pool plant other than a cooperative association may divert for his account only the milk of producers who are not members of a cooperative association: *Provided,* That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant from producers who are not members of a cooperative association in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to subparagraphs (4) and (5) of this paragraph. If the handler fails to make such designation, no milk diverted by him shall be producer milk;

(7) Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their members if each association has filed such a request in writing with the market administrator on or before the 1st day of the month the agreement is effective. This request shall specify the basis for assigning overdiverted milk to the producer members of each cooperative association according to a method approved by the market administrator; or

(d) Diverted from a pool plant to an other order plant if a Class III classification (or its equivalent) is designated for such milk pursuant to the provisions of another order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order. The conditions described in subparagraphs (1) through (7) of paragraph (c) of this section shall apply to this paragraph as if set forth in full herein.

7. Section 1136.15 is revised as follows:

**§ 1136.15 Fluid milk product.**

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, cream (sweet or sour) except frozen cream, concentrated milk (fresh or frozen), fortified milk or skim milk, reconstituted milk or skim milk or any mixture in fluid form of milk, skim milk and cream (except ice cream, ice cream and other frozen dessert mixes, eggnog, a product which contains six percent or more nonmilk fat (or oil), aerated cream, evaporated or condensed milk (plain or sweetened, and sterilized products in hermetically sealed containers).

**§ 1136.22 [Amended]**

8. In § 1136.22(l), the reference to "§ 1136.44(a)(8)" is changed to "§ 1136.44(a)(10)."

9. Section 1136.31 is revised as follows:

**§ 1136.31 Other reports.**

(a) Each producer-handler and each handler pursuant to § 1136.9(d) shall make reports to the market administrator at such time and in such manner as the market administrator shall request.

(b) Each handler who operates another order plant with disposition of fluid milk products on routes in the marketing area shall report such disposition to the market administrator on or before the seventh day after the end of each month.

* * * * *

10. In § 1136.32, the introductory text is revised as follows:

**§ 1136.32 Payroll reports.**

Each handler, except one exempt pursuant to § 1136.61 or one making payment pursuant to § 1136.62(b), shall report to the market administrator as follows:

* * * * *

11. Section 1136.41 is revised as follows:

**§ 1136.41 Classes of utilization.**

Subject to the conditions set forth in §§ 1136.42 through 1136.45, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of from a plant in the form of a fluid milk product except:

(i) Those classified pursuant to paragraph (c) (3), (4), and (7) of this section; and

(ii) Any product fortified with added solids shall be Class I in an amount equal only to the weight of an equal volume of a like unmodified product of the same butterfat content;

(2) In packaged fluid milk products in inventory on hand at the end of the month; and

(3) Not otherwise specifically accounted for as Class II or Class III utilization.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (except that classified pursuant to paragraph (c) (3) and (4) of this section) used to produce cottage cheese.

(c) *Class III milk.* Class III milk shall be all skim and butterfat:

(1) Used to produce any product other than a fluid milk product or a Class II product;

(2) Contained in inventory of bulk fluid milk products on hand at the end of the month;

(3) Contained in the skim milk portion only of fluid milk products and cottage cheese disposed of for livestock feed;

(4) Contained in the skim milk portion only of fluid milk products and cottage cheese dumped after prior notification to and opportunity for verification by the market administrator;

(5) In shrinkage of skim milk and butterfat, respectively, at each pool plant, or a handler pursuant to § 1136.9 (c), assigned pursuant to § 1136.45(b) (1), but not to exceed the following:

(i) Two percent of producer milk (except diverted milk); plus

(ii) One and one-half percent of milk received in bulk tank lots from other pool plants; plus

(iii) One and one-half percent of milk received from a handler pursuant to § 1136.9(c) (except that if the handler operating the pool plant 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); plus

(iv) One and one-half percent of receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class III utilization was requested by the operator of such plant and the handler; plus

(v) One and one-half percent of receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class III utilization was requested by the handler; less

(vi) One and one-half percent of milk disposed of in bulk tank lots to other pool plants (except when the exception specified in subdivision (iii) of this subparagraph applies, the applicable percentage shall be 2 percent);

(6) In shrinkage assigned pursuant to § 1136.45(b) (2);

(7) In fluid milk products delivered in bulk form to and used at a commercial food processing establishment (other than a milk plant) in the manufacture of bakery products, candy, or packaged food products (other than milk products) exclusively for consumption off the premises; and

(8) Contained in any fortified fluid milk product in excess of the pounds classified as Class I milk pursuant to paragraph (a) (1) (ii) of this section.

§ 1136.42 [Amended]

12. In § 1136.42(a), the references to "§ 1136.44(a) (8)," "§ 1136.44(a) (3)," and "§ 1136.44(a) (7)" are changed to "§ 1136.44(a) (10)," "§ 1136.44(a) (5)," and "§ 1136.44(a) (9)," respectively.

13. In § 1136.42(c), subparagraph (1) is deleted; subparagraphs (2), (3), and (4) are renumbered subparagraphs (1), (2), and (3), respectively; and the reference to "subparagraph (4)" is changed to "subparagraph (3)" in the two places it appears in such paragraph.

14. Section 1136.43 is revised as follows:

**§ 1136.43 Computation of skim milk and butterfat in each class.**

For each month the market administrator shall correct for mathematical and other obvious errors, the reports of receipts and utilization submitted pursuant to § 1136.30. The skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids. The market administrator shall compute the skim milk and butterfat in each class at all pool plants of such handler, exclusive of any classification based upon movements between such plants, and allocation pursuant to § 1136.44 and computation of obligation pursuant to § 1136.70 shall be based upon the combined utilization so computed. Producer milk for which a cooperative association is the responsible handler pursuant to § 1136.9 (b) or (c) shall be treated separately from the operations of any pool plant(s) operated by such cooperative association for the purpose of allocation pursuant to § 1136.44 and computation of obligation pursuant to § 1136.70.

15. Section 1136.44 is revised as follows:

**§ 1136.44 Allocation of skim milk and butterfat classified.**

After making the computations pursuant to § 1136.43, the market administrator shall determine each month the classification of milk received from producers by each cooperative association handler pursuant to § 1136.9 (b) and (c) which was not received at a pool plant and the classification of milk received from producers and from cooperative association handlers pursuant to § 1136.9 (c) by each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1136.41(c) (5);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in fluid milk products received in packaged form 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 (5) (iv) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III pursuant to § 1136.41 (c) (8) plus 2 percent of such receipts (weight of an equal volume of a like unmodified product of the same butterfat content);

(ii) From Class I milk, the remainder of such receipts; and

(iii) In the event that packaged other order milk receipts (including filled milk) are in excess of the total amount subtracted pursuant to subdivisions (i) and (ii) of this subparagraph the remaining quantity shall be subtracted from the utilization remaining in Class III and then Class II;

(4) Except for the first month that this subparagraph is effective, subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in inventory of packaged fluid milk products on hand at the beginning of the month: *Provided,* That this subparagraph shall not be applicable to a pool plant in any month immediately following a month in which such plant was not fully subject to the pooling and pricing provisions of this order;

(5) Subtract in the order specified below, from the pounds of skim milk remaining in each class, in series beginning with Class 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;

(ii) Receipts of fluid milk products (except filled milk) not qualified for fluid consumption and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler (as defined under this or any other Federal order) and from exempt distributing plants;

(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;

(5a) Subtract from the pounds of skim milk remaining in Class II and Class III, beginning with Class II, receipts from pool plants of other handlers (or other pool plants if applicable) in the form of cottage cheese;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Classes II and 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 (5)(iv) of this paragraph, for which the handler requests Class III utilization;

(ii) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraphs (2) and (5)(iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(*a*) Multiply the pounds of skim milk remaining in Class I by 1.25; and

(*b*) Subtract from the result the sum of the pounds of skim milk in producer milk, in receipts from pool plants of other handlers, and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (5)(v) of this paragraph;

(iii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (5)(v) of this paragraph, in excess of similar transfers to such plant, if Class III utilization was requested by the transferee handler and the operator of the transferor plant requests the lowest class utilization under the other order;

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III milk, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month that were not subtracted pursuant to subparagraph (4) of this paragraph;

(8) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated plants which were not subtracted pursuant to subparagraph (2), (5)(iv), or (6) (i) or (ii) of this paragraph;

(10) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plants, in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraph (5)(v) or (6)(iii) of this paragraph:

(i) In series beginning with Class III, the pounds determined by 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 § 1136.22(l) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk at the pool plant of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(11) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from pool plants of other handlers according to the classification assigned pursuant to § 1136.42(a);

(12) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class 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.

16. Section 1136.50(a) is revised as follows:

**§ 1136.50 Class prices.**

* * * * *

(a) *Class I milk price.* The price for Class I milk shall be the basic formula price for the preceding month plus $2.02 and plus 20 cents.

* * * * *

17. Section 1136.52(a) is revised as follows:

**§ 1136.52 Butterfat differentials to handlers.**

* * * * *

(a) *Class I milk.* Multiply the butter price for the preceding month by 1.20, divide the result by 10, and round to the nearest one-tenth cent.

* * * * *

18. Section 1136.53(a) is revised as follows:

**§ 1136.53 Location differentials to handlers.**

(a) For milk which is received from producers at a pool plant, or is diverted therefrom, or is delivered by a cooperative association pursuant to § 1136.9(c) to a pool plant and which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section and for other source milk for which a location adjustment is applicable, the price computed pursuant to § 1136.50(a) shall be reduced as follows:

| | *Rate per hundredweight (cents)* |
|---|---|
| Distance (miles): | |
| 150 but not more than 160 | 22.0 |
| For each additional 10 miles or fraction thereof in excess of 160 | 1.5 |

Such distance to be measured from the plant to the nearer of the city halls in Ogden or Provo, Utah;

* * * * *

**§ 1136.61 [Amended]**

19. In § 1136.61(d)(2), add immediately following "other order plant" the following: "(but the adjusted price not to be less than the Class III price)".

20. Section 1136.62(b)(2) is revised as follows:

**§ 1136.62 Obligation of handler operating a partially regulated distributing plant.**

* * * * *

(b) * * *

(2) Deduct the respective amounts of skim milk and butterfat received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool 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;

* * * * * *

21. In § 1136.62(b)(5), add immediately following the second reference therein to "Class I price applicable at the location of the nonpool plant" the following: "(but the adjusted price not to be less than the Class III price)".

22. A new § 1136.63 is added as follows:

**§ 1136.63 Obligation of a vendor on receipts from a producer-handler.**

Each vendor shall pay the market administrator for the producer-settlement fund on or before the 25th day after the end of the month at the difference between the value of the skim milk and butterfat in fluid milk products received from a producer-handler during the month at the Class I price applicable at the location of the producer-handler's plant (but not less than the Class III price) and its value at the Class III price, subject to the following conditions:

(a) The quantities of skim milk and butterfat in fluid milk products on which payments shall be made pursuant to this section shall not exceed the vendor's Class I disposition in the marketing area during the month; and

(b) This section shall not apply to a vendor whose total Class I disposition is obtained from a producer-handler, or whose total receipts and disposition of fluid milk products are considered as a part of the receipts and disposition of the producer-handler pursuant to § 1136.8(b)(3).

23. Section 1136.70 is revised as follows:

**§ 1136.70 Computation of the net pool obligation of each pool handler.**

The net pool obligation of each pool handler and of each cooperative association handler pursuant to § 1136.9 (b) and (c) shall be a sum of money computed each month by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class as computed pursuant to § 1136.44(c) by the applicable class price;

(b) Add the amount obtained from multiplying the overage deducted from each class pursuant to § 1136.44(a)(12) and the corresponding step of § 1136.44 (b) by the applicable class price;

(c) Add the amount obtained from multiplying the Class III 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 § 1136.45 (a)(7) and the corresponding step of § 1136.44(b) for the current month;

(d) Add an amount equal to the difference between the Class I and Class III price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1136.44(a)(5) and the corresponding step of § 1136.44(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1136.44(a)(5) (iv) and (v) and the corresponding step of § 1136.44(b) the Class I price shall be adjusted to the location of the transferor plant (but the adjusted price not to be less than the Class III price); and

(e) Add the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received (but the adjusted price not to be less than the Class III price) of the skim milk and butterfat subtracted from Class I pursuant to § 1136.44(a)(9) and the corresponding step of § 1136.44(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.

24. Section 1136.81 is revised as follows:

**§ 1136.81 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1136.61, 1136.62, 1136.63, 1136.82, and 1136.84, and out of which he shall make all payments pursuant to §§ 1136.83 and 1136.84: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

25. Section 1136.86 is revised as follows:

**§ 1136.86 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) Producer milk (including that classified pursuant to § 1136.40(b) but excluding, in the case of a cooperative association which is a handelr pursuant to § 1136.9(c), milk which was received at the pool plant of another handler) and such handler's own production.

(b) Other source milk allocated to Class I pursuant to § 1136.44(a) (5) and (9) and the corresponding steps of § 1136.44(b);

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants; and

(d) Class I milk disposed of by a vendor in the marketing area on which a payment to the producer-settlement fund is due pursuant to § 1136.63.

26. A new § 1136.88 is added as follows:

**§ 1136.88 Interest payments.**

The unpaid obligation of a handler pursuant to §§ 1136.82, 1136.84, 1136.86, and 1136.87 shall be increased 1 percent for each month or portion thereof beginning with the third day following the date by which such obligation was payable: *Provided*, That:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously made pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Signed at Washington, D.C., on August 18, 1970.

JOHN C. BLUM,
*Deputy Administrator,*
*Regulatory Programs.*

[F.R. Doc. 70-11018; Filed, Aug. 20, 1970; 8:48 a.m.]

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## [7 CFR Part 1138]

[Docket No. AO-335-A16]

## MILK IN RIO GRANDE VALLEY MARKETING AREA

### Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Rio Grande Valley 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 (7 CFR Part 900), at Albuquerque, N. Mex., on June 9, 1970, pursuant to notice thereof issued on May 25, 1970 (35 F.R. 8448).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on July 22, 1970, 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 subject to the following modification:

1. Under subheading "2. Location adjustments applicable to nonpool milk" a sentence is added to the last paragraph.

The material issues on the record relate to:

1. Whether credits for certain Class II dispositions of producer milk should be continued after August 1970.

2. An appropriate limit to the amount that the Class I price may be reduced by location adjustments in computing obligations of regulated handlers with respect to receipts of unregulated milk or obligations of partially regulated handlers.

3. Appropriate application of the order in a circumstance where Class I milk is moved from a pool plant or an other order plant to a nonpool plant that in turn is an unregulated supply plant source of Class I milk at a pool plant.

*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. *Credits for certain Class II uses.* The credits for certain Class II uses, including skim milk dumped or used for livestock feed and for skim milk moved to manufacturing plants outside the marketing area, should be discontinued.

Credits accorded handlers for specified Class II dispositions have been in effect since April 1966 pursuant to several temporary amendments. Primarily the problem arose from an excess of milk supply delivered in the marketing area from local and outside sources, in total, and a lack of manufacturing facilities in the area sufficient to utilize the excess. The credit provisions have made allowance for the cost of moving the excess milk from the marketing area to manufacturing plants outside the area.

A further provision has resulted in no charge to Rio Grande handlers for skim milk dumped or disposed of as livestock feed. From a producer standpoint, the latter has provided an alternative to

moving some excess milk out of the marketing area but producers obtain only partial utilization for their milk. The cream separated is utilized primarily for the ice cream processing operations at pool plants. The Class II credits at the full value of the skim milk have applied to such dispositions of skim milk.

With respect to milk moved out of the marketing area for Class II use, the order has provided that "milk or skim milk transferred or diverted as Class II milk to a nonpool plant located outside the marketing area from a pool plant or from farms located within the marketing area" is subject to a credit to the handler of the per hundredweight value of the skim milk less 40 cents. In effect, the net obligation of the handler on such disposition has been 40 cents per hundredweight for the skim milk so moved.

A further provision for a credit on skim milk used to produce condensed milk has never been used.

The credit provisions currently in effect have an expiration date of August 31, 1970. The temporary extension to such date was based on a hearing held June 24, 1969.

