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Now Available**CFR SUPPLEMENTS**

(As of January 1, 1962)

The following Supplements are now available:

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Title 26, Part 1 (§§ 1.0-1-1.400)-----	.40
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Previously announced: Title 26, Parts 30-39 (\$0.30); Title 46, Parts 146-149 (1961 Supplement 2) (\$1.25)

Order from Superintendent of Documents, Government Printing Office, Washington 25, D.C.

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Post Office Department

Effective upon publication in the FEDERAL REGISTER, § 6.309 is amended by the addition of subparagraph (16) to paragraph (a), subparagraph (9) to paragraph (b) and subparagraph (10) to paragraph (c), as follows:

§ 6.309 Post Office Department.

(a) *Office of the Postmaster General.* * * *

(16) One Deputy Executive Assistant to the Postmaster General.

(b) *Bureau of Facilities.* * * *

(9) One Deputy Assistant Postmaster General.

(c) *Bureau of Transportation.* * * *

(10) One Deputy Assistant Postmaster General.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] MARY V. WENZEL,
Executive Assistant to
the Commissioners.

[F.R. Doc. 62-1349; Filed, Feb. 9, 1962; 8:45 a.m.]

Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 6]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.306 Navel Orange Regulation 6.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act by

tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 8, 1962.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., February 11, 1962, and ending at 12:01 a.m., P.s.t., February 18, 1962, are hereby fixed as follows:

- (i) District 1: 200,000 cartons;
- (ii) District 2: 375,000 cartons;
- (iii) District 3: Unlimited movement;
- (iv) District 4: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: February 8, 1962.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62-1473; Filed, Feb. 9, 1962; 11:26 a.m.]

[Grapefruit Reg. 2]

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

Limitation of Shipments

§ 909.302 Grapefruit Regulation 2.

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

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011), because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date. The Administrative Committee held an open meeting on February 1, 1962, to consider recommendations for a regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such open meeting; necessary supplemental economic and statistical information upon which this recommended

[Lemon Reg. 7]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA**Limitation of Handling****§ 910.307 Lemon Regulation 7.**

regulation is based was received by the Fruit Branch on February 6, 1962; information regarding the provisions of the regulation recommended by the committee has been disseminated to shippers of grapefruit, grown as aforesaid, and this section, including the effective time thereof, is identical with the recommendation of the committee; it is necessary, in order to effectuate the declared policy of the act, to make this section effective on the date hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective date hereof.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., February 11, 1962, and ending at 12:01 a.m., P.s.t., February 25, 1962, no handler shall handle:

(i) From the State of California or the State of Arizona to any point outside thereof any grapefruit of any variety grown in the State of Arizona; in Imperial County, California; or in that part of Riverside County, California, situated south and east of White Water, California, unless such grapefruit grade at least U.S. No. 2: *Provided*, That included in the tolerances for defects permitted by such grade not more than 5 percent, by count, shall be allowed for grapefruit having peel more than one inch in thickness at the stem end, measured from the flesh to the highest point of the peel; or

(ii) From the State of California or the State of Arizona to any point outside thereof in the United States, any grapefruit, grown as aforesaid, which measure less than $3\frac{1}{16}$ inches in diameter, except that a tolerance of 5 percent, by count, of grapefruit smaller than the foregoing minimum size shall be permitted which tolerance shall be applied in accordance with the provisions for the application of tolerance, specified in the revised United States Standards for Grapefruit (California and Arizona), 7 CFR 51.925-51.955: *Provided*, That, in determining the percentage of grapefruit in any lot which are smaller than $3\frac{1}{16}$ inches in diameter, such percentage shall be based only on the grapefruit in such lot which are of a size $4\frac{1}{16}$ inches in diameter and smaller.

(2) As used herein, "handler," "variety," "grapefruit," and "handle" shall have the same meaning as when used in said amended marketing agreement and order; the term "U.S. No. 2" shall have the same meaning as when used in the aforesaid revised United States Standards for Grapefruit; and "diameter" shall mean the greatest dimension measured at right angles to a line from the stem to blossom end of the fruit.

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

Dated: February 6, 1962.

F. L. SOUTHERLAND,
Acting Director, Fruit and
Vegetable Division, Agricultural
Marketing Service.

[F.R. Doc. 62-1394; Filed, Feb. 9, 1962;
8:49 a.m.]

(iii) District 3: Unlimited movement.
(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

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

Dated: February 7, 1962.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable
Division, Agricultural Mar-
keting Service.

[F.R. Doc. 62-1405; Filed, Feb. 9, 1962;
8:50 a.m.]

[Grapefruit Reg. 1]

PART 912—GRAPEFRUIT GROWN IN THE INDIAN RIVER DISTRICT IN FLORIDA**Limitation of Handling****§ 912.301 Grapefruit Regulation 1.**

(a) *Findings.* (1) Pursuant to the marketing agreement and order (7 CFR Part 912; 27 F.R. 87) regulating the handling of grapefruit grown in the Indian River District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Indian River Grapefruit Committee, established under the said marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Indian River grapefruit, and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among han-

(2) It is hereby further found that it

is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011), because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 6, 1962.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., February 11, 1962, and ending at 12:01 a.m., P.s.t., February 18, 1962, are hereby fixed as follows:

- (i) District 1: 9,300 cartons;
- (ii) District 2: 186,000 cartons;

dlers of such Indian River grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 8, 1962.

(b) *Order.* (1) The quantity of grapefruit grown in the Indian River District which may be handled during the period beginning at 12:01 a.m., e.s.t., February 12, 1962, and ending at 12:01 a.m., e.s.t., February 19, 1962, is hereby fixed at 160,601 standard packed boxes.

(2) As used in this section, "handled," "Indian River District," "grapefruit," and "standard packed box" have the same meaning as when used in said marketing agreement and order.

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

Dated: February 8, 1962.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62-1444; Filed, Feb. 9, 1962; 8:50 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 78—BRUCELLOSIS IN DOMESTIC ANIMALS

Subpart D—Designation of Modified Certified Brucellosis Areas, Public Stockyards, Specifically Approved Stockyards, and Slaughtering Establishments

MODIFIED CERTIFIED BRUCELLOSIS AREAS

Pursuant to § 78.16 of the regulations in Part 78, as amended, Title 9, Code of Federal Regulations, containing restrictions on the interstate movement of animals because of brucellosis, under sections 4, 5, and 13 of the Act of May 29, 1884, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, and section 3 of the Act of March 3, 1905, as amended (21 U.S.C. 111-113, 114a-1, 120, 121, 125), § 78.13 of said regulations designating modified certified brucellosis areas is hereby amended to read as follows:

§ 78.13 Modified certified brucellosis areas.

The following States, or specified portions thereof, are hereby designated as modified certified brucellosis areas:

Alabama: Barbour, Calhoun, Chambers, Cherokee, Clay, Cleburne, Coffee, Covington, Cullman, Dale, De Kalb, Escambia, Etowah, Geneva, Henry, Houston, Jackson, Lauderdale, Lee, Limestone, Madison, Marshall,

Morgan, Randolph, Russell, and Talladega Counties.

Arizona: The entire State.

Arkansas: Ashley, Baxter, Benton, Boone, Bradley, Calhoun, Carroll, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Craighead, Crawford, Crittenden, Cross, Dallas, Drew, Faulkner, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Jefferson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Logan, Lonoke, Madison, Marion, Miller, Mississippi, Montgomery, Nevada, Newton, Ouachita, Perry, Pike, Poinsett, Polk, Pope, Prairie, Pulaski, Randolph, St. Francis, Saline, Scott, Searcy, Sebastian, Sevier, Sharp, Stone, Union, Van Buren, Washington, White, and Yell Counties.

California: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Ventura, Yolo, and Yuba Counties.

Colorado: Alamosa, Archuleta, Baca, Chaffee, Conejos, Costilla, Custer, Delta, Denver, Dolores, Eagle, Garfield, Gunnison, Hinsdale, Huerfano, La Plata, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Ouray, Phillips, Pitkin, Pueblo, Rio Grande, Saguache, San Juan, San Miguel, Sedgwick, Washington, and Yuma Counties; Southern Ute Indian Reservation, and Ute Mountain Ute Reservation.

Connecticut: The entire State.

Delaware: The entire State.

Florida: Baker, Bay, Bradford, Calhoun, Columbia, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, and Washington Counties.

Georgia: The entire State.

Idaho: The entire State.

Illinois: Alexander, Bond, Boone, Bureau, Carroll, Champaign, Christian, Clark, Clay, Clinton, Coles, Cook, Crawford, Cumberland, De Kalb, De Witt, Douglas, DuPage, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Gallatin, Greene, Grundy, Hamilton, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Kane, Kankakee, Kendall, Knox, Lake, La Salle, Lawrence, Lee, Livingston, Logan, McHenry, McLean, Macon, Madison, Mason, Massac, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Ogle, Perry, Pulaski, Putnam, Randolph, Richland, Rock Island, St. Clair, Saline, Shelby, Stark, Stephenson, Tazewell, Union, Vermilion, Wabash, Washington, Wayne, Whiteside, Will, Williamson, Winnebago, and Woodford Counties.

Indiana: The entire State.

Iowa: Audubon, Carroll, Clinton, Delaware, Dickinson, Emmet, Fayette, Greene, Hamilton, Lyon, Mitchell, Monona, O'Brien, Osceola, Palo Alto, Pocahontas, Polk, Sac, Scott, Wapello, Warren, Winnebago, Woodbury, and Wright Counties.

Kansas: Barton, Cheyenne, Clark, Clay, Comanche, Decatur, Ford, Franklin, Geary, Gove, Graham, Gray, Greeley, Hamilton, Harper, Haskell, Jefferson, Johnson, Kearney, Kingman, Kiowa, Leavenworth, Logan, Marshall, Meade, Miami, Mitchell, Morris, Morton, Nemaha, Norton, Osage, Osborne, Pawnee, Rawlins, Reno, Rice, Rooks, Sheridan, Sherman, Smith, Thomas, Trego, Wallace, Wichita, and Wyandotte Counties.

Kentucky: Allen, Anderson, Ballard, Barren, Boone, Boyd, Bracken, Breathitt, Breck-

inridge, Butler, Calloway, Campbell, Carlisle, Carroll, Carter, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Floyd, Franklin, Fulton, Gallatin, Grant, Graves, Green, Greenup, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jackson, Jefferson, Johnson, Kenton, Knott, Knox, Larue, Laurel, Lawrence, Leslie, Letcher, Lincoln, Livingston, Logan, McCracken, McCreary, McLean, Magoffin, Marion, Marshall, Martin, Mason, Meade, Menifee, Mercer, Metcalf, Monroe, Morgan, Muhlenberg, Nelson, Ohio, Oldham, Owen, Pendleton, Perry, Pulaski, Robertson, Rockcastle, Rowan, Shelby, Simpson, Spencer, Todd, Trigg, Trimble, Warren, Washington, Wayne, Webster, Whitley, and Wolfe Counties.

Louisiana: Ascension, Assumption, Calcasieu, St. Helena, St. John the Baptist, and Webster Parishes.

Maine: The entire State.

Maryland: The entire State.

Massachusetts: The entire State.

Michigan: The entire State.

Minnesota: The entire State.

Mississippi: Alcorn, Amite, Attala, Benton, Choctaw, Clay, DeSoto, Forrest, Franklin, George, Greene, Hancock, Harrison, Itawamba, Jackson, Jasper, Jefferson Davis, Jones, Lamar, Lawrence, Leake, Lee, Lowndes, Marion, Neshoba, Newton, Oktibbeha, Pearl River, Perry, Pike, Pontotoc, Prentiss, Smith, Stone, Tallahatchie, Tippah, Tishomingo, Union, Walthall, Webster, Winston, and Yalobusha Counties.

Missouri: Adair, Andrew, Barry, Bates, Bollinger, Boone, Buchanan, Caldwell, Callaway, Camden, Cape Girardeau, Carter, Cass, Cedar, Chariton, Christian, Clark, Clinton, Cole, Cooper, Crawford, Dallas, Daviess, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Iron, Jasper, Jefferson, Johnson, Lafayette, Lawrence, Lincoln, Linn, Livingston, McDonald, Macon, Madison, Maries, Marion, Mercer, Miller, Moniteau, Montgomery, New Madrid, Newton, Oregon, Ozark, Pemiscot, Perry, Phelps, Platte, Polk, Pulaski, Ralls, Randolph, Ray, Reynolds, Ripley, St. Charles, St. Francois, St. Genevieve, St. Louis, Scotland, Scott, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Warren, Washington, Wayne, and Wright Counties.

Montana: Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, McCone, Madison, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, and Yellowstone Counties.

Nebraska: Adams, Banner, Burt, Butler, Cass, Cedar, Chase, Cheyenne, Clay, Colfax, Cuming, Dakota, Deuel, Dixon, Dodge, Douglas, Dundy, Fillmore, Franklin, Furnas, Gage, Gosper, Hall, Hamilton, Harlan, Hitchcock, Howard, Jefferson, Johnson, Kimball, Lancaster, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Pierce, Platte, Polk, Richardson, Saline, Sarpy, Saunders, Seward, Stanton, Thayer, Thurston, Washington, Wayne, Webster, and York Counties.

Nevada: The entire State.

New Hampshire: The entire State.

New Jersey: The entire State.

New Mexico: The entire State.

New York: The entire State.

North Carolina: The entire State.

North Dakota: Adams, Barnes, Benson, Bottineau, Bowman, Burke, Cass, Cavalier, Divide, Dunn, Eddy, Emmons, Foster, Grand Forks, Grant, Griggs, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mount-
rail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rollette, Sargent, Sheridan, Sioux, Slope, Stark, Steele,

Trall, Walsh, Ward, Wells, and Williams Counties.

Ohio: Allen, Athens, Auglaize, Belmont, Butler, Carroll, Champaign, Clark, Clinton, Columbiana, Coshocton, Crawford, Cuyahoga, Darke, Defiance, Delaware, Fayette, Franklin, Fulton, Greene, Guernsey, Hancock, Hardin, Harrison, Henry, Hocking, Knox, Lake, Licking, Logan, Lorain, Lucas, Mahoning, Marion, Medina, Meigs, Mercer, Miami, Monroe, Montgomery, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pickaway, Pike, Portage, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Stark, Summit, Tuscarawas, Union, Van Wert, Vinton, Warren, Washington, Williams, Wood, and Wyandot Counties.

Oklahoma: Adair, Choctaw, Cimarron, Delaware, Mayes, and Nowata Counties.

Oregon: The entire State.

Pennsylvania: The entire State.

Rhode Island: The entire State.

South Carolina: Abbeville, Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Edgefield, Florence, Georgetown, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, Lexington, McCormick, Marion, Marlboro, Newberry, Orangeburg, Pickens, Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, and York Counties.

South Dakota: Brookings, Buffalo, Butte, Campbell, Clay, Codington, Custer, Day, Deuel, Edmunds, Faulk, Hamlin, Harding, Lawrence, Lincoln, McPherson, Marshall, Miner, Minnehaha, Moody, Perkins, Roberts, Turner, Union, and Walworth Counties.

Tennessee: The entire State.

Texas: Andrews, Bandera, Baylor, Blanco, Borden, Brewster, Brown, Burnet, Childress, Coke, Coleman, Concho, Cottle, Crane, Crockett, Culberson, Dallam, Dawson, Ector, Edwards, El Paso, Fisher, Gillespie, Glascock, Hardeman, Hartley, Haskell, Howard, Huds-peth, Irion, Jeff Davis, Kendall, Kerr, Kimble, King, Kinney, Lampasas, Lipscomb, Llano, Loving, McCulloch, Martin, Mason, Menard, Midland, Mills, Mitchell, Motley, Nolan, Ochiltree, Oldham, Parmer, Pecos, Presidio, Reagan, Real, Reeves, Runnels, San Saba, Schleicher, Scurry, Shackelford, Stephens, Sterling, Stonewall, Sutton, Taylor, Terrell, Throckmorton, Tom Green, Upton, Val Verde, Ward, Winkler, and Young Counties.

Utah: The entire State.

Vermont: The entire State.

Virginia: Accomack, Alleghany, Amelia, Appomattox, Arlington, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dickinson, Dinwiddie, Essex, Fairfax, Fluvanna, Franklin, Frederick, Giles, Gloucester, Greene, Greensville, Halifax, Hanover, Henrico, Highland, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lee, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Nansemond, Nelson, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Page, Pittsylvania, Powhatan, Prince George, Prince William, Princess Anne, Pulaski, Rappahannock, Richmond, Roanoke, Rockingham, Scott, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Washington, Westmoreland, Wise, Wythe, and York Counties; City of Hampton, and City of Newport News.

Washington: The entire State.

West Virginia: The entire State.

Wisconsin: The entire State.

Wyoming: Albany, Big Horn, Campbell, Crook, Fremont, Hot Springs, Laramie, Lincoln, Niobrara, Park, Sweetwater, Teton, Uinta, Washakie, and Weston Counties.

Puerto Rico: The entire area.

Virgin Islands of the United States: The entire area.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791-792, as amended, sec. 3, 33 Stat. 1265, as amended, sec. 13, 65 Stat. 693; 21 U.S.C. 111-113, 114a-1, 120, 121, 125; 19 F.R. 74, as amended; 9 CFR 78.16)

Effective date. The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER.

The amendment adds the following additional areas to the list of areas designated as modified certified brucellosis areas because it has been determined that such areas come within the definition of § 78.1(i): Barbour, Cullman, and Limestone Counties in Alabama; Crittenden, Cross, and St. Francis Counties in Arkansas; Riverside and San Bernardino Counties in California; De Witt, Mercer, and Stark Counties in Illinois; Gibson County in Indiana; Greene County in Iowa; Comanche, Graham, Hamilton, Kiowa, Morton, and Norton Counties in Kansas; Clinton, Estill, Henderson, Letcher, Mason, Menifee, Monroe, and Nelson Counties in Kentucky; Callaway, Holt, Miller, and Sullivan Counties in Missouri; Cheyenne County in Nebraska; McLean and Ransom Counties in North Dakota; Butler and Warren Counties in Ohio; Nowata County in Oklahoma; Aiken, Charleston, and Williamsburg Counties in South Carolina; Hardeman, Mills, Parmer, and Val Verde Counties in Texas; Halifax, and Lunenburg Counties in Virginia; and Teton County in Wyoming.

The amendment deletes the following areas from the list of areas designated as modified certified brucellosis areas because it has been determined that such areas no longer come within the definition of § 78.1(i): Monroe County in Mississippi; Carroll, Dade, Morgan, Pettis, Putnam, and Shelby Counties in Missouri; Towner County in North Dakota; Jackson County in Ohio; and Grant County in South Dakota.

Certain Indian reservations in Wyoming, heretofore specifically designated as modified certified brucellosis areas, are within counties so designated, therefore, specific reference to said reservations in this section has been discontinued.

The amendment imposes certain restrictions necessary to prevent the spread of brucellosis in cattle and relieves certain restrictions presently imposed. It should be made effective promptly in order to accomplish its purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), 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 the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 7th day of February 1962.

F. J. MULHERN,

Director, Animal Disease Eradication Division, Agricultural Research Service.

[F.R. Doc. 62-1404; Filed, Feb. 9, 1962; 8:50 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Reg. Docket No. 652; Amdt. 40-35]

PART 40—SCHEDULED INTERSTATE AIR CARRIER CERTIFICATION AND OPERATION RULES

Mechanical Reliability Reports

The Federal Aviation Agency published as a notice of proposed rule making (26 F.R. 1410) and circulated as Civil Air Regulations Draft Release No. 61-2 dated February 8, 1961, a proposal to amend Parts 40, 41, 42, and 46 of the Civil Air Regulations to establish requirements for the reporting of specific types of malfunctions, failures, and defects occurring to airplanes.

With the adoption of this amendment, it should be noted that the title, Daily Mechanical Report (DMR), is changed and will hereafter be known as the Mechanical Reliability Report (MRR). The Federal Aviation Agency believes the name to be appropriate in that it is more descriptive of the concept of the report.

The currently effective provisions of Part 40 require operators to submit daily a report known as a daily mechanical report (DMR) which contains information concerning each failure, malfunctioning, or other defect, regardless of where detected, which may reasonably be expected by the air carrier to cause a serious hazard in the operation of an airplane.

The lack of specific reporting requirements and the fact that each air carrier reported only those items which, in the opinion of the air carrier, constitute a hazard, heretofore resulted in inadequate and nonuniform reporting. Various attempts were made to correct these inadequacies, such as joint industry-government meetings and the use of a trial reporting guide for a six-month period. Some improvement in reporting was accomplished; however, satisfactory reporting was not achieved. In accordance with the proposal contained in Draft Release 61-2, this amendment specifies certain airplane and airplane component failures, malfunctions, or defects which must be reported by air carriers in mechanical reliability reports. In addition, an air carrier is required to report other airplane and airplane component failures, malfunctions, or defects, even though they are not specified in the rule, when the air carrier is of the opinion that they may seriously endanger the safe operation of its airplanes.

In Draft Release 61-2 it was proposed to require air carriers to report engine shutdowns during flight necessitated or caused by airplane component failure, malfunction, or defect. Although the Agency evaluates the significance of every engine shutdown, regardless of cause or effect, it has been determined that it is presently not necessary to require all engine shutdowns to be included in mechanical reliability reports. Accordingly, in this amendment, the proposed rule has been changed to require

mandatory reporting of engine shutdowns only when they involve engine flameout, foreign object ingestion or icing, external damage to the engine or airplane structure, or when more than one engine is shutdown during flight. Paragraph (b) (17) of § 40.508 has been worded to make it clear that action taken to shutdown an engine in flight need not be reported as an emergency action under the requirements of that provision.

Draft Release 61-2 contained a proposal to require reports of failures of the landing gear to extend or retract properly during flight. To avoid any misunderstanding of our intention that landing-gear doors be included in this reporting requirement, this final rule expressly provides for reporting the occurrence of a failure, malfunction, or defect which involves the extension or retraction of the landing gear, or the opening or closing of the landing-gear doors during flight.

Also, it will be noted that paragraph (b) (15) of § 40.508 has been changed from the original proposal so that failures, malfunctions, or defects in airplane structures are required to be reported only if a major repair is necessary.

Many failures, malfunctions, or defects are required to be included in the mechanical reliability report only if they occur during "flight." A note has been added to the rule to explain that in complying with the reporting requirements of § 40.508 an airplane is to be considered in "flight" from the moment it leaves the surface of the earth on takeoff until it touches down at a place of landing.

Attention is directed to the fact that Draft Release 61-2 proposed 13 specific reporting items while this amendment contains 17 reportable items. This increase in the number of items is the result of rewording and expanding the previous items to facilitate administrative handling of the reports within the Agency with automatic data processing equipment.

Another change has been made in this amendment which differs from the original proposal. This change provides that the report shall cover a 24-hour period beginning at 0900 hours local time each day and is to be submitted by 0900 hours of the following day rather than the midnight to midnight report period proposed. In this respect, local time is considered to be the time at each air carrier's main maintenance base. This revision does not alter the 24-hour interval made in the proposal, but is incorporated so that the reports can be handled more expeditiously by the Agency under its new automatic data processing system for evaluating individual reports and for distributing mechanical reliability report summaries.

Each air carrier is presently required by paragraph (a) of § 40.509 (Mechanical interruption summary report) to regularly file a summary report of "All interruptions to a scheduled flight, unscheduled changes of airplanes en route, and unscheduled stops and diversions from route which result from known or suspected mechanical difficulties or mal-

functions." In response to comment received, paragraph (a) of § 40.509 is being amended to avoid duplicate reporting under paragraph (a) of those malfunctions or mechanical difficulties required to be reported under § 40.508.

The Federal Aviation Agency believes that reports of the failures, malfunctions, and defects required under this amendment, plus additional reports received from the air carriers regarding other occurrences of failures, malfunctions, and defects they consider hazardous, will provide complete, accurate, and uniform reporting. Safety will be served better by this amended reporting procedure as the Agency will be able to disseminate to industry improved reports of hazardous conditions pertaining to airplane systems, components, and equipment. In addition, through analysis of information developed from reports received, the Agency will be able to detect deteriorating conditions in airplane systems, components, and equipment, and issue Airworthiness Directives and Alert Notices before such conditions reach hazardous proportions.

Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, Part 40 of the Civil Air Regulations (14 CFR Part 40, as amended) is hereby amended as follows, effective March 12, 1962:

1. By amending § 40.508 to read as follows:

§ 40.508 Mechanical reliability reports.

(a) Each air carrier shall report the occurrence or detection of those failures, malfunctions, or defects specified in paragraph (b) of this section. In addition, each air carrier shall report any other failure, malfunction, or defect which occurs or is detected at any time in an airplane or airplane component (including airplane systems, appliances, powerplants, and propellers) used by the air carrier, when, in the carrier's opinion, such failure, malfunction, or defect has endangered or may endanger the safe operation of an airplane used by the air carrier. The report shall be in written form covering a period of 24 hours beginning at 0900 hours local time of each day and ending at 0900 hours local time the next day, and shall be submitted to the Federal Aviation Agency maintenance inspector assigned to the air carrier by 0900 hours local time of the following day: *Provided*, That reports which are due on Saturday or Sunday may be submitted on the following Monday and in case of legal holidays on the following workday.

NOTE: Failures, malfunctions, or defects reported in accordance with the accident reporting provisions of Part 320 of the regulations of the Civil Aeronautics Board need not be included.

(b) The air carrier shall report each occurrence or detection of a failure, malfunction, or defect involving:

(1) Fires during flight and whether the related fire-warning system functioned properly;

(2) Fires during flight and whether the related fire-warning system did not function properly;

(3) Fires during flight not protected by a related fire-warning system;

(4) False fire warning during flight.

(5) Engine exhaust systems which result during flight in damage to engine, adjacent structure, equipment, or components;

(6) An airplane component which results during flight in the accumulation or circulation of smoke, vapor, or toxic or noxious fumes in the crew compartment of cabin;

(7) Engine shutdown during flight due to engine flameout;

(8) Engine shutdown during flight when external damage to the engine or to the airplane structure has occurred;

(9) Engine shutdown during flight due to foreign object ingestion or icing;

(10) Engine shutdown during flight of more than one engine on an airplane;

(11) Propeller feathering system or ability of the system to control overspeeding during flight;

(12) Fuel or fuel-dumping systems affecting fuel flow or causing hazardous leakage during flight;

(13) Landing gear extension or retraction or opening or closing of landing-gear doors during flight;

(14) Brake system components which result in loss of brake actuating force while the airplane is in motion on the ground;

(15) Airplane structure which requires major repair;

(16) Cracks, permanent deformation, or corrosion of airplane structure which exceed the maximum limits acceptable to the manufacturer or the Federal Aviation Agency; and

(17) Airplane components or systems which result during flight in the taking of emergency actions; except that action taken to shutdown an engine need not be reported as an emergency under this provision.

NOTE: Under the provisions of this paragraph, an airplane is in flight from the moment it leaves the surface of the earth on takeoff until it touches down at a place of landing.

(c) Reports required by paragraph (a) of this section shall be transmitted in a manner and on a form convenient to the air carrier's system of communication and procedure, and shall include in the first daily report as much of the following information as is available:

(1) Type and identification number of the airplane, name of the operator, date, flight number, and stage during which the incident occurred; e.g., preflight, takeoff, climb, cruise, descent, landing, inspection;

(2) Emergency procedure effected; e.g., unscheduled landing, emergency descent;

(3) Nature of condition; e.g., fire, structural failure;

(4) Identification of part and system involved, including available information pertaining to type designation of the major component and time since overhaul;

(5) Apparent cause of trouble; e.g., wear, crack, design deficiency, personnel error;

(6) Disposition; e.g., repaired, replaced, airplane grounded, part sent to manufacturer; and

(7) Brief narrative summary of other pertinent information necessary for more complete identification, determination of seriousness, and corrective action.

(d) Reports required by paragraph (a) shall not be withheld pending accumulation of all information specified in paragraphs (b) and (c) of this section. When additional information is obtained relative to the incident, including any that may be furnished by the manufacturer or other outside agency, it shall be expeditiously submitted as a supplement to the first report, referencing the date and place of submission of such report.

2. By amending § 40.509(a) to read as follows:

§ 40.509 Mechanical interruption summary report.

* * * * *

(a) All interruptions to a scheduled flight, unscheduled changes of airplanes en route, and unscheduled stops and diversions from route which result from known or suspected mechanical difficulties or malfunctions that are not required to be included in mechanical reliability reports.

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

(Secs. 311, 313(a), 601, 605; 72 Stat. 751, 752, 775, 778; 49 U.S.C. 1352, 1354, 1421, 1425)

Issued in Washington, D.C., on February 6, 1962.

N. E. HALABY,
Administrator.

[F.R. Doc. 62-1366; Filed, Feb. 9, 1962; 8:45 a.m.]

[Reg. Docket No. 652; Amdt. 41-43; Supp. 32]

PART 41—CERTIFICATION AND OPERATION RULES FOR SCHEDULED AIR CARRIER OPERATIONS OUTSIDE THE CONTINENTAL LIMITS OF THE UNITED STATES

Mechanical Reliability Reports

The Federal Aviation Agency published as a notice of proposed rule making (26 F.R. 1410) and circulated as Civil Air Regulations Draft Release No. 61-2 dated February 8, 1961, a proposal to amend Parts 40, 41, 42, and 46 of the Civil Air Regulations to establish requirements for the reporting of specific types of malfunctions, failures, and defects occurring to airplanes.

With the adoption of this amendment, it should be noted that the title, Daily Mechanical Report (DMR), is changed and will hereafter be known as the Mechanical Reliability Report (MRR). The Federal Aviation Agency believes the name to be appropriate in that it is more descriptive of the concept of the report.

The currently effective provisions of Part 41 require operators to submit daily a report known as a daily mechanical report (DMR) which contains information concerning each failure, malfunctioning, or other defect, regardless of where detected, which may reasonably be expected by the air carrier to cause a serious hazard in the operation of an airplane.

The lack of specific reporting requirements and the fact that each air carrier reported only those items which, in the opinion of the air carrier, constitute a hazard, heretofore resulted in inadequate and nonuniform reporting. Various attempts were made to correct these inadequacies, such as joint industry-government meetings and the use of a trial reporting guide for a six-month period. Some improvement in reporting was accomplished; however, satisfactory reporting was not achieved. In accordance with the proposal contained in Draft Release 61-2, this amendment specifies certain airplane and airplane component failures, malfunctions, or defects which must be reported by air carriers in mechanical reliability reports. In addition, an air carrier is required to report other airplane and airplane component failures, malfunctions, or defects, even though they are not specified in the rule, when the air carrier is of the opinion that they may seriously endanger the safe operation of its airplanes.

In Draft Release 61-2 it was proposed to require air carriers to report engine shutdowns during flight necessitated or caused by airplane component failure, malfunction, or defect. Although the Agency evaluates the significance of every engine shutdown, regardless of cause or effect, it has been determined that it is presently not necessary to require all engine shutdowns to be included in mechanical reliability reports. Accordingly, in this amendment, the proposed rule has been changed to require mandatory reporting of engine shutdowns only when they involve engine flameout, foreign object ingestion or icing, external damage to the engine or airplane structure, or when more than one engine is shutdown during flight. Paragraph (b) (17) of § 41.130 has been worded to make it clear that action taken to shutdown an engine in flight need not be reported as an emergency action under the requirements of that provision.

Draft Release 61-2 contained a proposal to require reports of failures of the landing gear to extend or retract properly during flight. To avoid any misunderstanding of our intention that landing-gear doors be included in this reporting requirement, this final rule expressly provides for reporting the occurrence of a failure, malfunction, or defect which involves the extension or retraction of the landing gear, or the opening or closing of the landing-gear doors during flight.

Also, it will be noted that paragraph (b) (15) of § 41.130 has been changed from the original proposal so that failures, malfunctions, or defects in airplane structures are required to be reported only if a major repair is necessary.

Many failures, malfunctions, or defects are required to be included in the mechanical reliability report only if they occur during "flight." A note has been added to the rule to explain that in complying with the reporting requirements of § 41.130 an airplane is to be considered in "flight" from the moment it leaves the surface of the earth on takeoff until it touches down at a place of landing.

Attention is directed to the fact that Draft Release 61-2 proposed 13 specific reporting items while this amendment contains 17 reportable items. This increase in the number of items is the result of rewording and expanding the previous items to facilitate administrative handling of the reports within the Agency with automatic data processing equipment.

Another change has been made in this amendment which differs from the original proposal. This change provides that the report shall cover a 24-hour period beginning at 0900 hours local time each day and is to be submitted by 0900 hours of the following day rather than the midnight to midnight report period proposed. In this respect, local time is considered to be the time at each air carrier's main maintenance base. This revision does not alter the 24-hour interval made in the proposal, but is incorporated so that the reports can be handled more expeditiously by the Agency under its new automatic data processing system for evaluating individual reports and for distributing mechanical reliability report summaries.

The currently effective provisions governing daily mechanical reports are set forth in the manual material in § 41.130-1(a). For purposes of consolidation and clarification, we are taking this opportunity to delete § 41.130-1(a) and incorporate in § 41.130 of the basic regulation all of the requirements prescribed in this amendment for mechanical reliability reports.

Likewise, requirements for daily reports concerning chronic mechanical difficulties are currently prescribed in the manual material in § 41.130-1(b). For purposes of consolidation and clarification, we are also deleting § 41.130-1(b) and incorporating the substance of that reporting requirement in a new § 41.130a which is being added to the basic regulation. While the title and phraseology of new § 41.130a have been changed to achieve regulatory uniformity, the substantive requirements of the amended rule are the same as those currently contained in the manual material in § 41.130-1.

It will be noted that the provisions of § 41.130a prescribe, in order to avoid duplicate reporting, that those malfunctions or mechanical difficulties reported in mechanical reliability reports need not be reported under the requirements of § 41.130a(a).

The Federal Aviation Agency believes that reports of the failures, malfunctions, and defects required under this amendment, plus additional reports received from the air carriers regarding other occurrences of failures, malfunctions, and defects they consider hazardous, will

provide complete, accurate, and uniform reporting. Safety will be served better by this amended reporting procedure as the Agency will be able to disseminate to industry improved reports of hazardous conditions pertaining to airplane systems, components, and equipment. In addition, through analysis of information developed from reports received, the Agency will be able to detect deteriorating conditions in airplane systems, components, and equipment, and issue Airworthiness Directives and Alert Notices before such conditions reach hazardous proportions.

Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, Part 41 of the Civil Air Regulations (14 CFR Part 41, as amended) is hereby amended as follows, effective March 12, 1962:

1. By amending § 41.130 to read as follows:

§ 41.130 Mechanical reliability reports.

(a) Each air carrier shall report the occurrence or detection of those failures, malfunctions, or defects specified in paragraph (b) of this section. In addition, each air carrier shall report any other failure, malfunction, or defect which occurs or is detected at any time in an airplane or airplane component (including airplane systems, appliances, powerplants, and propellers) used by the air carrier, when, in the carrier's opinion, such failure, malfunction, or defect has endangered or may endanger the safe operation of an airplane used by the air carrier. The report shall be in written form covering a period of 24 hours beginning at 0900 hours local time of each day and ending at 0900 hours local time the next day, and shall be submitted to the Federal Aviation Agency maintenance inspector assigned to the air carrier by 0900 hours local time of the following day: *Provided*, That reports which are due on Saturday or Sunday may be submitted on the following Monday and in case of legal holidays on the following workday.

Note: Failures, malfunctions, or defects reported in accordance with the accident reporting provisions of Part 320 of the regulations of the Civil Aeronautics Board need not be included.

(b) The air carrier shall report each occurrence or detection of a failure, malfunction, or defect involving:

- (1) Fires during flight and whether the related fire-warning system functioned properly;
- (2) Fires during flight and whether the related fire-warning system did not function properly;
- (3) Fires during flight not protected by a related fire-warning system;
- (4) False fire warning during flight;
- (5) Engine exhaust systems which result during flight in damage to engine, adjacent structure, equipment, or components;
- (6) An airplane component which results during flight in the accumulation or circulation of smoke, vapor, or toxic

or noxious fumes in the crew compartment or cabin;

(7) Engine shutdown during flight due to engine flameout;

(8) Engine shutdown during flight when external damage to the engine or to the airplane structure has occurred;

(9) Engine shutdown during flight due to foreign object ingestion or icing;

(10) Engine shutdown during flight of more than one engine on an airplane;

(11) Propeller feathering system or ability of the system to control overspeeding during flight;

(12) Fuel or fuel-dumping systems affecting fuel flow or causing hazardous leakage during flight;

(13) Landing gear extension or retraction or opening or closing of landing-gear doors during flight;

(14) Brake system components which result in loss of brake actuating force while the airplane is in motion on the ground;

(15) Airplane structure which requires major repair;

(16) Cracks, permanent deformation, or corrosion of airplane structure which exceed the maximum limits acceptable to the manufacturer or the Federal Aviation Agency; and

(17) Airplane components or systems which result during flight in the taking of emergency actions; except that action taken to shutdown an engine need not be reported as an emergency under this provision:

Note: Under the provisions of this paragraph, an airplane is in flight from the moment it leaves the surface of the earth on takeoff until it touches down at a place of landing.

(c) Reports required by paragraph (a) of this section shall be transmitted in a manner and on a form convenient to the air carrier's system of communication and procedure, and shall include in the first daily report as much of the following information as is available:

(1) Type and identification number of the airplane, name of the operator, date, flight number, and stage during which the incident occurred; e.g., preflight, takeoff, climb, cruise, descent, landing, inspection;

(2) Emergency procedure effected; e.g., unscheduled landing, emergency descent;

(3) Nature of condition; e.g., fire, structural failure;

(4) Identification of part and system involved, including available information pertaining to type designation of the major component and time since overhaul;

(5) Apparent cause of trouble; e.g., wear, crack, design deficiency, personnel error;

(6) Disposition; e.g., repaired, replaced, airplane grounded, part sent to manufacturer; and

(7) Brief narrative summary of other pertinent information necessary for more complete identification, determination of seriousness, and corrective action.

(d) Reports required by paragraph (a) shall not be withheld pending accumulation of all information specified in paragraphs (b) and (c) of this sec-

tion. When additional information is obtained relative to the incident, including any that may be furnished by the manufacturer or other outside agency, it shall be expeditiously submitted as a supplement to the first report, referencing the date and place of submission of such report.

2. By adding a new § 41.130a to read as follows:

§ 41.130a Mechanical interruption summary report.

Each air carrier shall submit regularly and promptly to the Administrator a summary report containing information on the following occurrences:

(a) All interruptions to a scheduled flight, unscheduled changes of airplanes en route, and unscheduled stops and diversions from route which result from known or suspected mechanical difficulties or malfunctions that are not required to be included in mechanical reliability reports.

(b) The number of engines removed prematurely because of mechanical trouble, listed by make and model of engine and the airplane type in which the engine was installed.

(c) The number of propeller featherings in flight, listed by type of propeller and type of engine and the airplane on which the propeller is installed. Propeller featherings accomplished for training, demonstration, or flight check purposes need not be reported.

§ 41.130-1 [Deletion]

3. By deleting § 41.130-1.

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

(Secs. 311, 313(a), 601, 605; 72 Stat. 751, 752, 775, 778; 49 U.S.C. 1352, 1354, 1421, 1425)

Issued in Washington, D.C., on February 6, 1962.

N. E. HALABY,
Administrator.

[F.R. Doc. 62-1364; Filed, Feb. 9, 1962; 8:45 a.m.]

[Reg. Docket No. 652; Amdt. 42-38; Supp. 46]

PART 42—IRREGULAR AIR CARRIER AND OFF-ROUTE RULES

Mechanical Reliability Reports

The Federal Aviation Agency published as a notice of proposed rule making (26 F.R. 1410) and circulated as Civil Air Regulations Draft Release No. 61-2 dated February 8, 1961, a proposal to amend Parts 40, 41, 42, and 46 of the Civil Air Regulations to establish requirements for the reporting of specific types of malfunctions, failures, and defects occurring to aircraft.

With the adoption of this amendment, it should be noted that the title, Daily Mechanical Report (DMR), is changed and will hereafter be known as the Mechanical Reliability Report (MRR). The Federal Aviation Agency believes the name to be appropriate in that it is more descriptive of the concept of the report.

The currently effective provisions of Part 42 require operators to submit daily a report known as a daily mechanical report (DMR) which contains information concerning each failure, malfunctioning, or other defect, regardless of where detected, which may reasonably be expected by the air carrier to cause a serious hazard in the operation of an aircraft.

The lack of specific reporting requirements and the fact that each air carrier reported only those items which, in the opinion of the air carrier, constitute a hazard, heretofore resulted in inadequate and nonuniform reporting. Various attempts were made to correct these inadequacies, such as joint industry-government meetings and the use of a trial reporting guide for a six-month period. Some improvement in reporting was accomplished; however, satisfactory reporting was not achieved. In accordance with the proposal contained in Draft Release 61-2, amendment specifies certain aircraft and aircraft component failures, malfunctions, or defects which must be reported by air carriers in mechanical reliability reports. In addition, an air carrier is required to report other aircraft and aircraft component failures, malfunctions, or defects, even though they are not specified in the rule, when the air carrier is of the opinion that they may seriously endanger the safe operation of its aircraft.

In Draft Release 61-2 it was proposed to require air carriers to report engine shutdowns during flight necessitated or caused by aircraft component failure, malfunction, or defect. Although the Agency evaluates the significance of every engine shutdown, regardless of cause or effect, it has been determined that it is presently not necessary to require all engine shutdowns to be included in mechanical reliability reports. Accordingly, in this amendment, the proposed rule has been changed to require mandatory reporting of engine shutdowns only when they involve engine flameout, foreign object ingestion or icing, external damage to the engine or aircraft structure, or when more than one engine is shutdown during flight. Paragraph (b)(17) of § 42.96 has been worded to make it clear that action taken to shutdown an engine in flight need not be reported as an emergency action under the requirements of that provision.

Draft Release 61-2 contained a proposal to require reports of failures of the landing gear to extend or retract properly during flight. To avoid any misunderstanding of our intention that landing-gear doors be included in this reporting requirement, this final rule expressly provides for reporting the occurrence of a failure, malfunction, or defect which involves the extension or retraction of the landing gear, or the opening or closing of the landing-gear doors during flight.

Also, it will be noted that paragraph (b)(15) of § 42.96 has been changed from the original proposal so that failures, malfunctions, or defects in aircraft structures are required to be reported only if a major repair is necessary.

Many failures, malfunctions, or defects are required to be included in the mechanical reliability report only if they occur during "flight." A note has been added to the rule to explain that in complying with the reporting requirements of § 42.96 an aircraft is to be considered in "flight" from the moment it leaves the surface of the earth on takeoff until it touches down at a place of landing.

Attention is directed to the fact that Draft Release 61-2 proposed 13 specific reporting items while this amendment contains 17 reportable items. This increase in the number of items is the result of rewording and expanding the previous items to facilitate administrative handling of the reports within the Agency with automatic data processing equipment.

Another change has been made in this amendment which differs from the original proposal. This change provides that the report shall cover a 24-hour period beginning at 0900 hours local time each day and is to be submitted by 0900 hours of the following day rather than the midnight to midnight report period proposed. In this respect, local time is considered to be the time at each air carrier's main maintenance base. This revision does not alter the 24-hour interval made in the proposal, but is incorporated so that the reports can be handled more expeditiously by the Agency under its new automatic data processing system for evaluating individual reports and for distributing mechanical reliability report summaries.