In the hearing of June 9, 1970, it was proposed by the cooperative which has handled most of the milk in such dispositions that skim milk dumped continue to be allowed the same credit and that skim milk moved out of the marketing area be credited with a transportation factor of 1.5 cents per 10 miles off the Class II price. Both credits would apply through August 1971. The cooperative pointed out that during 1969 the special provisions were used to transfer or divert out of the marketing area 24 million pounds of producer milk. Most of such disposition has been handled through the cooperative's pool plant at El Paso, Tex., from which it has been shipped to a manufacturing plant of the cooperative at Muenster, Tex., a distance of 625 miles. This plant is the closest manufacturing plant which has capacity to accommodate the volume of shipments involved.

During 1969, an additional 11 million pounds of skim milk were dumped pursuant to the credit provisions. Minor quantities were used for livestock feed.

All Class I distributing plants served by producer milk supplies are located in the marketing area. As previously stated, an important part of the problem in prior periods has been that substantial supplies were being shipped into the marketing area from distant sources outside, while at the same time large volumes of milk excess to handlers' fluid needs were being moved out of the marketing area to nonpool manufacturing plants.

The major part of the necessary market supply is produced within the marketing area. There are substantial additional quantities which have been regularly received from sources in Arizona, Colorado, Oklahoma, and Utah. During 1969, in-area production totaled 292 million pounds and milk receipts from outside sources totaled 67 million pounds. At the same time, however, more than 35 million pounds of milk and skim milk were disposed of either by transfer or diversion out of the marketing area for manufacturing, or as skim milk dumped.

Important changes in the market in recent months have minimized the basic problem which had necessitated substantial movements of milk from the market to nonpool plants outside the marketing area. The proponent cooperative, which now provides most of the milk supply in the marketing area, and two cooperatives furnishing most of the milk supplies brought in from outside sources, have arranged for systematic scheduling of their milk deliveries so that shipments from sources outside the market plus milk produced in the marketing area will approximate handlers' needs at all times. The principal outside sources during earlier periods have been producer members of cooperatives in the Central Arizona and Western Colorado Federal order markets. These sources are now included in the cooperatives' plan for scheduling shipments.

Another significant change in the market structure is the increase in proponent cooperative's membership among marketing area producers. This is the result of the consolidation of most of the membership of the New Mexico Milk Producers Association with that of Associated Milk Producers, Inc.

It was estimated that the arrangement among the three cooperatives will enable regular scheduling of delivery of approximately 90 percent of the producer milk supply on the market. This would be very nearly all of the in-area production not part of the own farm production of handlers, and all but a small fraction of the milk originating outside the marketing area.

The rational scheduling of shipments from outside the market should resolve the problem the credits were intended to deal with. The excess, if any, of supplies made available in the marketing area in relation to handlers' needs arises not because of excessive milk production in the area but because shipments in from outside have been greater than would be needed with full utilization by handlers of milk produced within the area. In most months production within the marketing area provides little margin over total handler Class I disposition. In 1969, marketing area production on a monthly basis averaged 24,330,295 pounds compared to handlers' Class I utilization of 22,843,718 pounds. This production-sales relationship is similar to that of other recent years, there having been no significant change in level of marketing area production or handlers' Class I sales.

Class II operations of pool plants in the marketing area also represent an outlet for local production not used in Class I. Cottage cheese produced in pool plants is a regular use of about 2.7 million pounds of milk monthly and thus is a logical outlet for both the skim milk and butterfat of producer milk. Handlers' Class II milk in cottage cheese and plant shrinkage, together about three million pounds per month, has in all but one month of the January 1969–April 1970 period been as much as marketing area production remaining after subtracting handlers' Class I sales.

In the one month, June 1969, cottage cheese use and shrinkage was 3.3 million pounds compared to 4.5 million pounds of production over Class I use. There is, however, a seasonal increase at this time in handlers' other principal Class II use, ice cream made in pool plants, which utilized milk products equivalent to 2.6 million pounds during the month of fluid milk constitutents. It is thus possible that all but minor quantities of marketing area production could be used in handlers' pool plants in the marketing area, even in the months of heaviest production in the area.

From this it is apparent that marketing area production is usually less than handlers' requirements for all uses. Plants in the marketing area thus depend in part on supplies from outside the area to supplement in-area production as evidenced also by the fact that volume of out-of-area supplies in all but a few months has substantially exceeded quantities shipped out or dumped under the credit provisions. In 1969, out-of-area supplies of producer and other order milk averaged 5.6 million pounds monthly compared with 3 million pounds monthly disposed of under the credit provisions. Proponent cooperative also stated that there would be a continuing need for part of the previously associated supplies from sources outside the marketing area. It was estimated that 2 million pounds or more monthly from out-of-area sources will be required to serve the market adequately.

Proponent cooperative, in asking for continuation of the Class II credits, did not contend, in fact, that substantial quantities would be moved out of the market as in previous years. Rather, it was indicated that under the new arrangements there likely would be little need for this kind of movement. Continuance of the credits was requested primarily as provision against the contingency that new supplies might be added to the market by parties not participating in the plan of the cooperatives to schedule shipments according to market needs.

The above indicated conditions which were peculiar to this market in earlier periods constituted the basis for the special provisions to aid in the orderly disposal of milk excess to handlers' needs in the marketing area. From 1966, until recently, such excess milk presented a difficult problem. During this period the burden of handling such milk fell principally on proponent cooperative, as one among several cooperatives in the market, which at that time represented a much smaller segment of the producers and the total milk supply than it now does. The separate nature of the supply operations of the several cooperatives caused an artificial "surplus" in the market to be moved out when actually in-area production was well related to market needs.

The result of this market situation was a reduction in returns to producers for a substantial volume of Class II milk to a level below the value of reserve milk

under normal conditions. This, in effect, was recognized in the special order provisions which were made effective.

Now, however, the means are available to cooperatives to eliminate the problem of excess milk supplies in the marketing area, due to consolidation of membership and the scheduling of supplies. The extra expense which reduced the returns of the milk in Class II, both on shipments into the area and at the same time for shipments from the marketing area to distant plants, can be reduced to a minimum. The quantities of milk from outside which are no longer needed regularly in the market can remain largely in other Federal order marketing areas subject to normal pricing for reserve milk in those markets.

Since the marketing area production normally is deficit in relation to handlers' total needs, adjustment of volumes shipped in should enable full utilization of local supplies. The means to achieve more efficient handling of milk supplies have been developed. The improved handling practices will be best supported by the pricing of reserve milk under the minimum pricing provisions of the order at its full value. The proposal to continue the credits on a contingency basis therefore is not adopted.

2. *Location adjustments applicable to nonpool milk.* A money obligation is due from a pool plant operator with respect to fluid milk products received from an unregulated supply plant if such receipts are allocated to Class I utilization. The handlers' payment is determined by charging him at the uniform price pursuant to § 1138.70(e) and crediting him at the uniform price pursuant to § 1138.84(b)(2). These prices used are adjusted to the location of the unregulated plant from which the fluid milk products are received, except that the adjustment to the uniform price is limited so that the price is not less than the Class II price.

The adjustment to the Class I price for location of the nonpool plant should be similarly limited. If the nonpool plant from which the milk is received is at a great distance, the location adjustment could reduce the Class I price to less than the Class II price. In these circumstances the computation would indicate a payment out of the producer-settlement fund to the handler, tending to subsidize the receipt of unregulated milk. This would be contrary to the intent of the payment required on the receipts of unregulated milk. The purpose of the payment is to protect the classified pricing plan by providing reasonable price parity between fully regulated milk and milk not so regulated.

The same type of computation occurs in arriving at the obligation of a partially regulated distributing plant pursuant to § 1138.62(b)(5). In this provision the obligation of the partially regulated distributing plant is based on the Class I price at the location of the plant less the value of the milk at the uniform price at such location. The uniform price adjustment for location may not be less than the Class II price. The Class I price, similarly, after adjustment for location should be not less than the Class II price. Such limitation to the location adjustment should apply also in § 1138.61(d)(2) with respect to the obligation for reconstituted skim milk in filled milk disposed of in the marketing area by a plant regulated by a Federal order providing for individual handler pooling.

3. *Accounting for regulated milk received from a nonpool plant.* There should be no obligation required of a pool plant operator for milk received from an unregulated supply plant if the milk is identified by specific assignment to milk previously priced as Class I under this order or another order. This exception to the regular charge at the Class I price less the uniform price is necessary to prevent a double charge on milk originating from a pool plant or from other order plants where it has been fully priced as Class I milk.

Similarly, in the case of a partially regulated distributing plant, it should be made clear that no charge applies to Class I transfers to a pool plant if such transfer is assigned to milk previously priced under this order or another order before receipt at the partially regulated distributing plant.

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

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

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

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

*Rulings on exceptions.* No exceptions were filed to the recommended decision.

*Marketing agreement and order.* Annexed hereto and made a part hereof are two documents, a marketing agreement regulating the handling of milk, and an order amending the order regulating the handling of milk in the Rio Grande Valley marketing area 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 agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

*Determination of producer approval any representative period.* June 1970 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Rio Grande Valley marketing area is approved or favored by producers, as defined under the terms of the order, 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 marketing area.

Signed at Washington, D.C., on August 17, 1970.

RICHARD E. LYNG,
*Assistant Secretary.*

*Order[1] Amending the Order, Regulating the handling of Milk in the Rio Grande Valley 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

[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.

of milk in the Rio Grande Valley 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; and

(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) 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, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1138.88.

*Order relative to handling.* It is therefore ordered that on and after the effective date hereof the handling of milk in the Rio Grande Valley 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 July 22, 1970, and published in the FEDERAL REGISTER on July 25, 1970 (35 F.R. 12003; F.R. Doc. 70-9646), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein subject to the following modifications:

1. Section 1138.55 is not deleted since the intent of the decision is accomplished by the expiration date contained within the provision.

2. Section 1138.70(f) is not deleted.

3. Section 1138.61(d)(2) is amended.

## PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

1. Section 1138.44(d)(3)(iii) is revised as follows:

**§ 1138.44 Transfers.**

* * * * *

(d) * * *

(3) * * *

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph (exclusive of transfers of fluid milk products to pool plants and other order plants) shall be assigned first to the remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant, and all remaining Class I utilization (including transfers of fluid milk products to pool plants and other order plants) shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

* * * * *

**§ 1138.46 [Amended]**

2. Section 1138.46 *Allocation of skim milk and butterfat classified* is amended as follows:

a. Paragraph (a)(1) is revised as follows:

(1) Subtract from the total pounds of skim milk classified:

(i) From 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 fully regulated under this or any other Federal milk order is classified and priced as Class I and is not used as an offset on any other payment obligation under this or any other order;

(ii) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II purusant to § 1138.41(b)(7);

b. Paragraph (a)(3)(iv) is revised as follows:

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants that were not subtracted pursuant to subparagraph (1)(i) of this paragraph; and

c. In paragraph (a)(4) subdivision (i) and the introductory text of subdivision (ii) are revised as follows:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraphs (1)(i) and (3)(iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraphs (1)(i) and (3)(iv) of this paragraph and subdivision (i) of this subparagraph which are in excess of the pounds of skim milk determined as follows:

d. Paragraph (a)(6) is revised to read as follows:

(6) Add to the remaining pounds of skim milk in Class II the pounds subtracted pursuant to subparagraph (1)(ii) of this paragraph.

e. Paragraph (a)(7)(i) is revised as follows:

(i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (1)(i), (3)(iv), and (4)(i) or (ii) of this paragraph;

**§ 1138.61 [Amended]**

3. Section 1138.61 *Plants subject to other Federal orders* is amended as follows:

Paragraph (d)(2) is revised to read:

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I 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 II price) and subtract its value at the Class II price.

**§ 1138.62 [Amended]**

4. Section 1138.62 *Obligations of handler operating a partially regulated distributing plant* is amended as follows:

a. Paragraph (a)(1)(i) is revised as follows:

(i) The obligation that would have been computed pursuant to § 1138.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or an other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. No obligation shall apply to Class I milk transferred to a pool plant or to an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants where such milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1138.70(e) and a credit in the amount specified in § 1138.84(b)(2) 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 II price) unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

b. Paragraph (b)(2) and (5) are revised as follows:

(2) Deduct the respective amounts of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or

butterfat disposed of to such nonpool plant by handlers fully regulated 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;

* * * * *

(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 II price) subtract its value at the uniform price applicable at such location (not to be less than the Class II 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 II price) less the value of such skim milk at the Class II price.

§ 1138.70 [Amended]

5. Section 1138.70 *Computation of the net pool obligation of each handler* is amended as follows:

Paragraph (e) is revised as follows:

(e) With respect to skim milk and butterfat subtracted from Class I pursuant to § 1138.46(a)(7) and the corresponding step of § 1138.46(b) (excluding 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 fully regulated 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), add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent weight was received, but in no event shall such adjustment result in a Class I price lower than the Class II price.

6. Section 1138.88 is revised as follows:

§ 1138.88 Expense of administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 16th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to (a) producer milk including such handler's own production, (b) other source milk allocated to Class I pursuant to § 1138.46 (a) (2)(i), (3), and (7) and the corresponding steps of § 1138.46(b), except other source milk on which no handler obligation applies pursuant to § 1138.70 (e) and (c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk specified in § 1138.62 (b)(2): *Provided*, That if such handler elects pursuant to § 1138.36 to use two accounting periods in any month the applicable rate of assessment for such handler shall be the rate set forth above multipled by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period.

[F.R. Doc. 70-10988; Filed, Aug. 20, 1970; 8:47 a.m.]

# FEDERAL COMMUNICATIONS COMMISSION

[ 47 CFR Parts 2, 87, 91 ]

[Docket No. 18924]

## INDUSTRIAL RADIO SERVICES

### Aeronautical and Land Mobile Telemetering; Order Extending Time for Filing Comments

In the matter of amendment of Parts 2, 87, and 91 of the rules to delete provisions for aeronautical telemetering and to make provisions for land mobile telemetering in the Industrial Radio Services, in the frequency band 216–220 MHz, Docket No. 18924. In the matter of petition of Readex Electronics, Inc., for amendment of the Commission's rules governing the Industrial Radio Services to establish an Industrial Telemetry Radio Service and to allocate thereto frequencies in the band 216–220 MHz, RM–1635.

1. On August 12, 1970, the National Association of Manufacturers (NAM) filed a pleading for an extension of time to October 1, 1970, in which to file comments to the Commission's notice of proposed rule making in the above-captioned matter (35 F.R. 12131).

2. In support of its request, NAM pointed out that the member companies comprising the Association have a vital interest in land mobile telemetry, but due to vacation scheduling of personnel with particular expertise in this area are experiencing difficulty in compiling the necessary data.

3. It appears that good cause has been shown and that the public interest would be served by granting an additional 30 days extension of time to all parties wishing to file comments.

4. *Accordingly, it is ordered*, Pursuant to § 0.251(b) of the Commission's rules and regulations, that the time for filing comments is extended to October 1, 1970, and that the time for filing reply comments is extended to October 12, 1970.

Adopted: August 14, 1970.

Released: August 17, 1970.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] DANIEL R. OHLBAUM,
*Acting General Counsel.*

[F.R. Doc. 70-11024; Filed, Aug. 20, 1970; 8:49 a.m.]

# Notices

## DEPARTMENT OF THE TREASURY

### Bureau of Customs

### ALUMINUM CHLORIDE FROM CANADA

### Antidumping Proceeding Notice

AUGUST 17, 1970.

On June 29, 1970, information was received in proper form pursuant to §§ 153.26 and 153.27 Customs Regulations (19 CFR 153.25, 153.27) indicating a possibility that aluminum chloride (anhydrous) manufactured by Welland Chemical of Canada, Ltd., Mississauga, Ontario, Canada, is being, or likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the Bureau of Customs is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of information received from all sources is as follows: The information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

[SEAL] MYLES J. AMBROSE,
*Commissioner of Customs.*

[F.R. Doc. 70-10984; Filed, Aug. 20, 1970; 8:46 a.m.]

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### TUBELESS TIRE VALVES FROM CANADA

### Antidumping Proceeding Notice

AUGUST 14, 1970.

On July 20, 1970, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27) indicate a possibility that tubeless tire valves from Canada are being, or likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the Bureau of Customs is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of information received from all sources is as follows: The information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

[SEAL] ROBERT V. MCINTYRE,
*Acting Commissioner of Customs.*

[F.R. Doc. 70-10985; Filed, Aug. 20, 1970; 8:46 a.m.]

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[C-9815]

### COLORADO

### Notice of Classification of Public Lands for Multiple-Use Management

AUGUST 13, 1970.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-1418) and to the regulations in 43 CFR Parts 2400, 2410, 2420, and 2460 (formerly Parts 2410 and 2411), the public lands described in paragraphs 2, 3, and 4 are hereby classified for multiple-use management. Publication of this notice segregates (a) the lands described in paragraphs 2 and 3 from appropriation only under the agricultural land laws (43 U.S.C., Parts 7 and 9, 25 U.S.C. 334), and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171), and (b) the lands described in paragraph 4 from all forms of appropriation including the general mining laws (30 U.S.C. 2), except for applications under the mineral leasing laws and the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869-1 to 869-4). The lands described in paragraphs 2 and 3 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 a Federal use or purpose.

2. No adverse comments were received following publication of a notice of proposed classification (35 F.R. 5492-5494) or at the public hearing which was held at Steamboat Springs, Colo., on April 29, 1970. However, comments relating to public lands proposed for disposal (35 F.R. 5490-5492) disclosed that the following described lands had public values that warrant their retention in public ownership. They are hereby added to this notice of classification.

SIXTH PRINCIPAL MERIDIAN, COLORADO

T 4 N., R. 84 W.,
Sec. 17, SE¼SW¼ and S½SE¼;
Sec. 20, NE¼, NE¼NW¼, S½SW¼, and N½SE¼;
Sec. 21, SW¼NW¼ and W½SW¼;
Sec. 28, NE¼NW¼;
Sec. 29, NW¼.
T. 2 N., R. 85 W.,
Sec. 35, S½NE¼, NE¼NW¼, S½NW¼, and N½SW¼.
T. 10 N., R. 85 W.,
Sec. 26, lot 19.
T. 10 N., R. 86 W.,
Sec. 23, N½NE¼ and SW¼NE¼.
T. 8 N., R. 87 W.,
Sec. 19, lot 2 and SE¼NW¼.
T. 8 N., R. 88 W.,
Sec. 23, lots 1, 2, and 7;
Sec. 24, lots 1 to 10, inclusive;
Tracts 59A, B, C, and D in secs. 23 and 24.

The area described aggregates approximately 1,801.81 acres of public land in Routt County, Colo.

3. As provided in paragraph 1, the lands described in this paragraph are classified for multiple-use management:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 1 N., R. 84 W.,
Sec. 26, E½SE¼, SW¼SE¼;
Sec. 33, S½NE¼, E½W½, and SE¼;
Sec. 35, E½E½, NW¼NE¼, E½SW¼NE¼, and E½NW¼SE¼.
T. 4 N., R. 84 W.,
Sec. 28, SE¼SE¼;
Sec. 32, NW¼NE¼ and E½E½;
Sec. 33.
T. 5 N., R. 84 W.,
Sec. 34, E½SE¼.
T. 6 N., R. 84 W.,
Sec. 27, SE¼SE¼.
T. 7 N., R. 84 W.,
Sec. 29, W½W½;
Sec. 30, E½NE¼;
Sec. 33, SE¼NE¼.
T. 2 N., R. 85 W.,
Sec. 8, S½SW¼;
Sec. 17, N½NW¼ and SW¼NW¼;
Sec. 18, lots 2, 3, and 4, NE¼, SE¼NW¼, E½SW¼, and NW¼SE¼;
Sec. 19, lot 1, NW¼NE¼, and NE¼NW¼.
T. 3 N., R. 85 W.,
Sec. 1, lots 10 and 11;
Sec. 2, lots 5, 6, 7, and 8;
Sec. 7, lot 10;
Sec. 11, lots 1, 2, 4, and 5;
Sec. 12, lots 3, 4, 5, 6, 11, 12, 13, and 14.
T. 4 N., R. 85 W.,
Sec. 18, lot 2.
T. 5 N., R. 85 W.,
Sec. 19, lots 7 to 12, inclusive;
Sec. 20, lots 5 and 16;
Sec. 30, lot 6;
Tract, 142.

T. 7 N., R. 85 W.,
Sec. 18, lots 1, 2, 3, and 4, W½E½, and E½W½;
Sec. 19, lots 1, 2, and 3.
T. 8 N., R. 85 W.,
Sec. 5, lots 5, 6, 7, and 8;
Sec. 6;
Sec. 9, lots 1, 2, 3, and 4, NE¼SE¼, and S½SE¼.
T. 10 N., R. 85 W.,
Sec. 20, lots 15 and 18;
Sec. 21, lots 13 and 14.
T. 2 N., R. 86 W.,
Sec. 3, S½SW¼ and W½SW¼SE¼;
Sec. 12, S½SE¼;
Sec. 13, N½N½NE¼NE¼, N½NW¼NE¼, SW¼NW¼NE¼, N½NW¼SW¼NE¼, NE¼NW¼, N½NE¼SE¼NW¼, W½SE¼NW¼, S½NE¼NE¼SW¼, NW¼NE¼SW¼, S½NE¼SW¼, NW¼SW¼, S½SW¼, S½N½N½SE¼, S½N½SE¼, and S½SE¼;
Sec. 24, N½.
T. 3 N., R. 86 W.,
Sec. 6, lots 9 to 14, inclusive, and lots 17 to 23, inclusive;
Sec. 7, lots 14, 15, and 16;
Sec. 12, lots 9, 15, and 16;
Sec. 13, lots 2 and 3.
T. 4 N., R. 86 W.,
Sec. 9, lot 3;
Sec. 10, S½SE¼;
Sec. 11, lots 8, 11, 17, and 19;
Sec. 13, SE¼NE¼;
Sec. 14, lots 4, 5, 6, 8, and 12;
Sec. 15, NE¼ and W½SW¼;
Sec. 17, SE¼SW¼;
Sec. 22, NE¼ and N½NW¼;
Sec. 23, NE¼NE¼, NW¼NW¼, S½N½, N½S½, SE¼SW¼, and SW¼SE¼;
Sec. 24, E½SW¼ and NW¼SE¼;
Sec. 25, NE¼NW¼;
Sec. 26, NW¼NE¼ and N½NW¼;
Sec. 27, S½NE¼, NE¼NW¼, S½NW¼, and SW¼;
Sec. 28, SE¼SE¼;
Sec. 31, lots 9, 16, and 17;
Sec. 33, NE¼NE¼.
T. 5 N., R. 86 W.,
Sec. 33, NW¼NE¼ and SE¼SE¼;
Sec. 34, SW¼SW¼;
Sec. 35, NE¼ and S½.
T. 7 N., R. 86 W.,
Sec. 12, lots 1, 2, 3, and 4;
Sec. 13, lots 1, 2, 3, and 4, and W½E½;
Sec. 16, lots 1, 2, 3, and 4;
Sec. 17, lot 7 and SE¼;
Sec. 20, NE¼;
Sec. 21, N½;
Sec. 22, lots 1, 2, 3, 4, 5, and 6, S½NW¼, and N½SW¼;
Sec. 24, lots 1, 2, 3, 4, and 11;
Sec. 25, lot 1.
T. 8 N., R. 86 W.,
Sec. 4, lots 12 and 13;
Sec. 5, lots 5, 6, 7, and 8;
Sec. 7, lot 5;
Sec. 8, lots 1 to 9, inclusive, and N½NE¼;
Sec. 9, lots 3 and 4;
Sec. 17, lots 1, 2, 3, 4, 5, and 6;
Tracts 61A, 61B, 61C, 64A, 64B, and 64C.
T. 10 N., R. 86 W.,
Sec. 36, SW¼SE¼.
T. 3 N., R. 87 W.,
Sec. 1, lots 1, 8, 9, 12, 13, and 14.
T. 4 N., R. 87 W.,
Sec. 35, E½;
Sec. 36.
T. 5 N., R. 87 W.,
Sec. 17, NE¼SE¼ and W½SW¼;
Sec. 18, NE¼SE¼ and S½SE¼;
Sec. 19, W½NW¼;
Sec. 29, W½NW¼;
Sec. 30, E½NE¼.
T. 6 N., R. 87 W.,
Sec. 2, NE¼SE¼.
T. 8 N., R. 87 W.,
Sec. 28, E½SE¼;
Sec. 34, N½.

T. 3 N., R. 88 W.,
Sec. 8, SW¼SW¼ and SE¼SE¼;
Sec. 17, lots 1 to 6, inclusive, SW¼NE¼, and SE¼NW¼.
T. 4 N., R. 88 W.,
Sec. 7, lots 2, 3, 4, 5, and 6, NE¼SW¼, and S½SE¼;
Sec. 17, NW¼ and N½SW¼;
Sec. 18, NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼.
T. 5 N., R. 88 W.,
Sec. 1, lot 7, SE¼NW¼, and SW¼;
Sec. 2, SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 3, lot 5, SW¼NE¼, and W½SE¼;
Sec. 11, NE¼ and S½;
Sec. 24, E½NE¼;
Sec. 31, lots 7 and 8;
Sec. 35, lot 4.
T. 8 N., R. 88 W.,
Sec. 6, lots 9, 10, 11, 12, 13, 17, and 18;
Sec. 7, lots 9, 11, 12, 13, and 14;
Sec. 8, lots 2, 4, 5, 10, and 11;
Tracts 70B, 82G, 82H, 82I, 82J, 82O, 82P, 83A, 83B, 83G, 83H, 83I, 83J, 83K, 83L, and 83P.
T. 9 N., R. 88 W.,
Sec. 31, lots 9 to 15, inclusive.
T. 3 N., R. 89 W.,
Sec. 4;
Sec. 5, lots 5, 6, and 10;
Sec. 8, lots 1, 6, and 8, and E½SE¼;
Sec. 18, lot 8, SE¼SW¼, and S½SE¼.
T. 4 N., R. 89 W.,
Sec. 10, lots 1, 2, 3, and 4.
T. 5 N., R. 89 W.,
Sec. 27, SE¼NW¼, SW¼, and NW¼SE¼;
Sec. 28, S½SE¼;
Sec. 29, SW¼ and W½SE¼;
Sec. 30, lots 1, 2, 3, and 4, SE¼NW¼, E½SW¼, and SE¼;
Sec. 31, NE¼NE¼;
Sec. 32, N½, SW¼, and N½SE¼;
Sec. 33;
Sec. 34, W½ and W½SE¼.
T. 1 S., R. 83 W.,
Sec. 1, lots 5 to 16, inclusive;
Sec. 2, lots 1 to 4, inclusive, and S½;
Sec. 3, lots 1 to 4, inclusive, N½SW¼, SW¼SW¼, and SE¼;
Sec. 4, lots 5 to 8, inclusive, E½SW¼, and SW¼SW¼;
Sec. 5, NE¼SW¼ and S½SE¼;
Sec. 7, lots 1 to 4, inclusive, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 8, E½NE¼, SW¼NW¼, W½SW¼, SE¼SW¼, and SE¼;
Sec. 9, NW¼ and W½SW¼;
Sec. 10, NE¼, SE¼NW¼, NW¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 11, N½NE¼, E½W½, W½SE¼, and SE¼SE¼;
Sec. 12, lots 1 to 11, inclusive;
Sec. 13, lots 1 to 6, inclusive;
Sec. 14, lots 1 to 6, inclusive;
Sec. 15, lots 1 to 7, inclusive;
Sec. 17, N½NE¼ and W½;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1, 2, and 4, NE¼, E½NW¼, SE¼SW¼, and E½SE¼;
Sec. 20, W½NE¼, NW¼, and W½SW¼;
Sec. 21, SE¼SE¼;
Sec. 22, NE¼, SE¼SW¼, N½SE¼, SW¼SE¼;
Sec. 23, E½NE¼, E½NW¼, N½SW¼, and NE¼SE¼;
Sec. 24, NE¼NE¼ and W½NW¼;
Sec. 26, W½NE¼, S½NW¼, and N½SW¼;
Sec. 27, lots 1 to 11, inclusive;
Sec. 28, lots 1 to 12, inclusive;
Sec. 29, SE¼NE¼, NW¼NW¼, and E½SE¼;
Sec. 30, lots 5 to 14, inclusive;
Sec. 31, lots 5 to 17, inclusive;
Sec. 32, lots 1, 2, and 3;
Sec. 33, lots 1 to 16, inclusive;
Sec. 34, lots 1 to 16, inclusive;
Sec. 35, S½NW¼, SW¼, N½SE¼, and SW¼SE¼.

T. 1 S., R. 84 W.,
Sec. 1, W½SW¼ and SE¼SW¼;
Sec. 2, lot 2 and SE¼;
Sec. 4, lots 2, 3, and 4, SW¼, and W½SE¼;
Sec. 5, lots 1, 2, 3, and 4, and S½;
Sec. 6, lots 1, 2, and 3, E½SW¼, and SE¼;
Sec. 7, SE¼NE¼, E½NW¼, and SE¼;
Sec. 8, NE¼, E½NW¼, SW¼NW¼, and S½;
Sec. 9, SE¼NE¼, W½NE¼, NW¼, and S½;
Sec. 12, NE¼, E½NW¼, and S½;
Sec. 13, E½E½;
Sec. 14, NW¼SE¼;
Sec. 17, N½, N½S½, and SW¼SW¼;
Sec. 18, lots 1, 2, 3, and 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, and 4, N½NE¼, SW¼NE¼, E½NW¼, E½SW¼, and SE¼;
Sec. 20, NW¼NW¼, S½S½, and NW¼SE¼;
Sec. 21, SW¼SW¼;
Sec. 22, S½;
Sec. 23, N½NE¼, SE¼NE¼, SW¼NW¼, SW¼, and S½SE¼;
Sec. 24, E½, NW¼, and NE¼SW¼;
Sec. 25, NE¼, E½SE¼, SW¼NW¼, and NW¼SW¼;
Sec. 26, N½, NE¼SW¼, and SE¼;
Sec. 27, NE¼NW¼, E½SW¼, SW¼SW¼, and SE¼;
Sec. 28, SW¼NE¼, W½NW¼, SE¼NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 29;
Sec. 30, lots 1 and 2, NE¼, and E½NW¼;
Sec. 31, lot 4, SE¼SW¼, and S½SE¼;
Sec. 32, E½, N½NW¼, and S½SW¼;
Sec. 33, NE¼NE¼, NW¼, NW¼SW¼, and S½S½;
Sec. 34, N½N½, SW¼NE¼, W½SW¼, NW¼SE¼, and SE¼SE¼;
Sec. 35, E½, W½NW¼, SE¼NW¼, and S½SW¼.
T. 1 S., R. 85 W.,
Sec. 3, S½SW¼;
Sec. 13, E½, N½SW¼, and SE¼SW¼;
Sec. 24, NE¼ and E½SE¼;
Sec. 25, E½NE¼ and SW¼SW¼;
Sec. 26, lots 1 to 11, inclusive;
Sec. 27, NE¼NE¼ and E½ SE¼;
Sec. 31, lots 1, 2, 3, and 4, E½, and E½W½;
Sec. 33, W½SW¼;
Sec. 34, E½NE¼ and SW¼NE¼;
Sec. 35.
T. 1 S., R. 86 W.,
Sec. 34, S½S½;
Sec. 36, S½S½.

The area described above aggregates approximately 49,200 acres of public land in Routt County, Colo.

4. As provided in paragraph 1 above, the lands described in this paragraph are classified for multiple use management with segregation from all forms of appropriation including the general mining laws, except for aplications under the mineral leasing laws and the Recreation and Public Purposes Act.

SIXTH PRINCIPAL MERIDIAN, COLORADO
ROUTT COUNTY

T. 4 N., R. 84 W.,
Sec. 21, NE¼NE¼, S½NE¼, and N½SE¼.
T. 6 N., R. 84 W.,
Sec. 10, SE¼NE¼.
T. 9 N., R. 85 W.,
Sec. 3, lot 19 and SW¼;
Sec. 4, lots 10, 11, 12, 13, 15, 18, and 19, SW¼NE¼, and NE¼SE¼;
Sec. 5, lots 5 and 8;
Sec. 8, lot 1;
Sec. 10, lots 1 and 2;
Tracts 42A, 42B, 42C, 42D, 42E, 43A, 43H, 43I, and 43P.
T. 10 N., R. 85 W.,
Sec. 32, lots 12 and 13.
T. 3 N., R. 88 W.,
Sec. 14, NW¼.