The currently effective provisions governing daily mechanical reports are set forth in the manual material in § 42.96-1. For purposes of consolidation and clarification, we are taking this opportunity to delete § 42.96-1 and incorporate in § 42.96 of the basic regulation all of the requirements prescribed in this amendment for mechanical reliability reports.

Likewise, requirements for a monthly report of chronic mechanical difficulties are currently prescribed in the manual material in § 42.96-1. For purposes of consolidation and clarification, this monthly reporting requirement is also being set forth, without substantive change, in a new § 42.96a which is being added to the basic regulation.

The Federal Aviation Agency believes that reports of the failures, malfunctions, and defects required under this amendment, plus additional reports received from the air carriers regarding other occurrences of failures, malfunctions, and defects they consider hazardous, will provide complete, accurate, and uniform reporting. Safety will be served better by this amended reporting procedure as the Agency will be able to disseminate to industry improved reports of hazardous conditions pertaining to aircraft systems, components, and equipment. In addition, through analysis of information developed from reports received, the Agency will be able to detect deteriorating conditions in aircraft systems, components, and equipment, and issue Airworthiness Directives and Alert Notices before such conditions reach hazardous proportions.

Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all relevant matter presented. Since the portion of the amendment pertaining to a monthly report of chronic mechanical difficulties is minor in nature and imposes no additional burden on any person, I find that notice and public procedure hereon is unnecessary.

In consideration of the foregoing, Part 42 of the Civil Air Regulations (14 CFR Part 42, as amended) is hereby amended as follows, effective March 12, 1962:

1. By amending § 42.96 to read as follows:

§ 42.96 Mechanical reliability reports.

(a) Each air carrier operating large aircraft shall report the occurrence or detection of those failures, malfunctions, or defects specified in paragraph (b) of this section. In addition, each air carrier shall report any other failure, malfunction, or defect which occurs or is detected at any time in an aircraft or aircraft component (including aircraft systems, appliances, powerplants, and propellers) used by the air carrier, when, in the carrier's opinion, such failure, malfunction, or defect has endangered or may endanger the safe operation of an aircraft used by the air carrier. The report shall be in written form covering a period of 24 hours beginning at 0900 hours local time of each day and ending at 0900 hours local time the next day, and shall be submitted to the Federal Aviation Agency maintenance inspector assigned to the air carrier by 0900 hours local time of the following day: *Provided*, That reports which are due on Saturday or Sunday may be submitted on the following Monday and in case of legal holidays on the following workday.

NOTE: Failures, malfunctions, or defects reported in accordance with the accident reporting provisions of Part 320 of the regulations of the Civil Aeronautics Board need not be included.

(b) The air carrier shall report each occurrence or detection of a failure, malfunction, or defect involving:

- (1) Fires during flight and whether the related fire-warning system functioned properly;
- (2) Fires during flight and whether the related fire-warning system did not function properly;
- (3) Fires during flight not protected by a related fire-warning system;
- (4) False fire warning during flight;
- (5) Engine exhaust systems which result during flight in damage to engine, adjacent structure, equipment, or components;
- (6) An aircraft component which results during flight in the accumulation or circulation of smoke, vapor, or toxic or noxious fumes in the crew compartment or cabin;
- (7) Engine shutdown during flight due to engine flameout;
- (8) Engine shutdown during flight when external damage to the engine or to the aircraft structure has occurred;
- (9) Engine shutdown during flight due to foreign object ingestion or icing;

(10) Engine shutdown during flight of more than one engine on an aircraft;

(11) Propeller feathering system or ability of the system to control overspeeding during flight;

(12) Fuel or fuel-dumping systems affecting fuel flow or causing hazardous leakage during flight;

(13) Landing gear extension or retraction or opening or closing of landing-gear doors during flight;

(14) Brake system components which result in loss of brake actuating force while the aircraft is in motion on the ground;

(15) Aircraft structure which requires major repair;

(16) Cracks, permanent deformation, or corrosion of aircraft structure which exceed the maximum limits acceptable to the manufacturer or the Federal Aviation Agency; and

(17) Aircraft components or systems which result during flight in the taking of emergency actions; except that action taken to shutdown an engine need not be reported as an emergency under this provision.

NOTE: Under the provisions of this paragraph, an aircraft is in flight from the moment it leaves the surface of the earth on takeoff until it touches down at a place of landing.

(c) Reports required by paragraph (a) of this section shall be transmitted in a manner and on a form convenient to the air carrier's system of communication and procedure, and shall include on the first daily report as much of the following information as is available:

(1) Type and identification number of the aircraft, name of the operator, date, flight number, and stage during which the incident occurred; e.g., preflight, takeoff, climb, cruise, descent, landing, inspection;

(2) Emergency procedure effected; e.g., unscheduled landing, emergency descent;

(3) Nature of condition; e.g., fire, structural failure;

(4) Identification of part and system involved, including available information pertaining to type designation of the major component and time since overhaul;

(5) Apparent cause of trouble; e.g., wear, crack, design deficiency, personnel error;

(6) Disposition; e.g., repaired, replaced, aircraft grounded, part sent to manufacturer; and

(7) Brief narrative summary of other pertinent information necessary for more complete identification, determination of seriousness, and corrective action.

(d) Reports required by paragraph (a) shall not be withheld pending accumulation of all information specified in paragraphs (b) and (c) of this section. When additional information is obtained relative to the incident, including any that may be furnished by the manufacturer or other outside agency, it shall be expeditiously submitted as a supplement to the first report, referencing the date and place of submission of such report.

2. By adding a new § 42.96a to read as follows:

§ 42.96a Monthly report of chronic mechanical difficulties.

As soon as practicable after the end of each calendar month, each irregular air carrier operating large aircraft shall submit to the assigned maintenance inspector three copies of a report covering the mechanical difficulties experienced during the preceding month which the air carrier considers chronic or otherwise particularly significant from a safety standpoint. The report shall fully identify all aircraft and aircraft components involved (i.e., manufacturer, model and type), and shall contain enough information to serve as a basis for corrective action and to enable a determination to be made of the trend of aircraft and aircraft component failures, malfunctions, or defects. The detailed information from which such reports are prepared shall be kept current and available at the air carrier's main headquarters for examination by any authorized representative of the Administrator or Board.

§ 42.96-1 [Deletion]

3. By deleting § 42.96-1.

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

(Secs. 311, 313(a), 601, 605; 72 Stat. 751, 752, 775, 778; 49 U.S.C. 1352, 1354, 1421, 1425)

Issued in Washington, D.C., on February 6, 1962.

N. E. HALABY,
Administrator.

[F.R. Doc. 62-1363; Filed, Feb. 9, 1962; 8:45 a.m.]

[Reg. Docket No. 652; Amdt. 46-4]

PART 46—SCHEDULED AIR CARRIER HELICOPTER CERTIFICATION AND OPERATION RULES

Mechanical Reliability Reports

The Federal Aviation Agency published as a notice of proposed rule making (26 F.R. 1410) and circulated as Civil Air Regulations Draft Release No. 61-2 dated February 8, 1961, a proposal to amend Parts 40, 41, 42, and 46 of the Civil Air Regulations to establish requirements for the reporting of specific types of malfunctions, failures, and defects occurring to aircraft.

With the adoption of this amendment, it should be noted that the title, Daily Mechanical Report (DMR), is changed and will hereafter be known as the Mechanical Reliability Report (MRR). The Federal Aviation Agency believes the name to be appropriate in that it is more descriptive of the concept of the report.

The currently effective provisions of Part 46 require operators to submit daily a report known as a daily mechanical report (DMR) which contains information concerning each failure, malfunctioning, or other defect, regardless of where detected, which may reasonably be expected by the air carrier to cause a serious hazard in the operation of a helicopter.

The lack of specific reporting requirements and the fact that each air carrier

reported only those items which, in the opinion of the air carrier, constitute a hazard, heretofore resulted in inadequate and nonuniform reporting. Various attempts were made to correct these inadequacies, such as joint industry-government meetings and the use of a trial reporting guide for a six-month period. Some improvement in reporting was accomplished; however, satisfactory reporting was not achieved. In accordance with the proposal contained in Draft Release 61-2, this amendment specifies certain helicopter and helicopter component failures, malfunctions, or defects which must be reported by air carriers in mechanical reliability reports. In addition, an air carrier is required to report other helicopter and helicopter component failures, malfunctions, or defects, even though they are not specified in the rule, when the air carrier is of the opinion that they may seriously endanger the safe operation of its helicopter.

In Draft Release 61-2 it was proposed to require air carriers to report engine shutdowns during flight necessitated or caused by helicopter component failure, malfunction, or defect. Although the Agency evaluates the significance of every engine shutdown, regardless of cause or effect, it has been determined that it is presently not necessary to require all engine shutdowns to be included in mechanical reliability reports. Accordingly, in this amendment, the proposed rule has been changed to require mandatory reporting of engine shutdowns only when they involve engine flameout, foreign object ingestion or icing, or external damage to the engine or helicopter. Paragraph (b) (17) of § 46.508 has been worded to make it clear that action taken to shutdown an engine in flight need not be reported as an emergency action under the requirements of that provision.

Also, it will be noted that paragraph (b) (15) of § 46.508 has been changed from the original proposal so that failures, malfunctions, or defects in helicopter structures are required to be reported only if a major repair is necessary.

Many failures, malfunctions, or defects are required to be included in the mechanical reliability report only if they occur during "flight." A note has been added to the rule to explain that in complying with the reporting requirements of § 46.508 a helicopter is to be considered in "flight" from the moment it leaves the surface of the earth on takeoff until it touches down at a place of landing.

Attention is directed to the fact that Draft Release 61-2 proposed 13 specific reporting items while this amendment contains items numbered one through 18 with some numbers vacant. This change in reporting items is the result of rearranging and expanding the previous items to adopt them to helicopter operations and to facilitate administrative handling of the reports within the Agency with automatic data processing equipment.

Another change has been made in this amendment which differs from the original proposal. This change provides that the report shall cover a 24-hour

period beginning at 0900 hours local time each day and is to be submitted by 0900 hours of the following day rather than the midnight to midnight report period proposed. In this respect, local time is considered to be the time at each air carrier's main maintenance base. This revision does not alter the 24-hour interval made in the proposal, but is incorporated so that the reports can be handled more expeditiously by the Agency under its new automatic data processing system for evaluating individual reports and for distributing mechanical reliability report summaries.

Each air carrier is presently required by paragraph (a) of § 46.509 (Mechanical interruption summary report) to regularly file a summary report of "All interruptions to a scheduled flight, unscheduled changes of helicopters en route, and unscheduled stops and diversions from route which result from known or suspected mechanical difficulties or malfunctions." In response to comment received, paragraph (a) of § 46.509 is being amended to avoid duplicate reporting under paragraph (a) of those malfunctions or mechanical difficulties required to be reported under § 46.508.

The Federal Aviation Agency believes that reports of the failures, malfunctions, and defects required under this amendment, plus additional reports received from the air carriers regarding other occurrences of failures, malfunctions, and defects they consider hazardous, will provide complete, accurate, and uniform reporting. Safety will be served better by this amended reporting procedure as the Agency will be able to disseminate to industry improved reports of hazardous conditions pertaining to helicopter systems, components, and equipment. In addition, through analysis of information developed from reports received, the Agency will be able to detect deteriorating conditions in helicopter systems, components, and equipment, and issue Airworthiness Directives and Alert Notices before such conditions reach hazardous proportions.

Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, Part 46 of the Civil Air Regulations (14 CFR Part 46, as amended) is hereby amended as follows, effective March 12, 1962:

1. By amending § 46.508 to read as follows:

§ 46.508 Mechanical reliability reports.

(a) Each air carrier shall report the occurrence or detection of those failures, malfunctions, or defects specified in paragraph (b) of this section. In addition, each air carrier shall report any other failure, malfunction, or defect which occurs or is detected at any time in a helicopter or helicopter component (including helicopter systems, appli-

ances, powerplants, and propellers) used by the air carrier, when, in the carrier's opinion, such failure, malfunction, or defect has endangered or may endanger the safe operation of a helicopter used by the air carrier. The report shall be in written form covering a period of 24 hours beginning at 0900 hours local time of each day and ending at 0900 hours local time the next day, and shall be submitted to the Federal Aviation Agency maintenance inspector assigned to the air carrier by 0900 hours local time of the following day: *Provided*, That reports which are due on Saturday or Sunday may be submitted on the following Monday and in case of legal holidays on the following workday.

NOTE: Failures, malfunctions, or defects reported in accordance with the accident reporting provisions of Part 320 of the Regulations of the Civil Aeronautics Board need not be included.

(b) The air carrier shall report each occurrence or detection of a failure, malfunction, or defect involving:

- (1) Fires during flight and whether the related fire-warning system functioned properly;
- (2) Fires during flight and whether the related fire-warning system did not function properly;
- (3) Fires during flight not protected by a related fire-warning system;
- (4) False fire warning during flight;
- (5) Engine exhaust systems which result during flight in damage to engine, adjacent structure, equipment, or components;
- (6) A helicopter component which results during flight in the accumulation or circulation of smoke, vapor, or toxic or noxious fumes in the crew compartment or cabin;
- (7) Engine shutdown during flight due to engine flameout;
- (8) Engine shutdown during flight when external damage to the engine or to the helicopter structure has occurred;
- (9) Engine shutdown during flight due to foreign object ingestion or icing;
- (10) (Reserved.)
- (11) (Reserved.)
- (12) Fuel systems affecting fuel flow or causing hazardous leakage during flight;
- (13) (Reserved.)
- (14) (Reserved.)
- (15) Helicopter structure which requires major repair;
- (16) Cracks, permanent deformation, or corrosion of helicopter structure which exceed the maximum limits acceptable to the manufacturer or the Federal Aviation Agency;
- (17) Helicopter components or systems which result during flight in the taking of emergency actions; except that action taken to shutdown an engine need not be reported as an emergency under this provision; and
- (18) Main rotor or auxiliary rotor system.

NOTE: Under the provisions of this paragraph, a helicopter is in flight from the

moment it leaves the surface of the earth on takeoff until it touches down at a place of landing.

(c) Reports required by paragraph (a) of this section shall be transmitted in a manner and on a form convenient to the air carrier's system of communication and procedure, and shall include in the first daily report as much of the following information as is available:

(1) Type and identification number of the aircraft, name of the operator, date, flight number, and stage during which the incident occurred; e.g., preflight, takeoff, climb, cruise, descent, landing, inspection;

(2) Emergency procedure effected; e.g., unscheduled landing, emergency descent;

(3) Nature of condition; e.g., fire, structural failure;

(4) Identification of part and system involved, including available information pertaining to type designation of the major component and time since overhaul;

(5) Apparent cause of trouble; e.g., wear, crack, design deficiency, personnel error;

(6) Disposition; e.g., repaired, replaced, aircraft grounded, part sent to manufacturer; and

(7) Brief narrative summary of other pertinent information necessary for more complete identification, determination of seriousness, and corrective action.

(d) Reports required by paragraph (a) shall not be withheld pending accumulation of all information specified in paragraphs (b) and (c) of this section. When additional information is obtained relative to the incident, including any that may be furnished by the manufacturer or other outside agency, it shall be expeditiously submitted as a supplement to the first report, referencing the date and place of submission of such report.

2. By amending § 46.509(a) to read as follows:

§ 46.509 Mechanical interruption summary report.

(a) All interruptions to a scheduled flight, unscheduled changes of airplanes en route, and unscheduled stops and diversions from route which result from known or suspected mechanical difficulties or malfunctions that are not required to be included in mechanical reliability reports.

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

(Secs. 311, 313(a), 601, 605; 72 Stat. 751, 752, 775, 778; 49 U.S.C. 1352, 1354, 1421, 1425)

Issued in Washington, D.C., on February 6, 1962.

N. E. HALABY,
Administrator.

[F.R. Doc. 62-1365; Filed, Feb. 9, 1962; 8:45 a.m.]

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION
REGULATIONS

[Airspace Docket No. 61-LA-89]

PART 601—DESIGNATION OF CONTROLLED AIRSPACE, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS**Alteration of Control Area Extensions and Designation of Transition Areas***Correction*

In F.R. Doc. 61-12219, appearing at page 12507 of the issue for Wednesday, December 27, 1961, the following correction is made in § 601.10859: The words reading "and 7 miles of the San Simon" should read "and 7 miles S of the San Simon".

[Airspace Docket No. 61-WA-171]

PART 601—DESIGNATION OF CONTROLLED AIRSPACE, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS**Designation, Revocation, and Alteration of Federal Airway Intersections; Change of Amendment**

On November 14, 1961, there were published in the FEDERAL REGISTER (26 F.R. 10635) amendments to Part 601 of the regulations of the Administrator. These amendments consisted of the designation, revocation and alteration of several intersections. One of these actions pertained to the alteration of the Turlock, Calif., Intersection which was described as based on the intersection of the Merced, Calif., VORTAC 010° and the Fresno, Calif., VORTAC 322° radials. Subsequent to the publication of the rule, it was determined that this intersection should have been based, in part, on the Castle, Calif., VOR 010° radial instead of the Merced, Calif., VORTAC.

Since this action imposes no additional burden on any person, this change is made in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), effective immediately, the following action is taken:

In the text of § 601.7001 (14 CFR 601.7001, 26 F.R. 10635) Turlock INT: "Merced, Calif., VORTAC" is deleted and "Castle, Calif., VOR" is substituted therefor.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on February 5, 1962.

D. D. THOMAS,
Director, Air Traffic Service.

[F.R. Doc. 62-1362; Filed, Feb. 9, 1962; 8:45 a.m.]

**Title 16—COMMERCIAL
PRACTICES****Chapter I—Federal Trade Commission**

[Docket C-2]

PART 13—PROHIBITED TRADE PRACTICES

Frank P. Becker, Inc., and
Frank P. Becker

Subpart: Advertising falsely or misleadingly: § 13.15 *Business status, advantages, or connections*: § 13.15-5 Advertising and promotional services; § 13.95 *Identity of product*; § 13.155 *Prices*: § 13.155-40 Exaggerated as regular and customary; § 13.235 *Source or origin*: § 13.235-60 Place: § 13.235-60(a) Domestic products as imported. Subpart: Furnishing means and instrumentalities of misrepresentation or deception: § 13.1055-50 *Preticketing merchandise misleadingly*. Subpart: Misrepresenting oneself and goods—Prices: § 13.1811 *Fictitious preticketing*. Subpart: Passing off: § 13.2105 *Passing off products as competitor's*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Frank P. Becker, Inc., et al., New York, N.Y., Docket C-2, Oct. 17, 1961]

Consent order requiring New York City distributors of perfumes and toilet waters, along with other kinds of merchandise, to cease representing falsely in advertising and labeling that their perfumes had been "Nationally advertised since 1940 Vogue, Mademoiselle, Harper's Bazaar"; that excessive amounts were usual retail selling prices; that products labeled with the corresponding initials were the same as those sold under the well-known brand names "Chanel", "Arpege", "Creme de Chine", "White Shoulders", and "My Sin"; and through use of the picture of the Eiffel Tower, the words "Paris Inspired", "Ellyn Deleith, Inc. . . . Distributor", etc., that its "Blue Flame" perfume was manufactured in France.

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

It is ordered, That respondents Frank P. Becker, Inc., a corporation, and its officers, and Frank P. Becker, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfumes, toilet waters, cosmetics, or any other articles of merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that said products have been frequently and continuously advertised from 1940 to the present time in Vogue, Mademoiselle or Bazaar magazines; or that said

products have been advertised in any magazines or publications or in any other manner or for any period of time unless such is the fact.

2. Representing, directly or indirectly, by preticketing or in any other manner, that any amount is the usual and regular retail price of merchandise when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made.

3. Using the letters "C", "A", "CC", "WS", or "MS" or any other letters, numerals or symbols either singly or in combination in the advertising or labeling of said perfumes, toilet waters or cosmetics to designate or describe the kind or quality thereof without clearly and conspicuously revealing in immediate connection therewith the actual trade name of the manufacturer of said products.

4. Using the words "Paris Inspired", "Inspired in France" or any other words indicating French origin or using pictures of the Eiffel Tower or of any other typically French scenes in advertising or labeling to describe perfumes, toilet waters or cosmetics which are not manufactured or compounded in France.

5. Using any words, terms or pictures in advertising or in labeling which represent, directly or indirectly, that said merchandise was manufactured or compounded or originated in a given country or geographical area unless such is the fact.

6. Furnishing or placing in the hands of retailers or dealers in said merchandise the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove inhibited.

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

Issued: October 17, 1961.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 62-1371; Filed, Feb. 9, 1962; 8:46 a.m.]

[Docket C-4]

PART 13—PROHIBITED TRADE PRACTICES

Eugene J. Friedman et al.

Subpart: Advertising falsely or misleadingly: § 13.155 *Prices*: § 13.155-40 Exaggerated as regular and customary; § 13.285 *Value*. Subpart: Invoicing products falsely: § 13.1108 *Invoicing products falsely*: § 13.1108-45 Fur Products Labeling Act. Subpart: Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition*: § 13.1845-30 Fur Products Labeling Act; § 13.1852 *Formal regulatory and*

¹ Amended to read as set forth.

statutory requirements: § 13.1852-35 Fur Products Labeling Act; § 13.1865 *Manufacture or preparation:* § 13.1865-40 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Eugene J. Friedman et al. trading as Giba-Friedman, Los Angeles, Calif., Docket C-4, Oct. 17, 1961]

In the Matter of Eugene J. Friedman and John R. Giba, Individually and as Co-partners Trading as Giba-Friedman

Consent order requiring Los Angeles furriers to cease violating the Fur Products Labeling Act by failing to disclose the true animal name of the fur used in fur products, and that certain fur was dyed; by setting forth fictitious prices and abbreviated information on invoices; by making claims concerning prices and values of fur products in advertising while failing to maintain adequate records as a basis therefor.

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

It is ordered, That Eugene J. Friedman and John R. Giba, individuals and co-partners trading as Giba-Friedman or under any other trade name and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products; or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products invoices showing all the information required to be disclosed by each of the subsections of section 5(b) (1) of the Fur Products Labeling Act.

B. Representing directly or by implication that the regular or usual price of any fur product is any amount in excess of the price at which the respondents have usually and customarily sold such products in the recent regular course of business.

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

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

A. Represents directly or by implication that the regular or usual price of

any fur product is any amount in excess of the price at which the respondents have usually and customarily sold such products in the recent and regular course of business.

B. Misrepresents in any manner the savings available to purchasers of respondents' fur products.

3. Making claims and representations of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the rules and regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

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

Issued: October 17, 1961.

By the Commission.

[SEAL]

JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 62-1372; Filed, Feb. 9, 1962; 8:46 a.m.]

[Docket C-3]

PART 13—PROHIBITED TRADE PRACTICES

Roberts Electric Co. and Robert Boos

Subpart: Advertising falsely or misleadingly: § 13.70 *Fictitious or misleading guarantees*; § 13.85 *Government approval, action, connection or standards*: § 13.85-60 Standards, specifications, or source; § 13.155 *Prices*: 13.155-40 Exaggerated as regular and customary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15; U.S.C. 45) [Cease and desist order, Roberts Electric Co. et al., Docket C-3, Oct. 17, 1961]

Consent order requiring Chicago distributors of electric generators, gas and electric motors, air compressors, etc., to cease representing falsely in newspaper advertisements and catalogs that the "Wisconsin 4-Cycle Gas Driven Engine Generating Plant" and all its parts were Government surplus property; that it cost the U.S. Government \$548 and purchasers saved the difference between that and their price of \$249; that excessive amounts were the usual selling prices for a "Reduction Unit", a "3 HP AC Motor", and a "Birggs & Stratton 4-Cycle Air-Cooled Gasoline Engine", and that their lower prices afforded savings to purchasers; and that said products were fully guaranteed.

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

It is ordered, That respondents, Roberts Electric Company, a corpora-

tion, and its officers, and Robert Boos, individually, and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' electric generators, gas and electric motors, air compressors or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that:

(a) Said products, or any parts or components thereof, are surplus government property or were secured from any other governmental or private source, unless such is the fact.

(b) The United States Government, or any other governmental agency or former owner, paid or is paying for said products any amount greater than is the fact.

(c) Any amount is respondents' customary and usual price for said merchandise when such amount is in excess of the price at which said merchandise is customarily and usually sold by respondents in the recent, regular course of business.

(d) Any saving from respondents' selling price is afforded to the purchasers of respondents' merchandise, unless the price at which it is offered constitutes a reduction from the price at which said merchandise has been customarily and usually sold by respondents in the recent, regular course of business.

(e) Any product is guaranteed unless the terms and conditions of the said guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth.

2. Using the words "regular," or "reg.," or any other words or terms of similar import or meaning, to describe or refer to respondents' prices for said merchandise unless such prices constitute the prices at which the advertised merchandise has been sold by respondents in the recent, regular course of business.

3. Misrepresenting, in any manner, the amount of savings available to purchasers of respondents' merchandise or the amounts by which the prices of said merchandise are reduced from the prices at which said merchandise is customarily and usually sold in the recent regular course of business.

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

Issued: October 17, 1961.

By the Commission.

[SEAL]

JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 62-1373; Filed, Feb. 9, 1962; 8:46 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release 33-4445 (34-6721)]

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Distribution by Broker-Dealers of Unregistered Securities

Recent decisions of the courts and of the Securities and Exchange Commission have raised important questions concerning the standards of conduct expected of a registered broker-dealer in connection with the distribution to the public of substantial blocks of unregistered securities, particularly in situations where the securities are those of relatively obscure and unseasoned companies and where all of the circumstances surrounding the proposed distribution are not known to the broker-dealer.¹ Particularly significant are the following: What steps the broker-dealer should take to make sure that he is not participating in an illegal distribution in violation of section 5 of the Securities Act of 1933? What investigation he should make concerning the issuer in order to avoid violations of the anti-fraud provisions of the Federal securities laws in the course of the distribution, and particularly section 17 of the Securities Act and section 10(b) of the Securities Exchange Act and Rule 10b-5 (17 CFR 240.10b-5) thereunder?

In view of certain apparent misconceptions with regard to the responsibilities of a broker-dealer under these circumstances, it seems appropriate to set forth for the guidance of the industry and the bar certain standards that the Commission believes applicable.

With regard to the registration requirements of the Securities Act of 1933, certain basic principles should be borne in mind. In the first place, section 5 of the Securities Act of 1933 broadly prohibits the use of the mails or facilities of interstate commerce to sell a security unless a registration statement is in effect. A dealer or other person claiming the benefit of an exemption from this requirement has the burden of proving

entitlement to it.² Where unregistered securities are offered to a dealer for distribution, exemption is commonly claimed under the first and third clauses of section 4(1) of the Securities Act which, speaking generally, exempt transactions not involving any distribution by, or for an issuer or for a person controlling, controlled by, or under common control with the issuer. Consequently, in order for this exemption to be available, a dealer must not be participating directly or indirectly in any such distribution. He may become such a participant even if he has no direct contractual relationship or privity with an issuer or person in a control relationship if he, in fact, engaged in steps necessary to such a distribution.³ Section 4(1) exempts trading transactions between individual investors with respect to securities already issued. It does not exempt distributions by issuers or control persons or acts of other individuals who engage in steps necessary to such distributions.⁴ Consequently, a dealer who offers to sell, or is asked to sell a substantial amount of securities must take whatever steps are necessary to be sure that this is a transaction not involving an issuer, person in a control relationship with an issuer or an underwriter. For this purpose, it is not sufficient for him merely to accept "self-serving statements of his sellers and their counsel without reasonably exploring the possibility of contrary facts."⁵

The amount of inquiry called for necessarily varies with the circumstances of particular cases. A dealer who is offered a modest amount of a widely traded security by a responsible customer, whose lack of relationship to the issuer is well known to him, may ordinarily proceed with considerable confidence. On the other hand, when a dealer is offered a substantial block of a little-known security, either by persons who appear reluctant to disclose exactly where the securities came from, or where the surrounding circumstances raise a question as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then searching inquiry is called for.

The problem becomes particularly acute where substantial amounts of a previously little-known security appear in the trading markets within a fairly short period of time and without the benefit of registration under the Securities Act of 1933. In such situations, it must be assumed that these securities emanate from the issuer or from persons controlling the issuer, unless some other

source is known and the fact that the certificates may be registered in the names of various individuals could merely indicate that those responsible for the distribution are attempting to cover their tracks.

In *United States v. Crosby*,⁶ the court found persuasive the contention of defendant dealers that, in selling large blocks of unregistered stock of Texas-Adams Oil Co., Inc., in reliance on a legal opinion based upon incomplete facts, they were "doing business as usual" and, to their best knowledge, according to acceptable standards. The court perhaps found this argument persuasive in the context of that criminal conspiracy trial, since no evidence to the contrary was before it. The experience of the Commission, however, clearly demonstrates that the conduct of these dealers did not meet acceptable standards. Not only did the transactions in fact violate section 5 of the Securities Act, as the court found, but the surrounding circumstances made such violations altogether likely. Shortly after the transfer of control of Texas-Adams to a small group of related persons, large blocks of unregistered stock commenced to appear in the market, accompanied by a drumfire of optimistic publicity from the management, obviously designed to keep the price of the stock up. In such situations, responsible dealers, aware that they have the burden of proving the availability of an exemption,⁷ and confronted with both an absolute liability to buyers under section 12(1) of the Securities Act, and with the possibility of civil, administrative, or criminal proceedings—proceed with far more caution than was displayed in the Texas-Adams case, and the Commission expects, and will continue to expect, all dealers to do so. It was up to these dealers to make an appropriate investigation as to who their seller was⁸ and not simply to rely upon the opinion of the seller's attorney that no control relationship existed.

There have been a number of cases in which dealers have unsuccessfully sought to justify a claim to exemption under section 4(1) of the Securities Act simply by securing from the sellers, actual or ostensible, representations that such persons are neither officers, directors, nor large stockholders of the issuer, and submitting such representations to an attorney who then gives an opinion to the effect that, assuming the correctness of such representations, exemption under section 4(1) is available. Obviously, an attorney's opinion based upon hypothetical facts is worthless if the facts are not as specified, or if unspecified but vital facts are not considered. Because of this, it is the practice of responsible counsel not to furnish an opinion concerning the availability of an exemption from registration under

² *SEC v. Ralston Purina*, 346 U.S. 119 (1953); *Gilligan, Will & Co. v. SEC*, supra note 1; *SEC v. Culpepper*, supra note 1; and *Edwards v. United States*, 312 U.S. 473 (1941).

³ *SEC v. Culpepper*, supra note 1.

⁴ *SEC v. Chinese Consolidated Benevolent Association*, 120 F.2d 738 (1941), cert. denied, 314 U.S. 618; *SEC v. Culpepper*, supra note 1.

⁵ *SEC v. Culpepper*, supra note 1. See also *SEC v. Mono-Kearsarge Consolidated Mining Co.*, supra note 1.

⁶ Supra note 1.

⁷ *Ralston-Purina* supra note 2. *Gilligan, Will*, supra note 1; *SEC v. Culpepper*, supra note 1.

⁸ The seller turned out to be a nominee for the controlling group and the brother-in-law of one of them.

¹ *United States v. Francis Peter Crosby*, 294 F.2d 928 (C.A. 2, 1961); *SEC v. Culpepper*, 270 F.2d 241 (C.A. 2, 1959); *Gilligan, Will & Co. v. SEC*, 257 F.2d 461 (C.A. 2, 1959); *SEC v. Mono-Kearsarge et al.*, 167 F. Supp. 248 (D. Utah, 1958); *Barnett & Co.*, SEA Rel. 6310; *Best Securities*, SEA Rel. 6282.

the Securities Act for a contemplated distribution unless such counsel have themselves carefully examined all of the relevant circumstances and satisfied themselves, to the extent possible, that the contemplated transaction is, in fact, not a part of an unlawful distribution. Indeed, if an attorney furnishes an opinion based solely upon hypothetical facts which he has made no effort to verify, and if he knows that his opinion will be relied upon as the basis for a substantial distribution of unregistered securities, a serious question arises as to the propriety of his professional conduct.⁹

A broker-dealer undertaking the sale of a block of securities under the circumstances referred to herein has the further problem of avoiding conduct which will violate the antifraud provisions of the Federal securities laws. In making such a distribution, he will probably find it necessary, or at least desirable, to recommend purchase of the security by his customers. The Commission has, however, repeatedly held that it is a violation of the antifraud provisions for a broker-dealer to recommend a security unless there is an adequate and reasonable basis for the recommendations¹⁰ and, further, that such recommendations should not be made without disclosure of facts known or reasonably ascertainable, bearing upon the justification for the recommendation.¹¹ As indicated, the making of recommendations for the purchase of a security implies that the dealer has a reasonable basis for such recommendations which, in turn, requires that, as a prerequisite, he shall have made a reasonable investigation. In addition, if such a dealer lacks essential information about the issuer, such as knowledge of its financial condition, he must disclose this lack of knowledge and caution customers as to the risk involved in purchasing the securities without it.¹²

In view of the foregoing principles, it would appear that if a dealer undertakes the retail distribution of a block of securities without obtaining reliable information concerning the issuer, there is a substantial risk that he will violate the antifraud provisions of the securities laws, either by making recommendations without an adequate basis or by failing to disclose the absence of available information. Indeed, a serious question arises as to whether a dealer who undertakes an aggressive retail distribution to individuals of an obscure, unregistered security, with regard to which reliable information is not readily available, can meet his obligation to treat customers fairly and in accordance

⁹ In *United States v. Crosby*, supra note 1, the court appears to have regarded the giving of such opinions as significant evidence supporting a jury finding that an attorney was guilty as a coconspirator.

¹⁰ *Leonard Burton*, SEA Rel. 5798; *Barnett & Co.*, supra note 1. *MacRobbins & Co.*, SEA Rel. 6462; *Midland Securities Inc.*, SEA Rel. 6524.

¹¹ *Leonard Burton*, supra note 10; *Best Securities*, supra note 1.

¹² *MacRobbins & Co., Inc.*, supra note 10.

with the standards of the profession.¹³ The mere fact that a security may allegedly be exempt from the registration requirements of the Securities Act of 1933 does not relieve a dealer of these obligations. On the contrary, it may increase his responsibilities, since neither he nor his customers receive the protection which registration under the Securities Act is designed to provide.

[SEAL]

ORVAL L. DuBois,
Secretary.

FEBRUARY 2, 1962.

[F.R. Doc. 62-1381; Filed, Feb. 9, 1962;
8:46 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 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

POLYSORBATE 80

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by The Upjohn Company, 7000 Portage Road, Kalamazoo, Michigan, and other relevant material, has concluded that the following regulation should issue in conformance with section 409 of the Federal Food, Drug, and Cosmetic Act, with respect to the food additive polysorbate 80 as an emulsifier in caloric dietary supplements. Therefore, pursuant to the provisions of the Federal Food, Drug and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), § 121.1009(c) of the food additive regulations (21 CFR 121.1009; 26 F.R. 4739, 5036, 5254, 8283, 9856) is amended by adding thereto a new subparagraph (6), reading as follows:

§ 121.1009 Polysorbate 80 (polyoxyethylene (20) sorbitan monooleate).

* * * * *

(c) * * *

(6) In special dietary foods, as an emulsifier for edible oils, with directions for use which provide for the ingestion of not to exceed 360 milligrams of polysorbate 80 per day.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the

¹³ *Best Securities*, supra note 1.

provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: February 6, 1962.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 62-1388; Filed, Feb. 9, 1962;
8:47 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact with Containers or Equipment and Food Additives Otherwise Affecting Food

RESINOUS AND-POLYMERIC COATINGS

The Commissioner of Food and Drugs, having reviewed comments submitted by the following firms and other relevant material, has concluded that certain changes in the text of § 121.2514 are needed to clarify the order:

Can Manufacturers Institute, Inc., 821 15th Street NW., Washington 5, D.C.
National Paint, Varnish and Lacquer Association, Inc., 1500 Rhode Island Avenue, NW., Washington 5, D.C.
Interchemical Corp., P.O. Box 659, Newark 1, N.J.
Owens-Illinois Technical Center, 1700 North Westwood, Toledo, Ohio.
Esso Research and Engineering Co., P.O. Box 111, Linden, N.J.
W. R. Grace & Co., Dewey and Almy Chemical Division, Cambridge, Mass.
American Can Co., 100 Park Avenue, New York, N.Y.
Stoner-Mudge Co., 2000 Westhall Street, Pittsburgh, Pa.
The Glidden Co., 900 Union Commerce Building, Cleveland, Ohio.
Firestone Plastics Co., P.O. Box 690, Pottstown, Pa.
Enjay Chemical Co., 15 West 51st Street, New York, N.Y.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), § 121.2514 (21 CFR 121.2514; 26 F.R. 7088) is amended as follows:

1. Section 121.2514(b)(3) is amended to read:

§ 121.2514 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) Any substance employed in the production of resinous and polymeric coatings that is the subject of a regula-

tion in this subpart F conforms with any specification in such regulation, and any substance that is not the subject of a regulation in this subpart F conforms with the specification, if any, provided in an order extending the effective date of the statute for such substance as an indirect additive to food. Substances named in this subparagraph and further identified as required:

2. Paragraph (b) (3) (xv) is amended by deleting the item "Maleic acid ester of glycerol" and substituting therefor the words "Methyl, ethyl, propyl, butyl, amyl, hexyl, heptyl, or octyl esters of maleic acid."

3. Paragraph (b) (3) (xxv) is amended by deleting the words "*N,N'*-Distearyl ethylenediamine" and substituting therefor the item "*N,N'*-Distearoyl ethylenediamine".

4. Paragraph (b) (3) (xxxi) is amended by deleting the item "di-Pentamethylene thiuram disulfide" and substituting therefor the item "di-Pentamethylene thiuram tetrasulfide."

5. Paragraph (c) is amended to read as follows:

(c) The coating in the finished form in which it is to contact food, when extracted with the solvent or solvents characterizing the type of food, and under conditions of time and temperature characterizing the conditions of its intended use as determined from Tables 1 and 2 of paragraph (d) of this section, shall yield chloroform-soluble extractives, corrected for zinc extractives as zinc oleate, not to exceed the following:

(1) From a coating intended for or employed as a component of a container not to exceed 1 gallon and intended for one-time use, not to exceed 0.5 milligram per square inch nor to exceed that amount as milligrams per square inch that would equal 0.005 percent of the water capacity of the container, in milligrams, divided by the area of the food-contact surface of the container in square inches. From a fabricated container conforming with the description in this subparagraph, the extractives shall not exceed 0.5 milligram per square inch of food-contact surface nor exceed 50 parts per million of the water capacity of the container as determined by the methods provided in paragraph (e) of this section.

(2) From a coating intended for or employed as a component of a container having a capacity in excess of 1 gallon and intended for one-time use, not to exceed 1.8 milligrams per square inch nor to exceed that amount as milligrams per square inch that would equal 0.005 percent of the water capacity of the container in milligrams, divided by the area of the food-contact surface of the container in square inches.

(3) From a coating intended for or employed as a component of a container for repeated use of continuous service, not to exceed 18 milligrams per square inch nor to exceed that amount as milligrams per square inch that would equal 0.005 percent of the water capacity of the container in milligrams, divided by

the area of the food-contact surface of the container in square inches.

(4) From coating intended for repeated use or continuous service, and employed other than as a component of a container, not to exceed 18 milligrams per square inch of coated surface.

6a. Paragraph (d) is amended by changing items I and II in Table 1 to read:

I. Nonacid (pH above 5.0), aqueous products; may contain salt or sugar or both, and including oil-in-water emulsions of low- or high-fat content.

II. Acidic (pH 5.0 or below), aqueous products; may contain salt or sugar or both, and including oil-in-water emulsions of low- or high-fat content.

b. Paragraph (d) is further amended by changing the title of Table 2 to read: "Table 2—Test procedures for determining the amount of extractives from resinous or polymeric coatings, using solvents simulating types of foods and beverages"; by inserting in Table 2, item A, food types I, IV-B, in the column under "Extractant Heptane"^{1,2} Time and temperature, the words "150° F., 2 hr"; and by changing footnote 2 under Table 2 to read: "Heptane extractivity results must be divided by a factor of five in arriving at the extractivity for a food product."

7. Paragraph (e) *Analytical methods* is amended by inserting the following note preceding subparagraph (5):

NOTE: The tests specified in subparagraph (4) (i) through (xvii) of paragraph (e) are applicable to flexible packages consisting of coated metal contacting food, in which case the closure end is double-folded and clamped with metal spring clips by which the package can be suspended.

8. Paragraph (e) (3) is amended by changing the phrase " $\frac{1}{8}$ -inch x $\frac{1}{4}$ -inch" to read, " $\frac{1}{8}$ -inch— $\frac{1}{4}$ -inch".

9a. In paragraph (e) (4) (i) through (xvii), inclusive, the last sentence in each subdivision is changed to read: "Proceed with the determination of the amount of extractives by the method described in subparagraph (5) of this paragraph."

b. In paragraph (e) (4) (vi), the word "baker" in the eleventh line is changed to read "beaker".

10. Paragraph (e) (5) is changed to read:

(5) *Determination of amount of extractives*—(i) *Total residues*. Evaporate the food-simulating solvents from subparagraph (4) (i) to (xvii), inclusive, of this paragraph to about 100 milliliters in the Pyrex flask and transfer to a clean, tared platinum dish, washing the flask three times with the solvent used in the extraction procedure, and evaporate to a few milliliters on a nonsparking low-temperature hotplate. The last few milliliters should be evaporated in an oven maintained at a temperature of 212° F. Cool the platinum dish in a desiccator for 30 minutes and weigh the residue to the nearest 0.1 milligram (*e*). Calculate the extractives in milligrams per square inch and in parts per million for the particular size of container being tested and for the specific food-simulating solvent used.

(a) *Water and 8-percent alcohol*.

Milligrams extractives per square inch =

$$\frac{e}{s}$$

Extractives residue = $Ex =$

$$\frac{(e)(a)(1000)}{(c)(s)}$$

(b) *Heptane*.

Milligrams extractives per square inch =

$$\frac{e}{(s)(F)}$$

Extractives residue = $Ex =$

$$\frac{(e)(a)(1000)}{(c)(s)(F)}$$

Where:

Ex = Extractives residue in parts per million for any container size.

e = Milligrams extractives per sample tested.

a = Total coated area, including closure, in square inches.

c = Water capacity of container, in grams.

s = Surface of coated area tested, in square inches.

F = Five, the ratio of the amount of extractives removed from a coated container by heptane under exaggerated time-temperature test conditions compared to the amount extracted by a fat or oil from a container tested under exaggerated conditions of thermal sterilization and use.

e' = Chloroform-soluble extractives residue.

ee' = Zinc corrected chloroform-soluble extractives residue.

e' or *ee'* is substituted for *e* in the above formulas when necessary.

If when calculated by the formulas in (a) and (b) of this subdivision, the concentration of extractives residue (*Ex*) exceeds 50 parts per million or the extractives in milligrams per square inch exceed the limitations prescribed in paragraph (c) of this section for the particular container size, proceed to subdivision (ii) of this subparagraph (method for determining the amount of chloroform-soluble extractives residue).