The area described above aggregates approximately 1,348.42 acres of public land in Routt County, Colo.

5. The record showing comments received and other information, and maps showing the lands involved are on file in the Craig District Office, Bureau of Land Management, Craig, Colo., and the Glenwood Springs District Office, Bureau of Land Management, Glenwood Springs, Colo.

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 for in 43 CFR 2461.3. For a period of 30 days interested parties may submit comments to the Secretary of the Interior, LLM, 320, Washington, D.C. 20240.

E. I. ROWLAND,
*State Director.*

[F.R. Doc. 70-10904; Filed, Aug. 20, 1970; 8:45 a.m.]

# DEPARTMENT OF AGRICULTURE

## Forest Service

### EAGLES NEST WILDERNESS

### Proposal and Hearing Announcement

Notice is hereby given in accordance with provisions of the Wilderness Act of September 3, 1964 (Public Law 88-577; 78 Stat. 890, 892; 16 U.S.C. 1131, 1132) that a public hearing will be held beginning at 9 a.m. on October 8, 1970, at the Summit County High School Auditorium, Frisco, Colo., on a proposal for recommendation to be made to the President of the United States by the Secretary of Agriculture that a recommendation be submitted to Congress for the establishment of the Eagles Nest Wilderness, comprised of approximately 71,785 acres within and contiguous to the Gore Range-Eagles Nest Primitive Area. Approximately 45,579 acres are located within the Arapaho National Forest and approximately 26,206 acres are within the White River National Forest. The proposed Wilderness is located in Eagle and Summit Counties, all in the State of Colorado.

A brochure containing a map and information about the proposed Wilderness may be obtained from the Forest Supervisor, Arapaho National Forest, 1010 10th Street, Post Office Box 692, Golden, Colo. 80401, or the Forest Supervisor, White River National Forest, Old Federal Building, Post Office Box 948, Glenwood Springs, Colo. 81601, or the Regional Forester, Building 85, Denver Federal Center, Denver, Colo. 80225.

Individuals or organizations may express their views by appearing at this hearing in Frisco, Colo., or they may submit written comments for inclusion in the official record to the Regional Forester at the above address by November 9, 1970.

A. W. GREELEY,
*Associate Chief, Forest Service.*

[F.R. Doc. 70-11021; Filed, Aug. 20, 1970; 8:49 a.m.]

# DEPARTMENT OF COMMERCE

## Business and Defense Services Administration

### DUKE UNIVERSITY MEDICAL SCHOOL

### 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. 70-00523-33-46040. Applicant: Duke University Medical School, Department of Anatomy, Box 3011, Durham, N.C. 27706. Article: Electron microscope, Model Elmiskop 101. Manufacturer: Siemens A. G., West Germany.

Intended use of article: The research that is planned using the article involves, among other things studies of isolated protein molecules. It is hoped that crystalline bovine serum albumin can be profitably studied using a special dark field technique and that it will be possible to detect alterations in this molecule brought about by detergents. In addition, work is planned on various isolated components of cell membranes and on membrane fractions; and on studies of metallic replicas of membrane fragments.

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 has a specified resolving capability of 3.5 angstroms. The most closely comparable domestic instrument is the Model EMU-4B electron microscope which was formerly manufactured by the Radio Corp. of America (RCA) and which is presently being supplied by the Forgflo Corp. The Model EMU-4B has a specified resolving capability of 5 angstroms. (The lower the numerical rating in terms of angstrom units, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated June 3, 1970 that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used.

We, therefore, find that the Model EMU-4B is not of equivalent scientific value to the foreign article for such purposes as this 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. 70-10970; Filed, Aug. 20, 1970; 8:45 a.m.]

### NORTH CAROLINA STATE UNIVERSITY

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder 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. 70-00782-00-46040. Applicant: North Carolina State University, Department of Materials Engineering, 109 Page Hall, Raleigh, N.C. 27607. Article: Goniometer stage, Type ALG-1. Manufacturer: Japan Electron Optics Lab., Co., Ltd., Japan.

Intended use of article: The article is an accessory for an existing electron microscope used for crystal defect structure studies.

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 an accessory for an electron microscope that was previously imported and is being used by the applicant institution. The article is being furnished by the manufacturer of the instrument with which the article is intended to be used. We know of no similar accessory being manufactured in the United States, which is interchangeable with the foreign article or can be readily adapted to the instrument with which the article is intended to be used.

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

[F.R. Doc. 70-10971; Filed, Aug. 20, 1970; 8:45 a.m.]

### UNIVERSITY OF KENTUCKY 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. 71-00033-33-46500. Applicant: University of Kentucky, Medical Center, Department of Anatomy, Lexington, Ky. 40506. Article: Ultramicrotome, Model LKB 4800A. Manufacturer: LKB Produkter A.B., Sweden. Intended use of article: The article will be used to study the process of keratinization at various stages. During the early developmental stages, keratin material is soft and at the late stages of development this material is extremely hard. Keratinizing feather germs will be cultured for various lengths of time. The "normal" or "base line" morphology of this organ grown in culture will be determined at the ultrastructural level. Application received by Commissioner of Customs: July 16, 1970.

Docket No. 71-00036-33-46040. Applicant: Texas Christian University, Fort Worth, Tex. 76129. Article: Electron microscope, Model EM 300. Manufacturer: Philips Electronics NVD, The Netherlands. Intended use of article: The article will be used for research studies on the fine structural changes in rat anterior pituitary after various hormone treatments; for electron microscopic studies on the Crustacean molt gland (Y-organ) involving both thin sectioned and negatively stained preparations; and to carry out electron microscopic and electron diffraction studies on thin films of aluminum oxides. Application received by Commisioner of Customs: July 17, 1970.

Docket No. 71-00037-33-46040. Applicant: Nassau Community College, Stewart Avenue, Garden City, N.Y. 11530. Article: Electron microscope, Model HS-8. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article will be used to improve and enhance instruction in physiology, parasitology, microbiology, histology, histochemical techniques, and in parasitology courses. Courses in electron microtomy and advanced electron microtomy and electron microscopy will be directed to producing students that are capable to go directly into hospitals and research electron microscope laboratories to work as electron microscopy technicians. Application received by Commissioner of Customs: July 16, 1970.

Docket No. 71-00038-01-07520. Applicant: Yale University, 225 Prospect Street, New Haven, Conn. 06520. Article: Batch microcalorimeter LKB 10700-2B. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used in the determination of the enthalpy changes in a wide variety of biochemical processes. Research studies concern the hydrolysis of a specific arginine-isoleucine bond in soybean trypsin inhibitor by trypsin, for comparison with the hydrolysis of a similar bond in the activation chymotrypsinogen A; antibody-antigen reactions; and the interaction of metal ions with human apocarbonic anhydrase, and of sulfonamide inhibitors with the apoenzyme. Application received by Commissioner of Customs: July 16, 1970.

Docket No. 71-00039-38-67200. Applicant: University of South Alabama, Mobile, Ala. 36608. Article: Categories tester and aversive conditioning programmer. Manufacturer: Barry F. Smith M.A. Science Engineer, Bio-Medical Engineer, Canada. Intended use of article: The article will serve primarily as an educational instrument which will include research training and experience. In addition, faculty of the Department of Psychology will use this apparatus for specific research and possibly for treatment of maladjusted individuals. The categories tester is a self contained system designed primarily for the Halstead test battery. Application received by Commissioner of Customs: July 16, 1970.

Docket No. 71-00042-33-46040. Applicant: U.S. Public Health Service Hospital, 3100 Wyman Park Drive, Baltimore, Md. 21211. Article: Electron microscope, Model JEM-100B. Manufacturer: Japan Electron Optics Lab. Co., Ltd., Japan. Intended use of article: The article will be used for ultrastructural studies of the hematopoietic tissues of patients with lymphoma and acute leukemia before and during treatment, of experimental pathology and chemotherapy in relevant animal model systems and in the search for and the identification of viruses in these pathological states. Application received by Commissioner of Customs: July 22, 1970.

Docket No. 71-00043-33-46500. Applicant: University of Illinois at Chicago Circle, Department of Biological Sciences, Box 4348, Chicago, Ill. 60680. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden. Intended use of article: The article will be used to section ovary, endocrine glands, fat body and ovarian duct system of *Drosophila melanogaster*, and *Drosophila persimilis;* ovary and endocrine tissue of *Ephestia kühnellia*; and mitospores, meiospores, sporangia and mycelia of the aquatic phycomycete, *Allomyces arbuscula*. These biological materials are to be investigated for cytological studies of growth, development and mutant gene activity. Application received by Commissioner of Customs: July 22, 1970.

Docket No. 71-00046-33-46500. Applicant: Southern Illinois University, School of Dental Medicine, Edwardsville, Ill. 62025. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden. Intended use of article: The article will be used for studies of soft tissues (examples: lymph nodes, salivary gland, mucosa) and dental hard tissues (examples: dentin, enamel, bone). Research in the areas of both soft tissues and dental hard tissues will deal with healthy, normal and diseased conditions, for investigation of the structural geometric orientation and organization. Application received by Commissioner of Customs: July 23, 1970.

Docket No. 71-00047-33-46500. Applicant: University of Alabama in Birmingham, 1919 Seventh Avenue South, Birmingham, Ala. 35233. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden. Intended use of article: The article will be used to prepare selected human and animal tissues for examination in the electron microscope. Research concerns alterations of endothelial permeability produced in surviving segments of human umbilical arteries and rabbit aortas. Dietary atherosclerosis will be induced in rabbit and permeability of early lesions, identified autoradiographically with tritiated thymidine will be evaluated. Application received by Commissioner of Customs: July 23, 1970.

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

[F.R. Doc. 70-10972; Filed, Aug. 20, 1970; 8:45 a.m.]

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Food and Drug Administration

## UNION CARBIDE CORP.

### Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 0F1008) has been filed by the Union Carbide Corp., 800 Wyatt Building, Washington, D.C. 20005, proposing the establishment of tolerances (21 CFR Part 120) for residues of the insecticide and nematocide aldicarb (2-methyl-2-(methylthio)propionaldehyde O-(methylcarbamoyl) oxime and its cholinesterase-inhibiting metabolites 2-methyl-2-(methylsulfinyl)propionaldehyde O-(methylcarbamoyl) oxime and 2-methyl-2-(methylsulfonyl)propionaldehyde O-(methylcarbamoyl) oxime in or on the raw agricultural commodities sugar beet tops at 1 part per million; sugar beets at 0.05 part per million; meat, fat, and meat byproducts of cattle, goats, hogs,

and sheep at 0.01 part per million (negligible residue); and milk at 0.002 part per million (negligible residue).

The analytical method proposed in the petition for determining residues of the pesticide is a procedure in which the residues are extracted and then reacted with peracetic acid to form the sulfone metabolite, which is analyzed by gas chromatography using a flame photometric detector with a filter specific for sulfur.

Dated: August 13, 1970.

R. E. DUGGAN,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-10961; Filed, Aug. 20, 1970; 8:45 a.m.]

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[DESI 7561]

## ANTIBIOTICS IN COMBINATION WITH OTHER DRUGS FOR NASAL USE

### Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparations:

1. Neo-Delta-Cortef 0.1 percent Nasal Spray containing 1 milligram prednisolone acetate, 5 milligrams neomycin sulfate (equivalent to 3.5 milligrams neomycin base), and 2.5 milligrams phenylephrine hydrochloride per milliliter; The Upjohn Co., 7171 Portage Road, Kalamazoo, Mich. 49002 (NDA 10-206).

2. Neo-Cortef 1.5 percent Nasal Spray containing 15 milligrams hydrocortisone acetate, 5 milligrams neomycin sulfate (equivalent to 3.5 milligrams neomycin base), and 2.5 milligrams phenylephrine hydrochloride per milliliter; The Upjohn Co. (NDA 9-512).

3. Neo-Cortef 0.5 percent Nasal Spray containing 5 milligrams hydrocortisone acetate, 5 milligrams neomycin sulfate (equivalent to 3.5 milligrams neomycin base), and 2.5 milligrams phenylephrine hydrochloride per milliliter; The Upjohn Co. (NDA 9-837).

4. Nasal Suspension Hydrospray containing 1 milligram hydrocortisone, 2.5 milligrams phenylephrine hydrochloride, 7.5 milligrams phenypropanolamine hydrochloride, and 5 milligrams neomycin sulfate (equivalent to 3.5 milligrams neomycin base) per milliliter; Merck Sharp & Dohme, Division of Merck & Co., Inc., West Point, Pa. 19486 (NDA 9-853).

5. Nasal Spray Neo-Hydeltrasol containing 1 milligram prednisolone 21-phosphate (as prednisolone sodium phosphate), 2.5 milligrams phenylephrine hydrochloride, 7.5 milligrams phenylpropanolamine hydrochloride, and 5 milligrams neomycin sulfate (equivalent to 3.5 milligrams neomycine base) per milliliter; Merck Sharp & Dohme, Division of Merck & Co., Inc. (NDA 11-136).

6. Biomydrin-F Nasal Spray with Hydrocortisone containing 0.2 milligram hydrocortisone acetate, 1 milligram neomycin sulfate (equivalent to 0.66 milligram neomycin base), 0.05 milligram gramicidin, 10 milligrams thonzylamine hydrochloride, 2.5 milligrams phenylephrine hydrochloride, and 0.5 milligram thonzonium bromide per milliliter; Warner-Chilcott Laboratories, Division of Warner-Lambert Pharmaceutical Co., 201 Tabor Road, Morris Plains, N.J. 07950 (NDA 9-842).

7. Trisocort Spraypak containing 0.2 milligram hydrocortisone, 5 milligrams hydroxyamphetamine hydrobromide, 1.25 milligrams phenylephrine hydrochloride, 0.05 milligram gramicidin, neomycin sulfate (equivalent to 0.6 milligram neomycin base) and polymyxin B sulfate (equivalent to 2000 units polymyxin B) per milliliter; Smith, Kline and French Laboratories, 1500 Spring Garden Street, Philadelphia, Pa. 19101 (NDA 9-538).

8. Biomydrin Antibiotic Nasal Solution, Nasal Spray, and Nasal Drops containing 1 milligram neomycin sulfate (equivalent to 0.66 milligram neomycin base), 0.05 milligram gramicidin, 10 milligrams thonzylamine hydrochloride, 2.5 milligrams phenylephrine hydrochloride, and 0.5 milligram thonzonium bromide per milliliter; Warner-Chilcott Laboratories, Division Warner-Lambert Pharmaceutical Co. (NDA 8-584).

9. Spectrocin Nasal Spray containing neomycin sulfate equivalent to 0.8 milligram neomycin base, 0.05 milligram gramicidin, and 2.5 milligrams phenylephrine hydrochloride per milliliter; E. R. Squibb & Sons, 909 Third Avenue, New York, N.Y. 10022 (NDA 8-328).

10. Drilitol Solution and Drilitol Spraypak containing 2 milligrams methapyrilene hydrochloride, 0.05 milligram gramicidin, polymyxin B sulfate equivalent to 500 units polymyxin B, and 10 milligrams hydroxyamphetamine hydrobromide per milliliter; Smith, Kline and French Laboratories (NDA 7-561).

11. Aerodrin Nasal Solution and Aerodrin Nasal Spray containing 5000 units polymyxin B sulfate, 5 milligrams methoxamine hydrochloride, and 5 milligrams neomycin sulfate (equivalent to 3.5 milligrams neomycin base) per milliliter; Burroughs Wellcome and Company (USA), Inc., 1 Scarsdale Road, Tuckahoe, N.Y. 10707 (NDA 8-715).

The Food and Drug Administration concludes there is a lack of substantial evidence within the meaning of the Federal Food, Drug, and Cosmetic Act, that these drugs are effective as fixed combinations for the uses recommended or suggested in their labeling and that each component of the combination drugs contributes to the total effects claimed for such drugs. Further, the topical use of neomycin in such preparations exposes the patient, without evidence of effectiveness, to the potential risk of sensitization or precipitation of allergic reaction.

Accordingly, the Commissioner of Food and Drugs intends to initiate proceedings to amend the antibiotic drug regulations to delete from the list of drugs acceptable for certification or release the above-listed antibiotic combinations and any other antibiotic drugs in combination with vasoconstrictors, decongestants, antihistamines, or steroids for nasal administration in man.

Prior to initiating such action, however, the Commissioner invites all interested persons who may be adversely affected by removal of these drugs from the market to submit pertinent data bearing on the proposal within 30 days following the date of publication of this notice in the FEDERAL REGISTER. To be acceptable, such data must be well-organized and consist of adequate and well-controlled studies bearing on the efficacy of the products, and not previously submitted. Any data should be identified with the reference number DESI 7561 and addressed to the Special Assistant for Drug Efficacy Study Implementation (BD-201), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

This announcement of the proposed action and implementation of the NAS-NRC reports for these drugs is made to give notice to persons who might be adversely affected by removal of these drugs from the market.

The firms listed above have been mailed a copy of the NAS-NRC report. Any interested person may obtain a copy of the NAS-NRC reports on any of the above-named drugs by writing to the Food and Drug Administration, Press Relations Office (CE-200), 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050-51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357) and delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 6, 1970.

CHARLES C. EDWARDS,
*Commissioner of Food and Drugs.*

[F.R. Doc. 70-10962; Filed, Aug. 20, 1970; 8:45 a.m.]

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[DESI 52 NV]

## POLYMYXIN-BACITRACIN-NEOMYCIN-HYDROCORTISONE OINTMENT

### Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparation: Neo-Polycin HC; each gram contains 4.29 milligrams of neomycin sulfate (equivalent to 3 milligrams of neomycin base), 8000 units of polymyxin B sulfate, 400 units of zinc bacitracin, and 10 milligrams of hydrocortisone acetate; by Pitman-Moore, Inc., Camp Hill Road, Fort Washington, Pa. 19034.

The Academy evaluated this preparation as probably effective for veterinary use as an anti-inflammatory and antibacterial agent. The Academy stated: (1) While there is evidence to substantiate the basic use of the ingredients,

data were not submitted on this particular combination drug in animals; and (2) proper labeling for veterinary use must be provided.

The Food and Drug Administration concurs with the academy's findings.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the academy and the Food and Drug Administration and (2) to inform all interested persons that such articles may be marketed provided they are the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of new animal drug applications are provided 6 months from the date of publication hereof in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug application for the listed drug has been mailed a copy of the NAS–NRC report. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 21, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70–10963; Filed, Aug. 20, 1970; 8:45 a.m.]

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[DESI 12–12NV]

## HYDROCORTISONE ACETATE-NEOMYCIN SULFATE-TETRACAINE OINTMENT

### Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following ointments: Neo-Cort (opthalmic ointment), and Pets' Best Cort-I-Mycin (ear and eye ointment); each gram contains 5 milligrams hydrocortisone acetate, 5 milligrams neomycin sulfate (equivalent to 3.5 milligrams neomycin base), and 5 milligrams tetracaine; by Philips Roxane Inc., 2621 North Belt Highway, St. Joseph, Mo. 64502.

The Academy evaluated these products as probably not effective for veterinary use as an aid in treatment of keratitis, conjunctivitis, and otitis externa. The Academy stated:

1. Ophthalmic formulations containing tetracaine in combination with other drugs when recommended for continued use are considered of questionable efficacy. Tetracaine should be removed from the preparations since this drug should not be used repeatedly in the eye.

2. The label should warn that all topical ophthalmic preparations containing corticosteroids, with or without an antimicrobial agent, are contraindicated in the initial treatment of corneal ulcers. They should not be used until the infection is under control and corneal regeneration is well underway.

3. There are some questions on the potential sensitizing effects of tetracaine and neomycin.

4. The indications for use should include the specific organisms against which the products are effective.

5. Documentation is inadequate to support the drugs safe and effective use in veterinary medicine.

The Food and Drug Administration concurs with the Academy's findings.

This announcement is published (1) to inform manufacturers of the subject drugs of the findings of the Academy and the Food and Drug Administration, and (2) to inform all interested persons that such articles to be marketed must be the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Manufacturers of the subject drugs are provided 6 months from the date of publication of this announcement in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The manufacturer of the listed drugs has been mailed a copy of the NAS–NRC report. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: August 4, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70–10964; Filed, Aug. 20, 1970; 8:45 a.m.]

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[DESI 0064NV]

## CERTAIN PREMIXES CONTAINING BACITRACIN

### Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparations:

1. 4–66 Turkey Grower Premix; each pound contains 1 gram of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc., Nutley, N.J. 07110.

2. Turkey Grower Premix 6357; each pound contains 1 gram of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

3. Turkey Grower Premix; each pound contains 2 grams of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

4. Turkey Premix 6937; each ton contains 1,500 grams of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

5. Turkey Starter Premix No. 13680; each pound contains 1 gram of bacitracin (from manganese bacitracin) by Roche Chemical Division, Hoffmann-La Roche Inc.

6. Turkey Grower Premix; each pound contains 1 gram of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

7. Broiler Premix 6398; each pound contains 1 gram of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

8. Turkey Finisher Premix 6391; each pound contains 1 gram of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

9. Amerine Turkey Starter Premix; each pound contains 1.5 grams of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

10. Turkey Starter Premix; each ton contains 1,500 grams of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

11. Turkey Starter Premix; each pound contains 2 grams of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

12. Turkey Starter Premix 6361; each pound contains 1.5 grams of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

13. Turkey Starter Premix P.P.A. No. 211; each ton contains 1,500 grams of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffman-La Roche Inc.

14. Special Pullet Grow Premix; each pound contains 1 gram of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

15. Chick Starter-Grower Premix 6370; each pound contains 1 gram of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

16. Direct Services Turkey Premix; each ton contains 1,668 grams of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

17. Starter Broiler Grower Premix 7153; each pound contains 1 gram of bacitracin (from manganese bacitracin); by Roche Chemical Division, Hoffmann-La Roche Inc.

18. Turkey Starter Premix; each pound contains 1.12 grams of bacitracin (from manganese bacitracin); by Hoffmann-La Roche Inc.

19. Turkey Starter Premix; each pound contains 1.5 grams of bacitracin (from manganese bacitracin); by Hoffmann-La Roche Inc.

20. Manganese Bacitracin Feed Grade; contains up to 25 grams of bacitracin activity per pound; by Grain Processing Corp., 1600 Oregon Street, Muscatine, Iowa 52761.

The Academy classified these feed premixes as probably effective for faster gains and feed efficiency in poultry. The Academy stated: (1) Claims for growth promotion or stimulation are disallowed and claims for faster gains and/or feed efficiency in poultry should be stated as "may result in faster gains and/or improved feed efficiency under appropriate conditions"; (2) each active ingredient in a preparation containing more than one drug must be effective, or contribute to the effectiveness of the preparation, to warrant acceptance as a therapeutic ingredient; (3) when using bacitracin alone, it is recommended that a minimum of 25 grams of bacitracin activity per ton of complete feed is necessary for improving rate of gain and/or feed efficiency for poultry; and (4) more information is needed to support the use of bacitracin for swine.

The Food and Drug Administration concurs with the findings of the Academy; however, the Administration concludes the appropriate claim for faster weight gains and improved feed efficiency should be "For increased rate of weight gain and improved feed efficiency for (under appropriate conditions of use)."

This evaluation is concerned only with these drugs' effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites as residues in food products derived from treated animals.

This announcement is published (1) to inform manufacturers of the subject drugs of the findings of the Academy and the Food and Drug Administration and (2) to inform all interested persons that such articles to be marketed must be the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Manufacturers of the subject drugs are provided 6 months from the date of publication of this announcement in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The manufacturers of the listed drugs have been mailed a copy of the NAS–NRC reports. Any other interested person may also obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: August 7, 1970.

R. E. DUGGAN,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-10965; Filed, Aug. 20, 1970; 8:45 a.m.]

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[DESI 6417V]

## TRIPELENNAMINE HYDROCHLORIDE

### Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparation by CIBA Pharmaceutical Co., 556 Morris Avenue, Summit, N.J. 07901: Pyribenzamine; as tablets containing 25, 50, or 500 milligrams of tripelennamine hydrochloride and as an injectable containing 20 milligrams of tripelennamine hydrochloride per cubic centimeter.

The Academy evaluated the drug as probably effective for use in conditions in which antihistaminic therapy may be expected to lead to alleviation of some signs of disease in horses, cattle, sheep, swine, goats, dogs, and cats. The Academy stated: (1) The rationale underlying the use of the preparation as a central nervous system stimulant for the "downer cow" syndrome is questioned; consequently, this claim should be deleted from the label; (2) references to specific diseases should be deleted from the label unless they can be properly substantiated; (3) the documentation of efficacy is inadequate in that it is based primarily upon clinical reports and no controlled data are available in the veterinary medical literature; (4) evidence must be provided to establish that the tablets disintegrate in the gastrointestinal tract of the medicated species to produce the desired therapeutic effect; (5) the labeling should include information on side effects such as (a) depression of the central nervous system and the incoordination that may occur when the drug is used at therapeutic dose levels, (b) disturbances in gastrointestinal functions that may occur, and (c) the fact that overdosage may give rise to excitement, ataxia, and convulsions; and (6) it is suggested that the labeling limit the indications for use to conditions in which antihistaminic therapy may be expected to lead to the alleviation of some signs of disease. Efficacy is not well established except in the case of exposure to an antigen to which the animal has a preexisting sensitivity. The sedative and antiemetic actions of antihistaminic drugs on the central nervous system may have prophylactic or therapeutic value in selected situations.

The Food and Drug Administration concurs with the Academy's findings.

This evaluation is concerned only with the drug's effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drug or its metabolites as residues in food products derived from treated animals.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration and (2) to inform all interested persons that such articles may be marketed provided they are the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of the new animal drug applications are provided 6 months from the date of publication hereof in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug application for the listed drug has been mailed a copy of the NAS–NRC report. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 28, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70–10966; Filed, Aug. 20, 1970; 8:45 a.m.]

[DESI 10184V]

## CERTAIN DRUG PRODUCTS CONTAINING NEOMYCIN

### Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparations:

1. Biosol; contains 5 grams of neomycin sulfate (equivalent to 3.5 grams of neomycin base); when dissolved according to direction each cubic centimeter contains approximately 100 milligrams of neomycin sulfate; by The Upjohn Co., Kalamazoo, Mich. 49001.

2. Biosol Sterile Solution (30-c.c. vial); each cubic centimeter contains 50 milligrams of neomycin sulfate (equivalent to 35 milligrams of neomycin base); by The Upjohn Co.

3. Biosol Sterile Solution (100-c.c. vial); each cubic centimeter contains 200 milligrams of neomycin sulfate (equivalent to 140 milligrams of neomycin base); by The Upjohn Co.

The Academy evaluated these preparations as probably effective in treating systemic bacterial infections in cattle, horses, sheep, swine, cats, and dogs caused by pathogens sensitive to the drug. The Academy stated: (1) Each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to neomycin sulfate," and if the disease claim cannot be so qualified the claim must be dropped; (2) the "Minimum Inhibitory Concentration" table tends to be misleading and should be deleted; (3) the labeling should carry a warning statement pertaining to "curare-like neuromuscular blockade"; (4) the inclusive phraseology describing the use of this preparation tends to be misleading and an overstatement of the activity of neomycin sulfate; and (5) comments relating to the development of resistant micro-organisms should be rephrased as recently resistance to neomycin sulfate has been reported more frequently.

The Food and Drug Administration concurs with the findings of the Academy.

This evaluation is concerned only with these drugs' effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-tested animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites as residues in food products derived from treated animals.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration and (2) to inform all interested persons that such articles may be marketed provided they are the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of new animal drug applications are provided 6 months from the date of publication hereof in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug applications for the listed drugs has been mailed a copy of the NAS–NRC report. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 21, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70–10967; Filed, Aug. 20, 1970; 8:45 a.m.]

[DESI 10863V]

## MYCOSTATIN OINTMENT

### Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences—National Research Council, Drug Efficacy Study Group, on the following preparation: Mycostatin Ointment; each gram contains 100,000 units of nystatin; by E. R. Squibb & Sons, Inc., Georges Road, New Brunswick, N.J. 08903.

The Academy evaluated this product as probably not effective for the treatment of cutaneous fungus infections in animals. The claims are too broad and there is no documentation of its use in animals. The Food and Drug Administration concurs with the Academy's evaluation.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration and (2) to inform all interested persons that such articles to be marketed must be the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of new animal drug applications are provided 6 months from the date of publication hereof in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug application for the listed drug has been mailed a copy of the NAS–NRC report. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to

the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 17, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-10968; Filed, Aug. 20, 1970; 8:45 a.m.]

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[Docket No. FDC-D-205; NDA's 6-408, 6-436, 6-535]

## ELI LILLY & CO. ET AL.

### Urethan; Notice of Withdrawal of Approval of New-Drug Applications

In the FEDERAL REGISTER of September 9, 1969 (34 F.R. 14181), the Commissioner of Food and Drugs announced his conclusions pursuant to evaluation of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, concerning the efficacy of the drug urethan. The announcement (DESI 6535) stated that urethan is regarded as a new drug and, although not a drug of choice, is considered to be effective for chronic granulocytic leukemia and possibly effective as an adjunct in the therapy of multiple myeloma. Holders of "deemed approved" new-drug applications for urethan were requested to revise labeling and update their applications in accordance with the announcement and were given 6 months to obtain and submit data to provide substantial evidence of effectiveness of the drug as an adjunct in the therapy of multiple myeloma. Any other persons distributing or intending to distribute the drug were requested to submit new-drug applications in accordance with the announcement. The first drug listed below was named in the announcement and the other two firms were advised that their drugs are affected thereby.

1. Urethan Tablets, 5 grains; Eli Lilly & Co., Box 618, Indianapolis, Ind. 46206 (NDA 6-535).

2. Urethan Solution, 4 grams per 30 cc.; Abbott Laboratories, 14th and Sheridan Road, North Chicago, Ill. 60064 (NDA 6-408).

3. Urethan Tablets, 5 grains; Lemmon Pharmacal Co., Sellersville, Pa. 18960 (NDA 6-436).

All of the above firms have advised that these drugs are no longer marketed and have waived opportunity for a hearing. No new-drug applications or supplements have been submitted pursuant to the announcement.

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 52 Stat. 1053, as amended; 21 U.S.C. 355(e)) and under authority delegated to him (21 CFR 2.120), the Commissioner, on the basis of new information evaluated with the evidence available when the applications were approved, finds there is a lack of substantial evidence that the above-listed drugs will have all the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of the above-listed new-drug applications, and all amendments and supplements thereto, is withdrawn, effective on the date of signature of this document. Outstanding stocks of the affected drugs should be recalled.

Accordingly, any urethan-containing drug on the market labeled for use in other than chronic granulocytic leukemia is regarded as a new drug for which an approved new-drug application is not in effect and is subject to regulatory action. However, this order does not affect such drugs which are labeled for use only in chronic granulocytic leukemia and which are otherwise in accord with the requirements announced in the FEDERAL REGISTER of September 9, 1969 (34 F.R. 14181).

Dated: July 28, 1970.

SAM D. FINE,
*Acting Associate Commissioner For Compliance.*

[F.R. Doc. 70-10969; Filed, Aug. 20, 1970; 8:45 a.m.]

# DEPARTMENT OF TRANSPORTATION

## National Highway Safety Bureau

## AGRICULTURAL TRACTOR SAFETY

### Notice of Public Meeting

On September 17, 1970, the National Highway Safety Bureau will hold a public meeting, beginning at 9:30 a.m., in the Mark Building, Second Floor Auditorium, 12th and Spruce Streets, St. Louis, Mo., to obtain information relating to the extent, cause, and prevention of agricultural tractor accidents on public roads and on farms. The meeting will serve to assist the Secretary of Transportation in preparing a report to Congress on this subject, pursuant to Public Law 91-265. The report is due January 1, 1971, and is to include:

(1) An estimate, based on the best statistical information available, of the number of deaths and injuries resulting annually from agricultural tractor accidents;

(2) Identification of the primary causes of accidents, including consideration of the hazards most likely to cause death or injury; and

(3) Specific recommendations on means of preventing the occurrence of, and reducing the severity of injuries resulting from, agricultural tractor accidents, including such legislative proposals as the Secretary determines are needed.