(ii) *Chloroform-soluble extractives residue*. Add 50 milliliters of chloroform (freshly distilled reagent grade or a grade having an established consistently low blank) to the dried and weighed residue, (*e*), in the platinum dish, obtained in subdivision (i) of this subparagraph. Warm carefully, and filter through Whatman No. 41 filter paper in a Pyrex funnel, collecting the filtrate in a clean, tared platinum dish. Repeat the chloroform extraction, washing the filter paper with this second portion of chloroform. Add this filtrate to the original filtrate and evaporate the total down to a few milliliters on a low-temperature hotplate. The last few milliliters should be evaporated in an oven maintained at 212° F. Cool the platinum dish in a desiccator for 30 minutes and weigh to the nearest 0.1 milligram to get the chloroform-soluble extractives residue (*e'*). This *e'* is substituted for *e* in the formulas in (a) and (b) of subdivision (i) of this subparagraph. If the concentration of extractives (*Ex*) still exceeds 50 parts per

million or the extractives in milligrams per square inch exceed the limitations prescribed in paragraph (c) of this section for the particular container size, proceed as follows to correct for zinc extractives ("C" enamels only): Ash the residue in the platinum dish by heating gently over a Meeker-type burner to destroy organic matter and hold at red heat for about 1 minute. Cool in the air for 3 minutes, and place the platinum dish in the desiccator for 30 minutes and weigh to the nearest 0.1 milligram. Analyze this ash for zinc by standard Association of Official Agricultural Chemists methods or equivalent. Calculate the zinc in the ash as zinc oleate, and subtract from the weight of chloroform-soluble extractives residue (e') to obtain the zinc-corrected chloroform-soluble extractives residue (ee'). This ee' is substituted for e in the formulas in (a) and (b) of subdivision (1) of this subparagraph.

To comply with the limitations in paragraph (c) of this section, the chloroform-soluble extractives residue (but after correction for zinc extractives in case of "C" enamels) must not exceed 50 parts per million and must not exceed in milligrams per square inch the limitations for the particular article as prescribed in paragraph (c)(1) of this section.

Notice and public procedure and delayed effective date are not necessary prerequisites to the promulgation of this order, and I so find, since the amendments serve only to clarify and interpret existing regulations.

Effective date. These amendments shall become effective upon publication of this order in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348 (c)(1))

Dated: February 6, 1962.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 62-1390; Filed, Feb. 9, 1962;
8:48 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

FILTERS, RESIN-BONDED

The Commissioner of Food and Drugs, having evaluated the data submitted in petitions filed by Johnson and Johnson, 4949 West 65th Street, Chicago 38, Illinois, and The Kendall Company, Walpole, Massachusetts, and other relevant material, has concluded that the following order should issue with respect to resin-bonded filters intended for use in filtering milk and edible oils. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), Subpart F of the food additive regulation (21 CFR Part 121)

is amended by adding thereto the following new section.

§ 121.2536. Filters, resin-bonded.

Resin-bonded filters may be safely used in producing, manufacturing, processing, and preparing food, subject to the provisions of this section.

(a) Resin-bonded filters are prepared from natural or synthetic fibers to which have been added substances required in their preparation and finishing, and which are bonded with resins prepared by condensation or polymerization of resin-forming materials, together with adjuvant substances required in their preparation, application, and curing.

(b) The quantity of any substance employed in the production of the resin-bonded filter does not exceed the amount reasonably required to accomplish the intended physical or technical effect or any limitation further provided.

(c) Any substance employed in the production of resin-bonded filters that is the subject of a regulation in this Subpart F of this part conforms with any specification in such regulation, and any substance that is not the subject of a regulation in such subpart conforms with the specification, if any, provided by an order extending the effective date of the statute for such substance as an indirect additive to food.

(d) Substances employed in the production of resin-bonded filters include the following, subject to any limitations provided:

List of Substances and Limitations

- (1) *Fibers:*
Cotton.
Nylon. (From nylon resins complying with the provisions of applicable regulations in Subpart F.)
Rayon (viscose).
- (2) *Substances employed in fiber finishing:*
Titanium dioxide.
Oleic acid.
Sodium oleate.
- (3) *Resins:*
Polyvinyl alcohol.
Polyvinyl alcohol with the copolymer of acrylic acid-allyl sucrose.
Polyvinyl alcohol with melamine formaldehyde.
Polyvinyl acetate with melamine formaldehyde.
- (4) *Adjuvant substances:*
Dimethyl polysiloxane with methylcellulose and sorbic acid. (As an antifoaming agent.)
Phosphoric acid.
Polysorbate 80.

(e) Resin-bonded filters conforming with the specifications of subparagraph (1) of this paragraph are used as provided in subparagraph (2) of this paragraph:

(1) *Total extractives:* The finished filter, when exposed to distilled water at 100° F. for 2 hours, yields total extractives not to exceed 2.8 percent by weight of the filter.

(2) *Conditions of use:* It is used to filter milk at operating temperatures not to exceed 100° F.

(f) Resin-bonded filters conforming with the specifications of subparagraph (1) of this paragraph are used as provided in subparagraph (2) of this paragraph:

(1) *Total extractives:* The finished filter, when exposed to distilled water at 145° F. for 2 hours, yields total extractives not to exceed 4.0 percent by weight of the filter.

(2) *Conditions of use:* It is used to filter milk at operating temperatures not to exceed 145° F.

(g) Resin-bonded filters conforming with the specifications of subparagraph (1) of this paragraph are used as provided in subparagraph (2) of this paragraph.

(1) *Total extractives:* The finished filter, when exposed to *n*-hexane at reflux temperature for 2 hours yields total extractives not to exceed 0.2 percent by weight of the filter.

(2) *Conditions of use:* It is used to filter edible oils.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348 (c)(1))

Dated: January 29, 1962.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 62-1389; Filed, Feb. 9, 1962;
8:48 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER B—STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS

PART 784—PROVISIONS OF THE FAIR LABOR STANDARDS ACT APPLICABLE TO FISHING AND OPERATIONS ON AQUATIC PRODUCTS

Revision

Part 784 of Chapter V, Title 29 of the Federal Regulations, is hereby revised in the manner indicated below in order to adapt it to the Fair Labor Standards Amendments of 1961 (Pub. Law 87-30). As this revision is concerned solely with interpretative rules, neither public procedure nor delay in the effective date is required by section 4 of the Adminis-

trative Procedure Act, and it will become effective upon publication in the FEDERAL REGISTER.

As revised, 29 CFR Part 784 reads as follows:

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784.13 "Commerce".
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784.16 "State".
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784.19 Commerce activities of employees.
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- 784.102 General legislative history.
784.103 Adoption of the exemption in the original 1938 Act.
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AUTHORITY: §§ 784.0 to 784.159 issued under secs. 1-19 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201-219.

Subpart A—General
INTRODUCTORY

§ 784.0 Purpose.

It is the purpose of this part to provide an official statement of the views of the Department of Labor with respect to the application and meaning of those provisions of the Fair Labor Standards Act which govern rights and obligations of employees and employers in the various enterprises engaged in fishing and related activities and in operations on aquatic products. The application of the Act to employment in such enterprises was broadened by amendments effective September 3, 1961. Under the amended Act, a substantial number of employees employed in the processing (other than canning), marketing, freezing, curing, storing, packing for shipment, or distributing of fish, shellfish, or other aquatic forms of animal or vegetable life and their by-products will be subject to its minimum wage provisions for the first time. Also, certain employers engaged in some of these activities may have employees who are newly subject to the Act under the amendments extending coverage to employees employed in specified enterprises engaged in commerce or in the production of goods for commerce. An exemption from minimum wages as well as overtime pay has been extended by the 1961 amendments to certain employees employed in canning of marine products at sea. It is an objective of this part to make available in one place, for the information of those who may be concerned with these and related provisions of the law, the official interpretations of such provisions by which the Department of Labor will be guided in carrying out its responsibilities under the Act.

§ 784.1 General scope of the Act.

The Fair Labor Standards Act, as amended, is a Federal statute of general application which establishes minimum wage, overtime pay, and child labor requirements that apply as provided in the Act. Employers and employees in enterprises engaged in fishing and related activities, or in operations on aquatic products on shore, need to know how the Act applies to employment in these enterprises so that they may understand their rights and obligations under the law. All employees whose employment has the relationship to interstate or foreign commerce which the Act specifies are subject to the prescribed labor standards unless specifically exempted from them. Employers having such employees are required to comply with the Act's provisions in this regard and with specified record-keeping requirements con-

tained in Part 516 of this chapter. The law authorizes the Department of Labor to investigate for compliance and, in the event of violations, to supervise the payment of unpaid minimum wages or unpaid overtime compensation owing to any employee. The law also provides for enforcement in the courts.

§ 784.2 Matters discussed in this part.

This part discusses generally the provisions of the Act which govern its application to employers and employees in enterprises and establishments of the fisheries, seafood processing, and related industries. It discusses in some detail those exemption provisions of the Act in sections 13(a)(5) and 13(b)(4) which refer specifically to employees employed in described activities with respect to seafood and other forms of aquatic life.

§ 785.3 Matters discussed in other interpretations.

Interpretations having general application to others subject to the law, as well as to fishermen and seafood canners, processors, or distributors and their employees, have been issued on a number of subjects of general interest. These will be found in other parts of this chapter. Reference should be made to them for guidance on matters which they discuss in detail, which this part does not undertake to do. They include Part 777 of this chapter, discussing methods of payment of wages; Part 778 of this chapter, discussing computation and payment of overtime compensation; Part 785 of this chapter, discussing the calculation of hours worked; Part 791 of this chapter, discussing joint employment relationships; and Part 776 of this chapter, discussing the general coverage provisions of the Act. Reference should also be made to Subpart G of Part 4 of this title, which contains the official interpretations of the child labor provisions of the Act.

§ 784.4 Significance of official interpretations.

The regulations in this part contain the official interpretations of the Department of Labor pertaining to the exemptions provided in sections 13(a)(5) and 13(b)(4) of the Fair Labor Standards Act of 1938, as amended. It is intended that the positions stated will serve as "a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" (Skidmore v. Swift, 323 U.S. 134, 138). These interpretations indicate the construction of the law which the Secretary of Labor and the Administrator believe to be correct and which will guide them in the performance of their duties under the Act, unless and until they are otherwise directed by authoritative decisions of the courts or conclude upon the re-examination of an interpretation that it is incorrect. The interpretations contained herein may be relied upon in accordance with section 10 of the Portal-to-Portal Act (29 U.S.C. 251-262), so long as they remain effective and are not modified, amended, rescinded, or determined by judicial authority to be incorrect.

§ 784.5 Basic support for interpretations.

The ultimate decisions on interpretations of the Act are made by the courts (Mitchell v. Zachry, 362 U.S. 310; Kirschbaum v. Walling, 316 U.S. 517). Court decisions supporting interpretations contained in this part are cited where it is believed they may be helpful. On matters which have not been determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (Skidmore v. Swift, 323 U.S. 134). In order that these positions may be made known to persons who may be affected by them, official interpretations are issued by the Administrator on the advice of the Solicitor of Labor, as authorized by the Secretary (Reorganization Plan 6 of 1950, 64 Stat. 1263; Gen. Ord. 45A, May 24, 1950; 15 F.R. 3290). As included in the regulations in this part, these interpretations are believed to express the intent of the law as reflected in its provisions and as construed by the courts and evidenced by its legislative history. References to pertinent legislative history are made in this part where it appears that they will contribute to a better understanding of the interpretations.

§ 784.6 Interpretations made, continued, and superseded by this part.

On and after publication of this Part 784 in the FEDERAL REGISTER, the interpretations contained therein shall be in effect and shall remain in effect until they are modified, rescinded or withdrawn. This part supersedes and replaces the interpretations previously published in the FEDERAL REGISTER and Code of Federal Regulations as Part 784 of this chapter. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Fair Labor Standards Act as amended by the Fair Labor Standards Amendments of 1961 are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn. The interpretations in this part provide statements of general principles applicable to the subjects discussed and illustrations of the application of these principles to situations that frequently arise. They do not and cannot refer specifically to every problem which may be met by employers and employees in the application of the Act. The omission to discuss a particular problem in this part or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy. Questions on matters not fully covered by this part may be addressed to the Administrator of the Wage and Hour and Public Contracts Divisions, United States Department of Labor, Washington 25, D.C., or to any Regional Office of the Divisions.

SOME BASIC DEFINITIONS

§ 784.7 Definition of terms used in the Act.

The meaning and application of the provisions of law discussed in this part depend in large degree on the definitions of terms used in these provisions. The Act itself defines some of these terms. Others have been defined and construed in decisions of the courts. In the following sections some of these basic definitions are set forth for ready reference in connection with the part's discussion of the various provisions in which they appear. These definitions and their application are further considered in other interpretative bulletins to which reference is made, and in the sections of this part where the particular provisions containing the defined terms are discussed.

§ 784.8 "Employer", "employee", and "employ".

The Act's major provisions impose certain requirements and prohibitions on every "employer" subject to their terms. The employment by an "employer" of an "employee" is, to the extent specified in the Act, made subject to minimum wage and overtime pay requirements and to prohibitions against the employment of oppressive child labor. The Act provides its own definitions of "employer", "employee", and "employ", under which "economic reality" rather than "technical concepts" determines whether there is employment subject to its terms (Goldberg v. Whitaker House Cooperative, 366 U.S. 28; United States v. Silk, 331 U.S. 704; Rutherford Food Corp. v. McComb, 331 U.S. 772). An "employer", as defined in section 3(d) of the Act, "includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization". An "employee", as defined in section 3(e) of the Act, "includes any individual employed by an employer", and "employ", as used in the Act, is defined in section 3(g) to include "to suffer or permit to work". It should be noted, as explained in Part 791 of this chapter, dealing with joint employment, that in appropriate circumstances two or more employers may be jointly responsible for compliance with the statutory requirements applicable to employment of a particular employee. It should also be noted that "employer", "enterprise", and "establishment" are not synonymous terms, as used in the Act. An employer may have an enterprise with more than one establishment, or he may have more than one enterprise, in which he employs employees within the meaning of the Act. Also, there may be different employers who employ employees in a particular establishment or enterprise.

§ 784.9 "Person".

As used in the Act (including the definition of "enterprise" set forth below in § 784.10), "person" is defined as meaning "an individual, partnership, association,

corporation, business trust, legal representative, or any organized group of persons" (Act, section 3(a)).

§ 784.10 "Enterprise".

The term "enterprise" which may, in some situations, be pertinent in determining coverage of this Act to employees employed by employers engaged in the procurement, processing, or distribution of aquatic products, is defined in section 3(r) of the Act. Section 3(r) states:

Enterprise means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor * * *.

The scope and application of this definition is discussed in Part 776 of this chapter and in §§ 779.200-779.235 of this chapter.

§ 784.11 "Establishment".

As used in the Act (including the provision quoted below in § 784.12), the term "establishment", which is not specially defined therein, refers to a "distinct physical place of business" rather than to "an entire business or enterprise" which may include several separate places of business. This is consistent with the meaning of the term as it is normally used in business and in government, is judicially settled, and has been recognized in the Congress in the course of enactment of amendatory legislation (Phillips v. Walling, 324 U.S. 490; Mitchell v. Bekins Van & Storage Co., 352 U.S. 1027; 95 Cong. Rec. 12505, 12579, 14877; H. Rept. No. 1455, 81st Cong., 1st Sess., p. 25). This is the meaning of the term as used in sections 3(r), 3(s), and 6(b) of the Act.

§ 784.12 "Enterprise engaged in commerce or in the production of goods for commerce".

Portions of the definition of "enterprise engaged in commerce or in the production of goods for commerce" (Act, section 3(s)) which may in some situations determine the application of provisions of the Act to employees employed by employers engaged in the procurement, processing, or distribution of aquatic products are as follows:

(s) "Enterprise engaged in commerce or in the production of goods for commerce" means any of the following in the activities of which employees are so engaged, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person:

(3) any establishment of any such enterprise * * * which has employees engaged in commerce or in the production of goods for commerce if the annual gross volume of sales of such enterprise is not less than \$1,000,000.

Provided, That an establishment shall not be considered to be an enterprise engaged in commerce or in the production of goods

for commerce, or a part of an enterprise engaged in commerce or in the production of goods for commerce, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection, if the only employees of such establishment are the owner thereof or persons standing in the relationship of parent, spouse, or child of such owner.

The application of this definition is considered in Part 776 of this chapter.

§ 784.13 "Commerce".

"Commerce" as used in the Act includes interstate and foreign commerce. It is defined in section 3(b) of the Act to mean "trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof." (For the definition of "State", see § 784.16.) The application of this definition and the kinds of activities which it includes are discussed at length in Part 776 of this chapter dealing with the general coverage of the Act.

§ 784.14 "Production".

To understand the meaning of "production" of goods for commerce as used in the Act it is necessary to refer to the definition in section 3(j) of the term "produced". A detailed discussion of the application of the term as defined is contained in Part 776 of this chapter, dealing with the general coverage of the Act. Section 3(j) provides that "produced" as used in the Act "means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State." (For the definition of "State" see § 784.16.)

§ 784.15 "Goods".

The definition in section 3(i) of the Act states that "goods", as used in the Act, means "goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof." Part 776 of this chapter, dealing with the general coverage of the Act, contains a detailed discussion of the application of this definition and what is included in it.

§ 784.16 "State".

As used in the Act, "State" means "any State of the United States or the District of Columbia or any Territory or possession of the United States" (Act, section 3(c)). The application of this definition in determining questions of coverage under the Act's definition of "commerce" and "produced" (see

§§ 784.13, 784.14) is discussed in Part 776 of this chapter, dealing with general coverage.

§ 784.17 "Regular rate".

As explained in Part 778 of this chapter, dealing with overtime compensation, employees subject to the overtime pay provisions of the Act must generally receive for their overtime work in any workweek as provided in the Act not less than one and one-half times their regular rates of pay. Section 7(d) of the Act defines the term "regular rate" "to include all remuneration for employment paid to, or on behalf of, the employee" except certain payments which are expressly described in and excluded by the statutory definition. This definition, which is discussed at length in Part 778 of this chapter, determines the regular rate upon which time and one-half overtime compensation must be computed under section 7(a) of the Act for employees within its general coverage who are not exempt from the overtime provisions under either of the fishery and seafood exemptions provided by sections 13(a) (15) and 13(b) (4) or under some other exemption contained in the Act. It should be noted that if such an employee is not himself engaged in commerce or in the production of goods for commerce as defined by the Act and in the courts, and is within the Act's coverage only by reason of his employment in an enterprise engaged in commerce or in the production of goods for commerce, under the amendments to the Act effective on September 3, 1961, there is no obligation to pay overtime to him until September 3, 1963, as explained below in § 784.25.

APPLICATION OF COVERAGE AND EXEMPTION PROVISIONS OF THE ACT

§ 784.18 Basic coverage in general.

Except as otherwise provided in specific exemptions, the minimum wage, overtime pay, and child labor standards of the Act are generally applicable to employees who engage in specified activities concerned with interstate or foreign commerce. The employment of oppressive child labor in or about establishments producing goods for such commerce is also restricted by the Act. Beginning on September 3, 1961, the monetary and child labor standards of the Act are also generally applicable to other employees, not specifically exempted, who are employed in specified enterprises engaged in such commerce or in the production of goods for such commerce. The monetary standards applicable to all the foregoing employees, covered under the provisions discussed below in §§ 784.19 and 784.20, are explained subsequently in §§ 784.23 to 784.25 of this Subpart A. The employer must observe these monetary standards with respect to all such employees in his employ except those who may be denied one or both of these benefits by virtue of some specific exemption provision of the Act, such as section 13(a) (5) or 13(b) (4). It should be noted that enterprises having employees subject to these exemptions may also have other employees who may be exempt under section 13(a) (1) of the Act, subject to conditions

specified in regulations, as employees employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman. The regulations governing these exemptions are set forth and explained in Part 541 of this chapter.

§ 784.19 Commerce activities of employees.

The Fair Labor Standards Act has applied since 1938 to all employees, not specifically exempted, who are engaged (a) in interstate or foreign commerce or (b) in the production of goods for such commerce, which is defined to include any closely related process or occupation directly essential to such production (29 U.S.C. 206(a), 207(a); and see §§ 784.13 to 784.16 for definitions governing the scope of this coverage). The Act as amended in 1961 continues this coverage. In general, employees of businesses concerned with fisheries and with operations on seafood and other aquatic products are engaged in interstate or foreign commerce, or in the production of goods for such commerce, as defined in the Act, and are subject to the Act's provisions except as otherwise provided in sections 13(a)(5) and 13(b)(4) or other express exemptions. A detailed discussion of the activities in commerce or in the production of goods for commerce which will bring an employee under the Act is contained in Part 776 of this chapter, dealing with general coverage.

§ 784.20 Commerce activities of enterprise in which employee is employed.

Under amendments to the Fair Labor Standards Act effective September 3, 1961 (Pub. Law 87-30, 75 Stat. 65), employees not covered by reason of their personal engagement in interstate commerce activities, as explained in § 784.19, are nevertheless brought within the coverage of the Act if they are employed in an enterprise which is defined in section 3(s) of the Act as an enterprise engaged in commerce or in the production of goods for commerce, or by an establishment described in section 3(s)(3) of the Act (see § 784.12.) Such employees, if not exempt from minimum wages and overtime pay under section 13(a)(5) or exempt from overtime pay under section 13(b)(4), will have to be paid in accordance with these monetary standards of the Act unless expressly exempt under some other provision. This would generally be true of employees employed in enterprises and by establishments engaged in the procurement, processing, marketing or distribution of seafood and other aquatic products, where the enterprise has an annual gross sales volume of \$1,000,000 or more. Enterprise coverage is more fully discussed in Part 776 of this chapter, dealing with general coverage.

§ 784.21 Exemptions from the Act's provisions.

The Act provides a number of specific exemptions from the general requirements previously described. Some are exemptions from the overtime provisions only. Others are from the child labor provisions only. Several are exemptions

from both the minimum wage and the overtime requirements of the Act. Finally, there are some exemptions from all three—minimum wage, overtime pay, and child labor requirements. An examination of the terminology in which the exemptions from the general coverage of the Fair Labor Standards Act are stated discloses language patterns which reflect congressional intent. Thus, Congress specified in varying degree the criteria for application of each of the exemptions and in a number of instances differentiated as to whether employees are to be exempt because they are employed by a particular kind of employer, employed in a particular type of establishment, employed in a particular industry, employed in a particular capacity or occupation, or engaged in a specified operation. (See 29 U.S.C. 203(d); 207(b), (c), (h); 213(a), (b), (c), (d). And see *Addison v. Holly Hill*, 322 U.S. 607; *Mitchell v. Trade Winds, Inc.*, 289 F. 2d 278; *Mitchell v. Stinson*, 217 F. 2d 210.) In general, there are no exemptions from the child labor requirements that apply in enterprises or establishments engaged in fishing or in operations on aquatic products see Part 4, Subpart G of this Title). Such enterprises or establishments will, however, be concerned with the exemption from overtime pay in section 13(b)(4) of the Act for employees employed in specified "on-shore" operations (see § 784.101) and the exemption from minimum wages and overtime pay provided by section 13(a)(5) for employees employed in fishing, fish-farming, and other specified "off-shore" operations on aquatic products. These exemptions, which are subject to the general rules stated in § 784.22, are discussed at length in Subpart B of this Part 784.

§ 784.22 Guiding principles for applying coverage and exemption provisions.

It is clear that Congress intended the Fair Labor Standards Act to be broad in its scope. "Breadth of coverage is vital to its mission" (*Powell v. U.S. Cartridge Co.*, 339 U.S. 497). An employer who claims an exemption under the Act has the burden of showing that it applies (*Walling v. General Industries Co.*, 330 U.S. 545; *Mitchell v. Kentucky Finance Co.*, 359 U.S. 290; *Tobin v. Blue Channel Corp.*, 198 F. 2d 245, approved in *Mitchell v. Myrtle Grove Packing Co.*, 350 U.S. 891; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52). Conditions specified in the language of the Act are "explicit prerequisites to exemption" (*Arnold v. Kanowsky*, 361 U.S. 388). In their application, the purpose of the exemption as shown in its legislative history as well as its language should be given effect. However, "the details with which the exemptions in this Act have been made preclude their enlargement by implication" and "no matter how broad the exemption, it is meant to apply only to" the specified activities (*Addison v. Holly Hill*, 322 U.S. 607; *Maneja V. Walalua*, 349 U.S. 254). Exemptions provided in the Act "are to be narrowly construed against the employer seeking to assert them" and their application limited to

those who come "plainly and unmistakably within their terms and spirit." This construction of the exemptions is necessary to carry out the broad objectives for which the Act was passed (*Phillips v. Walling*, 324 U.S. 490; *Mitchell v. Kentucky Finance Co.*, supra; *Arnold v. Kanowsky*, supra; *Calaf v. Gonzalez*, 127 F. 2d 934; *Bowie v. Gonzalez*, 117 F. 2d 11; *Mitchell v. Stinson*, 217 F. 2d 210; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52).

§ 784.23 Minimum wages and overtime pay for "old" and "new" coverage.

Under the Act as amended in 1961, an employer may have some employees subject to its minimum wage, overtime pay, or child labor provisions who would be covered by such provisions under the "old" law even if the amendments had not been enacted, and other employees whose coverage under such provisions was provided for the first time by the 1961 amendments. As previously explained, such provisions of the Act, as amended, may apply to an employee by reason of the activities in which he is individually engaged, or because he is employed in an enterprise whose activities satisfy the conditions prescribed in the law. However, the minimum wage rates and overtime pay provisions will not be uniform for all such employees until September 3, 1965. On and after that date, every such employee subject to the minimum wage provisions will be entitled to not less than \$1.25 an hour and every such employee subject to the overtime provisions will be entitled to overtime pay for all hours worked in excess of 40 in a workweek at a rate not less than one and one-half times his regular rate of pay. In contrast, during the period beginning with the effective date of the 1961 amendments on September 3, 1961 and ending September 2, 1965, the minimum wage rates applicable to employees subject to the minimum wage provisions, and the overtime pay provisions applicable to such employees who are not specifically exempt therefrom, will be different for employees in employment brought under the Act for the first time by the amendments than for employees whose coverage may be based on the "old" provisions of the Act. During this period employees whose coverage depends on the "new" provisions may be paid a lower minimum wage rate than those covered under the "old" provisions and may be employed for a longer workweek without overtime pay, as specified in the Act. Accordingly, employers who do not wish to pay to all covered employees the minimum wages and overtime pay required for employees covered under the "old" provisions will need to identify those employees who are covered under the "old" and those who are covered under the "new" provisions when wages are computed and paid under the Act.

§ 784.24 Pay standards for employees subject to "old" coverage of the Act.

The 1961 amendments did not change the tests described in § 784.20 by which coverage based on the employee's individual activities is determined. Any

employee whose employment satisfies these tests and would not have come within some exemption (such as section 13(a)(5)) in the Act prior to the 1961 amendments is subject to the "old" provisions of the law and entitled to a minimum wage of at least \$1.15 an hour beginning September 3, 1961 and not less than \$1.25 an hour beginning September 3, 1963 (29 U.S.C. 206(a)(1)), unless expressly exempted by some provision of the amended Act. Such an employee is also entitled to overtime pay for hours worked in excess of 40 in any workweek at a rate not less than one and one-half times his regular rate of pay (29 U.S.C. 207(a)(1)), unless expressly exempt from overtime by some exemption such as section 13(b)(4). (Minimum wage rates in Puerto Rico, the Virgin Islands, and American Samoa are governed by special provisions of the Act (29 U.S.C. 206(a)(3); 206(c).) Information on these rates is available at any office of the Wage and Hour and Public Contracts Divisions.

§ 784.25 Pay standards for "newly covered" employees.

There are some employees whose individual activities would not bring them within the minimum wage or overtime pay provisions of the Act as it was prior to the 1961 amendments, but who are brought within minimum wage or overtime coverage or both for the first time by the new "enterprise" coverage provisions or changes in exemptions, or both, which were enacted as part of the amendments and made effective September 3, 1961. Typical of such employees are those who, regardless of any engagement in commerce or in the production of goods for commerce, were exempt from minimum wages as well as overtime pay by virtue of section 13(a)(5) of the Act until the 1961 amendments, but who by virtue of these amendments are exempt only from overtime pay on and after September 3, 1961, under the amended section 13(d)(4) of the Act. These "newly covered" employees for whom no specific exemption has been retained or provided in the amendments must be paid not less than the minimum wages for hours worked and unless exempted by section 13(d)(4) or some other provision, not less than one and one-half times their regular rates of pay (see § 784.18) for overtime, as shown in the following schedule:

Beginning:	Minimum wage (29 U.S.C. 206(b))	Overtime pay (29 U.S.C. 207(a)(2))
Sept. 3, 1961----- Sept. 3, 1963-----	\$1 an hour----- No change-----	None required, After 44 hours in a workweek.
Sept. 3, 1964-----	\$1.15 an hour-----	After 42 hours in a workweek.
Sept. 3, 1965 ¹ ----- and thereafter.	\$1.25 an hour-----	After 40 hours in a workweek.

¹ Requirements identical to those for employees under "old" coverage. (Minimum wage rates for newly covered employees in Puerto Rico, the Virgin Islands, and American Samoa are set by wage order or recommendations of special industry committees (29 U.S.C. 206(a)(3); 206(c)(2)). Information on these rates may be obtained at any Office of the Wage and Hour and Public Contracts Divisions.)

Subpart B—Exemption Provisions Relating to Fishing and Aquatic Products

THE STATUTORY PROVISIONS

§ 784.100 The section 13(a)(5) exemption.

Section 13(a)(5) grants an exemption from both the minimum wage and the overtime requirements of the Act and applies to "any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing of such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee."

§ 784.101 The section 13(b)(4) exemption.

Section 13(b)(4) grants an exemption only from the overtime requirements of the Act and applies to "any employee employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof."

LEGISLATIVE HISTORY OF EXEMPTIONS

§ 784.102 General legislative history.

(a) As originally enacted in 1938, the Fair Labor Standards Act provided an exemption from both the minimum wage requirements of section 6 and the overtime pay requirements of section 7 which was made applicable to "any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or byproducts thereof" (52 Stat. 1060, sec. 13(a)(5)).

(b) In 1949 the minimum wage was extended to employees employed in canning such products by deleting the word "canning" from the above exemption, adding the parenthetical phrase "(other than canning)" after the word "processing" therein, and providing a new exemption in section 13(b)(4), from overtime pay provisions only, applicable to "any employee employed in the canning of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof". All other employees included in the original minimum wage and overtime exemption remained within it (63 Stat. 910).

(c) By the Fair Labor Standards Amendments of 1961, effective September 3, 1961 (75 Stat. 65), both these exemptions were further revised to read as set forth in §§ 784.100 and 784.101.

The effect of this change was to provide a means of equalizing the application of the Act as between canning employees and employees employed in other processing, marketing, and distributing of aquatic products on shore, to whom minimum wage protection, formerly provided only for canning employees, was extended by this action. The 1961 amendments, however, left employees employed in fishing, in fish farming, and in related occupations concerned with procurement of aquatic products from nature, under the existing exemption from minimum wages as well as overtime pay.

§ 784.103 Adoption of the exemption in the original 1938 Act.

Although in the course of consideration of the legislation in Congress before passage in 1938, provisions to exempt employment in fisheries and aquatic products activities took various forms, section 13(a)(5), as drafted by the conference committee and finally approved, followed the language of an amendment adopted during consideration of the bill by the House of Representatives on May 24, 1938, which was proposed by Congressman Bland of Virginia. He had, earlier on the same day, offered an amendment which had as its objective the exemption of the "fishery industry", broadly defined. This amendment had been defeated (83 Cong. Rec. 7408), as had an amendment subsequently offered by Congressman Mott of Oregon (to a pending amendment proposed by Congressman Coffee of Nebraska) which would have provided an exemption for "industries engaged in producing, processing, distributing, or handling * * * fishery or seafood products which are seasonal or perishable" (83 Cong. Rec. 7421-7423). Against this background, when Congressman Bland offered his amendment which ultimately became section 13(a)(5) of the Act he took pains to explain: "This amendment is not the same. In the last amendment I was trying to define the fishery industry. I am now dealing with those persons who are exempt, and I call the attention of the Committee to the language with respect to the employment of persons in agriculture * * * I am only asking for the seafood and fishery industry that which has been done for agriculture." It was after this explanation that the amendment was adopted (83 Cong. Rec. 7443). When the conference committee included in the final legislation this provision from the House bill, it omitted from the bill another House provision granting an hours exemption for "employees in any place of employment" where the employer was "engaged in the processing of or in canning fresh fish or fresh seafood" and the provision of the Senate bill providing an hours exemption for employees "employed in connection with" the canning or other packing of fish, etc. (see *Mitchell v. Stinson*, 217 F. 2d 210; *McComb v. Consolidated Fisheries*, 75 F. Supp. 798). The indication in this legislative history that the exemption in its final form was intended to depend upon the employment of the particular employee in the

specified activities is in accord with the position of the Department of Labor and the weight of judicial authority.

§ 784.104 The 1949 amendments.

In deleting employees employed in canning aquatic products from the section 13(a)(5) exemption and providing them with an exemption in like language from the overtime provisions only in section 13(b)(4), the conferees on the Fair Labor Standards Amendments of 1949 did not indicate any intention to change in any way the category of employees who would be exempt as "employed in the canning of" the aquatic products. As the Supreme Court has pointed out in a number of decisions, "When Congress amended the Act in 1949 it provided that pre-1949 rulings and interpretations by the Administrator should remain in effect unless inconsistent with the statute as amended 63 Stat. 920" (*Mitchell v. Kentucky Finance Co.*, 359 U.S. 290). In connection with this exemption the conference report specifically indicates what operations are included in the canning process (see § 784.143). In a case decided before the 1961 amendments to the Act, this was held to "indicate that Congress intended that only those employees engaged in operations physically essential in the canning of fish, such as cutting the fish, placing it in cans, labelling and packing the cans for shipment are in the exempt category" (*Mitchell v. Stinson*, 217 F. 2d 210).

§ 734.105 The 1961 amendments.

(a) The statement of the Managers on the Part of the House in the conference report on the Fair Labor Standards Amendments of 1961 (H. Rep. No. 327, 87th Cong., 1st Sess., p. 16) refers to the fact that the changes made in sections 13(a)(5) and 13(b)(4) originated in the Senate amendment to the House bill and were not in the bill as passed by the House. In describing the Senate provision which was retained in the final legislation, the Managers stated that it "changes the exemption in the act for" the operations transferred to section 13(b)(4) from section 13(a)(5) "from a minimum wage and overtime exemption to an overtime only exemption." They further stated: "The present complete exemption is retained for employees employed in catching, propagating, taking, harvesting, cultivating, or farming fish and certain other marine products, or in the first processing, canning, or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by such an employee." In the report of the Senate committee on the provision included in the Senate bill (S. Rep. No. 145, 87th Cong., 1st Sess., p. 33), the committee stated: "The bill would modify the minimum wage and overtime exemption in section 13(a)(5) of the act for employees engaged in fishing and in specified activities on aquatic products." In further explanation, the report states that the bill would amend this section "to remove

from this exemption those so-called on-shore activities and leave the exemption applicable to 'offshore' activities connected with the procurement of the aquatic products, including first processing, canning or packing at sea performed as an incident to fishing operations, as well as employment in loading and unloading such products for shipment when performed by any employee engaged in these procurement operations." It is further stated in the report that "persons who are employed in the activities removed from the section 13(a)(5) exemption will have minimum wage protection but will continue to be exempt from the Act's overtime requirements under an amended section 13(b)(4). The bill will thus have the effect of placing fish processing and fish canning on the same basis under the Act. There is no logical reason for treating them differently and their inclusion within the Act's protection is desirable and consistent with its objectives."

(b) The language of the Managers on the Part of the House in the conference report and of the Senate committee in its report, as quoted above, is consistent with the position supported by the earlier legislative history and by the courts, that the exemption of an employee under these provisions of the Act depends on what he does. The Senate report speaks of the exemption "for employees engaged in fishing and in specified activities" and of the "activities now enumerated in this section". While this language confirms the legislative intent to continue to provide exemptions for employees employed in specified activities rather than to grant exemption on an industry, employer, or establishment basis (see *Mitchell v. Trade Winds, Inc.*, 289 F. 2d 278), the report also refers with apparent approval to certain prior judicial interpretations indicating that the list of activities set out in the exemption provisions is intended to be "a complete catalog of the activities involved in the fishery industry" and that an employee, to be exempt, need not engage directly in the physical acts of catching, processing, canning, etc. of aquatic products which are included in the operations specifically named in the statute (*McComb v. Consolidated Fisheries Co.*, 174 F. 2d 74). It was stated that an interpretation of section 13(a)(5) and section 13(b)(4) which would include within their purview "any employee who participates in activities which are necessary to the conduct of the operations specifically described in the exemptions" is "consistent with the congressional purpose" of the 1961 amendments. (See Sen. Rep. No. 145, 87th Cong., 1st sess., p. 33; Statement of Representative Roosevelt, 107 Cong. Rec. (daily ed.) p. 6716, as corrected May 4, 1961.) From this legislative history the intent is apparent that the application of these exemptions under the Act as amended in 1961 is to be determined by the practical and functional relationship of the employee's work to the performance of the operations specifically named in section 13(a)(5) and section 13(b)(4).

PRINCIPLES APPLICABLE TO THE TWO EXEMPTIONS

§ 784.106 Relationship of employee's work to the named operations.

It is clear from the language of section 13(a)(5) and section 13(b)(4) of the Act, and from their legislative history as discussed in §§ 784.102-784.105, that the exemptions which they provide are applicable only to those employees who are "employed in" the named operations. Under the Act as amended in 1961 and in accordance with the evident legislative intent (see § 784.105), an employee will be considered to be "employed in" an operation named in section 13(a)(5) or 13(b)(4) where his work is an essential and integrated step in performing such named operation (see *Mitchell v. Myrtle Grove Packing Co.*, 350 U.S. 891, approving *Tobin v. Blue Channel Corp.*, 198 F. 2d 245; *Mitchell v. Stinson*, 217 F. 2d 210), or where the employee is engaged in activities which are functionally so related to a named operation under the particular facts and circumstances that they are necessary to the conduct of such operation and his employment is, as a practical matter, necessarily and directly a part of carrying on the operation for which exemption was intended (*Mitchell v. Trade Winds, Inc.*, 289 F. 2d 278; see also *Waller v. Humphreys*, 133 F. 2d 193 and *McComb v. Consolidated Fisheries Co.*, 174 F. 2d 74). Under these principles, generally an employee performing functions without which the named operations could not go on is, as a practical matter, "employed in" such operations. It is also possible for an employee to come within the exemption provided by section 13(a)(5) or section 13(b)(4) even though he does not directly participate in the physical acts which are performed on the enumerated marine products in carrying on the operations which are named in that section of the Act. However, it is not enough to establish the applicability of such an exemption that an employee is hired by an employer who is engaged in one or more of the named operations or that the employee is employed by an establishment or in an industry in which operations enumerated in section 13(a)(5) or section 13(b)(4) are performed. The relationship between what he does and the performance of the named operations must be examined to determine whether an application of the above-stated principles to all the facts and circumstances will justify the conclusion that he is "employed in" such operations within the intent of the exemption provision.

§ 784.107 Relationship of employee's work to operations on the specified aquatic products.

It is also necessary to the application of the exemptions that the operations of which the employee's work is a part be performed on the marine products named in the Act. Thus, the operations described in section 13(a)(5) must be performed with respect to "any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life". The operations

enumerated in section 13(b) (4) must be performed with respect to "any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any by-product thereof". Work performed on products which do not fall within these descriptions is not within the exemptions (Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52; Mitchell v. Trade Winds, Inc., 289 F. 2d 278; Walling v. Haden, 153 F. 2d 196).

§ 784.108 Operations not included in named operations on forms of aquatic "life".

Since the subject matter of the exemptions is concerned with "aquatic forms of animal and vegetable life", the courts have held that the manufacture of buttons from clam shells or the dredging of shells to be made into lime and cement are not exempt operations because the shells are not living things (Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52; Walling v. Haden, 153 F. 2d 196, certiorari denied 328 U.S. 866). Similarly, the production of such items as crushed shell and grit, shell lime, pearl buttons, knife handles, novelties, liquid glue, isinglass, pearl essence and fortified or refined fish oil is not within these exemptions.

§ 784.109 Manufacture of supplies for named operations is not exempt.

Employment in the manufacture of supplies for the named operations is not employment in the named operations on aquatic forms of life. Thus, the exemption is not applicable to the manufacture of boxes, barrels, or ice by a seafood processor for packing or shipping its seafood products or for use of the ice in its fishing vessels. These operations, when performed by an independent manufacturer, would likewise not be exempt (Dize v. Maddrix, 144 F. 2d 284 (C.A. 4), affirmed 324 U.S. 697, and approved on this point in Farmers' Reservoir Co. v. McComb, 337 U.S. 755).

§ 784.110 Performing operations both on nonaquatic products and named aquatic products.

By their terms, sections 13(a) (5) and 13(b) (4) provide no exemption with respect to operations performed on any products other than the aquatic products named in these subsections (see § 784.107). Accordingly, neither of the exemptions is applicable to the making of any commodities from ingredients only part of which consist of such aquatic products, if a substantial amount of other products is contained in the commodity so produced (compare Walling v. Bridgeman-Russell Co., 6 Labor Cases 61,422, 2 WH Cases 785 (D. Minn.) and Miller v. Litchfield Creamery Co., 11 Labor Cases 63,247, 5 WH Cases 1039 (N.D. Ind.), with Mitchell v. Trade Winds, Inc., 289 F. 2d 278). Thus, the first processing, canning, or processing of codfish cakes, clam chowder, dog food, crabcakes, or livestock food containing aquatic products is often not exempt within the meaning of the relevant exemptions.

§ 784.111 Operations on named products with substantial amounts of other ingredients are not exempt.

To exempt employees employed in first processing, canning, or processing products composed of the named commodities and a substantial amount of ingredients not named in the exemptions would be contrary to the language and purposes of such exemptions which specifically enumerate the commodities on which exempt operations were intended to be performed. Consequently, in such situations all operations performed on the mixed products at and from the time of the addition of the foreign ingredients, including those activities which are an integral part of first processing, canning or processing are non-exempt activities. However, activities performed in connection with such operations on the named aquatic products prior to the addition of the foreign ingredients are deemed exempt operations under the applicable exemption. Where the commodity produced from named aquatic products contains an insubstantial amount of products not named in the exemption, the operations will be considered as performed on the aquatic products and handling and preparation of the foreign ingredients for use in the exempt operations will also be considered as exempt activities.

§ 784.112 Substantial amounts of non-aquatic products; enforcement policy.

As an enforcement policy in applying the principles stated in §§ 784.110 and 784.111, if more than 20 percent of a commodity consists of products other than aquatic products named in section 13(a) (5) or 13(b) (4), the commodity will be deemed to contain a substantial amount of such nonaquatic products.

§ 784.113 Work related to named operations performed in off- or dead-season.