The Secretary has also been requested to consider establishing Federal safety standards for the installation of safety devices and for the design and manufacture of tractors, and assisting the States in developing accident reporting systems. Comments are encouraged on these subjects from researchers, farmers, agricultural representatives, tractor manufacturers and dealers, insurers, and other knowledgable parties who are able to provide substantive judgments on the matter of improved agricultural tractor safety. Comments should be organized to facilitate separate discussion, if possible, of the magnitude of the problem (the number of deaths and injuries which occur annually), tractor safety standards, tractor design, power takeoff and attached implement safety, training requirements and accident reporting procedures. Recommendations for corrective action and proposed legislation should be supported insofar as it is possible by evidence to substantiate such recommendations. Also, the economic implications and used acceptance of proposed changes should be addressed.

Interested persons are invited to attend the meeting and present oral and written comments on the above subjects. Any person planning to present oral comments is requested to submit an outline of his remarks and a time estimate to Dr. George Hartman, National Highway Safety Bureau, Room 5212, 400 Seventh Street NW., Washington, D.C. 20591, not later than September 11, 1970. An attempt will be made to honor requests for particular hours for presentation of testimony. Requests for special equipment, such as projectors and screens, should be made at the same time.

Written comments may be submitted by any interested person, whether or not he attends the meeting, and should be submitted to Dr. George Hartman, at the address given above, not later than September 21, 1970. All comments not read at the meeting will be incorporated as an appendix to the meeting transcript.

An agenda will be available in the meeting room on the day of the meeting. If more persons wish to be heard than can be accommodated September 17, the meeting will be extended to September 18. An attempt will be made to advise all participants of an extension prior to the meeting date.

The meeting transcript will be available for examination in the Docket Room, National Highway Safety Bureau, 400 Seventh Street NW., Washington, D.C. 20591, approximately 3 working days after the meeting.

Issued on August 18, 1970.

JACK L. GOLDBERG,
*Acting Associate Director for Planning and Programming.*

[F.R. Doc. 70-10993; Filed, Aug. 20, 1970; 8:47 a.m.]

# CIVIL AERONAUTICS BOARD

[Dockets Nos. 20291, 20993; Order 70-8-60]

## INTERNATIONAL AIR TRANSPORT ASSOCIATION

### Order Regarding Fare and Rate Matters

Issued under delegated authority August 17, 1970.

By Order 70-7-88, dated July 20, 1970, action was deferred, with a view toward eventual approval, on certain resolutions incorporated in an agreement adopted by

the Traffic Conferences of the International Air Transport Association (IATA). The agreement would amend the resolutions governing rates of exchange and the transmittable air waybill consignment note by changing the currency symbols for U.S. dollars and pounds sterling from "$" and "£" to "D" and "L" respectively.

In deferring action on the agreement, 10 days were granted in which interested persons might file petitions in support of or in opposition to the proposed action. No petitions have been received within the filing period and the tentative conclusions in 70–7–88 will herein be made final.

*Accordingly, it is ordered,* That:

Agreement CAB 21917, R–1 through R–3, be and hereby is approved.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK, *Secretary.*

[F.R. Doc. 70–11001; Filed, Aug. 20, 1970; 8:48 a.m.]

[Docket No. 20993; Order 70–8–61]

## INTERNATIONAL AIR TRANSPORT ASSOCIATION

### Order Regarding Specific Commodity Rates

Issued under delegated authority August 17, 1970.

By Order 70–7–144, dated July 30, 1970, action was deferred, with a view toward eventual approval, on an agreement adopted by the International Air Transport Association (IATA), relating to specific commodity rates. In deferring action on the agreement, 10 days were granted in which interested persons might file petitions in support of or in opposition to the proposed action.

No petitions have been received within the filing period, and the tentative conclusions in Order 70–7–144 will herein be made final.

*Accordingly, it is ordered,* That:

Agreement CAB 21753, R–17 through R–19, be and it hereby is approved: *Provided,* That approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publication.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK, *Secretary.*

[F.R. Doc. 70–11002; Filed, Aug. 20, 1970; 8:48 a.m.]

[Docket No. 22446; Order 70–8–54]

## SHASTA FLIGHT SERVICE

### Order To Show Cause

Issued under delegated authority August 17, 1970.

The Postmaster General filed a notice of intent August 6, 1970, pursuant to 14 CFR Part 298, petitioning the Board to establish for the above captioned air taxi operator, a final service mail rate of 60 cents per great circle aircraft mile for the transportation of mail by aircraft between Redding and San Francisco, via Sacramento, Calif., five round trips weekly.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Department and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with Piper Turbo PA–31 aircraft.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order[1] to include the following findings and conclusions:

The fair and reasonable final service mail rate to be paid to Nor-Cal Aviation, Inc., doing business as Shasta Flight Service, in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 60 cents per great circle aircraft mile between Redding and San Francisco, via Sacramento, Calif., based on five round trips per week.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f),

*It is ordered,* That:

1. Nor-Cal Aviation, Inc., doing business as Shasta Flight Service, the Postmaster General, Hughes Air Corp., United Air Lines, Inc., Western Air Lines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Nor-Cal Aviation, Inc., doing business as Shasta Flight Service;

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

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

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

5. This order shall be served upon Nor-Cal Aviation, Inc., doing business as Shasta Flight Service, the Postmaster General, Hughes Air Corp., United Air Lines, Inc., and Western Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK, *Secretary.*

[F.R. Doc. 70–10999; Filed, Aug. 20, 1970; 8:48 a.m.]

[1] This order to show cause is not a final action and is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will be applicable to final action taken by the staff under authority delegated in § 385.16(g).

[Docket No. 22343]

## SATURN AIRWAYS, INC.

### Notice of Proposed Approval

Application of Saturn Airways, Inc., for action pursuant to section 408 of the Federal Aviation Act of 1958 with respect to an aircraft purchase, Docket 22343.

Notice is hereby given, pursuant to the statutory requirements of section 408(b) of the Federal Aviation Act of 1958, as amended, that the undersigned intends to issue the attached order under delegated authority on August 24, 1970. Prior to such time interested persons may file comments or request a hearing with respect to the action proposed in the order.

Dated at Washington, D.C., August 18, 1970.

A. M. ANDREWS, *Director, Bureau of Operating Rights.*

ORDER OF APPROVAL

Issued under delegated authority.

By application filed July 7, 1970, and amended on July 10, 1970, Saturn Airways, Inc. (Saturn), requests the Board to approve without a hearing, pursuant to section 408 (b) of the Federal Aviation Act of 1958, as amended, (the Act) the purchase of a DC–8–55 aircraft by Union de Transports Aeriens (UTA), from Saturn. A letter agreement providing for the sale to UTA, at a purchase price of $4,970,000, subject to an adjustment for engine usage, is dated April 3, 1970.

UTA is the holder of a foreign air carrier permit authorizing it to perform air transportation between various French South Pacific territories and Los Angeles via Honolulu, pursuant to Order E–21178, August 11, 1964. Saturn is a U.S. supplemental air carrier which now operates, among other aircraft, two DC–8–61 aircraft and two DC–8–55 aircraft. Saturn seeks to dispose of the DC–8–55

aircraft, and proposes to acquire four DC–8–61 aircraft, two of which are in replacement for the DC–8–55 aircraft.[1]

The instant DC–8–55 aircraft is presently held by Saturn under a lease with option to purchase from Trans International Airlines, and Saturn has given notice of its intentions to exercise the purchase option. The application recites that the subject aircraft is redundant to Saturn's needs and is not required to meet Saturn's certificate or commercial obligations or to conduct an economic volume of operations.

The application asserts that the aircraft purchase will not affect the control of any direct air carrier, will not result in creating a monopoly, would not tend to restrain competition or jeopardize any air carrier, and would be consistent with the public interest.

No objections to the application or request for a hearing have been received.

Notice of intent to dispose of the application without hearing has been published in the FEDERAL REGISTER and a copy of such notice has been furnished to the Attorney General not later than 1 day following the date of such publication, both in accordance with section 408(b) of the Act.

Upon consideration of the application, it is concluded that the purchase is subject to section 408 of the Act. However, it is further concluded that the transaction does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly and does not tend to restrain competition. Furthermore, no person disclosing a substantial interest in the proceeding is currently requesting a hearing, and it is found that the public interest does not require a hearing. The Board has previously approved such transactions in the past and the application under review presents no new substantive issues.[2] There is no showing that Saturn's ability to perform its certificate obligations will be impaired, or that the aircraft is needed in its operations. We therefore find that the transaction will not be inconsistent with the public interest or that the conditions of section 408 will be unfulfilled.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.50, it is found that the foregoing aircraft purchase should be approved without hearing under section 408(b).

*Accordingly, it is ordered,* That: The sale of a DC–8–55 aircraft by Saturn to UTA, under the agreement filed in Docket 22343, be and it hereby is approved.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 5 days after the date of service of this order.

This order shall be effective upon issuance and the filing of such petitions shall not stay its effectiveness.

[SEAL] HARRY J. ZINK,
*Secretary.*

[F.R. Doc. 70–10997; Filed, Aug. 20, 1970; 8:47 a.m.]

[1] The application makes reference to Saturn's Exhibit SAT–103 in the Transatlantic Charter Authority Renewal Case, Docket 20509, indicating its proposal to acquire the DC–8–61 aircraft and additional L–100 turbojet aircraft.

[2] Caledonian Airways (Prestwick) Ltd., Order 70–6–139, June 25, 1970.

[Docket No. 22447; Order 70–8–55]

## SEDALIA, MARSHALL, BOONVILLE STAGE LINE, INC.

### Order To Show Cause

Issued under delegated authority August 17, 1970.

The Postmaster General filed a notice of intent August 6, 1970, pursuant to 14 CFR, Part 298, petitioning the Board to establish for the above captioned air taxi operator, a final service mail rate of 49 cents per great circle aircraft mile for the transportation of mail by aircraft between Shreveport, La., and Little Rock, Ark., via Texarkana, Tex., and Camden, Ark., six round trips weekly.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Department and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with Beechcraft 18 aircraft.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order[1] to include the following findings and conclusions:

The fair and reasonable final service-mail rate to be paid to Sedalia, Marshall, Boonville Stage Line, Inc., in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 49 cents per great circle aircraft mile between Shreveport, La., and Little Rock, Ark., via Texarkana, Tex., and Camden, Ark., based on six round trips per week.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16 (f),

*It is ordered,* That:

1. Sedalia, Marshall, Boonville Stage Line, Inc., the Postmaster General, Delta Air Lines, Inc., Braniff Airways, Inc., Texas International Airlines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Sedalia, Marshall, Boonville Stage Line, Inc.;

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

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

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

5. This order shall be served upon Sedalia, Marshall, Boonville Stage Line, Inc., the Postmaster General, Delta Air Lines, Inc., Braniff Airways, Inc., and Texas International Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
*Secretary.*

[F.R. Doc. 70–11000; Filed, Aug. 20, 1970; 8:48 a.m.]

[1] This order to show cause is not a final action and is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will be applicable to final action taken by the staff under authority delegated in § 385.16(g).

# CIVIL SERVICE COMMISSION

## DEPARTMENT OF JUSTICE

### Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Justice to fill by noncareer executive assignment in the excepted service the position of Assistant Director for National Services, Community Relations Service.

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

[F.R. Doc. 70–11006; Filed, Aug. 20, 1970; 8:48 a.m.]

## PROFESSOR OF ECONOMETRICS, DAYTON, OHIO

### Manpower Shortage; Notice of Listing

Under the provisions of 5 U.S.C. 5723, the Civil Service Commission found a manpower shortage on July 28, 1970, for the single position of Professor of Econometrics, GS–110–11, Air Force Institute of Technology, Wright-Patterson Air Force Base, Dayton, Ohio. This finding is self-canceling when the position is filled.

Assuming other legal requirements are met, an appointee to this position may be paid for the expense of travel and transportation to his first post of duty.

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

[F.R. Doc. 70–11004; Filed, Aug. 20, 1970; 8:48 a.m.]

## SUPERINTENDENT OF SCHOOLS, DISTRICT OF COLUMBIA

### Manpower Shortage; Notice of Listing

Under provisions of 5 U.S.C. 5723, the Civil Service Commission has found, effective August 13, 1970, that there is a manpower shortage for the single position of Superintendent of Schools, Public Schools of the District of Columbia.

The appointee may be paid for the expenses of travel and moving to his first post of duty.

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

[F.R. Doc. 70–11003; Filed, Aug. 20, 1970; 8:48 a.m.]

# FEDERAL POWER COMMISSION

[Docket No. RI70–1094 etc.]

## MARATHON OIL CO. ET AL.

### Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rates Changes To Become Effective Subject to Refund [1]

AUGUST 12, 1970.

The respondents named herein have filed proposed changes in rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however,* That the supplements to the rate schedules filed by respondents, as set forth herein, shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order respondents shall each execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved. Unless respondents are advised to the contrary within 15 days after the filing of their respective agreements and undertakings, such agreements and undertakings shall be deemed to have been accepted.[2]

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before September 28, 1970.

By the Commission.

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

[1] Does not consolidate for hearing or dispose of the several matters herein.

[2] If an acceptable general undertaking, as provided in Order No. 377, has previously been filed by a producer, then it will not be necessary for that producer to file an agreement and undertaking as provided herein. In such circumstances the producer's proposed increased rate will become effective as of the expiration of the suspension period without any further action by the producer.

APPENDIX A

| Docket No. | Respondent | Rate schedule No. | Supplement No. | Purchaser and producing area | Amount of annual increase | Date filing tendered | Effective date unless suspended | Date suspended until— | Cents per Mcf* Rate in effect | Cents per Mcf* Proposed increased rate | Rate in effect subject to refund in dockets Nos. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| RI70-1094 | Marathon Oil Co., 539 South Main St., Findlay, Ohio 45840. | 109 | 1 to 1 | Kansas-Nebraska Natural Gas Co., Inc. (West Sidney Area; Cheyenne County, Nebr.). | ($135) | 7-20-70 | [4] 7-5-70 | [5] 7-5-70 | [1] [2] 18.198 | [1] [2] [3] (18.1935) | RI70-1094 |
| RI71-127 | Atlantic Richfield Co., Post Office Box 2819, Dallas, Tex. 75221. | 634 | 1 | Michigan Wisconsin Pipe Line Co. (Eugene Island Area, Blocks 247 and 265, Offshore Louisiana). | 10,800 | 7-20-70 | 8-20-70 | [6] 8-21-70 | [1] 18.5 | 20.0 | |
| RI71-128 | Cities Service Oil Co., Post Office Box 300, Tulsa, Okla. 74102. | 329 | 1 | Michigan Wisconsin Pipe Line Co. (Blocks 247 and 265, Eugene Island Area, Offshore Louisiana.) | 10,800 | 7-22-70 | 8-22-70 | [6] 8-23-70 | [1] 18.5 | [1] 20.0 | |
| RI71-129 | Petroleum Corp. of Texas, Post Office Box 911, Breckenridge, Tex. 76024. | 8 | 2 | Coastal States Gas Producing Co. (Donna N., et al. Fields, Hidalgo County, Tex.) (RR. District No. 4). | 4,555 | 7-13-70 | 8-13-70 | 8-14-70 | 11.6768 | 12.5148 | |
| | do | 9 | 3 | do | 335 | 7-13-70 | 8-13-70 | 8-14-70 | 11.6768 | 12.5148 | |
| | do | 10 | 3 | do | 1,300 | 7-14-70 | 8-14-70 | 8-15-70 | 11.6768 | 13.5282 | |
| | do | 12 | 3 | do | 16,665 | 7-14-70 | 8-14-70 | 8-15-70 | 11.6768 | 13.5282 | |
| | do | 13 | 2 | do | 295 | 7-13-70 | 8-13-70 | 8-14-70 | 11.6768 | 12.5148 | |
| | do | 14 | 2 | do [7] | 1,010 | 7-13-70 | 8-13-70 | 8-14-70 | 11.6768 | 12.5148 | |
| | do | 15 | 2 | do [7] | 3,350 | 7-13-70 | 8-13-70 | 8-14-70 | 11.6768 | 12.5148 | |
| | do | 5 | 2 | do [7] | 1,205 | 7-14-70 | 8-14-70 | 8-15-70 | 12.68640 | 13.7860 | |
| | do | 7 | 3 | do [7] | 5,280 | 7-14-70 | 8-14-70 | 8-15-70 | 12.68640 | 13.7860 | |
| | do | 16 | 2 | do [7] | 2,749 | 7-13-70 | 8-13-70 | 8-14-70 | 12.68640 | 13.7860 | |

[*] Unless otherwise stated, pressure base is 14.65 p.s.i.a.
[1] Pressure base is 15.025 p.s.i.a.
[2] Includes 1 cent per Mcf charge by seller for gathering.
[3] Rate decrease due to reduction in Nebraska Conservation Tax effective as of July 1, 1970.
[4] Date 18.198-cent rate became effective subject to refund in Docket No. RI70–1094.
[5] Decreased rate accepted as of July 5, 1970, subject to refund in Docket No. RI70–1094.
[6] Or 1 day from date of initial delivery, whichever is later.
[7] Coastal resells the subject gas pursuant to its Rate Schedule No. 1, at presently effective rate of 14.6 cents. Increase to 15.65756 cents suspended in RI70–1548 until Oct. 1, 1970.