Generally, during the dead or inactive season when operations named in section 13(a) (5) or 13(b) (4) are not being performed on the specified aquatic forms of life, employees performing work relating to the plant or equipment which is used in such operations during the active season are not exempt. Illustrative of such employees are those who repair, overhaul, or recondition fishing equipment or processing or canning equipment and machinery during the off-season periods when fishing, processing, or canning is not going on. An exemption provided for employees employed "in" specified operations is plainly not intended to apply to employees employed in other activities during periods when the specified operations are not being carried on, where their work is functionally remote from the actual conduct of the operations for which exemption is provided and is unaffected by the natural factors which the Congress relied on as reason for exemption. The courts have recognized these principles. See Maneja v. Waialua, 349 U.S. 254; Mitchell v. Stinson, 217 F. 2d 210; Maisonet v. Central Coloso, 6 Labor Cases (CCH) par. 61,337, 2 WH Cases 753 (D. P.R.);

Abram v. San Joaquin Cotton Oil Co., 49 F. Supp. 393 (S.D. Calif.), and Heaburg v. Independent Oil Mill Inc., 46 F. Supp. 751 (W.D. Tenn.). On the other hand, there may be situations where employees performing certain pre-season or post-season activities immediately prior or subsequent to carrying on operations named in section 13(a) (5) or section 13(b) (4) are properly to be considered as employed "in" the named operations because their work is so close in point of time and function to the conduct of the named operations that the employment is, as a practical matter, necessarily and directly a part of carrying on the operation for which exemption was intended. Depending on the facts and circumstances, this may be true, for example, of employees who perform such work as placing boats and other equipment in condition for use at the beginning of the fishing season, and taking the necessary protective measures with respect to such equipment which are required in connection with termination of the named operations at the end of the season. Where such work is integrated with and is required for the actual conduct of the named operations on the specified aquatic forms of life, and is necessarily performed immediately before or immediately after such named operations, the employees performing it may be considered as employed in the named operations, so as to come within the exemption. It should be kept in mind that the relationship between the work of an employee and the named operations which is required for exemption is not necessarily identical with the relationship between such work and the production of goods for commerce which is sufficient to establish its general coverage under the Act. Thus, repair, overhaul, and reconditioning work during the inactive season which does not come within the exemption is nevertheless closely related and directly essential to the production of goods for commerce which takes place during the active season and, therefore, is subject to the provisions of the Act (Farmers' Reservoir Co. v. McComb, 337 U.S. 755; Mitchell v. Stinson, 217 F. 2d 210; Bowie v. Gonzalez, 117 F. 2d 11; Weaver v. Pittsburgh Steamship Co., 153 F. 2d 597, cert. den. 328 U.S. 858).

§ 784.114 Application of exemptions on a workweek basis.

The general rule is that the unit of time to be used in determining the application of the exemption to an employee is the workweek (see Overnight Motor Transportation Co. v. Missel, 316 U.S. 572; Mitchell v. Stinson, 217 F. 2d 210; Mitchell v. Hunt, 263 F. 2d 913; Puerto Rico Tobacco Marketing Co-op. Ass'n. v. McComb, 181 F. 2d 697). Thus, the workweek is the unit of time to be taken as the standard in determining the applicability to an employee of section 13(a) (5) or section 13(b) (4) (Mitchell v. Stinson, supra). An employee's workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It may begin at any hour of any day set

by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing the workweek for the purpose of escaping the requirements of the Act is not permitted. If in any workweek an employee does only exempt work he is exempt from the wage and hours provisions of the Act during that workweek, irrespective of the nature of his work in any other workweek or workweeks. An employee may thus be exempt in one workweek and not the next (see *Mitchell v. Stinson*, supra). But the burden of effecting segregation between exempt and nonexempt work as between particular workweek is on the employer (see *Tobin v. Blue Channel Corp.*, 198 F. 2d 245).

§ 784.115 Exempt and noncovered work performed during the workweek.

The wage and hours requirements of the Act do not apply to any employee during any workweek in which a portion of his activities falls within section 13(a) (5) if no part of the remainder of his activities is covered by the Act. Similarly, the overtime requirements are inapplicable in any workweek in which a portion of an employee's activities falls within section 13(b) (4) if no part of the remainder of his activities is covered by the Act. Covered activities for purposes of the above statements mean engagement in commerce, or in the production of goods for commerce, or in an occupation closely related or directly essential to such production or employment in an enterprise engaged in commerce or in the production of goods for commerce, as explained in §§ 784.17 and 784.18.

§ 784.116 Exempt and nonexempt work in the same workweek.

Where an employee, during any workweek, performs work that is exempt under section 13(a) (5) or 13(b) (4), and also performs nonexempt work, some part of which is covered by the Act, the exemption will be deemed inapplicable unless the time spent in performing nonexempt work during that week is not substantial in amount. For enforcement purposes, nonexempt work will be considered substantial in amount if more than 20 percent of the time worked by the employee in a given workweek is devoted to such work (see *Mitchell v. Stinson*, 217 F. 2d 210). Where exempt and nonexempt work is performed during a workweek by an employee and is not or cannot be segregated so as to permit separate measurement of the time spent in each, the employee will not be exempt (see *Tobin v. Blue Channel Corp.*, 198 F. 2d 245; *Walling v. Public Quick Freezing and Cold Storage Co.*, 62 F. Supp. 924).

§ 784.117 Combinations of exempt work.

The combination of exempt work under sections 13(a) (5) and 13(b) (4), or of one of these sections with exempt work under another section of the Act, is permitted. Where a part of an employee's covered work in a workweek is exempt under section 13(a) (5) and the remainder is exempt under another sec-

tion which grants an exemption from the minimum wage and overtime provisions of the Act, the wage and hours requirements are not applicable. If the scope of the exemption is not the same, however, the exemption applicable to the employee is that provided by whichever exemption provision is more limited in scope unless, of course, the time spent in performing work which is nonexempt under the broader exemption is not substantial. For example, an employee may devote part of his workweek to work within section 13(b) (4) and the remainder to work exempt from both the minimum wage and overtime requirements under another section of the Act. In such a case he must receive the minimum wage but is not required to receive time and one-half for his overtime work during that week (Cf. *Mitchell v. Myrtle Grove Packing Co.*, 350 U.S. 891; *Tobin v. Blue Channel Corp.*, 198 F. 2d 245). Each activity is tested separately under the applicable exemption as though it were the sole activity of the employee for the whole workweek in question. Unless the employee meets all the requirements of each exemption a combination exemption would not be available.

§ 784.118 Work subject to different minimum wage rates in same workweek.

Work subject to different minimum wage rates in the same workweek calls for application of a rule similar to that generally applied where work subject to two exemptions unequal in scope is involved. For example, section 13(b) (4) exempts both employment in canning and employment in processing other than canning of the named marine products from the overtime requirements, but the minimum wage requirements that must be observed for the two operations will not be the same until September 3, 1965. If employed in canning for his entire workweek, an employee will be entitled to the higher minimum wage rate prescribed by section 6(a) of the Act; if employed in processing other than canning throughout the workweek, he will be entitled only to the lower minimum wage rate prescribed by section 6(b). Prior to the 1961 amendments the situation differed only in that the Act provided a minimum wage exemption for the employment in processing other than canning. An employee employed in canning in a particular workweek was entitled to the minimum wage applicable to such employment, however, even where his processing of aquatic products for canning was intermingled in the same workweek with the processing of such products for other purposes (see *Tobin v. Blue Channel Corp.*, 198 F. 2d 245, approved in *Mitchell v. Myrtle Grove Packing Co.*, 350 U.S. 891).

GENERAL CHARACTER AND SCOPE OF THE SECTION 13(a) (5) EXEMPTION

§ 784.119 The exemption is intended for work affected by natural factors.

As indicated by the legislative history, the purpose of the section 13(a) (5) exemption is to exempt from the minimum wage and overtime provisions of the Act employment in those activities in the fishing industry that are controlled or

materially affected by natural factors or elements, such as the vicissitudes of the weather, the changeable conditions of the water, the run of the catch, and the perishability of the products obtained (83 Cong. Rec. 7408, 7443; S. Rep. No. 145, p. 33 on H.R. 3935, 87th Cong., 1st sess.; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52; *Walling v. Haden*, 153 F. 2d 196, certiorari denied 328 U.S. 866).

§ 784.120 Effect of natural factors on named operations.

The various activities enumerated in section 13(a) (5)—the catching, taking, propagating, harvesting, cultivating, or farming of aquatic forms of animal or vegetable life as well as "the going to and returning from work" are materially controlled and affected by the natural elements. Similarly, the activities of "first processing, canning or packing of such marine products at sea as an incident to, or in conjunction with, such fishing operations" are subject to the natural factors mentioned above. The "loading and unloading" of such aquatic products when performed at sea are also subject to the natural forces.

§ 784.121 Application of exemption to "offshore" activities in general.

The expression "offshore activities" is used to describe the category of named operations pertaining to the acquisition from nature of aquatic forms of animal and vegetable life. As originally enacted in 1938, section 13(a) (5) exempted not only employees employed in such "offshore" or "trip" activities but also employees employed in related activities on shore which were similarly affected by the natural factors previously discussed (see § 784.103, and *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52). However, the intent of the 1961 amendments to the Act was to remove from the exemption the so-called onshore activities and "leave the exemption applicable to 'offshore' activities connected with the procurement of the aquatic products" (S. Rep. 145, 87th Cong., 1st sess., p. 33). Despite its comprehensive reach (see §§ 784.105 and 784.106), the exemption, like the similar exemption in the Act for agriculture, is "meant to apply only" to the activities named in the statute (see *Maneja v. Waialua*, 349 U.S. 254; *Farmers Reservoir Co. v. McComb*, 337 U.S. 755).

§ 784.122 Exempt fisheries operations.

Employees engaged in the named operations, such as "catching" or "taking," are clearly exempt. As indicated in § 784.106, employees engaged in activities that are "directly and necessarily a part of" an enumerated operation are also exempt (*Mitchell v. Trade Winds, Inc.*, 289 F. 2d 278). The "catching, taking, propagating, harvesting, cultivating, or farming" of the various forms of aquatic life includes not only the actual performance of the activities, but also the usual duties inherent in the occupations of those who perform the activities. Thus, the fisherman who is engaged in "catching" and "taking" must see to it that his lines, nets, seines, traps, and other equipment are not fouled and are in working order. He may also have to

mend or replace his lines or nets or repair or construct his traps. Such activities are an integral part of the operations of "catching" and "taking" of an aquatic product.

§ 784.123 Operations performed as an integrated part of fishing.

Certain other activities performed on a fishing vessel in connection with named operations are, functionally and as a practical matter, directly and necessarily a part of such operations. For example, maintenance work performed by members of the fishing crew during the course of the trip on the fishing boat would necessarily be a part of the fishing operation, since the boat itself is as much a fishing instrument as the fishing rods or nets. Similarly, work required on the vessel to keep in good operating condition any equipment used for processing, canning or packing the named aquatic products at sea is so necessary to the conduct of such operations that it must be considered a part of them and exempt.

§ 784.124 Operations performed on fishing equipment.

On the principle stated in § 784.122, the replacement, repair, mending, or construction of the fisherman's equipment performed at the place of the fishing operation would be exempt. Such activities performed in contemplation of the trip are also within the exemption if the work is so closely related both in point of time and function to the acquisition of the aquatic life that it is really a part of the fishing operation or of "going to * * * work." For example, under appropriate facts, the repair of the nets, or of the vessel, or the building of fish trap frames on the shore immediately prior to the opening of the fishing season would be within the exemption. Activities at the termination of a fishing trip which are similarly related in time and function to the actual conduct of fishing operations or "returning from work" may be within the exemption on like principles. Similarly, the fact that the exemption is intended generally for "offshore" activities does not mean that it may not apply to employment in other activities performed on shore which are so integrated with the conduct of actual fishing operations and functionally so necessary thereto that the employment is, in practical effect, directly and necessarily a part of the fishing operations for which the exemption is intended. In such circumstances the exemption will apply, for example, to an employee employed by a vessel owner to watch the fishing vessel, its equipment, and the catch when it comes to port, check the mooring lines, operate bilge pumps and heating and cooling systems on the vessel, and assist in the loading and unloading of the fishing equipment and the catch. Work of the kinds referred to may be exempt when performed by the fisherman himself or by some other employee of the fishing organization. However, the exemption would not apply to employees of a manufacturer of supplies or to employees of independent shops which repair boats and equipment (Dize v.

Maddrix, 144 F. 2d 584, affirmed 324 U.S. 697).

§ 784.125 Going to and returning from work.

The phrase "including the going to and returning from work" relates to the preceding named operations which pertain to the procuring and appropriation of seafood and other forms of aquatic life from nature. The expression obviously includes the time spent by fishermen and others who go to and from the fishing grounds or other locations where the aquatic life is reduced to possession. If going to work requires fishermen to prepare and carry the equipment required for the fishing operation, this would be included within the exemption. In performing such travel the fishermen may be required to row, guide or sail the boat or otherwise assist in its operation. Similarly, if an employee were digging for clams or other shellfish or gathering seaweed on the sand or rocks it might be necessary to drive a truck or other vehicle to reach his destination. Such activities are exempt within the meaning of this language. However, the phrase does not apply to employees who are not employed in the activities involved in the acquisition of aquatic animal or vegetable life, such as those going to or returning from work at processing or refrigerator plants or wholesale establishments.

§ 784.126 Loading and unloading.

The term "loading and unloading" applies to activities connected with the removal of aquatic products from the fishing vessel and their initial movement to markets or processing plants. The term, however, is not without limitation. The statute by its clear language makes these activities exempt only when performed by any employee employed in the procurement activities enumerated in section 13(a)(5). This limitation is confirmed by the legislative history of the 1961 amendments which effectuated this change in the application of this term (S. Rep. 145, 87th Cong., 1st sess., p. 33). Consequently, members of the fishing crew engaged in loading and unloading the catch of the vessel to another vessel at sea or at the dockside would be engaging in exempt activities within the meaning of section 13(a)(5). On the other hand, dock workers performing the same kind of tasks would not be within the exemption.

§ 784.127 Operation of the fishing vessel.

In extending the minimum wage to seamen on American vessels by limiting the exemption from minimum wages and overtime provided by section 13(a)(14) of the Act to "any employee employed as a seaman on a vessel other than an American vessel," and at the same time extending the minimum wage to "on-shore" but not "offshore" operations concerned with aquatic products, the Congress, in the 1961 amendments to the Act, did not indicate any intent to remove the crews of fishing vessels engaged in operations named in section 13(a)(5) from the exemption provided by that section. The exemption provid-

ed by section 13(a)(14), above noted, and the general exemption in section 13(b)(6) from overtime for "any employee employed as a seaman" (whether or not on an American vessel) apply, in general, to employees, working aboard vessels, whose services are rendered primarily as an aid to navigation. It appears, however, that it is not the custom or practice in the fishing industry for a fishing vessel to have two crews namely a fishing crew whose duty it is primarily to fish and to perform other duties incidental thereto and a navigational crew whose duty it is primarily to operate the boat. Where, as is the typical situation, there is but one crew which performs all these functions, the section 13(a)(5) exemption would apply to its members. For a further explanation of the seaman's exemption see Part 783 of this chapter.

§ 784.128 Office and clerical employees under section 13(a)(5).

Office and clerical employees, such as bookkeepers, stenographers, typists, and others who perform general office work of a firm engaged in operating fishing boats are not for that reason within the section 13(a)(5) exemption. Under the principles stated in § 784.106, their general office activities are not a part of any of the named operations even when they are selling, taking and putting up orders, or recording sales, taking cash or making telephone connections for customer or dealer calls. Employment in the specific activities enumerated in the preceding sentence would ordinarily, however, be exempt under section 13(b)(4) since such activities constitute "marketing" or "distributing" within the meaning of that exemption (see § 784.157). In certain circumstances, office or clerical employees may come within the section 13(a)(5) exemption. If, for example, it is necessary to the conduct of the fishing operations that such employees accompany a fishing expedition to the fishing grounds to perform certain work required there in connection with the catch, their employment under such circumstances may, as a practical matter, be directly and necessarily a part of the operations for which exemption was intended, in which event the exemption would apply to them.

FIRST PROCESSING, CANNING, OR PACKING OF MARINE PRODUCTS UNDER SECTION 13(a)(5)

§ 784.129 Requirements for exemption of first processing, etc., at sea.

A complete exemption from minimum and overtime wages is provided by section 13(a)(5) for employees employed in the operations of first processing, canning, or packing of marine products at sea as an incident to, or in conjunction with "such" fishing operations—that is, the fishing operations of the fishing vessel (S. Rep. 145, 87th Cong., 1st sess., p. 33). To qualify under this part of the exemption, there must be a showing that (1) the work of the employees is such that they are, within the meaning of the Act, employed in one or more of the named operations of first processing, canning or packing, (2) such operations

are performed as an incident to, or in conjunction with, fishing operations of the vessel, (3) such operations are performed at sea, and (4) such operations are performed on the marine products specified in the statute.

§ 784.130 "Marine products."

The marine products which form the basis of the exemption are the "fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life" mentioned in section 13(a)(5). The exemption contemplates aquatic products currently or recently acquired and in the form obtained from the sea, since the language of the exemption clearly indicates the named operations of first processing, canning, or packing must be performed "at sea" and "as an incident to, or in conjunction with", fishing operations. Also, such "marine products" are limited to aquatic forms of "life."

§ 784.131 "At sea."

The "at sea" requirement must be construed in context and in such manner as to accomplish the statutory objective. The section 13(a)(5) exemption is for the "catching, taking, propagating, harvesting," etc., of "aquatic forms of animal and vegetable life." There is no limitation as to where these activities must take place other than, as the legislative history indicates, that they are "offshore" activities. Since the purpose of the 1961 amendments is to exempt the "first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations," it would frustrate this objective to give the phrase "at sea" a technical or special meaning. For example, to define "at sea" to include only bodies of water subject to the ebb and flow of the tides or to saline waters would exclude the Great Lakes which obviously would not comport with the legislative intent. On the other hand, one performing the named activities of first processing, canning, or packing within the limits of a port or harbor is not performing them "at sea" within the meaning of the legislative intent although the situs of performance is subject to tidewaters. In any event it would not appear necessary to draw a precise line as to what constitutes "at sea" operations, for, as a practical matter, such first processing, canning, or packing operations are those closely connected with the physical catching of the fish and are performed on the fishing vessel shortly or immediately following the "catching" and "taking" of the fish.

§ 784.132 "As an incident to, or in conjunction with" fishing operations.

The statutory language makes clear that the "first processing, canning or packing," unlike the other named operations of "catching, taking, propagating, harvesting, cultivating, or farming" are not exempt operations in and of themselves. They are exempt only when performed "as an incident to, or in conjunction with such fishing operations" (see *Farmers Reservoir Co. v. McComb*, 337 U.S. 755). It is apparent from the context that the language "such fishing

operations" refers to the principal named operations of "catching, taking, propagating, harvesting, cultivating, or farming" as performed by the fishermen or fishing vessel (compare *Bowie v. Gonzalez*, 117 F. 2d 11). Therefore to be "an incident to, or in conjunction with such fishing operations," the first processing, canning, or packing must take place upon the vessel that is engaged in the physical catching, taking, etc., of the fish. This is made abundantly clear by the legislative history. In Senate Report No. 145, 87th Congress, 1st session, at page 33, it pointed out:

For the same reasons, there was included in section 13(a)(5) as amended by the bill an exemption for the "first processing, canning or packing" of marine products "at sea as an incident to, or in conjunction with such fishing operations." The purpose of this additional provision is to make certain that the Act will be uniformly applicable to all employees on the fishing vessel including those employees on the vessel who may be engaged in these activities at sea as an incident to the fishing operations conducted by the vessel.

In accordance with this purpose of the section, the exemption is available to an employee on a fishing vessel who is engaged in first processing fish caught by fishing employees of that same fishing vessel; it would not be available to such an employee if some or all of the fish being first processed were obtained from other fishing vessels, regardless of the relationship, financial or otherwise, between such vessels (cf. *Mitchell v. Hunt*, 263 F. 2d 913; *Farmers Reservoir Co. v. McComb*, 337 U.S. 755).

§ 784.133 The exempt operations.

The final requirement is that the employee on the fishing vessel must be employed in "the first processing, canning or packing" of the marine products. The meaning and scope of these operations when performed at sea as an incident to the fishing operations of the vessel are set forth in §§ 784.134 to 784.136. To be "employed in" such operations the employee must, as previously explained (see §§ 784.106 and 784.122), be engaged in work which is clearly part of the named activity.

§ 784.134 "First processing."

Processing connotes a change from the natural state of the marine product and first processing would constitute the first operation or series of continuous operations that effectuate this change. It appears that the first processing operations ordinarily performed on the fishing vessels at sea consist for the most part of eviscerating, removal of the gills, beheading certain fish that have large heads, and the removal of the scallop from its shell. Icing or freezing operations, which ordinarily immediately follow these operations, would also constitute an integral part of the first processing operations, as would such activities as filleting, cutting, scaling, or salting when performed as part of a continuous series of operations. Employment aboard the fishing vessel in freezing operations thus performed is within the exemption if the first processing of which it is a part otherwise meets the condi-

tions of section 13(a)(5), notwithstanding the transfer by the 1961 amendments of "freezing," as such, from this exemption to the exemption from overtime only provided by section 13(b)(4). Such preliminary operations as cleaning, washing and grading of the marine products, though not exempt as first processing since they effect no change, would be exempt as part of first processing when done in preparation for the first processing operation described above including freezing. The same would be true with respect to the removal of the waste products resulting from the above described operations on board the fishing vessel.

§ 784.135 "Canning."

The term "canning" was defined in the legislative history of the 1949 amendments (House (Conference) Report No. 1453, 81st Cong., 1st sess.; 95 Cong. Rec. 14878, 14932-33). These amendments made the "canning" of marine products or byproducts exempt from overtime only under a separate exemption (section 13(b)(4)), and subject to the minimum wage requirements of the Act (see § 784.137 et seq.). The same meaning will be accorded to "canning" in section 13(a)(5) as in section 13(b)(4) (see § 784.143 et seq.) subject, of course, to the limitations necessarily imposed by the context in which it is found. In other words, although certain operations as described in § 784.143 et seq. qualify as canning, they are, nevertheless, not exempt under section 13(a)(5) unless they are performed on marine products by employees of the fishing vessel at sea as an incident to, or in conjunction with, the fishing operations of the vessel.

§ 784.136 "Packing."

The packing of the various named marine products at sea as an incident to, or in conjunction with, the fishing operations of the vessel is an exempt operation. The term "packing" refers to the placing of the named product in containers, such as boxes, crates, bags and barrels. Activities such as washing, grading, sizing and placing layers of crushed ice in the containers are deemed a part of packing when performed as an integral part of the packing operation. The packing operation may be a simple or complete and complex operation depending upon the nature of the marine product, the length of time out and the facilities aboard the vessel. Where the fishing trip is of short duration, the packing operation may amount to no more than the simple operation of packing the product in chipped or crushed ice in wooden boxes, as in the case of shrimp, or placing the product in wooden boxes and covering with seaweed as in the case of lobsters. Where the trips are of long duration, as for several weeks or more, the packing operations on fishing vessels with the proper equipment sometimes are integrated with first processing operations so that together these operations amount to readying the product in a marketable form. For example, in the case of shrimp, the combined operations may consist of the following series of operations—washing, grading, sizing, placing

in 5-pound boxes already labeled for direct marketing, placing in trays with other boxes, loading into a quick freezer locker, removing after freezing, emptying the box, glazing the contents with a spray of fresh water, replacing in box, putting them in 50-pound master cartons and finally stowing in refrigerated locker.

GENERAL CHARACTER AND SCOPE OF THE SECTION 13(b) (4) EXEMPTION

§ 784.137 "Shore" activities exempted under section 13(b) (4).

Section 13(b) (4) provides an exemption from the overtime but not from the minimum wage provisions of the Act for "any employee employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing" aquatic forms of animal and vegetable life or any byproducts thereof. Originally, all these operations were contained in the exemption provided by section 13(a) (5) but, as a result of amendments, first "canning," in 1949, and then the other operations in 1961, were transferred to section 13(b) (4). (See the discussion in §§ 784.102 to 784.105.) These activities are "shore" activities and in general have to do with the movement of the perishable aquatic products to a nonperishable state or to points of consumption (S. Rep. 145, 87th Cong., 1st sess., p. 33).

§ 784.138 Relationship of exemption to exemption for "offshore" activities.

The reasons advanced for exemption of employment in "shore" operations, now listed in section 13(b) (4), at the time of the adoption of the original exemption in 1938, had to do with the difficulty of regulating hours of work of those whose operations, like those of fishermen, were stated to be governed by the time, size, availability and perishability of the catch, all of which were considered to be affected by natural factors that the employer could not control (see 83 Cong. Rec. 7408, 7422, 7443). The intended limited scope of the exemption in this respect was not changed by transfer of the "shore" activities from section 13(a) (5) to section 13(b) (4). The exemption of employment in these "shore" operations may be considered, therefore, as intended to implement and supplement the exemption for employment in "offshore" operations provided by section 13(a) (5), by exempting from the hours provisions of the Act employees employed in those "shore" activities which are necessarily somewhat affected by the same natural factors. These "shore" activities are affected primarily, however, by fluctuations in the supply of the product or by the necessity for consumption or preservation of such products before spoilage occurs (see *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52; cf. *McComb v. Consolidated Fisheries*, 174 F. 2d 74).

§ 784.139 Perishable state of the aquatic product as affecting exemption.

(a) Activities performed after the conversion of an aquatic product to a nonperishable state cannot form the basis for application of the section 13(b) (4) exemption unless the subsequent opera-

tion is so integrated with the performance of exempt operations on the aquatic forms of animal and vegetable life mentioned in the section that functionally and as a practical matter it must be considered a part of the operations for which exemption was intended. The exemption is, consequently, not available for the handling or shipping of nonperishable products by an employer except where done as a part of named operations commenced on the product when it was in a perishable state. Thus, employees of dealers in or distributors of such nonperishable products as fish oil and fish meal, or canned seafood, are not within the exemption. Similarly, there is no basis for application of the exemption to employees employed in further processing of or manufacturing operations on products previously rendered nonperishable, such as refining fish oil or handling fish meal in connection with the manufacture of feeds. Further specific examples of application of the foregoing principle are given in the subsequent discussion of particular operations named in section 13(b) (4).

(b) In applying the principle stated in paragraph (a) of this section, the Department has not asserted that the exemption is inapplicable to the performance of the operations described in section 13(b) (4) on frozen, smoked, salted, or cured fish. The Department will continue to follow this policy until further clarification from the courts.

§ 784.140 Scope of exempt operations in general.

Exemption under section 13(b) (4), like exemption under section 13(a) (5), depends upon the employment in the actual activities named in the section, and an employee performing a function which is not necessary to the actual conduct of a named activity, as explained in § 784.106, is not within the exemption. It is also essential to exemption that the operations named in section 13(b) (4) be performed on the forms of aquatic life specified in the section and not on other commodities or on mixed commodities a substantial part of which consist of materials or products other than the named aquatic products. Application of these principles has been considered generally in the earlier discussion, and further applications will be noted in the following sections and in the subsequent discussion of particular operations mentioned in the section 13(b) (4) exemption.

§ 784.141 Fabrication and handling of supplies for use in named operations.

(a) As noted in § 784.109, the exemption for employees employed "in" the named operations does not extend to an employee by reason of the fact that he engages in fabricating supplies for the named operations. Employment in connection with the furnishing of supplies for the processing or canning operations named in section 13(b) (4) is not exempt as employment "in" such named operations unless the functional relationship of the work to the actual conduct of the named operations is such that, as a practical matter, the employment is directly and necessarily a part of the op-

erations for which exemption is intended. Employees who meet the daily needs of the canning or processing operations by delivering from stock, handling, and working on supplies such as salt, condiments, cleaning supplies, containers, etc., which must be provided as needed if the named operations are to continue, are within the exemption because such work is, in practical effect, a part of the operations for which exemption is intended. On the other hand, the receiving, unloading, and storing of such supplies during seasons when the named operations are not being carried on, for subsequent use in the operations expected to be performed during the active season, are ordinarily too remote from the actual conduct of the named operations to come within the exemption (see § 784.113), and are not affected by the natural factors (§ 784.138) which were considered by the Congress to constitute a fundamental reason for providing the exemption. Whether the receiving, unloading, and storing of supplies during periods when the named operations are being carried on are functionally so related to the actual conduct of the operations as to be, in practical effect, a part of the named operations and within the exemption, will depend on all the facts and circumstances of the particular situation and the manner in which the named operations are carried on. Normally, where such activities are directed to building up stock for use at a relatively remote time and there is no direct integration with the actual conduct of the named operations, the exemption will not apply.

(b) It may be that employees are engaged in the same workweek in performing exempt and nonexempt work. For example, a shop machinist engaged in making a new part to be used in the repair of a machine currently used in canning operations would be doing exempt work. If he also in the same workweek makes parts to be used in a manufacturing plant operated by his employer, this work, since it does not directly or necessarily contribute to the conduct of the canning operations, would be nonexempt work causing the loss of the exemption if such work occupied a substantial amount (for enforcement purposes, more than 20 percent) of the employee's worktime in that workweek (see § 784.116 for a more detailed discussion).

§ 784.142 Examples of nonexempt employees.

An employer who engages in operations specified in section 13(b) (4) which he performs on the marine products and byproducts described in that section may operate a business which engages also in operations of a different character or one in which some of the activities carried on are not functionally necessary to the conduct of operations named in section 13(b) (4). In such a business there will ordinarily be, in addition to the employees employed in such named operations, other employees who are nonexempt because their work is concerned entirely or in substantial part with carrying on activities which constitute neither the actual engagement in the named operations nor the performance of functions

which are, as a practical matter, directly and necessarily a part of their employer's conduct of such named operations. Ordinarily, as indicated in § 784.160, such nonexempt employees will not be employed in an establishment which is exclusively devoted by the employer to the named operations during the period of their employment. It is usually when the named operations are not being carried on, or in places wholly or partly devoted to other operations, that employees of such an employer will be performing functions which are not so necessarily related to the conduct of the operations named in section 13(b)(4) as to come within the exemption. Typical illustrations of the occupations in which such nonexempt workers may be found (although employment in such an occupation does not necessarily mean that the worker is nonexempt) are the following: General office work (such as maintaining employment, social security, payroll and other records, handling general correspondence, etc., as distinguished from "marketing" or "distributing" work like that described in § 784.159), custodial, maintenance, watching, and guarding occupations; furnishing food, lodging, transportation, or nursing services to workers; and laboratory occupations such as those concerned with development of new products. Such workers are, of course, not physically engaged in operations named in section 13(b)(4) in the ordinary case, and they are not exempt unless they can be shown to be "employed in" such operations on other grounds. But any of them may come within the exemption in a situation where the employer can show that the functions which they perform, in view of all the facts and circumstances under which the named operations are carried on, are actually so integrated with or essential to the conduct of the named operations as to be, in practical effect, directly and necessarily a part of the operations for which exemption was intended. Thus, for example, if canning operations described in section 13(b)(4) are carried on in a location where the canning employees cannot obtain necessary food unless the canner provides it, his employment of culinary employees to provide such food is functionally so necessary to the conduct of the canning operations that their work is, as a practical matter, a part of such operations, and the exemption will apply to them. On like principle, the exemption may apply to a watchman whose services are required during performance of the named operations in order to guard against spontaneous combustion of the products of such operations and other occurrences which may jeopardize the conduct of the operations.

"CANNING"

§ 784.143 Meaning and scope of "canning" as used in section 13(b)(4).

Section 13(b)(4) exempts any employee employed in the canning of aquatic forms of animal or vegetable life or byproducts thereof from the overtime requirements of the Act. As previously stated, it was made a limited exemption by the Fair Labor Standards Act Amend-

ments of 1949. The legislative history of this section in specifically explaining what types of activities are included in the term "canning" and the antecedents from which this section evolved make it clear that the exemption applies to those employees employed in the activities that Congress construed as being embraced in the term and not to all those engaged in the fish canning industry (*Mitchell v. Stinson*, 217 F. 2d 214). Congress defined the term "canning" (House (Conference) Report No. 1453, 81st Cong., 1st sess. 95 Cong. Rec. 14878, 14932-33) as follows:

Under the conference agreement "canning" means hermetically sealing and sterilizing or pasteurizing and has reference to a process involving the performance of such operations. It also means other operations performed in connection therewith such as necessary preparatory operations performed on the products before they are placed in bottles, cans, or other containers to be hermetically sealed, as well as the actual placing of the commodities in such containers. Also included are subsequent operations such as the labeling of the cans or other containers and the placing of the sealed containers in cases or boxes whether such subsequent operations are performed as part of an uninterrupted or interrupted process. It does not include the placing of such products or byproducts thereof in cans or other containers that are not hermetically sealed as such an operation is "processing" as distinguished from "canning" and comes within the complete exemption contained in section 13(a)(5).

Of course, the processing other than canning, referred to in the last sentence quoted above, is now, like canning, in section 13(b)(4) rather than section 13(a)(5).

§ 784.144 "Necessary preparatory operations."

All necessary preparatory work performed on the named aquatic products as an integral part of a single uninterrupted canning process is subject to section 13(b)(4) (see *Tobin v. Blue Channel Corp.*, 198 F. 2d 245, approved in *Mitchell v. Myrtle Grove Packing Co.*, 350 U.S. 891). Such activities conducted as essential and integrated steps in the continuous and uninterrupted process of canning are clearly within the definition of "canning" as contemplated by Congress and cannot be viewed in isolation from the canning process as a whole. Exempt preparatory operations include the necessary weighing, cleaning, picking, peeling, shucking, cutting, heating, cooling, steaming, mixing, cooking, carrying, conveying, and transferring to the containers the exempt aquatic products (see *Mitchell v. Stinson*, 217 F. 2d 214). But the preparatory operations do not include operations specified in section 13(a)(5) pertaining to the acquisition of the exempt products from nature. Therefore, if a canner employs fishermen or others to catch, take, harvest, cultivate, or farm aquatic animal and vegetable life, section 13(a)(5) and not section 13(b)(4) would apply to these particular operations.

§ 784.145 Preliminary processing by the canner.

The mere fact that operations preparatory to canning are physically sep-

arated from the main canning operations of hermetically sealing and sterilizing or pasteurizing would not be sufficient to remove them from the scope of section 13(b)(4). Where preparatory operations such as the steaming or shucking of oysters are performed in an establishment owned, operated, or controlled by a canner of seafood as part of a process consisting of a continuous series of operations in which such products are hermetically sealed in containers and sterilized or pasteurized, all employees who perform any part of such series of operations on any portion of such aquatic products for canning purposes are within the scope of the term "canning."

§ 784.146 Preliminary processing by another employer as part of "canning."

If the operations of separate processors are integrated in producing canned seafood products, all employees of such processors who perform any part of the described continuous series of operations to accomplish this result would be "employed in the canning of" such products. Moreover, preliminary operations performed in a separately owned processing establishment which are directed toward the particular requirements of a cannery pursuant to some definite arrangement between the operators of the two establishments would generally appear to be integrated with the cannery operations within the meaning of the above principles, so that the employees engaged in the preliminary operations in the separate establishment would be employed in "canning" within the meaning of section 13(b)(4) of the Act. Whether or not integration exists in a specific case of this general nature will depend, of course, upon all the relevant facts and circumstances in such case.

§ 784.147 Preservation of aquatic products for later canning.

The cooling, icing, or refrigeration of the aquatic products in the course of canning does not constitute such a break or discontinuance of the process as to bring the preparatory operations within other named operations in section 13(b)(4) instead of canning if the purpose of the refrigeration is to prevent spoilage for a short period, such as over the weekend, or during the transfer or shipment of the prepared products, or directly prior to the opening of the canning season. On the other hand, the freezing of aquatic products to be stored for a protracted or indefinite period for future canning is too remote from the actual canning to be considered as a part of that operation; it would, however, qualify as a "freezing" operation which is an exempt operation named in section 13(b)(4). This distinction is not without significance, for, as an exempt freezing operation, employees engaged therein are entitled to the minimum wage prescribed by section 6(b) of the Act for those to whom the minimum wage benefits are being extended for the first time as a result of the Fair Labor Standards Act amendments of 1961, rather than the minimum wage prescribed by section 6(a) of the Act for employees performing work which was

subject to the minimum wage prior to these amendments (§§ 784.23 to 784.25).

§ 784.148 Processing of aquatic products for canning and for other disposition.

Where canning and processing operations are intermingled, the former and not the latter exemption applies (see *Mitchell v. Myrtle Grove Packing Company*, 350 U.S. 891; *Tobin v. Blue Channel Corporation*, 198 F. 2d 245). Thus, where preparatory operations are performed on fish or seafood, some of which are to be canned and some of which are for processing, all the necessary preparatory operations are exempt as part of canning until that point in the operations where the commodity is channeled to accomplish the separate objectives, namely, canning or processing. Thereafter, the canning operations would be exempt as canning and the processing operations would be exempt as processing. For example, all the preparatory activities in a roe canning plant such as any unloading of the fish, cutting off the heads and tails, cleaning and scaling leading up to and including the extraction of the roe would qualify as canning operations, whereas the subsequent boning and filleting of the fish would come within processing operations when none of the filleted fish is to be canned. The minimum rates applicable in such a situation would be determined in accordance with the principles stated in §§ 784.23 to 784.25 of Subpart A of this Part 784.

§ 784.149 "Hermetically sealing and sterilizing or pasteurizing."

As previously indicated in § 784.143, hermetically sealing and sterilizing or pasteurizing are the operations which characterize the process of canning. Employment in such operations is clearly within the section 13(b)(4) exemption. Employees whose work does not relate to a process which includes these operations are not employed in canning. A process involving the placing of the aquatic products in cans or containers without hermetically sealing and sterilizing or pasteurizing is not canning, within the meaning of the exemption. Depending on the operations involved it may be "processing" or "packing for shipment" within the scope of the exemption, in which event the pay provisions for "new" rather than those for "old" coverage will be applicable, as explained in §§ 784.23 to 784.25, in Subpart A of this Part 784.

§ 784.150 "Subsequent operations."

Canning, within the meaning of the exemption, includes operations performed after hermetic sealing of the cans or other containers, such as labeling of them and placing of them in cases or boxes, which are required to place the canned product in the form in which it will be sold or shipped by the canner. This is so whether or not such operations immediately follow the actual canning operations as a part of an uninterrupted process. Storing and shipping operations performed by the employees of the cannery in connection with its canned products, during weeks in which canning operations are going on, to make room

for the canned products coming off the line or to make storage room come within the exemption as a part of canning. The fact that such activities relate in part to products canned during previous weeks or seasons would not affect the application of the exemption, provided canning operations such as hermetic sealing and sterilizing, or labeling, are currently being carried on. When, however, operations with respect to the aquatic products processed by the employer are performed as a part of his activities in "marketing * * * storing, packing for shipment, or distributing" such products rather than as a part of canning as above described (cf. *Calaf v. Gonzalez*, 127 F. 2d 934; *Tobin v. Blue Channel Corp.*, 198 F. 2d 245; *Mitchell v. Myrtle Grove Packing Co.*, 350 U.S. 891), these operations, while also exempt under section 13(b)(4), are subject to the minimum wage provisions of section 6(b) rather than section 6(a) of the Act and, if intermingled with those which are part of canning, will be subject to the rules stated previously in §§ 784.23 to 784.25, in Subpart A of this Part 784.

§ 784.151 Employees "employed in" canning.

All employees whose activities are directly and necessarily a part of the "canning" of the specified aquatic forms of life are within the exemption provided by section 13(b)(4). Thus, employees engaged in handling the fish or seafood, placing it into the cans, providing steam for cooking it, or operating the machinery that seals the cans or the equipment that sterilizes the canned product are engaged in exempt activities. In addition, can loft workers, those engaged in removing and carrying supplies from the stock room for current use in canning operations, and employees whose duty it is to reform cans, when canning operations are going on, for current use, are engaged in exempt activities. Similarly, the repairing, oiling, or greasing during the active season of canning machinery or equipment currently used in the actual canning operations are exempt activities. The making of repairs in the production room such as to the floor around the canning machinery or equipment would also be deemed exempt activities where the repairs are essential to the continued canning operations or to prevent interruptions in the canning operations. These examples are illustrative but not exhaustive. Employees engaged in other activities which are similarly integrated with and necessary to the actual conduct of the canning operations will also come within the exemption. Employees whose work is not directly and necessarily a part of the canning operations are not exempt. See §§ 784.106, 784.141, and 784.142.

PROCESSING, FREEZING, AND CURING

§ 784.152 General scope of processing, freezing, and curing activities.

Processing, freezing, and curing embrace a variety of operations that change the form of the "aquatic forms of animal and vegetable life." They include such operations as filleting, cutting, scaling, salting, smoking, drying, pickling, cur-

ing, freezing, extracting oil, manufacturing meal or fertilizer, drying seaweed preparatory to the manufacture of agar, drying and cleaning sponges (*Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52).

§ 784.153 Typical operations that may qualify for exemption.

Such operations as transporting the specified aquatic products to the processing plant; moving the products from place to place in the plant; cutting, trimming, eviscerating, peeling, shelling and otherwise working on the products; packing the products; and moving the products from the production line to storage or to the shipping platform are typical of the operations in processing plants which are included in the exemption. Removal of waste, such as clam and oyster shells, operation of processing and packing machinery, and providing steam and brine for the processing operations (see *Mitchell v. Trade Winds, Inc.*, 289 F. 2d 278, explaining *Waller v. Humphreys*, 133 F. 2d 193) are also included. As for the application of the exemption to office, maintenance, warehouse, and other employees, see the discussion in § 784.106 et seq., and §§ 784.141 and 784.142.

§ 784.154 Named operations performed on previously processed aquatic products.

It will be noted that section 13(b)(4) refers to employees employed in "processing" the named aquatic commodities and not just to "first processing" as does the provision in section 13(a)(5) for such processing at sea. Accordingly, if the aquatic products, though subjected to a processing operation, are still in a perishable state, the subsequent performance of any of the enumerated operations on the still perishable products will be within the exemption no matter who the employer performing the exempt operations may be. He may be the same employer who performed the prior processing or other exempt operations, another processor, or a wholesaler, as the case may be. As noted in § 784.139(b), the Department has not questioned the applicability of the foregoing rule where the operation is performed on frozen, salted, smoked, or cured fish.

§ 784.155 Operations performed after product is rendered nonperishable.

As indicated in § 784.139, after the character of the aquatic products as taken from nature has been altered by the performance of the enumerated operations so as to render them nonperishable (e.g., drying and cleaning sponges) section 13(b)(4) provides no exemption for any subsequent operations on the preserved products, unless the subsequent operation is performed as an integrated part of the operations named in the exemption which are performed by an employer on aquatic commodities described in section 13(b)(4) after receiving them in the perishable state. In the case of an employer who is engaged in performing on perishable aquatic forms of life specified in section 13(b)(4) any operations named in that section which result in a nonperishable product, the employment of his employees in the storing, marketing, packing for shipment, or

distributing of nonperishable products resulting from such operations performed by him (including products processed during previous weeks or seasons) will be considered to be an integrated part of his operations on the perishable aquatic forms of life during those workweeks when he is actively engaged in such operations. The employees employed by him in such work on the nonperishable products are, accordingly, within the exemption in such workweeks.

§ 784.156 Operations performed on byproducts.

The principles stated in the two preceding sections would also be applicable where the specified operations are performed on perishable byproducts. Any operation performed on perishable fish scraps, an unsegregated portion of which is to be canned, would come within the canning (not the processing) part of the exemption (see § 784.148). Fish-reduction operations performed on the inedible and still perishable portions of fish resulting from processing or canning operations, to produce fish oil or meal, would come within the processing part of the exemption. Subsequent operations on the oil to fortify it would not be exempt, however, since fish oil is nonperishable in the sense that it may be held for a substantial period of time without deterioration.

MARKETING, STORING, PACKING FOR SHIPMENT, AND DISTRIBUTING

§ 784.157 General scope of named operations.

The exemption from the overtime pay requirements provided by section 13(b)(4) of the Act extends to employees "employed in the * * * marketing * * * storing, packing for shipment, or distributing of any kind of" perishable aquatic product named in the section. An employee's work must be functionally so related to the named activity as to be, in practical effect, a part of it, and the named activity must be performed with respect to the perishable aquatic commodities listed in section 13(b)(4), in order for the exemption to apply to him. The named activities include the operations customarily performed in the marketing, storing, packing for shipment, or distributing of perishable marine products. For example, an employee engaged in placing perishable marine products in boxes, cartons, crates, bags, barrels, etc., preparatory to shipment and placing the loaded containers on conveyances for delivery to customers would be employed in the "packing for shipment" of such products. Salesmen taking orders for the perishable aquatic products named in the section would be employed in the "marketing" of them. Employees of a refrigerated warehouse who perform only duties involved in placing such perishable marine products in the refrigerated space, removing them from it, and operating the refrigerating equipment, would be employed in "storing" or "distributing" such products, depending on the facts. On the other hand, employees of a public

warehouse handling aquatic products which have been canned or otherwise rendered nonperishable, or handling perishable products which contain a substantial amount of ingredients not named in section 13(b)(4), would not be within the exemption. Office, clerical, maintenance, and custodial employees are not exempt by reason of the fact that they are employed by employers engaged in marketing, storing, packing for shipment, or distributing seafood and other aquatic products. Such employees are exempt only when the facts of their employment establish that they are performing functions so necessary to the actual conduct of such operations by the employer that, as a practical matter, their employment is directly and necessarily a part of the operations intended to be exempted (see, for some examples, § 784.159).

§ 784.158 Relationship to other operations as affecting exemption.

Employment in marketing, storing, distributing, and packing for shipment of the aquatic commodities described in section 13(b)(4) is, as such, exempted from the overtime pay provisions of the Act. This means that the employees actually employed in such operations on the named commodities are within the exemption without regard to the intimacy or remoteness of the relationship between their work and processing operations also performed on the commodities, so long as any prior processing has not rendered the commodity nonperishable (as in the case of a canned product) and therefore removed it from the category of marine products referred to by section 13(b)(4). If the commodity has previously been rendered nonperishable, the marketing, storing, distributing, or packing for shipment of it by an employee can come within the exemption only if the activity is one performed by his employer as an integrated part of a series of the named operations which commenced with operations on the perishable marine products to which section 13(b)(4) refers. Some examples of this situation are given in §§ 784.150 and 784.155.

§ 784.159 Activities performed in wholesale establishments.

The section 13(b)(4) exemption for employment in "marketing * * * storing, or distributing" the named aquatic products or byproducts, as applied to the wholesaling of fish and seafood, affords exemption to such activities as unloading the aquatic product at the establishment, icing or refrigerating the product and storing it, placing the product into boxes, and loading the boxes on trucks or other transportation facilities for shipment to retailers or other receivers. Transportation to and from the establishment is also included (Johnson v. Johnson & Company, Inc., N.D. Ga., 47 F. Supp. 650). Office and clerical employees of a wholesaler who perform general office work such as posting to ledgers, sending bills and statements, preparing tax returns, and making up payrolls are not exempt unless these activities can be shown to be functionally

necessary, in the particular fact situation, to the actual conduct of the operations named in section 13(b)(4). Such activities as selling, taking and putting up orders, recording sales, and taking cash are, however, included in employment in "marketing" or "distributing" within the exemption. Employees of a wholesaler engaged in the performance of any of the enumerated operations on fresh fish or fish products will be engaged in exempt work. However, any such operations which they perform on aquatic products which have been canned or otherwise rendered nonperishable are nonexempt in accordance with the principles stated in §§ 784.139 and 784.158.

APPLICATION OF SECTION 13(b)(4) IN CERTAIN ESTABLISHMENTS

§ 784.160 Establishments exclusively devoted to named operations.

As noted in § 784.106 and elsewhere in the previous discussion, the section 13(b)(4) exemption depends on employment of the employee in the operations named in that section and does not apply on an establishment basis. However, the fact that an establishment is exclusively devoted to operations specified in section 13(b)(4) is, in the absence of evidence to the contrary, an indication that the employees employed there are employed in the named operations either directly or through the performance of functions so necessary to conducting the operations that the employment should in practical effect, be considered a part of the activity intended to be exempted. Where this is the case, it is consistent with the legislative intent to avoid segmentation and treat all employees of the establishment in the same manner (see Sen. Rep. No. 145, 87th Cong. 1st sess., p. 33). Accordingly, where it can be demonstrated that an establishment is, during a particular workweek, devoted exclusively to the performance of the operations named in section 13(b)(4), on the forms of aquatic life there specified, any employee of the establishment who is employed there during such workweek will be considered to be employed in such operations and to come within the exemption if there are no other facts pertinent to his employment that require a particular examination of the functions which he performs in connection with the conduct of the named operations. If, however, there are any facts (for example, the employment of the same employee at the establishment or the engagement by other employees in like duties there during periods when none of the named operations are being carried on) which raise questions as to whether he is actually engaged in the exempt activities, it will be necessary to scrutinize what he is actually doing during the conduct of the operations named in section 13(b)(4) in order to determine the applicability of the exemption to him. This is necessary because an employee who would not otherwise be within the exemption, such as a carpenter doing repair work during the dead season, does not become exempt as "employed in" one of the named activities merely be-

cause the establishment begins canning or processing fish.

Signed at Washington, D.C., this 2d day of February 1962.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 62-1395; Filed, Feb. 9, 1962;
8:49 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 50—Division of Public Contracts, Department of Labor

PART 50-202—MINIMUM WAGE DETERMINATIONS

Office, Computing, and Accounting Machines Industry

Miscellaneous exceptions have been filed criticizing the findings and conclusions expressed in the tentative decision determining prevailing minimum wages in the office, computing, and accounting machines industry (26 F.R. 10517).

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) contends that the data on which the tentative decision was based were distorted downward because there is evidence that the survey table on which the tentative decision was based reflects the wage rates paid to a few beginners at a low rate in two large establishments which affects the employment median for the entire industry by 13 cents. It recommends that the wage determination be based upon an employment median 13 cents higher than the one used in the tentative decision. It contends that it would be appropriate to raise the prevailing minimum wage determination by 9 or 10 cents, still giving weight to the median establishment minimum wage. In order to allow for the newly excluded beginners it also recommends that a beginner tolerance be granted to establishments which had a beginner tolerance comparable to the ones used by the two establishments discussed.

The adoption of this recommendation would involve a clear inequity in the application of the Act to this industry in that it would provide one set of standards for establishments which, prior to this determination, have established one particular type of employment practice and another for the rest of the industry. This exception is rejected.

The AFL-CIO also contends that prevailing minimum wages have continued to rise since the hearing and are now about 12 or 13 cents higher than they were on the date of the BLS survey and 7 or 8 cents higher than they were determined to be in the tentative decision. In support of this they cite recently published BLS data showing that an 8.4-percent increase has taken place in the average straighttime earnings in this industry between the survey date of May 1959 and August 1961.

The Administrative Procedure Act requires that an opportunity be accorded to parties to rebut evidence such as this at a reopened hearing (5 U.S.C. 1006(d)).

(See the Attorney General's Manual on the Administrative Procedure Act, p. 79.) It is clear that the providing of such an opportunity would involve a substantial further delay in the making of any wage determination for this industry. I have concluded that the merits involved in the possible discovery of any recent increases in the prevailing minimum wage are outweighed by the advantage of a prevailing minimum wage determination in this industry without further delay.

New contentions have been made on behalf of manufacturers of typewriters, adding machines, and calculating machines to the effect that the definition of the industry contained in the tentative decision groups the manufacture of products which are dissimilar in various important respects.

This contention has not been advanced on a timely basis. The leading manufacturers of these machines were well represented at the panel conference where arrangements for product divisions of the wage data are most conveniently made. They were also well represented at the hearing. If prior to the hearing the contention had been made that it would be appropriate for me to make separate prevailing minimum wage determinations for various segments of the industry, the Department might have gathered evidence upon which branch determinations could have been established. The contention could have been made as late as the hearing if supported by evidence which would warrant and could form a reasonable basis for making branch determinations.

The question of whether a separate wage determination should be made for various branches of an industry is a matter of discretion; considering all the circumstances here involved, I do not deem it proper to give favorable consideration to this request, which, it may be noted, is made for the first time after the record has been closed. Any other decision in regard to this matter would virtually involve discarding several years of effort to determine the prevailing minimum wage in this industry, and beginning proceedings anew. The record contains information on the minimum wages paid by two of the three individual typewriter companies which filed exceptions to the tentative determination. At the time of the hearing in April 1960 the minimum hiring rate of the Royal McBee plant at Hartford, Conn., was \$1.54. The operations of Smith-Corona Marchant, Inc., were being reorganized with the view of transferring the activities of the Syracuse, N.Y., plant to the Groton-Cortland area where the minimum hiring rate was \$1.40 an hour. In view of the time which has elapsed since the hearing, it is apparent from these data that any adjustment which may be posed for these plants by a determination of \$1.55 an hour would not be of sufficient magnitude to justify a separate product break within the industry.

Many of the other exceptions merely repeat contentions fully discussed in rulings of record, including the tentative decision. Some of them do not relate to the material issues of fact, law, and discretion presented by the evidence of

record in this proceeding. Though not all of the remaining ones were deemed of sufficient persuasiveness to merit discussion in the tentative decision, none are new in the sense that they were not considered in the preparation of that decision. Each exception has been carefully considered. None appears to warrant further discussion here. Each is overruled. Each finding and conclusion, together with the reason and basis therefor, which is expressed in the tentative decision is hereby made final.

Accordingly, upon the findings and conclusions stated herein, pursuant to authority under the Walsh-Healey Public Contracts Act (41 U.S.C. sec. 35 et seq.), and in accordance with the Administrative Procedure Act (5 U.S.C. 1001), Title 41 of the Code of Federal Regulations, Part 50-202, is hereby amended by the addition of § 50-202.26 in the manner indicated below. The amendment shall become effective 30 days following its publication in the FEDERAL REGISTER.

The new § 50-202.26 of Title 41, Code of Federal Regulations, reads as follows:

§ 50-202.26 Office, computing, and accounting machines industry.

(a) *Definition.* (1) The office, computing, and accounting machines industry is defined as that industry which manufactures or furnishes computing machines and machines of a type designed for office or business use (including parts specially designed for such machines), such as the following: Accounting machines, adding machines, addressing machines (manual and automatic), billing machines, bookkeeping machines, calculating machines, cash registers, change making machines, check handling machines, collating machines, currency and coin handling machines, dating machines (automatic), dictating and transcribing machines, duplicating machines (except photocopy, blueprint, and printing), electronic computing and associated information processing equipment (except airborne), envelope handling machines (automatic), folding machines, inserting machines, key punch machines, label pasting machines, mailing machines, payroll machines, perforating and cancelling machines (except hand punches), postal permit mailing machines, post office cancelling machines, punched card tabulating machines, shorthand machines, sorting machines, stamp affixing machines, stencil machines, tabulating machines, time recorders, time stamping machines (except hand stamping), typewriters, and varitypers.

(2) This definition does not include (i) devices of simple construction and normally hand operated, such as pencil sharpeners, paper punches, staplers, gummed tape moisteners, seal presses, erasing machines, autographic registers, and rubber stamps; (ii) electron tubes; (iii) solid-state semiconductors; and (iv) functional electronic component parts such as resistors, capacitors, relays, connectors, and complex components, packaged components, modules, and other similar component combinations manufactured as a single unit.

(b) *Minimum wages.* The minimum wage for persons employed in the manufacture or furnishing of products of the office, computing, and accounting machines industry shall be \$1.55 an hour.

(Secs. 1, 4, 49 Stat. 2063, as amended, 2038; 41 U.S.C. 35, 38)

Signed at Washington, D.C., this 2d day of February 1962.

ARTHUR J. GOLDBERG,
Secretary of Labor.

[F.R. Doc. 62-1378; Filed, Feb. 9, 1962;
8:46 a.m.]

PART 50-205—ENFORCEMENT OF SAFETY AND HEALTH STANDARDS BY STATE OFFICERS AND EMPLOYEES

Pursuant to section 4 of the Walsh-Healey Public Contracts Act (49 Stat. 2038, 41 U.S.C. 38), Chapter 50 of Title 41, Code of Federal Regulations, is hereby amended by adding thereto an additional part, designated Part 50-205, concerning the agreements for participation of State officers and employees in the enforcement of the safety and health provisions of the Act. The new Part 50-205 shall become effective upon publication in the FEDERAL REGISTER.

Neither notice and public procedure nor a delay in effective date with regard to the making of these regulations is provided since they set forth general statements of policy, exempt from the notice, public procedure, and delayed effective date requirements of section 4 of the Administrative Procedure Act.

The new Part 50-205 of Chapter 50 of Title 41, Code of Federal Regulations, reads as follows:

- Sec.
50-205.1 Purpose and scope.
50-205.2 Definitions.
50-205.3 Agreement with a State agency.
50-205.4 Plan of cooperation.
50-205.5 Inspections by State agency.
50-205.6 Complaints.
50-205.7 Manual of instructions.
50-205.8 Reports of inspections.
50-205.9 Inspections by the Department of Labor.
50-205.10 Modification or termination of agreement.

AUTHORITY: §§ 50-205.1 to 50-205.10 issued under sec. 4, 49 Stat. 2038, 41 U.S.C. 38. Interpret or apply sec. 1, 49 Stat. 2036, 41 U.S.C. 35.

§ 50-205.1 Purpose and scope.

The Walsh-Healey Public Contracts Act authorizes and directs the Secretary of Labor to utilize, with the consent of a State, such State and local officers and employees as he may find necessary to assist in the administration of the Act. It is the purpose of this part to prescribe the rules governing the use of such State and local officers in inspections (or investigations) relating to the enforcement of the stipulation required by the Act providing that no part of a contract subject thereto will be performed nor will any materials, supplies, articles, or equipment to be manufactured or furnished

under such a contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract, and the enforcement of the safety and health standards interpreting and applying that stipulation published in Part 50-204 of this chapter.

§ 50-205.2 Definitions.

(a) "Act" means the Walsh-Healey Public Contracts Act.

(b) "Secretary" means the Secretary of Labor.

(c) "State agency" means any authority of a State government which is responsible for the enforcement of State laws or regulations prescribing safety and health standards for employees.

(d) "Administrator" means the Administrator of the Wage and Hour and Public Contracts Divisions or his duly authorized representative.

§ 50-205.3 Agreement with a State agency.

The Secretary may enter into an agreement with the head of a State agency providing for the use of State or local officers and employees in the conduct of inspections under the safety and health provisions of the Act as interpreted or applied in Part 50-204 of this chapter whenever he finds that the utilization of such State or local officers is necessary to assist in the administration of those provisions. In making such a finding, consideration may be given to the State laws or regulations administered by the State agency providing safety and health standards, the central and field organization of the State agency, and the qualifications of its investigative personnel.

§ 50-205.4 Plan of cooperation.

Each agreement under this part shall incorporate a plan of cooperation between the Department of Labor and the State agency. The plan shall include the operative details of the cooperation contemplated in the making of safety and health inspections. The plan shall include a statement of the location of the State offices designated to make inspections and those of the Department of Labor designated to cooperate with such State offices.

§ 50-205.5 Inspections by State agency.

Inspections shall be conducted by the State agency with whom an agreement has been made under this part in order to determine the extent of compliance by Government contractors subject to the Act (as determined by the Department of Labor) with the safety and health provisions interpreted or applied in Part 50-204 of this chapter. Inspectors of the State agency shall be considered authorized representatives of the Secretary of Labor in making inspections including the examining of the records of the Government contractor maintained under §§ 50-201.501 and 502 of this chapter. Inspections shall be made

upon request of the Department of Labor or concurrently with inspections made to ascertain the compliance by employers with State safety and health requirements.

§ 50-205.6 Complaints.

When a complaint of alleged safety and health violations by an employer apparently subject to the Act is filed with a State agency, that agency shall transmit a copy of the complaint to the cooperating office of the Department of Labor within 5 days from the receipt of the complaint. All complaints shall be considered confidential and shall not be disclosed to any employer without the consent of the complainant.

§ 50-205.7 Manual of instructions.

The Administrator shall provide the State agency with a manual of instructions which shall be used in the making of inspections.

§ 50-205.8 Reports of inspections.

The State agency shall furnish the Department of Labor with a report of its inspection when the following circumstances exist:

(a) The inspection was requested by the Department of Labor;

(b) The inspection discloses serious violations of the safety and health requirements of Part 50-204 of this chapter by an employer apparently subject to the Act;

(c) The inspection discloses minor violations of the safety and health requirements of Part 50-204 of this chapter by an employer apparently subject to the Act which are not corrected promptly when such apparent violations are brought to the attention of the employer or as to which fully reliable assurances of future compliance are not or cannot be obtained.

§ 50-205.9 Inspections by the Department of Labor.

The Administrator may conduct such inspections as he may find appropriate to assure compliance with the safety and health provisions of the Act or whenever he may find that a safety and health inspection should be carried out along with investigation under other provisions of the Act or the Fair Labor Standards Act of 1938. Whenever an inspection by the Administrator discloses apparent violations of State safety and health requirements the Administrator shall report such disclosures to the State agency.

§ 50-205.10 Modification or termination of agreement.

Any agreement entered into this part may be modified at any time with the consent of both parties, and may be terminated by either party after notifying the other party 60 days prior thereto.

Signed at Washington, D.C., this 1st day of February 1962.

ARTHUR J. GOLDBERG,
Secretary of Labor.

[F.R. Doc. 62-1377; Filed, Feb. 9, 1962;
8:46 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2558]

[Colorado 048874]

COLORADO

Withdrawing Lands in National Forests for Use of the Forest Service for Administrative Sites and Rec- reation Areas

Correction

In F.R. Doc. 61-11925, appearing at page 12081 of the issue for Saturday, December 16, 1961, the following corrections are made in the land descriptions for New Mexico Principal Meridian:

RIO GRANDE NATIONAL FOREST

* * * * *

Middle Forks Meadow Campground

T. 35 N., R. 3 E.,
Sec. 15, $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 22, $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.

* * * * *

Valdez Community Campground

T. 35 N., R. 4 $\frac{1}{2}$ E.,
Sec. 13, $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 24, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$.

* * * * *

McEntyre Campground

T. 35 N., R. 4 $\frac{1}{2}$ E.,
Sec. 1, All of Lot 6, Lot 11, W $\frac{1}{2}$ Lot 14, W $\frac{1}{2}$ Lot 19, Lot 20, N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 2, All of Lot 13.

[Public Land Order 2602]

[Colorado 024153]

COLORADO

Withdrawing Public Lands for Use in Connection With the Shadow Mountain National Recreation Area

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the following described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws, and reserved under the jurisdiction of the National Park Service, Department of the Interior, for public recreation purposes and for the protection of the Shadow Mountain National Recreation Area:

SIXTH PRINCIPAL MERIDIAN

T. 2 N., R. 76 W.,
Sec. 4, lot 3.
Containing 39.91 acres.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

FEBRUARY 5, 1962.

[F.R. Doc. 62-1374; Filed, Feb. 9, 1962; 8:46 a.m.]

[Public Land Order 2603]

MONTANA, NEW MEXICO, AND WASHINGTON

Withdrawing Lands for Use of the For- est Service for Administrative Sites and Recreation Areas; Correcting Public Land Orders No. 2434 of July 13, 1961, and No. 2569 of December 19, 1961

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to valid existing rights, the following described lands within the national forests hereafter named, are hereby withdrawn from prospecting, location, entry and purchase under the mining laws of the United States, in aid of programs of the Forest Service, Department of Agriculture, for use of the surface of the lands as administrative sites and recreation areas, as indicated:

[Montana 036030]

PRINCIPAL MERIDIAN

GALLATIN NATIONAL FOREST

Yankee Jim Camp and Picnic Area

T. 7 S., R. 7 E.,
Sec. 33, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.

Montanapolis Mineral Springs Recreation Area

T. 6 S., R. 10 E., unsurveyed, but when surveyed probably will be:
Sec. 29, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

Montanapolis Public Service Site

T. 6 S., R. 10 E., unsurveyed, but when surveyed probably will be:
Sec. 29, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.

Roadside Camp and Picnic Area

T. 9 S., R. 15 E.,
Sec. 20, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

Clarks Fork Camp and Picnic Area

T. 9 S., R. 15 E.,
Sec. 28, W $\frac{1}{2}$ lot 6.

Chief Joseph Campground

T. 9 S., R. 15 E.,
Sec. 28, NW $\frac{1}{4}$ lot 7.

Cooke Administrative Site

T. 9 S., R. 15 E.,
Sec. 29, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$.

Soda Butte Campground

T. 9 S., R. 15 E.,
Sec. 30, S $\frac{1}{2}$ lot 1.

CUSTER NATIONAL FOREST

Pine Grove Campground

T. 6 S., R. 17 E.,
Sec. 28, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ lot 9, SE $\frac{1}{4}$ lot 9, and SW $\frac{1}{4}$ lot 8;
Sec. 32, E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.

Sec. 33, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$.

KANIKSU NATIONAL FOREST

Willow Creek Recreation Area

T. 24 N., R. 29 W., unsurveyed, but when surveyed probably will be:
Sec. 3, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 4, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

Big Eddy Recreation Area

T. 27 N., R. 34 W.,
Sec. 25, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

The areas described total in the aggregate 483.08 acres.

2. In Public Land Order No. 2434 of July 13, 1961 (Washington 01484), withdrawing lands in national forests for use of the Forest Service, and appearing in the FEDERAL REGISTER issue of July 19, 1961, at pages 6474-5, the description "T. 16 N., R. 10 E. (Unsurveyed)", preceding the description "Sec. 3, W $\frac{1}{2}$ W $\frac{1}{2}$ ", for the Mather-Memorial Parkway Roadside Zone, is hereby corrected to read "T. 17 N., R. 10 E. (Unsurveyed)".

3. In Public Land Order No. 2569 of December 19, 1961 (1969385; New Mexico 0141063), revoking Public Land Order No. 629 of January 13, 1950, and appearing in the FEDERAL REGISTER issue of December 23, 1961, the description "Sec. 4, lot 4" appearing in T. 25 S., R. 15 E., is hereby corrected to read "Sec. 4, lot 1".

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

FEBRUARY 5, 1962.

[F.R. Doc. 62-1375; Filed, Feb. 9, 1962; 8:46 a.m.]

[Public Land Order 2604]

[Utah 073096]

UTAH

Withdrawal for Use of National Park Service (Hovenweep National Mon- ument)

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws, and reserved for use of the National Park Service in connection with administration of the Hovenweep National Monument:

SALT LAKE MERIDIAN

T. 39 S., R. 26 E.,
Sec. 21, W $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$.
Containing 280 acres.

2. The lands shall continue to be administered by the Bureau of Land Management for grazing purposes.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

FEBRUARY 5, 1962.

[F.R. Doc. 62-1376; Filed, Feb. 9, 1962; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Parts 1008, 1009, 1030-1049, 1061-1064, 1067-1070, 1078, 1079, 1095, 1097, 1099, 1108]

HANDLING OF MILK IN CERTAIN MARKETING AREAS

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

7 CFR Part, Docket No., and Marketing Area

1008; AO-268-A6; Greater Wheeling.
1009; AO-268-A6; Clarksburg, W. Va.
1030; AO-101-A25; Chicago, Ill.
1031; AO-170-A13; South Bend-LaPorte-Elkhart, Ind.
1032; AO-313-A4; Suburban St. Louis.
1033; AO-166-A26; Greater Cincinnati.
1034; AO-175-A16; Dayton-Springfield, Ohio.
1035; AO-176-A14; Columbus, Ohio.
1036; AO-179-A22; Northeastern Ohio.
1037; AO-197-A7; North Central Ohio.
1038; AO-194-A7; Rockford-Freepport, Ill.
1039; AO-212-A13; Milwaukee, Wis.
1040; AO-225-A13; Southern Mich.
1041; AO-72-A24; Toledo, Ohio.
1042; AO-240-A6; Muskegon, Mich.
1043; AO-247-A7; Upstate Mich.
1044; AO-299-A3; Michigan Upper Peninsula.
1045; AO-334-A4; Northeastern Wis.
1046; AO-308-A3; Ohio Valley.
1047; AO-33-A26; Fort Wayne, Ind.
1048; AO-325-A1; Greater Youngstown-Warren.
1049; AO-319-A2; Indianapolis, Ind.
1061; AO-327-A1; St. Joseph, Mo.
1062; AO-10-A27; St. Louis, Mo.
1063; AO-105-A15; Quad Cities-Dubuque.
1064; AO-23-A23; Greater Kansas City.
1067; AO-222-A11; Ozarks.
1068; AO-178-A13; Minneapolis-St. Paul, Minn.
1069; AO-153-A8; Duluth-Superior.
1070; AO-229-A7; Cedar Rapids-Iowa City.
1078; AO-272-A2; North Central Iowa.
1079; AO-295-A3; Des Moines, Iowa.
1095; AO-123-A25; Louisville-Lexington, Ky.
1097; AO-219-A10; Memphis, Tenn.
1099; AO-183-A7; Paducah, Ky.
1108; AO-243-A7; Central Ark.

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), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Assistant Secretary of Agriculture, with respect to proposed amendments to the tentative marketing agreements, and orders regulating the handling of milk in each of the marketing areas heretofore specified. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., not later than the close of business

the 5th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing, on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders, were formulated, was conducted at Chicago, Ill., on January 17, 18, and 19, 1962, pursuant to notice thereof which was issued January 8, 1962 (27 F.R. 314).

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

1. Basic formula prices used to compute Class I prices (and Class II price in the Chicago order),
2. Basic butterfat test in certain markets, and
3. Conforming changes in order language.

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. The monthly average price received by farmers for manufacturing grade milk in Minnesota and Wisconsin as published by the Department on about the 5th day following the month (adjusted to 3.5 percent butterfat) should be the basic formula price from which the Class I milk price is computed in each of the Federal orders named herein. This basic formula price should also be used in the computation of the Class II milk price under the Chicago order.

Class I prices in Federal order markets are established under the authority of the Agricultural Marketing Agreement Act. The standards for milk order prices described in the Act require that such prices reflect economic conditions which affect market supply and demand for milk in the marketing area. In accordance with these standards, Class I milk pricing formulas have been developed for use in the several Federal orders.

Class I milk price formulas, in markets here considered, employ a basic formula price representing a manufacturing milk value. To this is added a price differential, and in most of these markets a further adjustment is made to reflect the changing relationship of milk supplies to Class I milk disposition. The latter adjustment is commonly referred to as a supply-demand adjustment. Six of the orders considered here do not have basic formula prices, since the Class I prices thereunder are established at differentials from the Class I prices of other orders. Six additional orders contain basic formula prices but do not use them to compute prices for Class I milk. Prices under these orders are likewise maintained in fixed relationship to those of other orders.

Among the several markets, there is a considerable diversity of basic formulas employed. All of the basic formulas in-

clude alternative computations of which the highest is the effective formula. In each of these formulas the average Midwest condensery paying price is one of the alternatives. Also, each basic formula (except in the Chicago order for a few recent months) uses a butter-powder formula computation. Eight different butter-powder formulas are employed in the several orders. Five of the orders use computations based on butter and cheese prices, of which there are three variations. In five orders, paying prices reported by local manufacturing plants is an alternative computation.

Producer groups and handlers generally supported the adoption of a uniform basic formula for all the orders. The average price for manufacturing grade milk f.o.b. plants in Wisconsin and Minnesota as reported by the Department was supported by many of the producer groups as a basis for achieving such uniformity. Some producer groups and handlers favored use of a butter-powder formula either as the basic formula price or as an alternative computation.

Proponents of the Wisconsin-Minnesota manufacturing grade milk price as a basic formula price supported its adoption for the following reasons: (1) Current basic formulas are subject to certain defects or weaknesses; (2) the proposed price is a better measure of manufacturing milk values; and (3) a single basic formula price in all the orders would provide a desirable basis for price alignment among the several orders.

The lack of uniformity among the various basic formulas and the consequent diversity of results produced in Class I prices constitutes a serious problem with respect to coordination of prices among these markets. The extent to which the Midwest condensery price, common to all orders, has been the effective price, has mitigated this problem in the past.

The Midwest condensery price was originally based on reports by 18 plants. From time to time individual plants have ceased operations. Recently, eight plants (6 in Wisconsin and 2 in Michigan) have been reporting prices. Four of these are operated by a single firm and two others by another firm. A further reduction in number of plants included is anticipated. The plant at New Glarus, Wisconsin, is reported to be ceasing operations. In addition to the effect that reductions in the number of plants have had in impairing this average price as a representative value of manufacturing milk, there is substantial evidence that the posted pay prices reported for the two Michigan plants in the series do not currently reflect the total cost of milk to such plants. As a consequence of these developments the Midwest condensery price can no longer be considered fully reliable as an accurate measure of manufacturing milk values.

The formula computations based on butter and nonfat dry milk prices are intended to reflect a manufacturing milk value based on prices of these products. Among the eight butter-powder formulas used, yield factors representing the amount of nonfat dry milk obtained from 100 pounds of milk vary from 7.0 pounds to 8.2 pounds. Also the amount deducted to give recognition to cost of processing varies among the formulas. Such cost factors are rigid elements in these formulas which do not respond to changes in efficiency.

The formulas based on prices of butter and cheese are affected by considerations similar to those in connection with butter-powder formulas.

Local plant paying prices have tended to play a lesser role in establishing basic formula prices. Generally they have been lower than other alternative formula computations. Since different groups of plants are used in each order, uniformity of pricing among orders cannot be attained by use of such prices.

Uniformity of basic formulas is desirable for the purposes of aligning prices among related markets and promoting understanding of order pricing methods among parties in the industry. Further, in view of the disadvantages inherent in the existing formulas based on product prices and the lessening representation provided by the Midwest condensery prices, it is imperative that a sounder basis for determining basic formulas be provided.

The price for manufacturing grade milk in the two-state area of Wisconsin and Minnesota is issued by the State-Federal Crop Reporting Service on about the 5th day of each month for milk received at manufacturing plants in these states in the previous month. Plant operators report the total pounds of manufacturing grade milk received from farmers, the butterfat content, and total money paid to farmers for the milk. The two-state area is one in which there is a heavy concentration of manufacturing grade milk and where many plants are competing for such supply. In Minnesota about 80 percent of the milk sold off farms is manufacturing grade and in Wisconsin, about 65 percent. About 50 percent of the manufacturing grade milk sold off farms in the United States is produced in these two states.

The average price for manufacturing grade milk in Minnesota and Wisconsin, as available on the 5th day following the month, better meets the requirements for a basic formula price than other formulas now used. It is representative of prices paid to farmers for about half of the manufacturing grade milk produced in the country. It is a price level determined by competitive conditions which are affected by demand in all of the major uses of manufactured dairy products. The system of reporting has been developed so that a reliable average price is available promptly and thus it provides just as current a basis for pricing milk as existing basic formulas.

It is concluded that the average price for manufacturing grade milk in Wisconsin and Minnesota, as reported by the

Department on about the 5th day of the following month should be adopted as the basic formula price in these orders, excepting those where prices are determined on the basis of differentials from other markets.

Inasmuch as the manufacturing milk price for the two-state area is reported by the Department as the price at actual butterfat test, a method for adjustment to the butterfat test (3.5 percent) used in these orders must be adopted. For this purpose a generally recognized value of butterfat, 0.12 times the average wholesale price for 92-score butter at Chicago, should be used. Such a method of adjustment was favored by producer groups at the hearing. A handler representative suggested that adjustment by direct ratio method would be more representative of the practice among plants purchasing manufacturing milk. It was shown, however, that at 116 manufacturing plants in Wisconsin, payment for manufacturing grade milk was made on the direct ratio basis by only 21 of the plants. Ninety-one of the plants adjusted from 3.5 percent prices by use of butterfat differentials which, if used for conversion of the Minnesota-Wisconsin price to a 3.5 percent basis, would result in a price no less than that resulting from the differential proposed herein.

The proposal to use a butter-powder formula as an alternative basic formula computation is not adopted. To be effective, such a butter-powder formula would need to be constructed so that it represents about the same level of price as the Minnesota-Wisconsin manufacturing milk price. To the extent that it did become effective, it would tend to represent milk values in these particular uses rather than the general value in all major uses represented by the Minnesota-Wisconsin manufacturing milk price. Thus, it would tend to be less truly representative of manufacturing milk prices. Accordingly, such an alternative computation is unnecessary and undesirable.

Representatives of producer interests in these markets asked that certain adjustments be made in the Class I price differentials which are added to the basic formula price if the Minnesota-Wisconsin manufacturing milk price were used as the basic formula. Based upon average relationships in a seven year period (1955-1961) they asked that Class I differentials in individual markets be increased by amounts ranging from 2-3 cents in most markets to 10-13 cents in markets for which basic formula prices of the orders now include or have included particularly favorable butter-powder or butter-cheese alternative formulas. A number of handlers argued that the conversion should be based strictly upon current relationships prevailing for either the last five months of 1961 or for some portion of that period, and that action be such as to provide no current increase of price from the conversion. On this basis a suggestion was offered that the Class I differentials of most orders be reduced 10 cents, and that no change be made in the differentials of those few orders in which the butter-powder formula price currently exceeds the Minnesota-Wisconsin price.

Because of the variety of basic formulas among the various markets, a uniform basis for considering a need for such adjustments is not possible. Further, the existing basic formulas have not maintained precise relationships with the Minnesota-Wisconsin series during the years 1955 through 1961. In view of the variations in such relationships it is not possible to establish with any precision relationships which might be expected to obtain in the future.

In the Chicago order, effective beginning with September 1961, the price for manufacturing grade milk in Wisconsin and Minnesota became an alternative, along with the Midwest condensery price, for the basic formula price. This formula is accordingly reflected in eight markets whose prices are based on Chicago. These markets included Cedar Rapids-Iowa City, Des Moines, North Central Iowa, Ozarks, Quad Cities-Dubuque, Rockford-Freepport, St. Louis and Suburban St. Louis.

The transition to pricing Class I milk on the basis of the Minnesota-Wisconsin manufacturing milk price has already been accomplished without change in Class I differentials with respect to the Chicago market and the eight markets previously named in which the Class I price is established at a differential above or below the Chicago price. Because the Midwest condensery price has been lower than the Minnesota-Wisconsin price, the latter has established the level of Class I price. The price data for both series (condensery and Minnesota-Wisconsin) do not provide any basis for adjusting the Class I level in the Chicago order from that currently established on the basis of the Minnesota-Wisconsin price and existing Class I price differentials. For the three most recent years, 1959, 1960, and 1961, the Midwest condensery price has averaged 1 cent less than the Minnesota-Wisconsin price. Except for the latter part of 1961, the Midwest condensery price and the Minnesota-Wisconsin price represented virtually the same level of price. During recent months the Midwest condensery price has been below its former relationship with paying prices in the area, and has not reflected its usual relationship to values of manufactured dairy products. This relative weakness of the condensery price is a symptom of its progressive failure to represent accurately manufacturing milk values. In view of this situation it would not be appropriate to decrease Class I differentials in these markets to reflect recent levels in the condensery price.

For those orders which use the same basic formula price as contained in the Chicago order prior to the September 1, 1961, amendment, the same method of transition should be used. This will provide the best method of maintaining price alignment among markets. These markets include Milwaukee, Michigan Upper Peninsula, Northeast Wisconsin, Duluth-Superior and South Bend-LaPorte-Elkhart.

The Paducah order basic formula differs from those of the orders in this group only in the use of local plant prices. Since the local plant prices have

been lower than the alternative computations they have not been effective as a basic formula. Accordingly, the same method of transition to the new basic formula would apply for the Paducah order as other markets with basic formulas which differ only in not including local plant prices.

The transition for 13 other markets considered at this hearing represents a problem similar to that in markets just discussed which have basic formulas of the type in the Chicago market prior to the September 1, 1961, amendment. These markets include:

Northeastern Ohio.	Muskegon.
Toledo.	Upstate Michigan.
Fort Wayne.	Kansas City.
Wheeling.	St. Joseph.
Clarksburg.	Minneapolis-St. Paul.
North Central Ohio.	Youngstown-Warren.
Southern Michigan.	

Among these, St. Joseph has a Class I price based on the price under the Kansas City order. Although the order contains a basic formula price this is not used to establish Class I prices. The Youngstown-Warren order similarly contains a basic formula price which is not used, since the price is established by relationship to the price under the Northeastern Ohio order. The North Central Ohio order contains no basic formula price, and the Class I price is based on the Class I price under the Northeastern Ohio order.

For all of these 13 markets, the effective basic formula prices in recent months have been only slightly different from the basic formula prices in markets with the type used in the Chicago order prior to September 1, 1961. The average difference of the basic formulas from the Wisconsin-Minnesota manufacturing milk price in the years 1959, 1960, and 1961 has been less than one cent. It is concluded that the transition to the new basic formula should be made without change in the Class I price differentials. Proposed reductions in the Class I differentials for some of these markets are denied because (1) such reductions would result in distortion of present price alignments among markets, and (2) the differentials should not be reduced to reflect the current weakness in condensery prices cited elsewhere in this decision.

In some markets basic formula prices in recent months have exceeded the Minnesota-Wisconsin manufacturing milk price. These markets include Dayton-Springfield, Cincinnati, Columbus, Indianapolis, Louisville-Lexington, and Ohio Valley. In the Memphis and Central Arkansas markets, also, this relationship has existed, but a recommended decision has been issued (October 20, 1961; 26 F.R. 9860) which would change the basic formula price to conform to that under the Paducah order. With respect to Dayton-Springfield and other markets of this group (excluding Memphis and Central Arkansas) an adjustment of the Class I price differentials should be made such that substitution of the Minnesota-Wisconsin manufacturing milk price as a basic formula would not have resulted in lower Class I prices in recent months. (These months

would include those beginning with August 1961, which was the first month for which the Minnesota-Wisconsin manufacturing milk price was published on current basis, and through December.) For the Dayton-Springfield, Indianapolis, Ohio Valley, Louisville-Lexington and Cincinnati markets this would be accomplished by an upward adjustment of 4 cents per hundredweight in the stated differentials. For the Columbus market this would be accomplished with an upward adjustment of 1 cent per hundredweight.

The suggested adjustment of Class I price differentials based on a comparison of order basic formula prices with the Minnesota-Wisconsin manufacturing milk price in earlier years does not provide a valid basis for transition from current levels of the existing basic formula prices. The suggested comparison does not allow for recognized changes in the industry. The butter-powder formulas contained in these orders do not reflect the increasing efficiency of manufacturing plants. The margin of such butter-powder price formulas over the Minnesota-Wisconsin series during the 1955-61 period has shown a trend towards convergence. During the year 1960 the relationship was reversed and for several months the Minnesota-Wisconsin manufacturing price was the higher of the two.

No amendment will be required to carry out the conclusions of this decision with respect to thirteen of the orders affected. There are no basic formulas included in the orders for the Cedar Rapids-Iowa City, Des Moines, North Central Iowa, Quad Cities-Dubuque, Rockford-Freeport, or North Central Ohio markets. The North Central Ohio Class I price is in fixed relation to that of the Northeastern Ohio order and Class I prices of the other orders named are in fixed relation to the Chicago price. Basic formulas in the St. Louis, Ozarks, Suburban St. Louis, St. Joseph, and Youngstown-Warren orders are not used in the computation of prices for Class I milk, as Class I prices in these markets are also maintained, either directly or individually in fixed relationship to other markets for which amendments are herein provided. Since the date of this hearing recommended decisions, based on prior hearings, have been issued which would relate the Michigan Upper Peninsula price directly to that of the Northeastern Wisconsin order, deleting the basic formula price, and merge the Ohio Valley and Louisville-Lexington orders into a single regulation. Therefore, no amendment is proposed for the Michigan Upper Peninsula order. A single amendment is proposed for the proposed combination of Ohio Valley and Louisville-Lexington orders. As in certain other markets for which decisions are now outstanding, but for which amendment action is not completed, the amendments herein proposed with respect to these markets represent further modifications of the amendments proposed in such decisions.

Conforming changes are required in a substantial number of the remaining orders to continue without change the pricing provisions for milk classified in

classes other than Class I (or Class II under the Chicago order). In a few orders conforming changes have been adopted to avoid duplication of language. For uniformity, the basic formula price has been defined as the manufacturing milk pay price for the current month. All orders in which one month's basic price is now used to compute the Class I price for the succeeding month will continue that practice.

2. Prices under the Central Arkansas and Memphis orders should be stated on a 3.5 percent butterfat basis.

Class prices and producer prices under these orders are presently stated on a four percent butterfat basis. In order that the uniformity of basic formula prices provided herein may be maintained prices in these markets should be stated at the same butterfat content, 3.5 percent, as for other markets involved in this hearing. The Class I price in these orders is presently adjusted from 4.0 percent to other butterfat tests by a butterfat differential identical with that herein proposed for conversion of the Minnesota-Wisconsin pay price from the price reported at test to a 3.5 percent basis.

In order that change in the basic fat test will not affect the level of the Class II price at any given test it is provided that the price presently computed at 4.0 percent butterfat be converted to a 3.5 percent price by use of the Class II butterfat differential of the order. Producer prices under the order should also be announced at a 3.5 percent test to avoid confusion. Cooperative associations will not thereby be prevented from using the 4.0 percent basis in distributing returns to their members producers. The producer price at any given test will remain the same whether computed on a 3.5 percent or a 4.0 percent basis.

Evidence was also received concerning use of a 3.5 percent pricing basis in the orders for the Louisville-Lexington and Ohio Valley marketing areas. Subsequent to this hearing a recommended decision was issued on the basis of evidence received at a public hearing held September 17-21, 1961, in which merger of these orders into a single regulation with prices stated on a 3.5 percent basis was recommended. This record corroborates the findings of that decision with respect to the basic butterfat test to be used.

Rulings on special appearance and on proposed findings and conclusions. In a special appearance entered on behalf of certain handlers in a single market (Cincinnati), objection was raised that the location and duration of the hearing did not afford "reasonable opportunity to be heard" and that the notice of hearing was not sufficiently specific. Such objections are hereby overruled. The location of the hearing was central for the 36 markets at issue. All witnesses who desired to testify were heard. There was no request for extension of time or change in location of the hearing. No evidence was received with respect to changes in those provisions concerning which the objector claimed that additional preparation and testimony would be required.

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 orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

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

Recommended marketing agreements and orders amending the orders. The following orders amending the orders regulating the handling of milk in the specified marketing areas are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the respective orders, as hereby proposed to be amended:

Amendments to Part 1008 regulating the handling of milk in the Greater Wheeling marketing area.