The proposed increases of Atlantic and Cities, involving sales of third vintage gas-well gas from offshore Louisiana, were filed pursuant to Opinion No. 546-A. These increases shall be suspended for 1 day from the date of expiration of the statutory notice period or 1 day from the date of initial delivery, whichever is later. Thereafter, the proposed rates may be placed in effect subject to refund pending the outcome of Docket No. AR69-1.

Petroleum's proposed increases relate to sales of natural gas to Coastal. Coastal resells the gas to Trunkline at a presently effective settlement rate of 14.6 cents per Mcf, but has filed for a higher rate of 15.65756 cents per Mcf which was suspended in Docket No. RI70-1548 until October 1, 1970. Since Petroleum's proposed rates are not related to either Coastal's presently effective rate or its suspended rate, they should be suspended for only 1 day from the expiration of the statutory notice period.

[F.R. Doc. 70-10886; Filed, Aug. 20, 1970; 8:45 a.m.]

# FEDERAL RESERVE SYSTEM

## MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK

### Order Approving Merger of Banks

In the matter of the application of Marine Midland Grace Trust Company of New York for approval of merger with The Community Bank.

There has come before the Board of Governors, pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), an application by Marine Midland Grace Trust Company of New York, New York, N.Y., a State-member bank of the Federal Reserve System, for the Board's prior approval of the merger of that bank and The Community Bank, Lynbrook, N.Y., under the charter and name of Marine Midland Grace Trust Company of New York. As an incident to the merger, the three offices of The Community Bank would become branches of the resulting bank. Notice of the proposed merger, in form approved by the Board, has been published pursuant to said Act.

Upon consideration of all relevant material in the light of the factors set forth in said Act, including reports received pursuant to the Act on the competitive factors involved in the proposed merger,

*It is hereby ordered*, For the reasons set forth in the Board's Statement[1] of this date, that said application be and hereby is approved, provided that said merger shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York pursuant to delegated authority.

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of New York.

By order of the Board of Governors,[2] August 13, 1970.

[SEAL] KENNETH A. KENYON,
*Deputy Secretary.*

[F.R. Doc. 70-10989; Filed, Aug. 20, 1970; 8:47 a.m.]

# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## APPRENTICESHIP INFORMATION AND LOCAL UNION REPORTS

### Notice of Changes

Notice is hereby given that certain revisions in the forms and reporting procedures for the 1970 Apprenticeship Information Report EEO-2 and the Local Union Report EEO-3 have been approved by the Bureau of the Budget and have been adopted.

1. Changes in the Apprenticeship Information Report EEO-2:

a. Apprenticeship Information Report EEO-2, previously filed only by joint labor-management apprenticeship committees, must also be filed by employers which operate apprenticeship programs unilaterally. Employers conducting such programs were required in the past to file the Apprenticeship Schedule A, until this year when it was deleted from Employer Information Report EEO-1. Notices of deletion of Apprenticeship Schedule A was given in the FEDERAL REGISTER, Wednesday, January 21, 1970, vol. 35, page 825. Employers will file a version of EEO-2, identified as Apprenticeship Information Report EEO-2-E. The EEO-2 cutoff limiting filing by Joint Apprenticeship Committees only to programs with five or more apprentices has been extended to employers operating apprenticeship programs.

b. The apprentice statistics table, which requires figures of specified minority members participating in apprenticeship programs, by year of apprenticeship, has been expanded to include the number of graduates and the number of dropouts during the previous year in both the EEO-2 and EEO-2-E reports.

2. Changes in the Local Union Report EEO-3:

a. Schedule II previously required from all Nonreferral Unions, has been eliminated. Beginning with the 1970 report Nonreferral Unions will be required to file only the basic portion of the form, Parts A through F.

b. The apprenticeship report has been eliminated from Local Union Report EEO-3. Very few local unions had been reporting on this apprenticeship schedule as operating apprenticeship programs unilaterally, and that small number would have been reduced further by the five apprentice cutoff of EEO-2.

WILLIAM H. BROWN III,
*Chairman.*

AUGUST 14, 1970.

[F.R. Doc. 70-10973; Filed, Aug. 20, 1970; 8:46 a.m.]

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, and Maisel. Absent and not voting: Governors Brimmer and Sherrill.

# DEPARTMENT OF LABOR

## Office of the Secretary

## WORKER REQUEST FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR ADJUSTMENT ASSISTANCE

### Notice of Investigation

A petition requesting certification of eligibility to apply for adjustment assistance has been filed, on August 13, 1970, with the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, by the Independent Union of Piano Workers on behalf of workers of the East Rochester, N.Y., piano plant of the Aeolian American Corp. The petition points out that the request for certification is made under Proclamation 3964 ("Modification of Trade Agreement Concession and Adjustment of Duty on Certain Pianos) of February 21, 1970. In that proclamation, the President, among other things, acted to provide under sec. 302(a)(3) with respect to the piano industry that its workers may request the Secretary of Labor for certifications of eligibility to apply for adjustment assistance under chapter 3, title III of the Trade Expansion Act of 1962.

The Act, sec. 302(b)(2), provides that the Secretary of Labor shall certify as eligible to apply for adjustment assistance under chapter 3 any group of workers in an industry with respect to which the President has acted under sec. 302(a)(3), upon a showing by such group of workers to the satisfaction of the Secretary of Labor that the increased imports (which the Tariff Commission has determined to result from concessions granted under trade agreements) have caused or threatened to cause unemployment or underemployment of a significant number or proportion of workers of such workers' firm or subdivision thereof.

In view of the petition and the responsibilities of the Secretary of Labor, the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, has instituted an investigation, as provided in 29 CFR 90.11. The investigation relates, as above indicated, to the determination of whether any of the group of workers covered by the request should be certified as eligible to apply for adjustment assistance, including the determinations of related subsidiary subjects and matters, such as the date unemployment or underemployment began or threatened to begin and the subdivision of the firm involved to be specified

in any certification to be made, as more specifically provided in Subpart C of 29 CFR Part 90.

Interested persons should submit written data, views, or arguments relating to the subjects of investigation to the Director, Office of Foreign Economic Policy, U.S. Department of Labor, Washington, D.C., 20210, on or before September 4, 1970.

Signed at Washington, D.C., this 13th day of August 1970.

EDGAR I. EATON,
*Director, Office of Foreign Economic Policy.*

[F.R. Doc. 70-10995; Filed, Aug. 20, 1970; 8:47 a.m.]

## WORKER REQUEST FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR ADJUSTMENT ASSISTANCE

### Notice of Investigation

A petition requesting certification of eligibility to apply for adjustment assistance has been filed, on August 13, 1970, with the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, by the United Furniture Workers of America, AFL-CIO, on behalf of workers of the Holly, Mich., piano plant of Grinnell Brothers. The petition points out that the request for certification is made under Proclamation 3964 (Modification of Trade Agreement Concession and Adjustment of Duty on Certain Pianos) of February 21, 1970. In that Proclamation, the President, among other things, acted to provide under section 302(a)(3) with respect to the piano industry that its workers may request the Secretary of Labor for certifications of eligibility to apply for adjustment assistance under chapter 3, title III of the Trade Expansion Act of 1962.

The Act, section 302(b)(2), provides that the Secretary of Labor shall certify as eligible to apply for adjustment assistance under chapter 3 any group of workers in an industry with respect to which the President has acted under section 302(a)(3), upon a showing by such group of workers to the satisfaction of the Secretary of Labor that the increased imports (which the Tariff Commission has determined to result from concessions granted under trade agreements) have caused or threatened to cause unemployment or underemployment of a significant number or proportion of workers of such workers' firm or subdivision thereof.

In view of the petition and the responsibilities of the Secretary of Labor, the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, has instituted an investigation, as provided in 29 CFR 90.11. The investigation relates, as above indicated, to the determination of whether any of the group of workers covered by the request should be certified as eligible to apply for adjustment assistance, including the determinations of related subsidiary subjects and matters, such as the date unemployment or underemployment began or threatened to begin and the subdivision of the firm involved to be specified in any certification to be made, as more specifically provided in Subpart C of 29 CFR Part 90.

Interested persons should submit written data, views, or arguments relating to the subjects of investigation to the Director, Office of Foreign Economic Policy, U.S. Department of Labor, Washington, D.C. 20210, on or before September 4, 1970.

Signed at Washington, D.C., this 13th day of August 1970.

EDGAR I. EATON,
*Director, Office of Foreign Economic Policy.*

[F.R. Doc. 70-10996; Filed, Aug. 20, 1970; 8:47 a.m.]

# FEDERAL COMMUNICATIONS COMMISSION

[Mexican List 264]

## MEXICAN STANDARD BROADCASTING STATIONS

### List of New Stations, Proposed Changes in Existing Stations, Deletions, and Corrections in Assignments

JUNE 16, 1970.

List of new stations, proposed changes in existing stations, deletions, and corrections in assignments of Mexican standard broadcast stations modifying the assignments of Mexican broadcast stations contained in the appendix to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

| Call letters | Location | Power watts | Antenna radiation mv/m/kw | Schedule | Class | Antenna height (feet) | Ground system: Number of radials | Ground system: Length (feet) | Proposed data of change or commencement of operation |
|---|---|---|---|---|---|---|---|---|---|
| | | *980 kHz* | | | | | | | |
| XELT (Correction of an omission: In operation with 500W-D/250W-N since 5.26.66. Increase time power and change in day-in class). | Guadalajara, Jalisco, N. 20°40'37", W. 103°23'15". | 1,000-D/250-N | ND-190 | U | III-D IV-N | 267 | 120 | 267 | 2.16.71 (probable). |
| | | *1010 kHz* | | | | | | | |
| XEXN (This corrects the geographical coordinates notified in List No. 261 dated 1.16.70). | Ures, Sonora N. 29°25'30", W. 110°23'00". | 500-D/200-N | ND-190 | U | II | 243 | 120 | 243 | |
| | | *1330 kHz* | | | | | | | |
| XEBO (This complements the notification included in List No. 262—PO: 1,000, DA-N, no change in nighttime operation. This notifies the supplementary information). | Irapuato, Guanajuato, N. 20°40'31", W. 101°20'54". | 5,000-D/1,000-N | DA-N *ND-D-190* | U | III | | | | 11.14.70 (probable). |
| | | *1350 kHz* | | | | | | | |
| XEJY (PO: 1540 kHz) | El Grullo, Jalisco, N. 19°48'25", W. 104°19'30". | 1,000-D/100-N | ND-190 | U | III-D IV-N | 183 | 120 | 183 | 1.16.71 (probable). |
| | | *1400 kHz* | | | | | | | |
| XEIH (In operation since 5.12.70. This notifies the supplementary information). | Fresnillo, Zacatecas, N. 23°11'25", W. 102°52'55". | 500-D/250-N | ND-*190* | U | IV | *109* | *90* | *105* | *5.12.70.* |
| | | *1400 kHz* | | | | | | | |
| XEQJ (PO: 1550 kHz) | Tamazula de Gordiano, Jalisco, N. 19°40'00", W. 103°16'00". | 1,000-D/100-N | ND-190 | U | IV | 176 | 120 | 176 | 1.16.71 (probable). |
| | | *1450 kHz* | | | | | | | |
| XEPP (Correction of an omission: In operation with 1,000W-D/250W-N, ND, since 9.8.59. This notifies the supplementary information). | Orizaba, Veracruz, N. 18°50'57", W. 97°07'05". | 1,000-D/250-N | ND-*190* | U | IV | *171* | *180* | *180* | *9.8.59.* |
| | | *1520 kHz* | | | | | | | |
| XEVO (In operation since 5.16.70. This notifies the supplementary information). | San Rafael, Veracruz, *N. 20°11'43", W. 96°51'58".* | 250 | ND-*166* | D | II | *98* | *120* | *97* | *5.16.70.* |

| Call letters | Location | Power watts | Antenna radiation mv/m/kw | Schedule | Class | Antenna height (feet) | Ground system: Number of radials | Ground system: Length (feet) | Proposed date of change or commencement of operation |
|---|---|---|---|---|---|---|---|---|---|
| | | *1540 kHz* | | | | | | | |
| XEJY (Change to 1350 kHz) | El Grullo, Jalisco | 500 | ND | D | II | | | | |
| | | *1550 kHz* | | | | | | | |
| XEQJ (Change to 1400 kHz) | Tamazula de Gordiano, Jalisco. | 500 | ND | D | II | | | | |

HAROLD G. KELLEY,
*Acting Chief, Broadcast Facilities Division, Broadcast Bureau.*

[F.R. Doc. 70-10935; Filed, Aug. 20, 1970; 8:45 a.m.]

[Dockets Nos. 18938; 18939; FCC 70-854]

## WESTERN BROADCASTING CORP. AND WARMAN COMMUNICATIONS, INC.

### Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of Western Broadcasting Corp., Greensburg, Pa., Docket No. 18938, File No. BPCT-4186, and Warman Communications, Inc., Greensburg, Pa., Docket No. 18939, File No. BPCT-4202, for construction permit for new television broadcast station.

1. The Commission has before it the above-captioned applications, each requesting a construction permit for a new commercial television broadcast station to operate on channel 40, Greensburg, Pa.

2. There is a significant disparity in the proposed Grade B contours of the applicants. In accordance with Commission policy, evidence as to which of the two coverage proposals would represent a more efficient use of the frequency will be accepted under the standard comparative.[1]

3. Based on the information in the application of Western Broadcasting Corp. (Western), cash in the amount of at least $217,529 will be needed to construct and operate the proposed station for 1 year, as follows: Down payment on equipment, $47,200; payments on equipment, including interest, $47,554; operation expenses, $11,950; equipment not covered by letter of credit, $14,700; interest on loans, $2,625; and miscellaneous expenses, $17,500. Principal payments on loans will also be required, but because Western has failed to submit sufficient information concerning the terms of its loans, it is not possible to calculate the amount. To meet these cash requirements, Western has $3,500 in existing capital and intends to raise $225,000 by means of personal loans and stock subscriptions from the following five individuals: John H. Norris, $35,000; Thomas H. Moffit, $40,000; Frank W. Gaydosh, $100,000; George E. McDonald, $25,000; and Fague Springman, $25,000. However, the balance sheets of the first three contributors do not reveal sufficient current and liquid assets in excess of current liabilities to enable them to meet their obligations to Western as required by paragraph 4(d), section III, FCC Form 301, so that only $53,500 is available to meet a commitment of $217,529. In addition, a breakdown of Western's operating expenses reveals that only $12,000 has been allocated for programing. The Commission's experience with the programing expenses of other television broadcast stations, indicates that this figure is unrealistically low. In view of the foregoing, appropriate financial issues will be specified.

4. On the basis of their replies to section IV-B of FCC Form 301, both Western and Warman have failed to comply with the tentative criteria set forth in our Notice of Inquiry in Docket No. 11774, 20 FCC 2d 880 (1969). Among other things, neither applicant has provided us with information concerning the composition of Greensburg, so that we have no way of determining whether representative cross-sections of the community have been consulted. Moreover, Warman has not listed the community problems elicited by its consultations with community leaders and members of the general public so that we have no way of determining whether or not its proposed programing is responsive to Greensburg's problems. Therefore, an appropriate issue will be specified against Western and Warman.