1. Delete § 1008.50 and substitute therefor the following:

§ 1008.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agri-

culture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1008.51 [Amendment]

2. Delete § 1008.51(b) and substitute therefor the following:

(b) *Class II milk price.* The Class II milk price shall be the highest of the prices computed pursuant to subparagraphs (1), (2), and (3) of this paragraph, rounded to the nearest whole cent.

(1) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department:

Company and Location

Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(2) The price resulting from the following computation:

(i) Multiply by 6 the simple average as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the month for which prices are being computed;

(ii) Add an amount equal to 2.4 times the simple average as published by the Department of Agriculture of the prices determined per pound of "Cheddars" on the Wisconsin Cheese Exchange for the trading days that fall within the month; and

(iii) Divide by 7 and to the resulting amount add 30 percent; and then multiply by 3.5;

(3) The price per hundredweight computed by adding together the plus values of subdivisions (i) and (ii) of this subparagraph:

(i) From the Chicago butter price, subtract 3 cents, add 20 percent thereof, and multiply by 3.5.

(ii) From the simple average as computed by the market administrator of the weighted averages of the carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department, deduct 5.5 cents and multiply by 8.2.

Amendments to Part 1009 regulating the handling of milk in the Clarksburg, West Virginia, marketing area.

1. Delete § 1009.50 and substitute therefor the following:

§ 1009.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1009.51 [Amendment]

2. Delete § 1009.51(b) and substitute therefor the following:

(b) *Class II milk price.* The Class II milk price shall be the highest of the prices computed pursuant to subparagraphs (1), (2), and (3) of this paragraph, rounded to the nearest whole cent.

(1) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department:

Company and Location

Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(2) The price resulting from the following computation:

(i) Multiply by 6 the simple average as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the month for which prices are being computed;

(ii) Add an amount equal to 2.4 times the simple average as published by the Department of Agriculture of the prices determined per pound of "Cheddars" on the Wisconsin Cheese Exchange, for the trading days that fall within the month; and

(iii) Divide by 7 and to the resulting amount add 30 percent; and then multiply by 3.5.

(3) The price per hundredweight computed by adding together the plus values of subdivisions (i) and (ii) of this subparagraph:

(i) From the Chicago butter price, subtract 3 cents, add 20 percent thereof, and multiply by 3.5; and

(ii) From the simple average as computed by the market administrator of the weighted averages of the carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current

month by the Department, deduct 5.5 cents and multiply by 8.2.

Amendments to Part 1030 regulating the handling of milk in the Chicago, Illinois, marketing area.

1. Delete § 1030.50 and substitute therefor the following:

§ 1030.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by the butterfat differential pursuant to § 1030.82. The basic formula price shall be rounded to the nearest full cent.

§ 1030.52 [Amendment]

2. In § 1030.52 (a) and (b) change the phrase "the basic formula price plus" to "the basic formula price for the preceding delivery period plus".

3. Replace § 1030.52(c) with the following:

(c) *Class III milk.* The price per hundredweight for Class III milk shall be the basic formula price.

Amendments to Part 1031 regulating the handling of milk in the South Bend-LaPorte-Elkhart, Indiana, marketing area.

1. Delete § 1031.51 and substitute therefor the following:

§ 1031.51 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the United States Department of Agriculture for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1031.53 [Amendment]

2. In § 1031.53 immediately after the words "basic formula price" insert "for the preceding month".

§ 1031.54 [Amendment]

3. Delete § 1031.54(a) and substitute therefor the following:

(a) The average of the basic or field prices reported to have been paid, or to be paid, per hundredweight for milk of 3.5 percent butterfat content received, from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department:

Present Operator and Location

Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Pet Milk Co., Belleville, Wis.

Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

Amendments to Part 1033 regulating the handling of milk in the Cincinnati, Ohio, marketing area.

1. Delete § 1033.50 and substitute therefor the following:

§ 1033.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1033.51 [Amendment]

2. In § 1033.51(a) change "\$1.30" to "\$1.34".

§ 1033.52 [Amendment]

3. Delete § 1033.52(b) and substitute therefor the following:

(b) *Class II milk.* Multiply the Chicago butter price by 118, subtract therefrom the amount computed in subparagraph (1) of this paragraph and divide the result by 1000;

(1) From the average of carlot prices per pound for nonfat dry milk, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th of the immediately preceding month through the 25th day of the current month by the United States Department of Agriculture, deduct 6.4 cents and multiply the result by 8.2.

4. In § 1033.52(c) change "§ 1033.51 (b) (2)" to "§ 1033.52 (b) (1)".

Amendments to Part 1034 regulating the handling of milk in the Dayton-Springfield, Ohio, marketing area.

1. Delete § 1034.50 and substitute therefor the following:

§ 1034.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1034.51 [Amendment]

2. In § 1034.51(a) change "\$1.20" to "\$1.24".

Amendments to Part 1035 regulating the handling of milk in the Columbus, Ohio, marketing area.

1. Delete § 1035.50 and substitute therefor the following:

§ 1035.50 Basic formula prices.

(a) The basic formula price for Class I milk shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

(b) The basic formula price for Class II and Class III milk shall be the higher of the prices as computed to the nearest one-tenth of a cent by the market administrator pursuant to subparagraphs (1) and (2) of this paragraph:

(1) The arithmetical average of the basic (or field) prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during the month at the following places for which prices are reported to the market administrator or to the Department by the companies listed below:

Company and Location

Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(2) The price per hundredweight computed by adding together the plus amounts calculated pursuant to subdivisions (i) and (ii) of this subparagraph:

(i) From the Chicago butter price, subtract 3.5 cents, and multiply the difference by 4.2; and

(ii) From the nonfat dry milk price, subtract 4 cents and multiply the difference by 8.2.

§ 1035.51 [Amendment]

2. In § 1035.51(a) change the phrase "basic formula price for the preceding month, plus \$1.10" to "basic formula price computed pursuant to § 1035.50(a) for the preceding month, plus \$1.11".

3. In § 1035.51 (b) and (c) change the phrase "basic formula price" to "basic formula price determined pursuant to § 1035.50(b)".

4. In § 1035.51(d) change the reference "§ 1035.50(b) (1) and (2)" to "§ 1035.50 (b) (2) (i) and (ii)".

Amendments to Part 1036 regulating the handling of milk in the Northeastern Ohio marketing area.

1. Delete § 1036.50 and substitute therefor the following:

§ 1036.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed

at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the United States Department of Agriculture for the month. The basic formula price shall be rounded to the nearest full cent.

2. Delete § 1036.52 and § 1036.53 and substitute therefor the following:

§ 1036.52 Class II milk prices.

The minimum price per hundredweight to be paid by each handler, f.o.b. his plant, for producer milk of 3.5 percent butterfat content received from producers or from a cooperative association during the month, which is classified as Class II utilization, shall be the higher of the prices per hundredweight of milk of 3.5 percent butterfat content computed by the market administrator pursuant to paragraphs (a) and (b) of this section, plus 30 cents.

(a) The average of the basic (or field) prices ascertained to have been paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator by the Department of Agriculture or by the companies indicated below:

Company and Location

Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus amounts pursuant to subparagraphs (1) and (2) of this paragraph:

(1) From the average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter for the month as reported by the Department of Agriculture for the Chicago market, subtract 3 cents, add 20 percent of the resulting amount and then multiply by 3.5; and

(2) From the simple average of the weighted averages of the carlot prices per pound of spray and roller process nonfat dry milk solids for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department of Agriculture, deduct 5.5 cents, multiply by 8.5 and then multiply by 0.965.

§ 1036.53 Class III milk prices.

The minimum price per hundredweight to be paid by each handler, f.o.b. his plant, for producer milk of 3.5 percent butterfat content received from producers or from a cooperative association during the month, which is classified as Class III utilization, shall be the basic formula price, as computed pursuant to § 1036.50, but in no event

shall the Class III price exceed the price computed pursuant to § 1036.52(b) plus 10 cents.

Amendments to Part 1039 regulating the handling of milk in the Milwaukee, Wisconsin, marketing area. (The following amendments represent further modification to the extent necessary to carry out the conclusions of this decision and with respect to the provisions specified, of the amendments proposed in the recommended decision issued December 22, 1961 (26 F.R. 12580).)

1. Delete § 1039.50 and substitute therefor the following:

§ 1039.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the butter price. The basic formula price shall be rounded to the nearest full cent.

§ 1039.51 [Amendment]

2. Delete § 1039.51(b) and substitute therefor the following:

(b) *Class II milk price.* The price for Class II milk shall be the basic formula price for the month.

Amendments to Part 1040 regulating the handling of milk in the Southern Michigan marketing area.

1. Delete § 1040.50 and substitute therefor the following:

§ 1040.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the United States Department of Agriculture for the month. The basic formula price shall be rounded to the nearest full cent.

2. Delete § 1040.52 and substitute therefor the following:

§ 1040.52 Class II milk price.

The minimum price per hundredweight to be paid by each handler, f.o.b. his plant, for milk of 3.5 percent butterfat content received from producers or from a cooperative association during the month which is classified as Class II utilization shall be as follows:

(a) In the months of February through September the higher of:

(1) The average of the prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers

during the month at the following plants, except any which meet the qualification of § 1040.16, for which prices have been reported to the market administrator:

Present Operator and Location

Borden Co., Mt. Pleasant, Mich.
Carnation Co., Sheridan, Mich.
Carnation Co., Sparta, Mich.
Fairmont Foods Co., Bad Axe, Mich.
Kraft Foods, Clare, Mich.
Kraft Foods, Pinconning, Mich.
Nestle Co., Ubly, Mich.; or

(2) The price per hundredweight computed by subtracting 18.3 cents from the sum of the plus amounts computed pursuant to subdivisions (i) and (ii) of this subparagraph:

(i) From the average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter for the month as reported by the Department of Agriculture for the Chicago market, subtract three cents, add 20 percent of the resulting amount and then multiply by 3.5; and

(ii) From the simple average of the weighted averages of the carlot prices per pound of spray and roller process nonfat dry milk solids for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department of Agriculture, deduct 5.5 cents, multiply by 8.2; and

(b) In the months of October, November, December and January, add 20 cents per hundredweight to the price determined pursuant to paragraph (a) of this section.

Amendments to Part 1041 regulating the handling of milk in the Toledo, Ohio, marketing area.

§ 1041.50 [Amendment]

1. Delete § 1041.50(b) and substitute therefor the following:

(b) *Class II milk price.* The Class II milk price shall be the highest of the prices per hundredweight for milk of 3.5 percent butterfat content computed pursuant to subparagraphs (1) and (2) of this section.

(1) The average of the basic (or field) prices reported to have been paid or to be paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department on or before the 5th day after the end of the month by the companies indicated below:

Companies and Location

Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(2) The price per hundredweight computed by adding together the plus values pursuant to subdivisions (i) and (ii) of this subparagraph:

(i) From the Chicago butter price subtract three cents, and multiply by 4.2; and

(ii) From the arithmetical average of the carlot prices per pound for nonfat dry milk (not including that specifically designated animal feed), spray and roller process, f.o.b. manufacturing plants in the Chicago area, as published by the Department during the month, deduct 5.5 cents, and multiply by 8.2, except that if such agency does not publish such prices f.o.b. manufacturing plants, there shall be used for the purpose of this computation the arithmetical average of the carlot prices thereof delivered to Chicago, Illinois, as published weekly by such agency during the month; and in the latter event the figure "7.5" shall be substituted for "5.5" in the above formula.

2. Delete § 1041.51 and substitute therefor the following:

§ 1041.51 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

Amendments to Part 1042 regulating the handling of milk in the Muskegon, Michigan, marketing area.

1. Delete § 1042.50 and substitute therefor the following:

§ 1042.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the United States Department of Agriculture for the month. The basic formula price shall be rounded to the nearest full cent.

Amendments to Part 1043 regulating the handling of milk in the Upstate Michigan marketing area.

1. Delete § 1043.50 and substitute therefor the following:

§ 1043.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices

(using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the United States Department of Agriculture for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1043.51 [Amendment]

2. Delete § 1043.51 (b) and (c), and substitute therefor the following:

(b) *Class II milk.* The Class II milk price shall be the highest of the prices computed pursuant to subparagraphs (1), (2), and (3) of this section.

(1) The average of the basic or field prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the USDA:

Present Operator and Location

Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(2) The price per hundredweight computed by adding together the plus values computed pursuant to subdivisions (i) and (ii) of this subparagraph:

(i) From the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the mid-point of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the USDA during the month; subtract 3 cents, add 20 percent thereof and multiply by 3.5.

(ii) From the simple average, as computed by the market administrator, of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the U.S.D.A., deduct 5.5 cents and then multiply by 8.2.

(3) The average of the basic or field prices per hundredweight reported to have been paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants:

Kraft Foods Co., Cadillac, Mich.
Borden Co., Mount Pleasant, Mich.
Carnation Co., Sparta, Mich.
Kraft Foods Co., Clare, Mich.

(c) *Class III milk.* The Class III milk price shall be the Class II milk price less 20 cents.

§ 1043.62 [Amendment]

3. In § 1043.62 change "§ 1043.50(b) (1)" to "§ 1043.51(b) (2) (i)".

Amendments to Part 1045 regulating the handling of milk in the Northeastern Wisconsin marketing area. (The following amendments represent further modifications, to the extent necessary to carry out the conclusions of this decision with

respect to the provisions specified, of the amendments proposed in the recommended decision issued February 7, 1962.)

1. Delete § 1045.50 and substitute therefor the following:

§ 1045.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the USDA for the month. The basic formula price shall be rounded to the nearest full cent.

2. Delete § 1045.52 and substitute therefor the following:

§ 1045.52 Class II milk price.

The Class II milk price shall be the basic formula price.

§ 1045.53 [Amendment]

3. In § 1045.53 change the reference to "§ 1045.52" to "§ 1045.50".

Amendments to Part 1046 regulating the handling of milk in the Louisville-Lexington-Evansville marketing area. (The following amendments represent further modifications, to the extent necessary to carry out the conclusions of this decision with respect to the provisions specified, of the regulation proposed in the recommended decision issued January 31, 1962, as a means of merging the orders regulating the handling of milk in the Louisville-Lexington, Kentucky, and Ohio Valley marketing areas, to be accomplished by amendment of Part 1046.)

1. Delete § 1046.50 and substitute therefor the following:

§ 1046.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1046.51 [Amendment]

2. In § 1046.51(a), in the language preceding subparagraph (1), delete "\$1.25" and substitute "\$1.29".

Amendments to Part 1047 regulating the handling of milk in the Fort Wayne, Indiana, marketing area.

1. Delete § 1047.50 and substitute therefor the following:

§ 1047.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for

manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1047.51 [Amendment]

2. Replace § 1047.51(b) with the following:

(b) *Class II milk price.* The price for Class II milk of 3.5 percent butterfat content shall be the higher of the prices per hundredweight of milk of 3.5 percent butterfat content computed by the market administrator pursuant to subparagraphs (1) and (2) of this paragraph rounded to the nearest cent:

(1) The average of the basic (or field) prices ascertained to have been paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator by the Department or by the companies indicated as follows:

Present Operator and Location

Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(2) The price per hundredweight computed by adding together the plus amounts pursuant to subdivisions (i) and (ii) of this subparagraph:

(i) From the Chicago butter price, subtract three cents, and then multiply by 4.2; and

(ii) From the simple average of the weighted averages of the carlot prices per pound of spray and roller process nonfat dry milk solids for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department, deduct 5.5 cents and multiply by 8.2.

Amendments to Part 1049 regulating the handling of milk in the Indianapolis, Indiana, marketing area.

1. Delete § 1049.50 and substitute therefor the following:

§ 1049.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the butter price for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1049.51 [Amendment]

2. Delete § 1049.51(a) and substitute therefor the following:

(a) *Class I milk price.* The price for Class I milk shall be the basic formula price for the preceding month, plus \$1.29.

3. Delete § 1049.51(b) and substitute therefor the following:

(b) *Class II milk price.* The price for Class II milk shall be the higher of the prices, rounded to the nearest cent, computed as follows:

(1) The average of the basic or field prices reported to have been paid or to be paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department:

Present Operator and Location

Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(2) The sum of the amounts computed pursuant to subdivision (i) and (ii) of this subparagraph.

(i) Multiply the butter price by 4.2.

(ii) From the arithmetical averages of the weighted average of carlot prices per pound of spray and roller process nonfat dry milk for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department, deduct 5.5 cents and multiply by 8.2.

Amendments to Part 1064 regulating the handling of milk in the Greater Kansas City marketing area.

1. Delete § 1064.50 and substitute therefor the following:

§ 1064.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the United States Department of Agriculture for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1064.52 [Amendment]

2. In § 1064.52, (a) and (b), and in § 1064.82, delete "§ 1064.50(b)(1)" and substitute therefor "§ 1064.50".

Amendments to Part 1068 regulating the handling of milk in the Minneapolis-St. Paul, Minnesota, marketing area.

1. Delete § 1068.51 and substitute therefor the following:

§ 1068.51 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the United States Department of Agriculture for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1068.53 [Amendment]

2. In § 1068.53 change the phrase "basic formula price" to "basic formula price for the preceding month".

3. Delete § 1068.54 and substitute therefor the following:

§ 1068.54 Class II price.

The price per hundredweight for Class II milk shall be the basic formula price.

Amendments to Part 1069 regulating the handling of milk in the Duluth-Superior marketing area.

1. Delete § 1069.50 and substitute therefor the following:

§ 1069.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the United States Department of Agriculture for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1069.51 [Amendment]

2. Replace § 1069.51(b) with the following:

(b) *Class II milk.* The Class II price per hundredweight of milk of 3.5 percent butterfat content shall be determined each month as follows:

(1) Multiply by 4.24 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter per pound at Chicago, as reported by the Department, during the delivery period: *Provided*, That if no price is reported for Grade AA (93-score) butter, the highest of the prices reported for Grade A (92-score) butter for that day shall be used

in lieu of the price for Grade AA (93-score) butter;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for spray process nonfat dry milk solids, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month, by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 75.2 cents and adjust to the nearest full cent.

Amendments to Part 1097 regulating the handling of milk in the Memphis, Tennessee, marketing area. (The following amendments represent further modifications, to the extent necessary to carry out the conclusions of this decision with respect to the provisions specified, of the amendments proposed in the recommended decision issued October 17, 1961 (26 F.R. 9860)).

1. Delete § 1097.50 and substitute therefor the following:

§ 1097.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1097.51 [Amendment]

2. In § 1097.51(b) delete the period at the end of the paragraph and add: "and from which shall be subtracted 5 times the butterfat differential for the respective month computed pursuant to § 1097.52(b)".

§§ 1097.52, 1097.71 and 1097.92 [Amendments]

3. In §§ 1097.52, 1097.71, and 1097.92, delete "4.0" wherever it appears and substitute therefor "3.5".

Amendments to Part 1099 regulating the handling of milk in the Paducah, Kentucky, marketing area.

1. Delete § 1099.50 and substitute therefor the following:

§ 1099.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the United States Department of Agriculture for the month. The

basic formula price shall be rounded to the nearest full cent.

§ 1099.51 [Amendment]

2. Delete § 1099.51(b) and substitute therefor the following:

(b) *Class II milk price.* The highest of the prices computed pursuant to subparagraphs (1), (2), and (3) of this paragraph shall be the Class II price during the months of August through March, and such price shall be reduced ten cents during the months of April through July: *Provided*, That in no case shall such price be less than the price determined in subparagraph (3) of this paragraph.

(1) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department of Agriculture:

Present Operator and Location

Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(2) The sum of the amounts determined pursuant to subdivision (i) and (ii) of this subparagraph less 75 cents.

(i) Multiply by 4.24 the simple average, as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) of 93 score bulk creamery butter per pound at Chicago, as reported by the Department of Agriculture, during the month: *Provided*, That if no price is reported for 93 score butter, the highest of the prices reported for 92 score butter for the day shall be used in lieu of the price for 93 score butter.

(ii) Multiply by 8.2 the weighted average of carlot prices per pound for spray process nonfat dry milk solids, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department of Agriculture.

(3) Or the price shall be the average of the basic (or field) prices reported to or ascertained by the market administrator to have been paid, or to be paid, without deductions for hauling or other charges to be paid by the farm shipper, for milk of 4.0 percent butterfat content received during the month by the Pet Milk Company at its manufacturing plant located at Mayfield, Kentucky, less 5 times the butterfat differential calculated pursuant to § 1099.52(b).

Amendments to Part 1108 regulating the handling of milk in the Central Arkansas marketing area. (The following amendments represent further modifications, to the extent necessary to carry out the conclusions of this decision with respect to the provisions specified, of the

amendments proposed in the recommended decisions issued October 17, 1961 (26 F.R. 9860), and concurrently herewith.

1. Delete § 1108.50 and substitute therefor the following:

§ 1108.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

§§ 1108.51, 1108.52, 1108.71, 1108.72 and 1108.73 [Amendments]

2. In §§ 1108.51, 1108.52, 1108.71, 1108.72 and 1108.73 change "4.0 percent" to "3.5 percent".

Signed at Washington, D.C., on February 7, 1962.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 62-1406; Filed, Feb. 9, 1962; 8:50 a.m.]

[7 CFR Parts 1044, 1045]

[Docket Nos. AO-299-A2 and AO-334-A3]

MILK IN MICHIGAN UPPER PENINSULA AND NORTHEASTERN WISCONSIN MARKETING AREAS

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

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), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Assistant Secretary of Agriculture, with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Michigan Upper Peninsula and Northeastern Wisconsin marketing areas. Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington 25, D.C., not later than the close of business the 7th day after publication of this decision in the FEDERAL REGISTER. Five copies of the exceptions should be filed.

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders, were formulated, was conducted at Marinette, Wis., on November 7-9, 1961, pursuant to notice thereof which was issued October 18, 1961 (26 F.R. 9947).

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

1. Pricing of Class I milk;
2. Classification and pricing of milk used for manufacturing purposes;
3. Classification of fluid milk products fortified with nonfat milk solids;
4. Inclusion of the city of Carney, Mich., in Zone 1(a);
5. Allocation of receipts of packaged fluid milk products;
6. Elimination of base-excess plan;
7. Classification of cream transferred to a second nonpool plant;
8. Reclassification of inventory;
9. Definition of pool plant;
10. Weight factors for certain fluid milk products; and
11. Miscellaneous changes.

Issues 1, 2, and 3 relate to both the Michigan Upper Peninsula and Northeastern Wisconsin orders; issue 4 relates only to the Michigan Upper Peninsula order; and issues 5 through 11 relate only to the Northeastern Wisconsin order.

Several proposed amendments contained in the notice of hearing were not supported by proponents and no testimony on those proposals was offered by any other interested parties. Accordingly, they will not receive further consideration.

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

(a) **Class I pricing.** The Class I differentials of the Northeastern Wisconsin order should not be changed but the Class I price of that order should be adjusted each month by a supply-demand factor based on relationship of combined producer receipts and Class I sales at pool plants regulated by the Northeastern Wisconsin and Michigan Upper Peninsula orders. Michigan Upper Peninsula Class I prices should be fixed in the same relationship to Northeastern Wisconsin Class I prices in all months of the year. The Minnesota-Wisconsin milk price series should not be included in either basic formula at this time.

The Michigan Upper Peninsula and Northeastern Wisconsin orders provide Class I differentials which vary inversely with the seasonality of milk production. The annual average of Northeastern Wisconsin differentials at most pool plants is 74 cents, and is 84 cents at the remaining plants which are located in the northern part of the marketing area. The annual average of Michigan Upper Peninsula differentials applicable to plants in Zone 1(a) is 87 cents. The Class I differentials each month at plants in Zones 1 and 2 of the Upper Peninsula order are 10 and 30 cents higher, respectively, than the differential applicable at plants located in Zone 1(a). The difference between the Class I differentials at plants in the lower price area of Northeastern Wisconsin and that paid at plants in Zone 2 of the Upper Peninsula order is 41 cents in all months of the year except July when it is 61 cents. The basic formulas of the two orders are the same.

The primary market of plants regulated by the Northeastern Wisconsin order is the marketing area of that order. However, a significant volume of milk disposed of from such plants is distributed in the Upper Peninsula marketing area. In turn, plants regulated by other Federal orders, particularly those regulated by the Milwaukee order, distribute milk in the Northeastern Wisconsin marketing area.

Several proposed amendments relating to Class I price levels in the Michigan Upper Peninsula and Northeastern Wisconsin orders were considered at the hearing. In general, the testimony relating to these proposals may be summarized as follows:

Bargaining-type cooperative associations representing Northeastern Wisconsin producers proposed an increase in that order's Class I price level citing increased costs associated with milk production.

Operating type cooperative associations on the Northeastern market cautioned that any contemplated increase in Class I price must give consideration to the competition for sales in the Northeastern Wisconsin marketing area by plants regulated by other orders.

Proprietary plant handlers were also concerned with the effect any increase in the Class I price level would have on the competition for sales with plants regulated by other Federal orders.

A cooperative association representing the majority of producers on the Upper Peninsula market proposed that that order's Class I price be increased. It cited increased production costs and the relatively short production season in the Upper Peninsula. Individual producers not members of this association also proposed a Class I price increase.

Michigan Upper Peninsula handlers testified that the spread between the Northeastern Wisconsin prices and those in the Upper Peninsula was too high. However, while they desired a decrease in the spread, they testified that the Northeastern Wisconsin Class I price level should be increased rather than the Upper Peninsula level decreased.

The present Class I differentials have been effective since the promulgation of the two orders on December 1, 1958, except for the modification occasioned by the amendment providing for Zone 1(a) in the Upper Peninsula order on July 1, 1960. Each of the markets has been adequately supplied with milk since the inception of the orders. During the first 9 months of 1959, 1960, and 1961 producer receipts averaged 133, 135, and 142 percent, respectively, of Class I sales by Northeastern Wisconsin handlers; and in the Upper Peninsula market producer receipts averaged 157, 156 and 138 percent, respectively, of Class I sales.

The milkshed of the Northeastern Wisconsin market lies almost entirely within the largest milk production State in the Union. In this milkshed the farms of Northeastern Wisconsin producers are interspersed with the farms of producers who deliver to plants regulated by the Chicago order and farms engaged in the production of ungraded milk to be used only for manufacturing purposes. The

immediate increase in the uniform price occasioned by a Class I price increase would encourage these dairy farmers to shift to Northeastern Wisconsin pool plants. The response to a price increase would be facilitated in this market because several Northeastern Wisconsin handlers maintain other plant facilities, some of which are pool plants under the terms of the Chicago order and some of which receive ungraded milk for manufacturing. Any Class I price increase in the Northeastern Wisconsin order would encourage additional supplies of milk for the market thereby reducing uniform prices.

The Agricultural Marketing Agreement Act of 1937 under which authority Federal milk orders are promulgated and administered requires that order prices be set at levels which reflect milk supply and demand conditions. In accordance with this standard, Class I prices in the nearby Federally regulated markets of Chicago and Milwaukee are subject to supply-demand adjustment factors which increase Class I prices when milk supply is relatively short and decrease such prices when it is relatively long. A supply-demand adjustment factor was not included originally in the Northeastern Wisconsin and Michigan Upper Peninsula Class I price provisions. This provision was omitted at that time to permit the accumulation of milk supply-demand data in the two markets on which to construct such a provision. Adequate data are now available and Class I prices in the orders should be subject to a supply-demand adjustment factor.

Alignment of Class I prices between the Northeastern Wisconsin and Michigan Upper Peninsula orders is necessary because significant volumes of Class I milk are disposed of in the Upper Peninsula market from plants regulated by the Northeastern Wisconsin order. For example, in September 1961, when the overall Class I utilization of Upper Peninsula handlers was 7.6 million pounds, Class I distribution in the Upper Peninsula marketing area from plants not subject to that order was about 1.5 million pounds. This distribution was principally from plants regulated by the Northeastern Wisconsin order. Should the Class I prices in the Upper Peninsula market exceed the prices in Northeastern Wisconsin plus the cost of moving milk to the Upper Peninsula, the Upper Peninsula handlers would be placed at a disadvantage in Class I sales with Northeastern Wisconsin handlers. Under this condition the Upper Peninsula producers could lose Class I sales and this would lower uniform prices.

In order to maintain necessary price alignment, the Class I prices of both orders should be adjusted by a common supply-demand adjustor. Such an adjustor should be based on the relationship of combined producer receipts to combined Class I sales in the two markets.

Since the two orders became effective there has been an increase of combined producer receipts in relation to combined Class I sales. During the first 9 months of 1961, total producer receipts were 141

percent of total Class I sales, and for the comparable periods in 1960 and 1959 they were 140 and 139 percent, respectively. A supply-demand adjustment factor would act to decrease the Class I price should production continue to increase over fluid needs. On the other hand, should production decrease or sales increase, the supply-demand adjustment would tend to increase the Class I price and insure adequate supplies.

The Class I prices each month would be adjusted depending on the relationship of current supply-demand conditions to a norm or "standard utilization range." The standard utilization range would vary seasonally in recognition of the seasonality of milk production and Class I sales. The annual average standard utilization range would be 134-139 percent. Producer receipts and Class I sales for the second and third preceding months would be combined in computing the "current utilization percentage." In order to avoid erratic price movements, a 4-cent limit should be placed on the amount by which the supply-demand price adjustment for a particular month can exceed or be less than the adjustment computed for the preceding month. Since no supply-demand provision is now provided in the order, the 4-cent limit on the monthly change in the supply-demand adjustment should be from that for the second preceding month for the first year of its applicability. This will provide an orderly transition in the market to the operation of the supply-demand provision.

The first adjustment under the revised order would be limited to 4 cents, plus or minus. No adjustment would be made whenever the current utilization percentage falls within the range for the month.

The table of standard utilization percentages should be as follows:

Pricing month	2 months used	Receipts as percentage of sales	
		Minimum	Maximum
January.....	October-November.....	123	128
February.....	November-December.....	128	133
March.....	December-January.....	130	135
April.....	January-February.....	133	138
May.....	February-March.....	135	140
June.....	March-April.....	140	145
July.....	April-May.....	145	150
August.....	May-June.....	150	155
September.....	June-July.....	145	150
October.....	July-August.....	130	135
November.....	August-September.....	123	128
December.....	September-October.....	123	128

The Class I price would be increased or decreased 2 cents for each percent the current utilization is below or above, respectively, the minimum and maximum of the standard utilization range. The increase or decrease in the Class I price would be limited to a maximum of 24 cents. This limit is provided for supply-demand adjustments under the Chicago and Milwaukee orders.

If the supply-demand adjustment had been effective during 1961, Class I prices would have been decreased an average of one-half of a cent per month. They would have been increased 2 and 4 cents, respectively in January and February;

decreased 2, 2, 4, and 4 cents, respectively, in March, July, August, and December; and unchanged in April, May, June, September, October, and November.

A 20-cent higher Class I differential in the Upper Peninsula area for the month of July previously was provided to attract milk to the Peninsula market to cover increases in Class I sales in July in this vacation area. However, the demand for Class I milk in relation to producer receipts in the Upper Peninsula in July has not been so high as to warrant continuance of the high Class I differential.

The Class I differential applicable in the month of July in each zone of the Upper Peninsula order should be reduced 20 cents. With this change, the difference between Class I prices in the Upper Peninsula and the Northeastern Wisconsin order will be constant in each month of the year.

There should be no further decrease in the spread between Northeastern Wisconsin and Michigan Upper Peninsula Class I differentials. Upper Peninsula handlers testified that the difference between the Class I prices of the two orders in the other 11 months of the year is more than the cost of moving milk into the Upper Peninsula from Northeastern Wisconsin, thereby placing them at a competitive disadvantage in Class I sales. Data presented relating to actual costs of moving milk were conflicting and inadequate. However, the data relating to Class I sales by local handlers were reviewed. The overall Class I utilization at Upper Peninsula pool plants has increased at a faster rate than has distribution in the Upper Peninsula marketing area from other plants. In January through September 1961, the Class I utilization at Upper Peninsula pool plants was 68.5 million pounds compared to 67.0 million pounds in the same 9 months of 1960, a 2.3-percent increase. Class I distribution in the Upper Peninsula marketing area in January through September 1961 from plants not regulated by the order of 14.4 million pounds was unchanged from that for the same period a year earlier. This distribution was principally from plants regulated by the Northeastern Wisconsin order.

The Minnesota-Wisconsin manufacturing grade price series should not be included in the basic price formula of either order on basis of the record of this proceeding. Official notice is taken of the issuance of a notice of joint hearing on proposals to include the series in these and 34 other Federal orders (26 F.R. 314). Amendment of the basic formulas will be considered on the basis of the record of the regional hearing.

The Northeastern Wisconsin order should not provide a 12-month moving average basic formula. The use of such a basic formula was supported on the basis that, in conjunction with a level Class I differential, monthly fluctuations in the Class I price would be eliminated. It is not the aim of the basic formula to provide level pricing. Rather it is used as a measure of changes in the value of milk used for manufacturing purposes. Elimination of fluctuations in the basic formula would not reflect adequately the

relationship between the value of milk for manufacturing and that disposed of for fluid consumption.

Seasonal variation in Class I differentials should be maintained. Testimony on a proposal to provide level differentials emphasized the adverse effect seasonal pricing might have on the demand for fluid milk. Seasonal Class I pricing has the desirable effect of encouraging more even seasonal production. More over, since plants regulated by nearby Federal orders which do not provide level differentials compete with plants regulated by the subject orders for Class I sales and in the procurement of milk, it would not be in the interest of orderly marketing of available supplies to provide level differentials at this time.

2. *Classification and pricing of milk used for manufacturing purposes.* The utilization of milk now designated as Class II and Class III under each of the orders should be included in one class (designated Class II) and priced at the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota as reported by the U.S. Department of Agriculture.

The Upper Peninsula and Northeastern Wisconsin orders each classify as Class III all skim milk and butterfat used to produce butter, nonfat dry milk and cheese (except cottage cheese); in skim milk disposed of for animal feed or dumped, and in allowable shrinkage. Class II includes skim milk and butterfat used to produce those manufactured milk products not in Class III and that contained in inventories of fluid milk products on hand at the end of the month.

The Class III price in each order is related to the market prices of butter and nonfat dry milk but the Class III price under the Northeastern Wisconsin order is fixed at a higher level than that of the Upper Peninsula order. The Class II price in each order is the same, namely, the higher of the average price paid at selected Midwest condenseries or a price based on the prices of butter and nonfat dry milk.

Cooperative associations representing the majority of producers on both markets proposed that skim milk and butterfat used to produce all manufactured milk products be placed in one class and that the price for skim milk and butterfat so classified be the average price paid for manufacturing grade milk received at plants in Minnesota and Wisconsin. Three operating cooperative associations and proprietary operators of plants pooled under the Northeastern Wisconsin order opposed the use of such Minnesota-Wisconsin price for this purpose.

Fluid milk markets must have a supply of milk which includes some reserve over fluid sales to accommodate daily and seasonal variations in the demand for fluid milk. The price for such reserve milk should be established at levels low enough to allow for its orderly disposition for manufacturing but should not be so low as to encourage excessive supplies of milk to be used only for manufacturing. The Class III price levels and, at times, the Class II price levels of the Northeastern Wisconsin and

Upper Peninsula orders have been lower than prices paid for ungraded milk in the supply areas. Under these circumstances, supplies of Grade A milk in excess of Class I sales and a reasonable reserve are encouraged because milk costs to dairy product manufacturers may be reduced by using surplus Grade A rather than manufacturing grade milk.

Operators of several plants regulated by each of the orders purchase manufacturing grade milk as well as Grade A milk; and several handlers operating plants regulated by the Northeastern order also operate plants regulated pursuant to the Chicago order. The average price paid by one handler whose plant is regulated by the Northeastern Wisconsin order for ungraded milk containing 3.5 percent butterfat received during January through September 1961 was \$3.25. One cooperative association proposing the use of the Minnesota-Wisconsin price represents 9,000 dairy farmers who deliver ungraded milk to manufacturing plants located in Wisconsin. Prices paid for this milk at one hundred of these manufacturing plants, none of which are operated by cooperative associations, averaged \$3.23 for the January-September period of 1961. Such average prices do not include premiums paid or hauling subsidies. The average Minnesota-Wisconsin price for this period, adjusted to a 3.5 percent butterfat differential by the Chicago butterfat differential, was \$3.24. Northeastern Wisconsin Class II and Class III prices during this period averaged \$3.21 and \$3.10, respectively, and in the Upper Peninsula order they averaged \$3.21 and \$2.95.

The price of reserve or excess supplies of milk received at Northeastern Wisconsin and Upper Peninsula plants should be based on the competitive value of ungraded milk used in various manufactured products rather than on prices paid at a very limited number of condensing plants or on a formula which reflects fixed yield factors and processing costs associated with only two manufactured milk products, namely, butter and nonfat dry milk. The utilization of the excess milk received at order pool plants is not limited to the manufacture of condensed milk, butter or nonfat dry milk. Excess milk also is used to produce ice cream, cottage cheese and many other types of cheeses. The Minnesota-Wisconsin price measures the competitive value of ungraded milk used in a wide variety of milk products and, therefore, better reflects the full value of milk used for manufacturing purposes than do the present formulas.

In a highly competitive milk procurement area, individual manufacturing plants tend to pay prices for milk which approximate pay prices of the most efficient plants in the area. As shifts occur in the relationship between returns of the various manufactured dairy products, processors engaged in manufacturing the most remunerative products will be able to pay the highest prices for milk. Processors of other less remunerative products must meet these prices or lose their supplies of milk.

The milkshed of the Northeastern Wisconsin order is a highly competitive milk procurement area. It lies almost entirely within the State of Wisconsin in which the largest quantities of manufacturing grade milk in the United States are produced. Large quantities of manufacturing grade milk are produced in Minnesota also. The Minnesota-Wisconsin price is computed from pay prices for manufacturing grade milk purchased in competition in these two States. It would measure appropriately the value of Northeastern Wisconsin surplus Grade A milk which must compete with manufacturing grade milk for a market.

The milkshed of the Michigan Upper Peninsula order is not within such a highly competitive ungraded milk procurement area. There are, however, large numbers of producers of ungraded milk on the Upper Peninsula. The products made from this ungraded milk compete for markets with those manufactured in Wisconsin and, therefore, the value of Upper Peninsula ungraded and surplus Grade A milk is not dissimilar from that of Wisconsin milk.

The separate classification and pricing of milk used in various manufactured products under the two orders has tended to favor the processors of some products in recent years. This is the unavoidable result of classifying and pricing milk for manufacturing purposes into separate classes according to products.

Further, the greater the disparity between individual class prices and the competitive level of manufacturing grade milk for the same uses, the more incentive there is to shift surplus Grade A milk into the lowest priced class because of the wider operating margin allowed. As a result, producers' incomes are adversely affected.

Information on prices paid at manufacturing plants in Wisconsin and Minnesota is assembled by the Statistical Reporting Service, United States Department of Agriculture. Plant operators report total pounds of manufacturing grade milk received from farmers, total butterfat content and total dollars paid for such milk, f.o.b. plant. These prices are available on a monthly basis and are announced on or before the 5th day of the following month.

The average of prices paid farmers in the various States for manufacturing grade milk as reported by the Statistical Reporting Service is at the average butterfat test of such milk. Since Orders 44 and 45 (formerly Orders 111 and 116) announce prices on a 3.5 percent butterfat basis, it is necessary that the announced Minnesota-Wisconsin price be adjusted to this basis. Official notice is taken of the amendment to the Chicago order which became effective September 1, 1961 (26 F.R. 7957). This amendment provides for using the Minnesota-Wisconsin price as the Class III price and adjusting it to a 3.5 percent butterfat basis by a differential equal to the average quotation for the month of Grade A (92-score) butter at Chicago times 0.12. This method is appropriate for the Northeastern Wisconsin and Michigan Upper Peninsula orders and should likewise be used for adjusting the

announced Minnesota-Wisconsin price to a 3.5 percent butterfat basis.

The butterfat differential currently applicable for adjusting Class II and Class III milk prices is the 92-score bulk creamery butter price at Chicago times 0.115. This differential would be maintained as the handler butterfat differential for the newly designated Class II utilization.

3. *Classification of fluid milk products fortified with nonfat dry milk solids.* Fluid milk products fortified with nonfat milk solids should be classified as Class I milk in an amount equal only to the weight of an equal volume of a like unmodified product of the same butterfat content. The skim milk equivalent of the added solids in excess of such weight should be classified as Class II.

The Upper Peninsula and Northeastern Wisconsin orders provide that the skim milk equivalent of nonfat milk solids used in fortifying fluid milk products be classified as Class I. Handlers, including cooperative associations operating plants regulated by the Northeastern Wisconsin order, proposed that the equivalent of these solids be classified as Class II. Bargaining cooperative associations on both markets opposed the proposed change in classification on the basis, generally, that it would reduce the income of producers and that nonfat solids would replace producer milk for fluid use if the skim milk equivalent were not accounted for as Class I.

Fortified fluid milk products usually result from the addition of nonfat milk solids to fluid milk or skim milk, thus producing a finished product of higher nonfat solids content. Reconstituted products, on the other hand, result from adding such solids to water thus yielding a weight of products approximating the weight of milk from which the solids were obtained.

Nonfat dry milk and condensed skim milk, the principal products used for fortifying, may be obtained from unpriced milk or from milk which has been priced as surplus under the terms of other Federal orders. These products are not necessarily obtained from producer milk.

An economic incentive exists for handlers to substitute reconstituted fluid milk products for fluid milk products processed from producer milk. Since such substitution would displace an equivalent amount of producer milk in Class I, the application of Class I skim equivalent pricing in this circumstance is economically sound and is necessary to maintain orderly milk marketing.

The same economic incentive does not exist, however, with respect to the use of nonfat dry milk or condensed skim milk to fortify a fluid milk product. The incentive for handlers to use solids to fortify fluid milk products is to meet consumer demand for fluid milk products with high solids content. Such fortified fluid milk products represent a small but growing part of the total Class I market. For example, during the first 9 months of 1961, the skim milk equivalent of solids used by Northeastern Wisconsin handlers to fortify fluid milk products averaged 381,000 pounds

monthly and during the like period of 1960 the skim milk equivalent of solids so used averaged 353,677 pounds monthly. The increased emphasis on low fat diets and the high nutritional value of nonfat solids in relation to their weight may be the reason for the increased demand for fluid milk products with high solids content.

When the skim milk equivalent of fortified products is classified as Class I it inflates significantly Class I disposition. Producer milk is then allocated to the inflated Class I utilization even though producer milk need not be used as a source for the solids. Further, it was not demonstrated that fortified fluid milk products displace rather than increase Class I use of producer milk.

4. *Inclusion of Carney, Michigan in Zone 1(a).* Carney, Michigan, should not be included in Zone 1(a). A handler operating an Upper Peninsula supply plant at Carney proposed that Carney be included in Zone 1(a) rather than Zone 1. The Class I differential applicable at plants located in Zone 1(a) is 10 cents lower than that applicable at plants in Zone 1.

The proponent handler's plant is primarily engaged in making Italian type cheese. Grade A milk is received at the plant from 41 dairy farmers, from Upper Peninsula bottling plants and from plants regulated by other Federal orders. Its receipts of ungraded milk are approximately $3\frac{1}{2}$ times as much as its receipts of Grade A milk from producers.

When receipts from the 41 Grade A dairy farmers are not moved to Upper Peninsula bottling plants for fluid use, they are used in the manufacture of cheese. A relatively low percentage of total receipts from the 41 farmers is moved to bottling plants. Since the Upper Peninsula order provides for handler rather than marketwide pooling the uniform price payable at the Carney plant is lower than that paid at other pool plants. In order to maintain the supply of milk from the 41 Grade A farmers the handler must pay premiums above the required uniform price. He testified that if his Class I price were 10 cents lower, he would be in a position to market additional volumes of Grade A milk to Upper Peninsula bottling plants, thereby increasing his uniform price and decreasing the amount of premiums.

The Class I differentials applicable at plants located in the respective zones of the Upper Peninsula marketing area are provided as incentive for an adequate supply of milk to meet fluid demand in respective parts of the marketing area. This purpose is being accomplished. As concluded under issue No. 1 relating to the Class I price level, the zone pricing in the Upper Peninsula order should not be changed other than to reduce the Class I differentials by 20 cents in the month of July.

5. *Allocation of receipts of packaged fluid milk products.* No change should be made in the allocation procedure of the Northeastern Wisconsin order.

It was proposed that receipts of packaged fluid milk products from nonpool plants which are disposed of in the same

package as received be allocated to Class I before receipts from producers. Packaged fluid milk products from nonpool plants are not received at proponent's pool plant nor did proponent know of any pool plant which was receiving packaged fluid products from nonpool sources.

Pursuant to the proposed amendment, fluid milk products not priced by any Federal order would be allocated to Class I utilization and would not be subject to compensatory payments. Under this circumstance, the intent of the order would be nullified in that the order would no longer assure that all handlers were paying at least the minimum Class I price for all disposition of fluid milk products. The proposed amendment is, therefore, denied.

6. *Deletion of the base-excess plan.* The order should continue to provide a base-excess plan.

The Northeastern Wisconsin order was amended effective July 1, 1961, to provide a base-excess plan. One bargaining cooperative association, Manitowoc Milk Producers, proposed that the base-excess plan be deleted. A second bargaining cooperative association, Pure Milk Products, which also submitted a proposal to delete the base-excess plan, testified that its members had not expressed dissatisfaction with the base-excess plan. Therefore, it did not support its proposal. Three operating cooperative associations supported the continuation of the base-excess plan.

The base-excess plan has not been effective for a full base-making and base-paying period. There is no basis in this record for reaching a different conclusion regarding its effectiveness as a stimulant to even seasonal production than was stated in the previous decision on this matter. In view of this, it should not be deleted at this time.

7. *Classification of cream transferred to a second nonpool plant.* The transfer provisions should be amended to permit the Class II classification, under certain conditions, of cream transferred from a pool plant to a nonpool plant and subsequently transferred to a second nonpool plant.

A handler who operates a pool plant and a nonpool plant moves surplus Grade A milk from his pool plant to his nonpool plant for manufacturing. The nonpool plant also receives ungraded milk which is commingled with the surplus Grade A milk. On occasion, cream is moved to a second nonpool plant where it is used for manufacturing purposes. According to the laws of the State of Wisconsin, cream so moved from a plant at which Grade A and ungraded milk are commingled cannot be used for fluid purposes. The handler proposed that the order be amended to permit the Class II classification of transfers of such cream to second nonpool plants even though the second nonpool plant has fluid operations and does not receive sufficient Grade A milk from dairy farmers to meet fluid needs. A cooperative association operating a pool plant supported the amendment and other cooperative associations had no objection to it.

The transfer provisions of the order are intended to classify as Class I that milk which is moved to nonpool plants and which is used for Class I purposes at the receiving nonpool plant. To this end, Class I utilization at the nonpool plant which exceeds receipts of Grade A milk from dairy farmers who constitute its regular source of Grade A milk is prorated to receipts of Grade A milk from plants regulated by this and other Federal orders. In view of the Wisconsin State laws, cream transferred from a nonpool plant to another nonpool plant should be assigned to any available Class II utilization at the second nonpool plant after assignment of cream from plants not regulated by any Federal order.

8. *Reclassification of inventory.* No change should be made in the method of reclassifying inventory.

The current order classifies ending inventory as Class II. In the following month butterfat and skim milk in such inventory is assigned to available Class II utilization of the handler prior to assignment of producer milk. Any butterfat and skim milk in inventory which is in excess of Class II milk available for assignment is classified as Class I.

It was proposed that the order provide an "inventory variation" method of classification. This would have the effect of allocating inventory to Class II utilization and allocating other source receipts during the month to Class I, thus giving Class I priority to other source receipts during the month over inventory of fluid milk products even though beginning inventory was composed entirely of producer milk. The present system of handling inventory gives priority to Class I of producer milk in inventory before receipts of other source milk. The current method is consistent with the intent to give producer milk prior allocation to Class I and should be retained.

9. *Definition of pool plant.* No change should be made in the definition of a pool plant.

It was proposed that a new paragraph be added to the pool plant definition which would credit plant operators with minimum pool plant qualification compliance should a labor dispute limit the movement of milk from the plant. Cooperative associations representing the majority of producers on the market opposed the proposed amendment.

The proposal raises questions the answers to which would be extremely difficult to incorporate in order provisions. For example, how should a labor dispute be defined, what constitutes a limitation of movement, and should a work stoppage be a consideration. If, after a review of the facts, the Secretary concluded that pool performance could not be met because of an unusual and unavoidable circumstance, he could suspend or terminate applicable provisions of the order to eliminate undue hardship to producers or handlers due to circumstances beyond their control.

10. *Weight factors for certain fluid milk product.* The order should not provide specific factors to be used in computing product pounds in specified fluid

milk products. It was proposed that such a conversion factor for chocolate milk drinks be specified in the order.

The decision relative to the conversion factor used for respective dairy products should remain with the market administrator since he is in the best position to verify and determine skim milk and butterfat content of fluid milk products.

11. *Miscellaneous changes.* The Northeastern Wisconsin order provides for the filing of monthly reports by the 5th day of the month exclusive of Sundays and holidays. It was proposed that a definition of "holiday" be provided. Proponent testified, however, that he had had no difficulties because of the lack of such definition in the Northeastern Wisconsin order and that any anticipated problems could be handled administratively under the present provisions. Accordingly, the proposed amendment is denied.

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 orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

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

Recommended marketing agreements and orders amending the orders. The following orders amending the orders regulating the handling of milk in the Michigan Upper Peninsula and Northeastern Wisconsin marketing areas are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended: Michigan Upper Peninsula order, Part 1044:

§ 1044.22 [Amendment]

1. Delete § 1044.22(i) (1) and substitute the following:

(1) On or before the 5th day of each month the minimum price for Class I milk pursuant to § 1044.50 and Class I butterfat differential pursuant to § 1044.52(a), both for the current month; the minimum price for Class II milk pursuant to § 1044.51 and the Class II butterfat differential pursuant to § 1044.52(b), both for the preceding month; and

2. Delete § 1044.41 and substitute the following:

§ 1044.41 Classes of utilization.

Subject to the conditions set forth in §§ 1044.42 and 1044.43, the classes of utilization shall be:

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

(1) Disposed of in the form of fluid milk products, except:

(i) Fluid milk products classified as Class II pursuant to (b) (3) of this section; and

(ii) Fluid milk products which are fortified with nonfat milk solids shall be Class I in an amount equal only to the weight of an equal volume of a like unfortified product of the same butterfat content; and

(2) Not accounted for as Class II utilization.

(b) Class II utilization shall be all skim milk and butterfat:

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

(2) In inventories of fluid milk products on hand at the end of the month;

(3) In skim milk disposed of for livestock feed or dumped subject to prior notification to and verification (at his discretion) by the market administrator;

(4) In skim milk equal to the weight of skim milk in fortified fluid milk products which is not classified as Class I pursuant to paragraph (a) (1) (ii) of this section;

(5) In shrinkage of skim milk and butterfat allocated to milk received from producers, but not to exceed 2 percent of such receipts; and

(6) In shrinkage of other source milk.

§ 1044.45 [Amendment]

3. In § 1044.45 delete "in Class I, Class II, and Class III" and substitute "in Class I and Class II."

4. Delete § 1044.46 and substitute the following:

§ 1044.46 Allocation of butterfat classified.

The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to milk received from producers:

(a) Subtract from the total pounds of butterfat in Class II utilization, the pounds of butterfat shrinkage classified pursuant to § 1044.41(b) (5);

(b) Subtract from the pounds of butterfat remaining in each class, in series beginning with Class II utilization, the pounds of butterfat in other source milk received from a plant(s) other than those subject to another marketing agreement or order issued pursuant to the Act;

(c) Subtract from the pounds of butterfat remaining in each class the pounds of butterfat in other source milk received during the month in the form of fluid milk products from a plant subject to another marketing agreement or order issued pursuant to the Act as follows:

(1) From Class I, the pounds of such butterfat received in a consumer-packaged form not so packaged in the plant during the month, and disposed of without further processing or packaging; and

(2) In series beginning with Class II utilization, the remaining pounds of such butterfat;

(d) Subtract from the pounds of butterfat remaining in each class, in series beginning with Class II utilization, the pounds of butterfat contained in inventory of fluid milk products on hand at the beginning of the month;

(e) Subtract from the remaining pounds of butterfat in each class the pounds of butterfat received from fluid milk plants of other handlers according to the classification established pursuant to §§ 1044.41 and 1044.43(a);

(f) Add to the remaining pounds of butterfat in Class II utilization the pounds subtracted pursuant to paragraph (a) of this section; and

(g) If the remaining pounds of butterfat in Class I and Class II exceed the pounds of butterfat in milk received from producers, subtract such overage from the remaining pounds of butterfat in each class in series, beginning with Class II utilization.

5. Delete §§ 1044.50, 1044.51, 1044.52, and 1044.53 and insert §§ 1044.50, 1044.51, and 1044.52 to read as follows:

§ 1044.50 Class I milk price.

Subject to the provisions of § 1044.52, the price per hundredweight for Class I milk shall be the price pursuant to § 1045.51(a) of this chapter (Northeastern Wisconsin) plus 11 cents for plants located in Zone 1(a), 21 cents for plants located in Zone 1, and 41 cents for plants located in Zone 2. For plants located outside the marketing area and west of Lake Michigan the price (subject to § 1044.53) shall be that specified for Zone 1. For plants located outside the marketing area and east of Lake Michigan the price (subject to § 1044.53) shall be that specified for Zone 2.

§ 1044.51 Class II milk price.

The price per hundredweight for Class II milk shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the USDA for the month, adjusted to a 3.5 percent butterfat basis by a butterfat differential, rounded to the nearest one-tenth cent, obtained by multiplying 0.12 by the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the USDA for the month.

§ 1044.52 Handler butterfat differential.

If the average butterfat test of Class I milk or Class II milk as computed pursuant to § 1044.48 is more or less than 3.5 percent, there shall be added to, or subtracted from, as the case may be, the price for each class of utilization, for each one-tenth of one percent that such average butterfat test is above or below 3.5 percent, a butterfat differential computed by multiplying the butter price pursuant to the proviso of § 1044.51 for the month specified below by the applicable factor listed, and rounding to the nearest one-tenth cent:

(a) For Class I milk, multiply such price for the preceding month by 0.125;

(b) For Class II milk, multiply each price for the current month by 0.115.

6. Renumber §§ 1044.55 and 1044.56 as §§ 1044.53 and 1044.54.

§ 1044.60 [Amendment]

7. In § 1044.60(a) delete "§§ 1044.54 and 1044.55" and substitute therefor "§§ 1044.52 and 1044.53".

§ 1044.61 [Amendment]

8. In § 1044.61 (c) and (d) delete "§§ 1044.51 and 1044.55" and substitute therefor "§§ 1044.50 and 1044.53".

§ 1044.62 [Amendment]

9. In § 1044.62 delete "§ 1044.54" and substitute therefor "§ 1044.52".

Northeastern Wisconsin order, Part 1045:

§ 1045.22 [Amendment]

1. Delete § 1045.22(i)(1) and substitute the following:

(1) On or before the 5th day of each month the minimum price for Class I milk pursuant to § 1045.51 and the Class I butterfat differential pursuant to § 1045.53(a), both for the current month; the minimum price for Class II milk pursuant to § 1045.52 and the Class II butterfat differential pursuant to § 1045.53(b), both for the preceding month;

2. Delete § 1045.41 and substitute the following:

§ 1045.41 Classes of utilization.

Subject to the conditions set forth in §§ 1045.42 and 1045.43, the classes of utilization shall be:

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

(1) Disposed of in the form of fluid milk products except:

(i) Fluid milk products classified as Class II pursuant to paragraph (b)(3) of this section; and

(ii) Fluid milk products which are fortified with nonfat milk solids shall be Class I in an amount equal only to the weight of an equal volume of a like unfortified product of the same nature and butterfat content; and

(2) Not accounted for as Class II utilization.

(b) Class II utilization shall be all skim milk and butterfat:

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

(2) In inventories of fluid milk products on hand at the end of the month;

(3) In skim milk disposed of for live-stock feed or dumped subject to prior notification to and verification (at his discretion) by the market administrator;

(4) Represented by the weight of skim milk in fortified fluid milk products which is not classified as Class I pursuant to paragraph (a)(1)(ii) of this section;

(5) In shrinkage of skim milk and butterfat allocated to milk received from producers, but not to exceed 2 percent of such receipts; and

(6) In shrinkage of other source milk.

3. Delete § 1045.43 and substitute the following:

§ 1045.43 Transfers.

Skim milk and butterfat transferred or diverted as milk, skim milk or cream in bulk form from a pool plant to:

(a) The pool plant of another handler shall be classified as Class I unless the operators of both plants in their reports submitted pursuant to § 1045.30 claim Class II utilization, subject in either event to the following conditions;

(1) The receiving plant has utilization in Class II of an equivalent amount of skim milk and butterfat, respectively; and

(2) The greatest possible total quantity of skim milk and butterfat in producer milk in the two plants is allocated to Class I;

(b) A plant operated by a producer-handler or a handler exempt pursuant to § 1045.81, shall be Class I utilization;

(c) A nonpool plant (except as specified in paragraph (b) of this section) shall be Class I utilization, unless the following conditions and the conditions of paragraph (d) of this section are met:

(1) Utilization in Class II is claimed by the transferor-handler in his report submitted pursuant to § 1045.30 for the month;

(2) The operator of the nonpool plant has utilization of an equivalent amount of skim milk and butterfat in Class II after the prior deduction from Class II utilization of receipts thereof during the month of skim milk or butterfat, respectively, from plants not regulated under the provisions of any Federal marketing agreement or order; and

(3) The operator of the nonpool plant maintains books and records which are adequate for the verification of such utilization and are made available if requested by the market administrator.

(d) The classification of any skim milk or butterfat for which a claim of Class

II use is made under paragraph (c)(1) of this section shall be subject to the following further conditions:

(1) If any skim milk or butterfat was disposed of from the nonpool plant in the form of bulk milk, skim milk, or cream to other nonpool plants, the market administrator shall determine the classification of such skim milk or butterfat at the nonpool plant where actually used or processed;

(2) If class I utilization at any nonpool plant at which classification of the pooled milk is made exceeds the receipts during the month from dairy farmers who constitute its regular source of Grade A milk, the transferred quantity shall be Class I to the extent to such excess: *Provided*, That when, during the month, transfers to such nonpool plant have been made from regulated plants under more than one Federal marketing agreement or order, the amount of skim milk or butterfat so classified as Class I milk shall be a pro rata quantity based on the proportion of receipts at the nonpool plant from each of such regulated plants, *And provided further*, That if the transferor nonpool plant also has receipts of ungraded milk which are commingled with the receipts from the pool plant, transfers of cream from such nonpool plant to another nonpool plant which is located in Wisconsin shall be allocated first to Class II utilization available after making the deduction pursuant to paragraph (c)(2) of this section at the transferee nonpool plant.

§ 1045.45 [Amendment]

4. In § 1045.45 delete "Class I, Class II and Class III" and substitute "Class I and Class II".

5. Delete § 1045.46 and substitute the following:

§ 1045.46 Allocation of butterfat classified.

The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to milk received from producers:

(a) Subtract from the total pounds of butterfat in Class II utilization the pounds of butterfat shrinkage classified pursuant to § 1045.41(b)(5);

(b) Subtract from the pounds of butterfat remaining in each class, in series beginning with Class II utilization, the pounds of butterfat in other source milk received from plants other than those subject to another marketing agreement or order issued pursuant to the Act;

(c) Subtract from the pounds of butterfat remaining in each class, in series beginning with Class II utilization, the pounds of butterfat in other source milk received from a plant subject to another marketing agreement or order issued pursuant to the Act;

(d) Subtract from the pounds of butterfat remaining in each class, in series beginning with Class II, the pounds of butterfat contained in inventory of fluid milk products on hand at the beginning of the month;

(e) Subtract from the remaining pounds of butterfat in each class the pounds of butterfat received as fluid milk products from pool plants of other han-

handlers according to the classification established pursuant to §§ 1045.41 and 1045.43(a);

(f) Add to the remaining pounds of butterfat in Class II utilization the pounds subtracted pursuant to paragraph (a) of this section; and

(g) If the remaining pounds of butterfat in Class I and Class II exceed the pounds of butterfat in milk received from producers, subtract such overage from the remaining pounds of butterfat in each class in series, beginning with Class II.

6. Delete §§ 1045.51, 1045.52, 1045.53 and 1045.54 and substitute the following:

§ 1045.51 Class I milk price.

Subject to the provisions of § 1045.53, the price per hundredweight for Class I milk shall be as follows:

(a) The basic formula price for the preceding month plus \$0.54 during the months of March, April, May, and June, \$0.74 during January, February, July, and December, and \$0.94 during all other months plus or minus a supply-demand adjustment of not more than 24 cents. The supply-demand adjustment shall be computed as follows:

(1) Calculate a "current utilization percentage" for each month by dividing the total pounds of Class I milk (excluding interhandler transfers) disposed of from pool plants under the terms of this order and the order regulating the handling of milk in the Michigan Upper Peninsula marketing area (Part 1044 of this chapter) for the second and third preceding months into the total hundredweight of producer milk received at such plants during the same months, multiply by 100 and round to the nearest whole number;

(2) Calculate a "net deviation percentage" as follows:

(i) If the current utilization percentage is neither less than the minimum standard utilization percentage specified below nor in excess of the maximum standard utilization percentage specified below, the net deviation percentage is zero;

(ii) Any amount by which the current utilization percentage is less than the minimum standard utilization percentage specified below is a "minus net deviation percentage"; and

(iii) Any amount by which the current utilization percentage exceeds the maximum standard utilization percentage specified below is a "plus net deviation percentage".

Month for which price applies	Month for which utilization is computed	Standard utilization range	
		Minimum	Maximum
January.....	October-November.....	123	128
February.....	November-December.....	128	133
March.....	December-January.....	130	135
April.....	January-February.....	133	138
May.....	February-March.....	135	140
June.....	March-April.....	140	145
July.....	April-May.....	145	150
August.....	May-June.....	150	155
September.....	June-July.....	145	150
October.....	July-August.....	130	135
November.....	August-September.....	123	128
December.....	September-October.....	123	128

(3) For a minus net deviation percentage the Class I price shall be increased and for a plus net deviation percentage the Class I price shall be decreased by two cents for each percentage point of net deviation: *Provided*, That for each of the first 12 months from the effective date hereof, the supply-demand adjustment shall differ by not more than 4 cents from that calculated for the second preceding month and thereafter by not more than 4 cents from that calculated for the first preceding month.

(b) For plants located in the Wisconsin counties of Florence, Forest, Marinette, Oneida and Vilas or in the State of Michigan, the price computed in paragraph (a) of this section shall be increased 10 cents.

§ 1045.52 Class II milk price.

The price per hundredweight for Class II milk shall be the average price per hundredweight for manufacturing grade milk f.o.b. plants in Wisconsin and Minnesota, as reported by the USDA for the month, adjusted to a 3.5 percent butterfat basis by a butterfat differential, rounded to the nearest one-tenth cent, obtained by multiplying 0.12 by the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery at Chicago, as reported by the USDA for the month.

§ 1045.53 Handler butterfat differential.

If the average butterfat test of Class I milk or Class II milk as computed pursuant to § 1045.48 is more or less than 3.5 percent, there shall be added to or subtracted from, as the case may be, the price for such class of utilization, for each one-tenth of one percent that such average butterfat test is above or below 3.5 percent, a butterfat differential computed by multiplying the butter price specified in § 1045.52 by the applicable factor listed and rounded to the nearest one-tenth cent:

(a) For Class I milk multiply such price for the preceding month by 0.125;

(b) For Class II milk multiply such price for the current month by 0.115.

7. Renumber § 1045.55 as § 1045.54.

§ 1045.60 [Amendment]

8. In § 1045.60(d) delete "Class III" and substitute "Class II".

§ 1045.63 [Amendment]

9. In § 1045.63(b) delete "Class III" and substitute "Class II".

§ 1045.64 [Amendment]

10. In § 1045.64 delete "Class I, Class II and Class III" and substitute "Class I and Class II".

§ 1045.83 [Amendment]

11. In § 1045.83(a) (1), delete "Class III" and substitute "Class II".

Signed at Washington, D.C., on February 7, 1962.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 62-1407; Filed, Feb. 9, 1962; 8:50 a.m.]

[7 CFR Part 1108]

[Docket No. AO-243-A6]

MILK IN CENTRAL ARKANSAS MARKETING AREA

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

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Assistant Secretary, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement, and order regulating the handling of milk in the Central Arkansas marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., not later than the close of business the 5th day after publication in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

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, were formulated, was conducted at Little Rock, Arkansas, on November 15, 1961, and December 5 and 6, 1961, pursuant to notice thereof which was issued October 25, 1961 (26 F.R. 10135), and a supplemental notice which was issued October 31, 1961 (26 F.R. 10485).

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

1. Marketing area;
2. Class I price;
3. Location price differentials;
4. Class II price;
5. Equivalent price determination;
6. Pool plant definition;
7. Cooperative association as a handler;
8. Allowable shrinkage in Class II;
9. Reporting dates; and
10. Classification of fluid milk products fortified with nonfat milk solids.

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.* The marketing area should be expanded to include Phillips, Lee, St. Francis, Cross, Woodruff, and Prairie Counties, Arkansas, and the city of Gurdon and the town of Okolona in Clark County, Arkansas. In each of these counties and in the two communities in Clark County, handlers presently regulated by the Central Arkansas milk order dispose of more than half the fluid milk products sold in the respective county or community.

The Central Arkansas Milk Producers Association proposed the extension of

the marketing area to add 13 counties east and northeast of the marketing area as presently defined. This additional area was requested to encompass a territory within which sales made from a plant located at Paragould, Arkansas are about half of that plant's total sales. No sales were made in the present marketing area from the Paragould plant at the time of the hearing. That plant was reported to be the successful bidder for a contract to supply a military installation in the area beginning January 1, 1962.

Fluid milk products from the Paragould plant are distributed in an area of northeast Arkansas and southern Missouri where handlers regulated under the St. Louis, Paducah, Memphis, and Central Arkansas markets sell milk. The plant is nearer to Memphis, Tennessee (about 90 miles), and to Little Rock, Arkansas (about 143 miles), than to the principal cities in the other areas. In the territory served by the Paragould plant that plant has about 40 percent of all sales; Paducah and Memphis handlers (other than the Paragould plant) each have about one-fourth of the sales and St. Louis and Central Arkansas handlers each have about 11-12 percent of all sales.

In the 13-county area proposed for inclusion in the Central Arkansas marketing area, the Paragould plant has 43 percent of all sales; Central Arkansas handlers, 11 percent; Memphis handlers, 21 percent; Paducah handlers, 9 percent; and St. Louis handlers, 3 percent.

The proposed 13-county area is composed of six southern counties in each of which handlers regulated under the Central Arkansas order make more than half the total fluid milk products sales and seven northern counties where Central Arkansas handlers do not have a majority of the sales. Therefore, only the six counties which are primarily served by Central Arkansas handlers should be included in the Central Arkansas marketing area.

Sales from the Paragould plant in the six-county area represented just under 5 percent of the total fluid sales made from the plant at the time of the hearing. The military contract sales reported to be awarded to this plant amount to about 500 gallons per day and approximately 5 percent of the total fluid sales from the plant. Thus, with any further increase in sales in the present Central Arkansas marketing area plus the six counties proposed herein to be included, the Paragould plant would be regulated under the Central Arkansas order. The sales in the Memphis area represent less than 3 percent of the disposition from the Paragould plant. However, regulation under the Central Arkansas order would occur in the month following that in which the sales in the Central Arkansas area exceeded those in the Memphis area for a six-month period.

Since the Paragould plant is regulated under the Memphis order at the present time the minimum class prices required to be paid producers are generally in line with those required under the Central Arkansas order. The Memphis order

which operates on the basis of an individual handler pool requires that any plant from which 1,000 pounds of Class I milk per day, or 5 percent of the Class I milk at the plant during the month, is disposed of on routes in the marketing area shall be regulated as to minimum prices paid producers. The Central Arkansas order requires that 10 percent of a plant's receipts from producers and other pool plants be disposed of on routes in the marketing area as a basis for full regulation of minimum prices. There was no proposal to reduce this requirement in order to regulate a plant under the order where it made the greater sales. Therefore, when the sales by the Paragould plant in the counties primarily supplied by Central Arkansas handlers exceed 10 percent, the plant should be regulated under the Central Arkansas order.

There are three other plants which sell milk in the seven counties not recommended for inclusion in the Central Arkansas milk marketing area which would remain unregulated by reason of the failure to include said counties in the area. There was no showing of disorderly marketing conditions in the area which might be attributable to the practices of these handlers in buying milk from producers.

The proposed inclusion of Okolona and Gurdon in the marketing area was requested by two handlers now regulated under the Central Arkansas order who make 70 percent of the sales in the two communities. The marketing area now includes all of Clark County (total population, 20,950) except the city of Gurdon (2,166) and the town of Okolona (344). (Official notice has been taken of 1960 United States Census.) The proponents of the change pointed out that the impact of prices and sales practices actually extends beyond the corporate limits of the communities since they are entirely surrounded by area which is presently included in the regulated market.

One handler selling in these communities has recently offered customers a free quart carton of milk with each half-gallon purchase. The handlers proposing the regulation of these communities attribute this sales practice to the subject handler's being able to purchase milk without regard to minimum order prices. This handler purchases milk from the Central Arkansas milk producers on a classified price plan but since his books are not audited by the producers' association or an impartial agency there is no assurance that he pays the Class I price for all fluid products sold. Another handler who purchases milk on the same basis testified that he sold Class II milk for whatever price he could get. He cited prices of \$2.95 to \$3.50 per hundredweight. He then pays producers for Class II milk at such prices. Since Class II milk is available at these prices substantially below the Class I price and can be sold in an unregulated market at competitively destructive prices it promotes disorderly marketing. To prevent this disorder Gurdon and Okolona should be included in the marketing area.

Two handlers who have small sales in these communities objected to their inclusion in the regulated marketing area. Each of these handlers has a plant regulated under the Central Arkansas order as well as a plant which is not regulated and from which distribution is made in Gurdon and Okolona. Each of these handlers maintained that it was more economical because of route arrangements to serve the Okolona and Gurdon area from the unregulated plant rather than from the regulated plant. These handlers also alleged that they were paying Class I prices in excess of those charged regulated handlers. These prices are negotiated with the producers cooperative which supplies milk to these handlers. The negotiated price is a price paid for milk supposedly used in fluid sales. The quantity of milk used in fluid sales is reported by the handler but is not subject to verification. Some of the milk may actually move to other fluid milk plants or be disposed of on routes. The lack of a system for verifying the use of milk according to established class prices has already brought about disorderly marketing in these communities. Since these handlers have the opportunity to adjust their business so that sales are made from a regulated plant in the regulated area no hardship should result from the inclusion of these towns in the marketing area. Furthermore, there is no indication that the negotiated prices which they pay are so inflexible that the charges they would be required to pay into the Central Arkansas producer settlement fund would not be recoverable in the prices they otherwise pay producers.

2. *Class I price.* The issue with respect to Class I price is composed of three segments: the basic formula price, the fluid differential added to the basic formula and the need for a compensatory payment on Class I milk priced under the Memphis order.

a. *Basic formula.* The type of basic formula appropriate for use in the Central Arkansas market was considered at a hearing held at Memphis, Tennessee and Little Rock, Arkansas on July 18-20, 1961. Official notice is hereby taken of the recommended decision (26 F.R. 9860) resulting from that hearing which recites the necessity for adopting a basic formula in the Central Arkansas order which will maintain general alignment with prices in the Memphis market. The decision also describes the necessity for alignment of Memphis Class I prices through the basic formula with Class I prices in the Paducah, Ozarks, St. Louis and Suburban St. Louis markets. No final decision in this matter has been made pending the reconsideration of the basic formula appropriate for use in several central United States markets including both Central Arkansas and Memphis. That hearing opened at Chicago, Illinois, January 17, 1962. Official notice is taken of this hearing notice issued January 11, 1962 (27 F.R. 314).

Since the issue with respect to basic formula is being considered on the basis of these other hearing records, the decision on this record will be confined to the relative level of the Class I price in the Central Arkansas market assum-

ing the basic formula used in the various markets in the region is identical in all markets.

b. *Fluid differential.* A fluid differential of \$1.74 should be established subject to a maximum price in relation to that established for the same month in the Ozarks area and a maximum and minimum price based on the Memphis Class I price, seasonally adjusted. A maximum price limit through December 1962 should be the Ozarks Class I price, seasonally adjusted, plus 75 cents. On and after January 1, 1963, this maximum price limit should be the Ozarks Class I price, seasonally adjusted, plus 60 cents. Maximum and minimum limits in the Class I price should be based on the Memphis Class I price, seasonally adjusted, plus or minus 25 cents, respectively.

About three-fourths of the milk supply for the Central Arkansas market is received from farms located within the boundaries of the marketing area. There is little competition for this milk supply from handlers in other markets. Therefore, the supply of milk available to the market from nearby farms is determined primarily by the decisions of these dairymen in expanding or reducing dairy operations. The average daily delivery of milk per producer rose gradually, about 50 pounds each year, from 1955 to 1960. In the first nine months of 1961 the daily delivery per producer rose 94 pounds above the average delivery in the same period of the previous year. Although there was some reduction in number of producers supplying the market the total supply of milk available to the market from producers who normally supply the area rose 7 million pounds from January-October 1960 to January-October 1961.

Class I sales declined in the same period by 4½ million pounds. As a consequence of these contra-changes in supply and sales the ratio of supply to sales rose from 119 in the 1960 period to 127 in 1961. These percentages are calculated on the basis of the total supply of milk maintained for the Central Arkansas area including the milk diverted to other areas which was included in the cooperative association pool but which was not reported as producer milk under the order. Class I sales include all sales from this cooperative pool supply.

The increase in milk supply relative to sales indicates that Class I prices may be attracting too much milk supply or they may be discouraging Class I sales. Transfers during the past year of Class I sales from the Central Arkansas market to handlers supplied by producers in the Memphis and Ozarks areas reduced Class I sales of Central Arkansas producers by 1,550,000 pounds monthly. This loss of Class I sales was offset largely by Class I sales to other markets. However, the substitution of other sources of supply for Class I sales which Central Arkansas producers had made can be attributed to some extent to the relative levels of Class I prices in these markets.

Although the major part of the milk supply for the Central Arkansas market

is obtained from nearby counties, the northwestern Arkansas counties of Benton and Washington provide the reserve supply for the market. These counties are in the Ozarks marketing area and supplies available to the Central Arkansas market are affected by the relationship between the price in the Ozarks area versus that in the Central Arkansas market. There are also large supplies of milk in southern Missouri which are equally available to the St. Louis and Central Arkansas markets.

The trend toward an oversupply in the Central Arkansas area relative to Class I sales could be accentuated quickly by any further increase in the Central Arkansas Class I price in relation to surrounding markets which represent alternative supplies of milk. If the Class I price exceeds substantially for an extended period the price in these other markets by more than the cost of transporting milk from such markets we may expect milk from these other markets to supplant milk priced under the Central Arkansas order.

To prevent further loss of Class I sales the fluid differential established by the Central Arkansas order for the remainder of 1962 should not exceed the Ozarks differential by more than it does currently. The \$1.74 differential in the Central Arkansas area exceeds the Ozarks differential (annual average) before supply-demand adjustment by 59 cents. Official notice has been taken of the provisions of the Chicago, St. Louis and Ozarks orders which establish Class I prices. The cost of moving milk from Springfield, Missouri to Little Rock is about 35 cents per hundredweight. From Washington and Benton counties Arkansas the milk freight cost to Little Rock is about 30 cents. The Class I price in Washington and Benton counties is established by the Ozarks order at 25 cents over the Springfield price.

The St. Louis differential (annual average before adjustment by supply-demand adjuster) is \$1.40 and plus transportation from St. Louis (54 cents) is more than the Central Arkansas differential. However, milk priced under the St. Louis order is received at plants nearer to Little Rock than St. Louis and at such plants the freight cost to Little Rock would be lower.

If prices in the St. Louis and Ozarks markets were not depressed by the currently effective supply-demand adjustment the Central Arkansas differential of \$1.74 would maintain reasonable alignment with Class I prices in these markets. Normally, a Class I price in the Central Arkansas market about 60 cents over the Ozarks price and 35 cents over the St. Louis price would be an appropriate ceiling. This difference should be established as a maximum limit on the Central Arkansas Class I price to become effective January 1, 1963.

In the 12 months ending with October 1961 the Central Arkansas Class I price exceeded the Ozarks Class I price (4 percent butterfat basis) by 96 cents. The relatively high price in Central Arkansas resulted from two factors. The Central Arkansas price rose relative to the Ozarks price because the basic formula used in computing the Central Arkansas price

averaged 18 cents higher than the basic formula which determined the Ozarks price. The divergence in price due to the basic formula differences, as heretofore stated, is being dealt with in another decision.

Another factor which affected the relative levels of the Class I prices in these two markets was the supply-demand adjuster which reduced the St. Louis price and thereby reduced the Ozarks Class I price which is related directly to the St. Louis price. If the supply-demand adjuster which affects the Ozarks and St. Louis prices continues to reduce such prices by as much as it has been doing the Central Arkansas ceiling price should reflect such reductions on and after January 1, 1963. Meanwhile, the ceiling price should be established at a 15-cent higher level to allow a gradual price adjustment. This ceiling arrangement should prevent any further increase this year in the Central Arkansas Class I price relative to the Class I prices in the Ozarks and St. Louis markets.

The mechanics for aligning Central Arkansas Class I prices with the Ozarks and St. Louis markets should be through a ceiling based on the Ozarks price. This will accomplish alignment with St. Louis prices since the Ozarks and St. Louis prices are directly related with the Ozarks price somewhat less variable on a seasonal basis.

With separate Class I pricing formulas in the Memphis and Central Arkansas markets, it will be possible for prices to move in one market independently of the other. Because there is considerable overlapping of sales routes operated by Memphis handlers and by Central Arkansas handlers a sharp drop or increase in the Class I prices in Central Arkansas could disrupt normal delivery patterns and induce shifts in milk supplies between these adjacent markets. A provision which maintains the Central Arkansas Class I price within the range of the Memphis Class I price plus or minus 25 cents will prevent wide differences in prices in the two markets. The 25-cent difference should apply to the annual average fluid differential with seasonal adjustments, if necessary.

c. *Compensatory payment on Class I milk priced under the Memphis order.* The compensatory payment into the Central Arkansas producer settlement fund on Class I milk priced under the Memphis order, whenever the Central Arkansas Class I price at any location exceeds the Memphis Class I price, should be discontinued.

This provision was adopted to deal with an unusual situation in which a plant located in the Central Arkansas marketing area disposed of almost equal quantities of Class I milk in the Central Arkansas and the Memphis marketing areas. Whenever sales in Memphis exceeded those in Central Arkansas the plant became subject to the Memphis order and was eligible for a price deduction based on the location of the plant in relation to Memphis. When sales were greater in the Central Arkansas area the deduction did not apply. This handler is no longer operating in this manner. Memphis sales of the handler are procured at and distributed from a

Memphis plant. Sales in the Central Arkansas area are made from a plant located in the area.

Since Federal order Class I prices in neighboring markets are established to maintain general alignment subject to transportation cost differentials and relative levels of supply and demand in each market, compensatory payments are not needed in most cases to maintain appropriate market price relationships.

The deletion of this provision is necessary at this time to avoid the imposition of unwarranted charges which might result from differences in the Memphis and Central Arkansas Class I prices as the result of this decision and a pending decision relative to the Memphis Class I price. It has been proposed to change the seasonality of the Memphis Class I differential. Such a change would require substantial payments by a Memphis handler disposing of Class I products in the Central Arkansas area during months when the Memphis price was lower than the Central Arkansas price.

3. *Location price differentials.* No change should be made in the rate or application of location price differentials except that such differentials should be measured from Little Rock as well as Benton, Arkansas.

The cooperative association representing a majority of the producers supplying the market sponsored a proposal in the hearing notice to disallow location price differentials at plants located in the marketing area. At the hearing the proponents offered no testimony relative to their proposal.

Several handlers whose plants are located within 60 miles of Benton, Arkansas (the present basing point for location differentials) supported the cooperative association proposal. These plants are not allowed a location price differential under present terms of the order. Other handlers whose plants were located in the area proposed to be added to the marketing area opposed the proposal.

The evidence shows Little Rock is the population center of the marketing area and the primary sales point in the area. Therefore, the prices at other locations should be based on the distance from Little Rock or Benton, whichever is nearer.

It was suggested that several location points be established north and west of Little Rock. The effect of establishing such basing points would deny certain handlers located beyond those points the differentials based on transportation costs to Little Rock. Therefore, such basing points are not appropriate to a pattern of uniform prices for milk disposed of primarily in Little Rock.

There was no testimony on which to establish a rate other than that now provided by the order, 1.5 cents per 10 miles distance.

4. *Class II price.* The Class II price should be the price reported by the United States Department of Agriculture as paid, f.o.b. plant, for milk used in manufacturing dairy products in the United States. The price should be adjusted to 4 percent by using the Class II butterfat differential.

The producers' cooperative association which represents most of the producers in the market has assumed responsibility for marketing milk in excess of that required by handlers for fluid products and for the ice cream and cottage cheese which some handlers manufacture. For such milk moved to manufacturing plants this cooperative has been receiving prices in excess of the Class II prices established by the order. The prices received have usually been higher than the United States average manufacturing milk price and have been 45 cents higher than the order Class II price. Since this cooperative can market all the excess milk in the area at this price or higher prices, there is no need to establish prices at a level lower than that reflected by the United States average prices.

The United States average price is reported per hundredweight of milk at test received. In order to announce a price at the basic test of 4 percent butterfat the price should be adjusted to 4 percent by using the Class II butterfat differential.

5. *Equivalent price determination.* The order should specify that in the absence of a quoted price or index needed to determine a class price or other order provision, an equivalent price should be determined by the Secretary. This provision is necessary to assure continuity of order operation in the event a price series referred to in the order is discontinued or revised.

6. *Pool plant definition.* The pool plant definition should include a plant operated by a cooperative association which delivers half or more of its members' milk to other handler's plants and from which at least 25 percent of the plant's receipts of Grade A milk is shipped to regulated plants during the months October through January.

The Central Arkansas Milk Producers Association operates a reload station at Springdale, Arkansas where milk is transferred to large transport trucks from trucks which pick up milk at the farms. The cooperative has purchased stationary holding tanks to be installed during January 1962. With the installation of these tanks the station will operate as a milk plant—receiving, cooling, and holding milk for transfer to other plants as it is needed.

This supply plant is to be used to handle reserve milk for the Fort Smith and Southern Arkansas markets as well as the Central Arkansas market. Some milk from the plant also moves regularly to a handler regulated under the Ozarks order.

Although the Central Arkansas market has received more milk from this station than any other fluid milk market, the quantities of milk moved from the station to Little Rock have, at times, been very small. This is partly because trucks are rerouted from the farms in some instances to reduce hauling instead of sending such milk through the station.

Since the supply of milk is maintained primarily for the Central Arkansas market it should be possible for the plant to qualify for pooling in this market. To assure that the plant is maintained

primarily to handle reserve milk for the Central Arkansas market, two conditions should be met. First, the cooperative association should deliver at least half its members milk to the plants of other handlers regulated under the Central Arkansas order. Second, the plant should demonstrate its connection with the market by shipping at least 25 percent of its milk receipts to regulated distributing plants during the months October through January. It is during these months that the largest quantities of the Springdale milk supply have been delivered to Little Rock handlers.

The provisions under which a supply plant not operated by such a cooperative may qualify should be revised to permit qualification on the basis of shipments during the October-January period. If such a plant were supplying the market its milk would be needed in the same months as the supply plant operated by the cooperative association.

7. *Cooperative association as a handler.* A cooperative association should be permitted to elect to be the handler with respect to the milk of its member producers delivered to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association.

Transportation of milk in insulated tank trucks from the farm to handlers as directed by cooperative associations creates a problem with respect to the determination of the responsibility to the individual producers in the market under certain circumstances. The handlers have only indirect knowledge of the identity of the individual producers from whom they receive milk and of the weights and tests of the milk of such individual shippers. The cooperative association maintains such information for its member producers, and the handlers accept the measurements as recorded by the agent of the cooperative association.

There are circumstances when it would be more appropriate to permit the cooperative association in control of the transportation to qualify as the handler under the order and report the milk so handled. This is particularly true when milk of several producers is commingled in the tank truck and delivered to two or more plants and in the case of producers whose milk is delivered on alternate days to different plants. The cooperative association should be provided the option of being the handler for all bulk tank milk to each pool plant for which it can qualify as the handler if a written request is provided the market administrator and the operator of the pool plant.

The functions of a cooperative association as a handler in this capacity differ from those of other handlers in that the cooperative does not use milk in a plant. Hence, the order should provide for these differences in the provisions relating to definitions, reporting, transfers, allocation of milk to be classified, payments and assessment charges. These conforming changes will maintain obligations as now established by the order except that the cooperative association will be required to report and account for the disposition of the individual deliveries of milk from producer members.

8. *Allowable shrinkage.* The maximum shrinkage of producer milk which is classified in Class II should be assigned to specific handling functions in the case of milk handled in more than one plant and in the case of milk received at the farm in a bulk tank truck.

The maximum shrinkage allowance in Class II at each pool plant should be 0.5 percent of the skim milk and butterfat in producer milk (excluding milk diverted to a nonpool plant) plus 1.5 percent of the skim milk and butterfat in all milk or milk products processed at such plant. Plants which are operated in a reasonably efficient manner and for which accurate records of receipts and utilization are maintained should not have plant losses in excess of the maximums provided. Any shrinkage in excess of the maximums should be classified as Class I milk.

To avoid duplicate shrinkage allowance on interplant movements of milk, shrinkage should be based on the amount that receipts from other pool plants are in excess of transfers to such plants. No shrinkage should be allowed on producer milk diverted to nonpool plants. On milk received at the pool plant and transferred in bulk to another plant, the transferor plant would be limited to the 0.5-percent maximum receiving shrinkage allowance on such milk.

In the assembly operation of bulk farm tank milk, there may be some physical loss of milk. Receipts at pool plants may not agree with the aggregate of the weights determined at the farm from the bulk tank "dip stick" reading. Provision should be made so that the cooperative association in its capacity as a handler on bulk tank milk will retain one-half of 1 percent of the 2-percent allowable shrinkage with the remainder passed on to the operator of the pool plant. If, however, the handler files a notice with the market administrator that he is purchasing farm bulk tank milk from the cooperative association on the basis of the aggregate farm weights and tests, the entire shrinkage should be available to the pool plant to which the milk is delivered.