5. John H. Norris, president and 21 percent stockholder of Western, is also a director of Faith Theological Seminary, 100 percent owner of Brandywine-Main Line Radio, Inc., licensee of stations WXUR-AM-FM, Media, Pa., and is responsible for the operation of these stations and the effectuation of their broadcast policies. Brandywine-Main Line's license renewal applications were recently denied after a hearing on issues involving compliance with the Fairness Doctrine (Docket No. 17141). Therefore, an appropriate issue will be specified.

6. Except as indicated by the issues set forth below, Western Broadcasting Corp. and Warman Communications, Inc., are qualified to construct and operate their proposed television broadcast stations. However, their applications are mutually exclusive in that operation as proposed would result in mutually destructive interference and the Commission is therefore unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity, and is of the opinion that they must be designated for hearing in a consolidated proceeding on the issues set forth below.

7. *Accordingly, it is ordered,* That the applications of Western Broadcasting Corp. and Warman Communications, Inc., pursuant to section 309(e) of the Communications Act of 1934, as amended, are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine with respect to the application of Western Broadcasting Corp.:

(a) Whether, John H. Norris, Thomas H. Moffitt, and Frank W. Gaydosh have cash and liquid assets, in excess of current liabilities in sufficient amount to enable them to meet their respective loan and stock subscription commitments to the applicant corporation.

(b) The terms of repayment of the personal loans offered the applicant, and the extent to which these terms will increase the applicant's cash requirements.

(c) Whether Western Broadcasting Corp. can present 60 hours of programing per week for 1 year at a cost of $12,000, and, if not, whether it will have available sufficient funds to effectuate its programing proposal.

(d) Whether in light of the evidence adduced under issues "a," "b," and "c" above, Western Broadcasting Corp. is financially qualified to construct and operate its proposed station for 1 year.

(e) The efforts made to ascertain community needs and interests of the area to be served and the means by which Western Broadcast Corp. proposes to meet those needs and interests.

(f) To determine, in light of the Commission's decision in Docket No. 17141, whether Western Broadcasting Corp. has the requisite qualifications to be a permittee of the Commission.

(2) To determine with respect to the application of Warman Communications, Inc.: The efforts made to ascertain community needs and interests of the area to be served and the means by which Warman Communications, Inc., proposes to meet those needs and interests.

(3) To determine which of the two proposals would better serve the public interest.

(4) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

8. *It is further ordered,* That to avail themselves of the opportunity to be heard, the applicants herein, pursuant to

[1] Harriscope, Inc., 2 FCC 2d 223 (1965).

§ 1.221(c) of the Commission's rules, in person or by attorney, shall within twenty (20) days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

9. *It is further ordered*, That, the applicants herein, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: August 5, 1970.

Released: August 13, 1970.

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

[F.R. Doc. 70-11025; Filed, Aug. 20, 1970; 8:49 a.m.]

# INTERSTATE COMMERCE COMMISSION

## FOURTH SECTION APPLICATIONS FOR RELIEF

AUGUST 18, 1970.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42030—*Beet or cane sugar from Johnstown, Colo.* Filed by Southwestern Freight Bureau, agent (No. B-182), for interested rail carriers. Rates on sugar, beet or cane, liquid or invert, in tankcar loads, as described in the application, from Johnstown, Colo., to Dallas, Tex.

Grounds for relief—Market competition.

Tariff—Supplement 19 to Southwestern Freight Bureau, agent, tariff ICC 4815.

FSA No. 42031—*Tin mill black plate to points in Southern Territory.* Filed by Traffic Executive Association-Eastern Railroads, agent (E.R. No. 2984), for interested rail carriers. Rates on plate, tin mill black, in carloads, as described in the application, from points in Maryland, New Jersey, Ohio, Pennsylvania, and West Virginia, to specified points in southern territory.

Grounds for relief—Commodity relationship.

Tariff—Traffic Executive Association-Eastern Railroads, agent, tariff ICC C-819.

FSA No. 42032—*Corn steepwater sediment from Pekin and Peoria, Ill.* Filed by Illinois Freight Association, agent (No. 361), for interested rail carriers. Rates on feed, animal, or poultry, viz: Corn steepwater sediment, wet, in tankcar loads, as described in the application, from Pekin and Peoria, Ill., to Mobile, Ala.

Grounds for relief—Rail-barge competition.

Tariff—Supplement 154 to Illinois Freight Association, agent, tariff ICC 1044.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[F.R. Doc. 70-11013; Filed; Aug. 20, 1970; 8:48 a.m.]

[Notice 136]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 18, 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 2860 (Sub-No. 82 TA), filed August 12, 1970. Applicant: NATIONAL FREIGHT, INC., 57 West Park Avenue, Vineland, N.J. 08360. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen concentrated coffee*, from points in Florida to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and the District of Columbia, for 180 days. Supporting shipper: The Coca-Cola Co., Foods Division, Post Office Box 2711, 1200 West Colonial Drive, Orlando, Fla. 32802. Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 410 Post Office Building, Trenton, N.J. 08608.

No. MC 69397 (Sub-No. 10 TA), filed August 12, 1970. Applicant: JAMES H. HARTMAN & SON, INC., R.F.D. No. 2, Box 334, Pocomoke City, Md. 21851. Applicant's representative: Wilmer B. Hill, 705 McLachlen Bank Building, 666 11th Street NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips*, in bulk, from Pocomoke City, Md., to Manville, N.J., for 180 days. Supporting shipper: U.S. Plywood-Champion Papers Inc., Knightsbridge, Hamilton, Ohio 45011; D. A. Kloes, Traffic Analyst. Send protests to: Paul J. Lowry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 206 Old Post Office Building, 129 East Main Street, Salisbury, Md. 21801.

No. MC 96098 (Sub-No. 43 TA), filed August 12, 1970. Applicant: MILTON TRANSPORTATION, INC., Rural Delivery 2, Post Office Box 207, Milton, Pa. 17847. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper*, from Stamford, Conn., to Urbana, Ohio, for 180 days. Supporting shipper: St. Regis Paper Co., 150 East 42d Street, New York, N.Y. 10017. 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 96098 (Sub-No. 44 TA), filed August 21, 1970. Applicant: MILTON TRANSPORTATION, INC., Rural Delivery 2, Post Office Box 207, Milton, Pa. 17847. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Printing paper, gummed paper, gummed paper tape, and paper backed with aluminum foil*, from Troy, Dayton, Urbana, and Franklin, Ohio, to points in Massachusetts, Rhode Island, Maryland, and the District of Columbia, under continuing contract or contracts with St. Regis Paper Co., for 180 days. Supporting shipper: St. Regis Paper Co., 150 East 42d Street, New York, N.Y. 10017. 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 107515 (Sub-No. 704 TA), filed August 12, 1970. Applicant: REFRIGERATED TRANSPORT CO., INC., Post Office Box 208, 3901 Jonesboro Road SE., Forest Park, Ga. 30050. Applicant's representative: B. L. Bundlach (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vinyl plastic binding*, from Andover, Mass., to Tifton, Ga., Sparta, N.C., and Mountain City, Tenn., for 150 days. Supporting shipper: Shawsheen Rubber Co., Inc., Andover, Mass. 01810. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 309, 1252 West Peachtree Street NW., Atlanta, Ga. 30309.

No. MC 110420 (Sub-No. 620 TA), filed August 13, 1970. Applicant: QUALITY CARRIERS, INC., Post Office Box 339,

100 South Calumet Street, Burlington, Wis. 53105. Applicant's representative: A. Bryant Torhorst (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, from the plantsite of Reliance Universal, Inc., at North Chicago, Ill., to Sheboygan and New Holstein, Wis.; Butler, Ind.; Brownsville, Tenn.; Alpena, Mich.; and Shreveport, La., for 180 days. Supporting shipper: Reliance Universal, Inc., 1901 Sheridan Road, North Chicago, Ill. 60064 (E. A. Weidman, Purchasing Agent). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 111941 (Sub-No. 21 TA), filed August 12, 1970. Applicant: PIERCETON TRUCKING COMPANY, INC., Post Office Box 97, Laketon, Ind. 46943. Applicant's representative: Alki E. Scopelitis, 816 Merchants Bank Building, 11 South Meridian Street, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Precast concrete and materials and supplies* used in the erection of precast concrete when moving at the same time and in the same vehicle with precast concrete, from Kalamazoo, Mich., to Chesterton, Elkhart, and South Bend, Ind., and Justice, Ill., for 180 days. Supporting shipper: Precast/Schokbeton, Inc., 3102 East Cork Street, Kalamazoo, Mich. 49003. Send protests to: District Supervisor J. H. Gray, Interstate Commerce Commission, Bureau of Operations, 345 West Wayne Street, Room 204, Fort Wayne, Ind. 46802.

No. MC 113678 (Sub-No. 395 TA), filed August 12, 1970. Applicant: CURTIS, INC., Post Office Box 16004, Stockyards Station, Denver, Colo. 80216. Applicant's representative: Stanley Averch (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery*, from the plantsite of M & M/Mars and its storage facilities in Chicago, Ill., to points in Florida, Georgia, Alabama, Louisiana, Mississippi, North Carolina, and South Carolina, restricted to vehicles equipped with mechanical refrigeration, for 180 days. Supporting shipper: M & M/Mars, High Street, Hackettstown, N.J. 07840. Send protests to: District Supervisor Herbert C. Ruoff, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, Colo. 80202.

No. MC 124964 (Sub-No. 11 TA), filed August 10, 1970. Applicant: JOSEPH M. BOOTH, doing business as J. M. BOOTH TRUCKING, Post Office Box 907, Office: Highway 441 and Haines Creek Road, Tavares, Fla., Eustis, Fla. 32726. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Juices, drinks, concentrates, not frozen, and equipment, materials and supplies, used or useful in the manufacture and sale of juices, drinks and concentrates;* (2) *fruit salads* in mixed loads with the commodities in (1) above, between the facilities of Doric Foods Corp. at Mount Dora, Fla., on the one hand, and, on the other, points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Virginia, Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Vermont, West Virginia, Wisconsin, and the District of Columbia, under continuing contract or contracts with Doric Foods Corp., Mount Dora, Fla., for 180 days. Supporting shipper: Doric Foods Corp., State Road 19, Umatilla, Fla. 32784. Send protests to: District Supervisor G. H. Fauss, Jr., Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 124979 (Sub-No. 2 TA), filed August 13, 1970. Applicant: CONRAD BERG, doing business as C. BERG COMPANY, Route 1, Box 185–A, Saginaw, Minn. 55799. 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: *Salt*, from Pine Bend, Minn., to points in Iowa, Wisconsin, North Dakota, South Dakota, for 180 days. Supporting shipper: International Salt Co., Rosemont, Ill. Send protests to: District Supervisor A. E. Rathert, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn. 55401.

No. MC 127505 (Sub-No. 33 TA), filed August 12, 1970. Applicant: RALPH H. BOELK, doing business as R. H. BOELK TRUCK LINES, Route No. 2, Mendota, Ill. 61342. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel container parts, materials, equipment, and supplies* used in the manufacture, sale, and distribution of steel containers, between Okolona, Ky., and Mendota and Chicago, Ill., for 180 days. Supporting shipper: Conco Inc., Mendota, Ill. Send protests to: William E. Gallagher, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 219 South Dearborn Street, Room 1086, Chicago, Ill. 60604.

No. MC 133686 (Sub-No. 4 TA), filed August 14, 1970. Applicant: TOM SAWYER, Box 3, Kingston, Idaho 98104. Applicant's representative: Joseph O. Earp, 411 Lyon Building, Seattle, Wash. 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Butter*, from Pelican Rapids, Bertha, and Fergus Falls, Minn., to Spokane and Seattle, Wash. and Portland, Oreg., for 150 days. Supporting shipper: North Star Dairy, 350 Endicott on Fourth Building, St. Paul, Minn. 55101. Send protests to: Interstate Commerce Commission, Bureau of Operations, 401 U.S. Post Office, Spokane, Wash. 99201.

No. MC 134477 (Sub-No. 3 TA), filed August 12, 1970. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, Minn. 55118. Applicant's representative: Paul Schanno (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, 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 (except hides and commodities in bulk) from the plantsite and/or storage facilities used by Armour & Co. at or near Sioux City, Iowa, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, for 180 days. Supporting shipper: Armour & Co., 111 East Wacker Drive, Chicago, Ill. Send protests to: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn. 55401.

No. MC 134847 TA, filed August 12, 1970. Applicant: BESSETTE TRANSPORT INC., 505 Provost Street, Iberville, Province of Quebec, Canada. Applicant's representative: Norman Menard, Post Office Box 211, 441 Maisonneuve Boulevard, St. Jean, Province of Quebec, Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bedford slate, slate detergent, ammoniated stripper, and slate finish*, from ports of entry on the international boundary line between the United States and Canada at or near Champlain, Ogdensburg, and Rouses Point, N.Y., and Highgate Springs and Newport, Vt., to Atlanta, Ga.; Baltimore, Md.; Pensacola, Fla.; Cincinnati, Ohio; New Orleans, La.; Jersey City, N.J.; and Boston, Mass., for 150 days. Supporting shipper: Green Mountain Slate Ltd., and/or Bedford Slate Ltd., 9450 Charles de la Tour Street, Montreal 11, Province of Quebec, Canada. Send protests to: Martin P. Monaghan, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 52 State Street, Room 5, Montpelier, Vt. 05602.

No. MC 134847 (Sub-No. 1 TA), filed August 12, 1970. Applicant: BESSETTE TRANSPORT, INC., 505 Provost Street, Iberville, Province of Quebec, Canada. Applicant's representative: Norman Menard, Post Office Box 211, 441 Maisonneuve Boulevard, St. Jean, Province of Quebec, Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural machinery and implements*, from ports of entry on the international boundary line between the United States and Canada located at points in Maine, New Hampshire, Vermont, New York, Michigan (except port of entry Detroit, Mich.) and Minnesota, to points in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, North

Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin, for 150 days. Supporting shipper: Dion Freres Inc., St. Therese, Province of Quebec, Canada. Send protests to: Martin P. Monaghan, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 52 State Street, Room 5, Montpelier, Vt. 05602.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[F.R. Doc. 70-11016; Filed, Aug. 20, 1970; 8:48 a.m.]

[Nos. 17000, 15879]

## WESTERN TRUNK-LINE AND CERTAIN EASTERN RAILROADS

### Rate Investigation

Rate structure investigation, Part 2,[1] Western Trunk-Line class rates, No. 17000, Eastern class-rate investigation, No. 15879.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 14th day of August 1970.

It appearing, that in the reports and orders in these proceedings, 164 I.C.C. 1, 164 I.C.C. 314, and subsequent reports, as modified and amended, the Commission required or authorized the carriers designated therein to establish and thereafter to maintain and observe until further order of the Commission, certain rates pertaining to import-export traffic between points in the Western Trunk-Line Territory and North Atlantic Ports and import-export traffic between points in the Official Territory and North Atlantic Ports prescribed in said orders, and that said orders as subsequently modified are still outstanding;

It further appearing, that by petition filed June 8, 1970, the Traffic Executive Association-Eastern Railroads move, in substance, that the orders entered in these proceedings, as modified and amended, insofar as they pertain to said import-export traffic, be vacated and set aside on the ground that these orders, as amended and modified, are obsolete;

And it further appearing, that since the date of said orders, changes have occurred in the general and economic conditions of the various areas covered therein, and in the transportation conditions affecting the traffic handled under or subject to said import-export rates which may obviate the necessity for the maintenance of the outstanding orders; and that observance of said orders may tend to burden, complicate, or needlessly prolong the processes of compiling affected tariff schedules, accomplishing necessary revisions, and in the republication of them from time to time; therefore:

*It is ordered*, That the parties to this proceeding be, and they are hereby, cited to show cause, if any, by formal return (original and 3 copies) filed with the Commission on or before September 21, 1970, stating specifically the grounds relied upon, why said orders should not be vacated to the extent indicated and set aside.

*And it is further ordered*, That notice of this proceeding be served on all parties of record, and that notice be given to the public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, Washington, D.C., for publication in the FEDERAL REGISTER.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[F.R. Doc. 70-11014; Filed, Aug. 20, 1970; 8:48 a.m.]

[1] Embraces also proceedings listed in the margin of the first page of the report 164 I.C.C. 1.

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