The changes in maximum shrinkage allowed in Class II requires changes in the method of prorating shrinkage to preserve the intended application of the proposed allowances.

9. *Reporting dates.* No change should be made in the date on which handlers' reports of receipts and utilization of milk must be mailed to the market administrator. Such reports must now be mailed on the 7th day of the month. The cooperative association proposed that reports be mailed on the 6th or delivered on the 7th day. The earlier reporting was requested to permit an earlier announcement of the uniform price.

The requirement that reports be filed on the 6th day after the end of each month could be burdensome in a month when a holiday and a weekend occurred in that period.

The class prices should be reported not later than the 6th day of the month. The prices are reported now on the 5th but since the Class I price would be based

in part on Class I prices in other markets the later announcement date is necessary.

10. *Classification of fluid milk products fortified with nonfat milk solids.* "Dietary foods" and other fluid milk products fortified with nonfat milk solids should be classified as Class I up to the weight of an unmodified product of the same nature and butterfat content. The skim milk equivalent of the added solids in excess of such weight should be classified as Class II.

The Central Arkansas order provides that the skim milk equivalent of nonfat milk solids used in the fortification of fluid milk products be classified as Class I. Several handlers proposed that the skim milk equivalent of added solids be classified as Class II. The producer association opposed the proposed change in classification but offered no testimony on the issue.

Fortified fluid milk products customarily result from the addition of concentrated nonfat milk solids to milk or skim milk in fluid form to yield a finished product of a higher nonfat solids content than that of an equivalent amount of whole (producer) milk. Reconstituted products, on the other hand, involve the process of "floating" concentrated milk solids in water to yield a weight of product approximately equal to the weight of milk from which the concentrated milk product was first made by the removal of water.

Nonfat dry milk and condensed milk are ordinarily derived from unpriced milk or milk which has been priced as surplus under a Federal order. These products are not necessarily processed from producer milk and may be made from ungraded milk. An economic incentive exists for handlers to substitute, where possible, reconstituted fluid milk products for fluid milk products processed from current receipts of producer milk. Since such substitution would displace an equivalent amount of producer milk in Class I, the application of skim equivalent pricing in this circumstance is economically sound and is necessary to maintain orderly marketing.

The same economic incentive does not exist, however, with respect to the use of nonfat dry milk or condensed skim milk to fortify a fluid milk product. The incentive for handlers to use solids to fortify fluid milk products, primarily derived from producer milk, is in being able to readily meet the specific demands of consumers and thereby to maintain or even increase Class I sales. Until recently, fortified fluid milk products represented a very small proportion of total fluid milk sales.

It is practical and administratively necessary to maintain the skim milk equivalent method of accounting for total receipts and disposition. Therefore, the difference between the volume classified in Class I and the total skim milk equivalent of nonfat milk solids in the product should be assigned to Class II. Accordingly, the order should be amended to classify fortified products as Class I only to the extent of the weight of an unmodified fluid milk product of the same nature and butterfat content.

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

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

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

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

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

Recommended marketing agreement and order amending the order. The following order amending the order regulating the handling of milk in the Central Arkansas marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. 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:

1. Delete § 1103.4 and substitute the following:

§ 1103.4 Central Arkansas marketing area.

"Central Arkansas marketing area," hereinafter called the "marketing area" means all the territory included within the boundaries of the counties of Clark, Conway, Cross, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lee, Lo-

noke, Monroe, Phillips, Pope, Prairie, Pulaski, Saline, St. Francis, White, and Woodruff, all in the State of Arkansas.

§ 1108.8 [Amendment]

2. In § 1108.8 after the words "producer milk" insert a comma and "milk from a cooperative association in its capacity as a handler pursuant to § 1108.12(c).".

3. Delete § 1108.9 and substitute the following:

§ 1108.9 Supply plant.

"Supply plant" means:

(a) An approved plant from which fluid milk products in an amount not less than 50 percent of its receipts of producer milk and milk received from a cooperative association in its capacity as a handler pursuant to § 1108.12(c) is moved during such month to distributing plants: *Provided*, That any such plant which qualifies as a supply plant for each of the months during the period October through January shall upon written application to the market administrator, on or before the end of such period, be designated as a supply plant for the following months of February through September; or

(b) An approved plant which is operated by a cooperative association having member producers which delivers 50 percent or more of its member milk to the pool plants of other handlers and from which fluid milk products in an amount not less than 25 percent of its receipts of producer milk during the month at such plant are shipped during such month to distributing plants: *Provided*, That any such plant which qualifies as a supply plant for each of the months October through January shall, upon written application to the market administrator, on or before the end of such period, be designated as a supply plant for the following months of February through September.

§ 1108.12 [Amendment]

4. In § 1108.12 add paragraph (c) as follows:

(c) Any cooperative association with respect to the milk of its producer members which is delivered to the pool plant of another handler in a tank truck owned or 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, that it will be the handler for such milk for the month, such cooperative handler status to be effective the first day of the month following receipt by the market administrator of such notice and to continue until the first day of the month following receipt of a request to discontinue such cooperative handler status. Milk so delivered shall be considered to have been received by the cooperative association at the plant to which delivered and then transferred to the handler operating the plant.

5. Delete § 1108.14 and substitute the following:

§ 1108.14 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a dis-

tributing plant which during the month has no other source milk, producer milk or milk received from a cooperative association as a handler pursuant to § 1108.12(c).

6. Delete § 1108.15 and substitute the following:

§ 1108.15 Producer milk.

"Producer milk" shall be that skim milk or butterfat for each handler's account in milk (in an amount determined by weights and measurements for individual producer's deliveries, as taken at the farm in the case of milk moved from the farm in a bulk tank truck) which is received pursuant to paragraphs (a) and (b) of this section and diverted pursuant to § 1108.6 as follows:

(a) Received directly from producers' farms at a pool plant by the operator of the pool plant (except that for which a cooperative association is a handler pursuant to § 1108.12(c)) or diverted by the pool plant operator pursuant to § 1108.6.

(b) Received directly from producers' farms for its account by a cooperative association in its capacity as a handler pursuant to § 1108.12(c) or diverted for its account pursuant to § 1108.6.

§ 1108.17 [Amendment]

7. In § 1108.17 insert after the words "producer milk" the words "and milk from a cooperative association in its capacity as a handler pursuant to § 1108.12(c)".

§ 1108.30 [Amendment]

8. In § 1108.30(a) delete subparagraph (2) and substitute the following:

(2) Fluid milk products received from other pool plants and milk received from a cooperative association in its capacity as a handler pursuant to § 1108.12(c).

§ 1108.31 [Amendment]

9. In § 1108.31(b) (2) delete "for each of his pool plants" and substitute "for each pool plant".

10. Delete § 1108.41 and substitute the following:

§ 1108.41 Classes of utilization.

Subject to the conditions set forth in §§ 1108.42 through 1108.46, 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 the plant in the form of fluid milk products; except

(i) Fluid milk products classified pursuant to subparagraph (b) (3) of this section, and

(ii) Fluid milk products which are fortified with additional milk solids shall be Class I in an amount equal only to the weight of an equal volume of an unfortified product of the same butterfat content, and

(2) Not specifically accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

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

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

(3) Disposed of as skim milk and used for livestock feed;

(4) The weight of skim milk in fortified fluid milk products which is not classified as Class I pursuant to paragraph (a) (1) (ii) of this section; and

(5) In shrinkage of skim milk and butterfat, respectively, allocated pursuant to § 1108.42(b) (1) but not in excess of:

(i) Two percent of milk received at a pool plant directly from producers except milk diverted pursuant to § 1108.6; plus

(ii) Two percent of milk received from a cooperative association handler pursuant to § 1108.12(c), if the handler operating the pool plant files with the market administrator in writing, prior to the first day of the month, notice that he is purchasing such milk for the month on the basis of farm weights determined by farm bulk tank calibrations; plus

(iii) One and one-half percent of milk received in bulk from pool plants of other handlers or received from cooperative associations pursuant to § 1108.12(c) unless two percent shrinkage is assigned pursuant to subdivision (ii) of this subparagraph; less

(iv) One and one-half percent of milk disposed of in bulk to other plants; and less

(v) One and one-half percent of milk disposed of to plants by a cooperative association handler pursuant to § 1108.12(c) unless two percent shrinkage is assigned pursuant to subdivision (ii) of this subparagraph.

(6) In shrinkage allocated to other source milk pursuant to § 1108.42(b) (2).

§ 1108.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively for each handler; and

(b) Prorate the resulting amounts between:

(1) The maximum pounds of skim milk and butterfat pursuant to § 1108.41(b) (5) divided by 0.02; and

(2) The pounds of skim milk and butterfat in other source milk received in the form of bulk fluid milk products.

11. Renumber § 1108.42 as § 1108.43.

12. Delete § 1108.43 which precedes § 1108.43(d) and substitute the following:

§ 1108.44 Transfers.

Skim milk or butterfat transferred (including milk diverted to nonpool plants) from a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1108.12(c) shall be classified:

(a) As Class I milk if transferred to a pool plant unless:

(1) The transferee and transferor handlers claim Class II utilization in their reports submitted pursuant to § 1108.30;

(2) The transferee plant has utilization in Class II of an equivalent amount of skim milk and butterfat, respectively, after the computation pursuant to § 1108.46(a) (5) and the corre-

sponding step of (b): *Provided*, That if either or both plants have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to producer milk; and

(3) If a specified utilization is not claimed by both handlers, subject to subparagraph (2) of this paragraph, skim milk and butterfat transferred to the pool plant of another handler by a cooperative association which is a handler pursuant to § 1108.12(c) shall be classified pro rata to the respective amounts remaining in each class for such month at the pool plant of the receiving handler after the computations pursuant to § 1108.46(a)(6) and the corresponding step of § 1108.46(b).

(b) As Class I milk if transferred to the plant of a producer-handler; and

(c) As Class I milk if transferred or diverted in bulk form as milk or skim milk to a nonpool plant unless:

(1) No fluid milk products are distributed on routes from the plant;

(2) It is located less than 250 miles by the shortest hard surfaced highway distance, as determined by the market administrator, from the plant from which transferred or diverted;

(3) The transferring or diverting handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 1108.30 for the month within which such transaction occurred;

(4) The operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification; and

(5) Not less than an equivalent amount of skim milk and butterfat was actually utilized in the nonpool plant in the use indicated in such report: *Provided*, That if it is found that an equivalent amount of skim milk and butterfat was not actually used in such plant during the month in such indicated use, the pounds transferred in excess of such actual use shall be classified as Class I milk.

13. Redesignate § 1108.43(d) as § 1108.44(d).

14. Renumber § 1108.44 as § 1108.45 and § 1108.45 as § 1108.46.

§ 1108.46 [Amendment]

15. Delete subparagraphs (4), (5), (6), and (7) of renumbered § 1108.46 and substitute the following:

(4) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(5) Add to the pounds of skim milk remaining in Class II the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(6) Subtract from the pounds of skim milk remaining in each class the skim milk received from other pool plants or from a cooperative association in its capacity as a handler pursuant to § 1108.12(c) according to its classification as

determined pursuant to § 1108.44(a) (1) and (2);

(7) Subtract from the pounds of skim milk remaining in each class, the skim milk received from a cooperative association in its capacity as a handler pursuant to § 1108.12(c) according to its classification as determined pursuant to § 1108.44(a) (3); and

(8) Subtract from the pounds of skim milk remaining in each class any amount by which the pounds of skim milk remaining in both classes exceed the pounds of skim milk in milk received from producers in series beginning with Class II. Such excess shall be called "overage".

16. Delete § 1108.51 and substitute the following:

§ 1108.51 Class prices.

Subject to the provisions of §§ 1108.52 and 1108.53, the class prices per hundredweight of milk containing 4.0 percent butterfat shall be determined for each month as follows:

(a) *Class I milk price.* The Class I milk price shall be the basic formula price for the preceding month plus \$1.74: *Provided*, That such Class I price shall not exceed: (1) The Class I price for the same month established under the Memphis Federal milk order plus 25 cents (plus or minus any seasonal adjustment in the Memphis price); or (2) the Class I price for milk of 4 percent butterfat content for the same month established under the Ozarks Federal milk order applicable at plants in the Ozarks marketing area other than those in Washington or Benton Counties, Arkansas, plus;

	From effective date through December 1962	Effective January 1963
January, February, July, and December.....	Cents 77	Cents 62
March.....	97	82
April, May, and June.....	90	75
August, September, October, and November.....	57	42

And provided further, That such Class I price shall not be less than the Class I price for the same months established under the Memphis Federal milk order minus 25 cents (plus or minus any seasonal adjustment in the Memphis price).

(b) *Class II milk price.* The Class II milk price shall be the average price reported by the Department of Agriculture for the current month for milk used in the manufacture of American cheese, evaporated milk, and butter and by-products, f.o.b. plant, United States, adjusted to 4.0 percent butterfat basis by using the differential established pursuant to § 1108.52(b).

§§ 1108.53, 1108.74 [Amendment]

17. In § 1108.53 and § 1108.74 delete the words "city limits of Benton, Arkansas" and substitute therefor "City Hall at Benton, Arkansas, or the State Capitol at Little Rock, Arkansas, whichever is nearer", and change "such city limits"

to "the respective City Hall or State Capitol".

§ 1108.61 [Amendment]

18. Delete § 1108.61(c).

19. Add § 1108.55 as follows:

§ 1108.55 Use of equivalent prices.

If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner prescribed, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

§ 1108.27 [Amendment]

20. In § 1108.27(k) (1) change "5th" to "6th".

§ 1108.80 [Amendment]

21. In § 1108.80 add paragraph (d) as follows:

(d) On or before the 13th day after the end of each delivery period, to each cooperative association, with respect to receipts of milk for which such cooperative association is the handler pursuant to § 1108.12(c), not less than the value of such milk at applicable class prices.

22. Delete § 1108.86 and substitute the following:

§ 1108.86 Expense of administration.

As his pro rata share of the expense of the administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of each month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe on the quantities designated as follows:

(a) A cooperative association as a handler pursuant to § 1108.12(c), on producer milk except that transferred to another handler operating a pool plant.

(b) A handler operating a pool plant, on producer milk plus milk received from a cooperative association as a handler pursuant to § 1108.12(c) and on other source milk allocated to Class I pursuant to § 1108.46(a)(2) and (b).

(c) A handler operating a nonpool plant at which milk is not classified and priced under provisions of another Federal milk order, on Class I milk disposed of in the marketing area except milk disposed of to a pool plant.

23. Make the following conforming changes in order language:

§ 1108.40 [Amendment]

In § 1108.40 delete the words "§§ 1108.41 through 1108.45" and substitute therefor "§§ 1108.41 through 1108.46".

§ 1108.60 [Amendment]

In § 1108.60 delete the words "§§ 1108.40 through 1108.45" and substitute therefor "§§ 1108.40 through 1108.46".

§§ 1108.53, 1108.70 [Amendment]

In § 1108.53, § 1108.70(a) and § 1108.70(b) delete the reference "§ 1108.45" and substitute therefor "§ 1108.46".

In § 1108.70(c) delete the reference "§ 1108.45(a) (7)" and substitute therefor "§ 1108.46(a) (8)".

In § 1108.70(d) delete the references "§ 1108.45(a) (5)" and "§ 1108.45(a) (4)".

and substitute therefor "§ 1108.46(a) (4)".

Signed at Washington, D.C., on February 7, 1962.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 62-1408; Filed, Feb. 9, 1962;
8:50 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 20]

ICE CREAM, FRENCH ICE CREAM, ICE MILK, FRUIT SHERBETS, AND WATER ICES

Proposed Amendments of Standards

Notice is given that American Food Laboratories, 1000 Stanley Avenue, Brooklyn, N.Y., and National Pectin Products Co., 2656 West Cullerton Street, Chicago, Ill., have separately proposed amendments to the standards of identity for frozen desserts, as follows:

American Food Laboratories proposes that paragraph (f) (2) in the standard of identity for ice cream (§ 20.1), paragraph (e) (2) in the standard of identity for fruit sherbets (§ 20.4), and paragraph (d) (1) in the standard of identity for water ices (§ 20.5) in each case be amended by changing the period at the end of the first sentence to a comma and adding the words "propylene glycol, or glycerin". These changes would have the effect of providing that the specified stabilizing ingredients which the standards provide may be added in admixture with dextrin, may also be added in admixture with propylene glycol or glycerin.

National Pectin Products Co. proposes that the first sentence in paragraph (e) (2) of the standard of identity for fruit sherbets (§ 20.4) and the first sentence in paragraph (d) (1) of the standard of identity for water ices (§ 20.5) be amended by changing the period at the end thereof to a comma and adding the words, "propylene glycol ether of methylcellulose" to the stabilizing ingredients therein listed.

National Pectin Products Co. also proposes that the last part of the second sentence in paragraph (b) (4) of the standard of identity for ice cream (§ 20.1), which provides that fruit may be acidulated with citric or ascorbic acid, be amended by changing it to read "* * * may be acidulated with citric acid, ascorbic acid, or phosphoric acid." Cross-references in the standards for french ice cream (§ 20.2) and ice milk (§ 20.3) make the proposed amendment applicable to standards for these frozen desserts also.

Pursuant to the 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 in accordance with the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (25 F.R. 8625), all interested persons are invited to submit their views in writing regarding the proposals published herein. Such views and comments should be submitted in quintuplicate, addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., prior to the thirtieth day following the date of publication of this notice in the FEDERAL REGISTER.

Dated: February 6, 1962.

J. K. KIRK,
Assistant Commissioner
of Food and Drugs.

[F.R. Doc. 62-1387; Filed, Feb. 9, 1962;
8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 3]

[Docket No. 14484; RM-289]

MODESTO AND SAN MATEO, CALIF.

Table of Assignments, Television Broadcast Stations; Order Extending Time for Filing Comments

1. The Commission has before it for consideration the requests of the Honor-

able Don D. Hammond, mayor of Modesto, Calif., and Chester Smith and Corbett Pierce of Modesto, filed February 5, 1962, to extend the time for filing comments in the above-entitled proceeding. Mayor Hammond does not indicate specifically the time extension he seeks; the latter petitioners seek to extend the filing date for comments from February 5, 1962 to February 19, 1962, and for reply comments, from February 19, 1962, to March 5, 1962.

2. The petitioners indicate that a number of persons in Modesto are interested in the proposal under consideration in this rule making proceeding, i.e., a proposal of the National Educational Television and Radio Center (NET) to shift television Channel 14 from Modesto to San Mateo, Calif., for noncommercial educational use, and need additional time to file their comments on it. Messrs. Smith and Pierce also state that counsel for NET has advised that it has no objection to the extension of time they request.

3. The Commission is of the view that the public interest will be served by extending the time for comments in this proceeding. The views of interested persons in the Modesto area on the proposal will be useful in its evaluation, and a short extension of time for comments may be granted without prejudice to any party or unduly delaying the orderly consideration of the proposal.

4. Accordingly, it is ordered, This 6th day of February 1962, that the aforesaid requests of Mayor Hammond and Messrs. Smith and Pierce are granted; and that the time for filing comments herein is extended from February 5, 1962, to February 19, 1962, and that the time for filing reply comments is extended from February 19, 1962, to March 5, 1962.

5. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and section 0.241(d)(8) of the Commission's rules.

Released: February 7, 1962.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-1398; Filed, Feb. 9, 1962;
8:49 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 55560]

FISH

Tariff-Rate Quota

FEBRUARY 7, 1962.

The tariff-rate quota for the calendar year 1962 on certain fish dutiable under paragraph 717(b), Tariff Act of 1930, as modified.

In accordance with the proviso to item 717(b) of Part I, Schedule XX, of the General Agreement on Tariffs and Trade (T.D. 51802), it has been ascertained that the average aggregate apparent annual consumption in the United States of fish, fresh or frozen (whether or not packed in ice), filleted, skinned, boned, sliced, or divided into portions, not specially provided for: cod, haddock, hake, pollock, cusk, and rosefish, in the three years preceding 1962, calculated in the manner provided for in the cited agreement, was 190,476,220 pounds. The quantity of such fish that may be imported for consumption during the calendar year 1962 at the reduced rate of duty established pursuant to that agreement is, therefore, 28,571,433 pounds.

[SEAL]

PHILIP NICHOLS, Jr.,
Commissioner of Customs.

[F.R. Doc. 62-1397; Filed, Feb. 9, 1962;
8:49 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

TEXAS

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321(a) of Public Law 87-128 (7 U.S.C. 1961) it has been determined that in the following counties in the State of Texas natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

TEXAS

DeWitt.	Live Oak.
Frio.	Maverick.
Jim Wells.	Wilson.
Karnes.	

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after December 31, 1962, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 7th day of February 1962.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 62-1410; Filed, Feb. 9, 1962;
8:50 a.m.]

GEORGIA

Designation of Area for Emergency Loans

For the purpose of making emergency loans pursuant to section 321(a) of Public Law 87-128 (7 U.S.C. 1961) it has been determined that in Polk County, Ga., natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named county after June 30, 1962, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 7th day of February 1962.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 62-1411; Filed, Feb. 9, 1962;
8:50 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Classification No. 74]

ARIZONA

Small Tract Opening

1. Pursuant to authority delegated to me by Bureau Order No. 684, dated August 28, 1961 (26 F.R. 8216), I hereby open for bid and sale at public auction, under the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U.S.C. 682a), as amended, 79 tracts listed in Part 3 of this Order. These parcels are located in the following described lands which were classified under the above Act by Classification Order No. 74 of February 3, 1961 (26 F.R. 1315):

GILA AND SALT RIVER MERIDIAN

T. 1 N., R. 8 E.,
Sec. 36, NW¼, NE¼SW¼, N½SE¼.

The tracts will be offered to the general public in the sequence shown in Part 3 of this Order, beginning at 10 a.m., on March 29, 1962. The sale will be held in the Agriculture Building, Arizona State Fairgrounds, 1826 West McDowell Road, Phoenix, Arizona.

2. The center of the Apache Junction Area is at the intersection of the Apache Trail and U.S. Highway 60-70-80-89, and is 32 miles east of Phoenix, Arizona, on the lower southwestern slopes of the Superstition Mountain Range. The population is approximately 8,500 permanent residents. Three water companies service the area, electricity is available in all but the remote portions, and natural gas is being extended into outlying areas.

The subject lands are situated on the eastern fringe of the Apache Junction Area and are north of the U.S. Highway 60-70-80-89, and east of the main access road running northerly through the NE¼, Sec. 35, and they are considered equally desirable and potentially suitable for desert homesite development. The tracts can be identified by finding the brass cap survey markers for the east quarter corner and the west quarter corner of Sec. 36, and by finding the reference corners for the northwest section corner and the north quarter corner of Sec. 36. Electricity is available to this neighborhood from a power line running along the western boundary of Sec. 25 and the NW¼ Sec. 36. Natural gas and water are available at the Palm Springs development 2½ miles to the west, and can be extended into these lands as soon as sufficient demand exists. There are no zoning restrictions. The lands are accessible from U.S. Highway 60-70-80-89 by a graded, gravel road leaving this highway 3.5 miles southeast of Apache Junction, thence northeastward to the point of intersection with the north section line of Sec. 35. A recently cleared and graded road runs eastward along the line for ¼ mile to the northwest corner of the land, and continues east along the north side of Sec. 36, giving access to the northern portion of the area. The southern portion is accessible from a point on the U.S. Highway 4.25 miles southeast of Apache Junction, then northerly over unimproved roads and trails into the subject land.

The topography of the NW¼, NE¼SW¼, and the N½N½SE¼, Sec. 36, is quite flat, with a very gentle slope. Two main and several very small shallow washes traverse the area. The soils consist of sandy to silty loams, with occasional small gravelly areas. The S½N½SE¼, Sec. 36, is situated on the gentle northern slope of a low, rough desert mountain which rises rather abruptly just south of this land. This portion is particularly desirable for homesites because of its higher elevation, which affords an excellent view of the Superstition Mountain Range. The soils are quite gravelly, with low, rocky ridges in the extreme southern portion of the land.

The highest and best use for these lands is for desert homesite development.

The tracts will be subject to existing rights-of-way and to rights-of-way 50

feet in width on each side of every section line 40 feet on each side of all center section lines, 30 feet on each side of all sixteenth subdivision lines, and 25 feet on each side of all East-West sixty-fourth subdivision lines, for roads and utilities.

The minerals will be reserved to the United States. Each tract will contain 2½ acres.

3. The tract numbers, legal description, sides with right-of-way reservations, and the appraised value or minimum bid are shown on the table below:

Tract No.	Legal description	Sides with right-of-way reservation	Appraised value, minimum bid
1.	NW¼NE¼NE¼NW¼	50 ft. North.	\$2,000
2.	SE¼NE¼NE¼NW¼	40 ft. East and 25 ft. South.	2,000
3.	SW¼NE¼NE¼NW¼	25 ft. South.	2,000
4.	NE¼NW¼NE¼NW¼	50 ft. North.	2,000
5.	NW¼NW¼NE¼NW¼	50 ft. North and 30 ft. West.	2,000
6.	SW¼NW¼NE¼NW¼	30 ft. West and 25 ft. South.	2,000
7.	NE¼SE¼NE¼NW¼	40 ft. East and 25 ft. North.	2,000
8.	SE¼SE¼NE¼NW¼	40 ft. East and 30 ft. South.	2,000
9.	NW¼SE¼NE¼NW¼	25 ft. North.	2,000
10.	SW¼SE¼NE¼NW¼	30 ft. South.	2,000
11.	NE¼SW¼NE¼NW¼	25 ft. North.	2,000
12.	SE¼SW¼NE¼NW¼	30 ft. South.	2,000
13.	NW¼SW¼NE¼NW¼	30 ft. West and 25 ft. North.	2,000
14.	SW¼SW¼NE¼NW¼	30 ft. West and 30 ft. South.	2,000
15.	NE¼NE¼NW¼NW¼	50 ft. North and 30 ft. East.	2,000
16.	NW¼NE¼NW¼NW¼	50 ft. North.	2,000
17.	NE¼NW¼NW¼NW¼	do.	2,000
18.	NW¼NW¼NW¼NW¼	50 ft. North and 50 ft. West.	2,000
19.	SE¼NW¼NW¼NW¼	25 ft. South.	2,000
20.	NE¼SE¼NW¼NW¼	25 ft. North and 30 ft. East.	2,000
21.	SE¼SE¼NW¼NW¼	30 ft. East and 30 ft. South.	2,000
22.	NW¼SE¼NW¼NW¼	25 ft. North.	2,000
23.	NE¼SW¼NW¼NW¼	do.	2,000
24.	SE¼SW¼NW¼NW¼	30 ft. South.	2,000
25.	NW¼SW¼NW¼NW¼	50 ft. West and 25 ft. North.	2,000
26.	NE¼NE¼SE¼NW¼	30 ft. North and 40 ft. East.	2,000
27.	NW¼NE¼SE¼NW¼	30 ft. North.	2,000
28.	NE¼NW¼SE¼NW¼	do.	2,000
29.	SE¼NW¼SE¼NW¼	25 ft. South.	2,000
30.	NW¼NW¼SE¼NW¼	30 ft. North and 30 ft. West.	2,000
31.	SW¼NW¼SE¼NW¼	30 ft. West and 25 ft. South.	2,000
32.	NE¼SE¼SE¼NW¼	40 ft. East and 25 ft. North.	2,000
33.	SE¼SE¼SE¼NW¼	40 ft. East and 40 ft. South.	2,000
34.	NW¼SE¼SE¼NW¼	25 ft. North.	2,000
35.	NE¼SW¼SE¼NW¼	do.	2,000
36.	SE¼SW¼SE¼NW¼	40 ft. South.	2,000
37.	NW¼SW¼SE¼NW¼	25 ft. North and 30 ft. West.	2,000
38.	SW¼SW¼SE¼NW¼	30 ft. West and 40 ft. South.	2,000
39.	NE¼NE¼SW¼NW¼	30 ft. North and 30 ft. East.	2,000
40.	SE¼NE¼SW¼NW¼	30 ft. East and 25 ft. South.	2,000
41.	NW¼NE¼SW¼NW¼	30 ft. North.	2,000
42.	SW¼NE¼SW¼NW¼	25 ft. South.	2,000
43.	NE¼NW¼SW¼NW¼	30 ft. North.	2,000
44.	SE¼NW¼SW¼NW¼	25 ft. South.	2,000
45.	SW¼NW¼SW¼NW¼	50 ft. West and 25 ft. South.	2,000
46.	NE¼SE¼SW¼NW¼	25 ft. North and 30 ft. East.	2,000
47.	SE¼SE¼SW¼NW¼	40 ft. South and 30 ft. East.	2,000
48.	NW¼SE¼SW¼NW¼	25 ft. North.	2,000
49.	NE¼SW¼SW¼NW¼	do.	2,000
50.	SE¼SW¼SW¼NW¼	40 ft. South.	2,000
51.	NW¼SW¼SW¼NW¼	25 ft. North and 50 ft. West.	2,000
52.	SW¼SW¼SW¼NW¼	50 ft. West and 40 ft. South.	2,000
53.	NE¼NE¼NE¼SW¼	40 ft. North and 40 ft. East.	2,000
54.	NW¼NE¼NE¼SW¼	40 ft. North.	2,000
55.	NE¼NW¼NE¼SW¼	do.	2,000
56.	NW¼NW¼NE¼SW¼	40 ft. North and 30 ft. West.	2,000
57.	NE¼SE¼NE¼SW¼	25 ft. North and 40 ft. East.	2,000
58.	NW¼SE¼NE¼SW¼	25 ft. North.	2,000
59.	NE¼SW¼NE¼SW¼	do.	2,000
60.	NW¼SW¼NE¼SW¼	25 ft. North and 30 ft. West.	2,000
61.	NE¼NE¼NE¼SE¼	40 ft. North and 50 ft. East.	2,000
62.	SE¼NE¼NE¼SE¼	50 ft. East and 25 ft. South.	2,000
63.	NW¼NE¼NE¼SE¼	40 ft. North.	2,000
64.	NE¼NW¼NE¼SE¼	do.	2,000
65.	NW¼NW¼NE¼SE¼	40 ft. North and 30 ft. West.	2,000
66.	SW¼NW¼NE¼SE¼	30 ft. West and 25 ft. South.	2,000
67.	NE¼NW¼NW¼SE¼	40 ft. North.	2,000
68.	NW¼NW¼NW¼SE¼	40 ft. North and 40 ft. West.	2,000
69.	NE¼SE¼NE¼SE¼	25 ft. North and 50 ft. East.	2,200
70.	SE¼SE¼NE¼SE¼	50 ft. East and 30 ft. South.	2,200
71.	NW¼SE¼NE¼SE¼	25 ft. North.	2,200
72.	NE¼SW¼NE¼SE¼	do.	2,200
73.	SE¼SW¼NE¼SE¼	30 ft. South.	2,200
74.	NW¼SW¼NE¼SE¼	25 ft. North and 30 ft. West.	2,200
75.	SW¼SW¼NE¼SE¼	30 ft. West and 30 ft. South.	2,200
76.	NE¼SE¼NW¼SE¼	25 ft. North and 30 ft. East.	2,200
77.	NW¼SE¼NW¼SE¼	25 ft. North.	2,200
78.	SE¼SW¼NW¼SE¼	30 ft. South.	2,200
79.	SW¼SW¼NW¼SE¼	40 ft. West and 30 ft. South.	2,200

4. Bids may be made personally by the applicant or his agent at the sale, or may be mailed. Bids sent by mail will be considered only if received at the Arizona Land Office, Bureau of Land Management, 3022 Federal Building, Phoenix 25, Arizona, prior to 3:00 p.m., March 23, 1962. If sealed bids are submitted for more than one tract, no tract preference can be allowed since the tracts will be offered in numerical sequence. No sealed bid will be accepted if it is less than the

appraised value of the tract. No oral bid will be accepted if it is less than \$10.00 higher than the highest mailed bid, or, if there be none, if it be less than the appraised value of the tract. All bids must be in units of \$10.00.

5. Persons who have previously acquired a tract under the Small Tract Act are not qualified to purchase a tract at the sale.

6. Bids sent by mail must be made by submitting a properly completed Small

Tract Auction Application to Purchase, copies of which may be obtained from the Manager, U.S. Land Office, 3022 Federal Building, Phoenix 25, Arizona. Each bid sent by mail must clearly show (a) the name and post office address of the bidder, (b) Classification No. 74, and (c) the Tract Number of the land for which the bid is made. Each bid must be accompanied by the full amount of the bid in the form of cash, certified or cashier's check, post office money order, or bank draft made payable to Bureau of Land Management. Each bid must be enclosed in a separate envelope, but payment need only accompany the highest bid, provided all other bids designate the envelope containing the payment. Each envelope must carry on its reverse the following information and nothing else: (a) "Classification No. 74."

(b) The number of the Tract for which the bid is made. Bids which are not filed in accordance with the above instructions will be rejected.

7. Each tract will be awarded to the highest qualified bidder. If the highest bid is oral, the bidder will be required to make payment for the tract at the close of bidding, and a personal check will be acceptable for that purpose. Any person who is declared high bidder for any tract will be disqualified for consideration for other tracts at the sale. High mailed bids will become the opening bid at the auction. All unsuccessful bids will be returned promptly after the auction.

8. Any tracts not sold when offered in the course of bidding and on which no qualifying mailed bid has been received, will be offered at public auction upon the motion of any qualified bidder beginning at 10:30 a.m., on Thursday, April 5, 1962, in the United States Land Office, Room 3204 (third floor), Federal Building, 230 North First Avenue, Phoenix, Arizona. The remaining tracts will continue subject to nomination and auction at that place each succeeding Thursday at 10:30 a.m. (except holidays), until all tracts are sold or until the auction is declared closed by the Manager, United States Land Office. Mailed bids in the format described in Part 4 received after March 29, 1962, will be considered at the next scheduled offering.

FRED J. WEILER,
State Director,
Arizona Land Office.

FEBRUARY 1, 1962.

[F.R. Doc. 62-1330; Filed, Feb. 9, 1962;
8:45 a.m.]

Office of Saline Water

[Administrative Management Regulation
No. 1]

PROCESS RESIDENT ENGINEERS

Delegation of Authority

SECTION 1. *Authority.* Each Process Resident Engineer in charge of a field office of the Office of Saline Water at field locations of demonstration plants is authorized to purchase supplies and materials and make contracts for sup-

plies and materials when the amount involved in any one case does not exceed \$2,500. Each Engineer is authorized to make contracts for supplies and materials and services for amounts exceeding \$2,500 whenever public exigencies require immediate delivery of the supplies or materials, or performance of the service, to protect life, limb or loss of Government property.

SEC. 2. Limitations. The authority delegated in section 1 shall be exercised in accordance with applicable limitations in the Federal Property and Administrative Services Act of 1949, as amended, and in accordance with applicable policies, procedures and controls prescribed by the General Services Administration, the Department of the Interior, and the Director, Office of Saline Water.

SEC. 3. Effective date. This regulation is effective January 25, 1962.

(Subpar. 205 DM 11.1 and 11.4, Delegations of Authority by the Secretary of the Interior)

CHARLES F. MACGOWAN,
Director.

JANUARY 25, 1962.

[F.R. Doc. 62-1391; Filed, Feb. 9, 1962; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 14455, 14456; FCC 62M-163]

JEFFERSON RADIO CO. (WIXI) AND
VOICE OF THE MID SOUTH

Order Continuing Hearing

In re applications of W. D. Frink, tr/as Jefferson Radio Co. (WIXI), Docket No. 14455, File No. BL-8187, for license to cover construction permit BP-10672 authorizing a new standard broadcast station at Irondale, Ala.; Fred H. Davis and W. D. Frink, d/b as Voice of the Mid South, Docket No. 14456, File No. BP-14110, for construction permit to build a new standard broadcast station at Centreville, Ala.

The Hearing Examiner having under consideration a change of date for commencement of hearing;

It appearing that a prehearing conference was held on February 2, 1962, and owing to the fact that the applicants are not at present represented by counsel and will need to secure counsel it was agreed that a change of the hearing date was imperative; and

It further appearing that the date of February 28, 1962, was established as the date for commencement of hearing by the Acting Chief Hearing Examiner;

It is ordered, This 2d day of February 1962, that the date for commencement of hearing is changed from February 28 to April 10, 1962.

Released: February 5, 1962.

FEDERAL COMMUNICATIONS
COMMISSION,
BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-1399; Filed, Feb. 9, 1962; 8:49 a.m.]

[Docket No. 14497]

JAMES H. WITHROW

Order To Show Cause

In the matter of James H. Withrow, Post Office Box 828, Saint Mary's, Ga., Docket No. 14497; order to show cause why there should not be revoked the license for Radio Station 6W3437 in the Citizens Radio Service.

The Commission, by the Chief, Safety and Special Radio Services Bureau, under delegated authority, having under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of Citizens radio station 6W3437;

It appearing, that, pursuant to § 1.76 of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee as follows: Official notice of violation mailed on June 20, 1961, alleging that on June 11, 1961, Citizens radio station 6W3437 was observed in violation of the Commission's rules, viz: § 19.61(a)—transmission of idle conversation not considered substantive or necessary.

It further appearing, that, the above-named licensee received the official notice of violation, but did not make satisfactory reply thereto, whereupon the Commission by letter dated August 10, 1961, and sent by certified mail—return receipt requested (Certified No. 89792) again brought this matter to the attention of the licensee and requested that such licensee respond to the Commission's letter within 15 days from the date of its receipt, stating the measures which had been taken or were being taken in order to bring the operation of the radio station into compliance with the Commission's rules, and warning the licensee that failure to respond to such letter might result in the institution of proceedings for the revocation of the station license; and

It further appearing, that, receipt of the Commission's letter was acknowledged by the signature of the licensee, on August 14, 1961, to a Post Office Department return receipt card; and

It further appearing, that, in view of the foregoing, the licensee has repeatedly violated § 1.76 of the Commission's rules;

It is ordered, This 26th day of January 1962, pursuant to section 312(a) (4) of the Communications Act of 1934, as amended, and section 0.291(b) (8) of the Commission's statement of delegations of authority, that the said licensee show cause why the license for the above-captioned radio station should not be revoked, and appear and give evidence in respect thereto at a hearing to be held at a time and place to be specified by subsequent order; and

It is further ordered, That the Acting Secretary send a copy of this order by certified mail—return receipt requested—to the said licensee.

Released: January 29, 1962.

FEDERAL COMMUNICATIONS
COMMISSION,
BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-1400; Filed, Feb. 9, 1962; 8:49 a.m.]

[Docket No. 14498]

JACK C. MUNSON

Order To Show Cause

In the matter of Jack C. Munson, 314 Avalon Boulevard, Wilmington, Calif., Docket No. 14498; order to show cause why there should not be revoked the license for radio station WH-6555 aboard the vessel "Lark".

The Commission, by the Chief, Safety and Special Radio Services Bureau, under delegated authority, having under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of the above-captioned station;

It appearing, that, pursuant to § 1.76 of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee as follows: Official notice of violation mailed on October 11, 1961, alleging that on October 9, 1961, a copy of Part 8 of the Commission's rules was not available during inspection of radio station WH-6555, in violation of § 8.367(a) (2) of the Commission's rules; and a failure to have recorded in the station log each time the safety watch on 2182 kc, required by § 8.202(d), was begun, suspended, or concluded, in violation of § 8.368(a) (5) of the Commission's rules.

It further appearing, that the above-named licensee, received said official notice but did not make satisfactory reply thereto, whereupon the Commission, by letter dated November 13, 1961, and sent by certified mail—return receipt requested (Cert. No. 345110), brought this matter to the attention of the licensee and requested that such licensee respond to the Commission's letter within 15 days from the date of its receipt stating the measures which had been taken, or were being taken, in order to bring the operation of the radio station into compliance with the Commission's rules, and warning the licensee that failure to respond to such letter might result in the institution of proceedings for the revocation of the radio station license; and

It further appearing, that receipt of the Commission's letter was acknowledged by the signature of the licensee's agent, Aubrey Phelpott, on November 14, 1961, to a Post Office Department return receipt; and

It further appearing, that, although more than 15 days have elapsed since the licensee's receipt of the Commission's letter, no response was made thereto; and

It further appearing, that, in view of the foregoing, the licensee has repeatedly violated § 1.76 of the Commission's rules;

It is ordered, This 5th day of February 1962, pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, and section 0.291(b) (8) of the Commission's statement of delegations of authority, that the said licensee show cause why the license for the above-captioned radio station should not be revoked, and appear and give evidence in respect thereto at a hearing to be held at a time and place to be specified by subsequent order; and

It is further ordered, That the Secretary send a copy of this order by certified mail—return receipt requested—to the said licensee.

Released: February 7, 1962.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-1401; Filed, Feb. 9, 1962;
8:49 a.m.]

[Docket Nos. 14318, 14319; FCC 62M-169]

COLUMBIA BASIN MICROWAVE CO.

Order Continuing Hearing

In re applications of Columbia Basin Microwave Co., Docket No. 14318, File No. 1464-Cl-R-61, for renewal of the license for station KOY40, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Ephrata, Wash.; Docket No. 14319, File No. 4082-Cl-AL-61, for consent to assignment of the license for station KOY40, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Ephrata, Wash., from Patricia Hughes, d/b as Columbia Basin Microwave Co. to Columbia Basin Microwave Co., Inc.

The Hearing Examiner having under consideration a motion for continuance filed by Columbia Basin Microwave Co. (Columbia), on January 30, 1962, and the proceedings at the further prehearing conference in the above-entitled matter held on January 29, 1962;

It appearing, that on January 12, 1962, Columbia filed an application for change in an existing station owned by it but not involved in the proceedings herein, to provide microwave transmission service to a customer allegedly not directly controlled by, or under direct or indirect common control with Columbia at a new point of communication;

It further appearing, that at the aforementioned conference Columbia agreed not to file its petition for reconsideration and grant without hearing until the 30-day public notice period for the new application of January 12 had expired, or until such further time as may be necessary to satisfy the Common Carrier Bureau and to result in compliance, if necessary, with the appropriate provisions of the Commission's rules relating to defective applications (47 CFR 21.20(c));

It further appearing, that, in light of the foregoing, counsel for the Common Carrier Bureau agreed to interpose no objection to a grant of an indefinite continuance of the hearing herein;

It further appearing, that good cause has been shown for reaffirming the action taken by the Examiner in his order of November 30, 1961, following preliminary conference, at least to the extent of postponing the hearing until such time as the Commission shall have had the opportunity to act upon a petition for reconsideration and grant without hearing that Columbia proposes to file as soon as it has satisfied the Common Carrier Bureau regarding the acceptability of its application and as soon as relevant public notice periods have expired;

It is ordered, This 5th day of February 1962, that the motion for continuance filed by Columbia Basin Microwave Co. is granted insofar as it requests that the hearing herein be postponed until such time as the Commission shall have had an opportunity to act upon a proposed petition for reconsideration and grant without hearing: Provided, however, such postponement is without prejudice to the right of any party to request the designation of a specific hearing date for a good cause shown; and that the hearing herein is postponed as hereinabove set forth.

Released: February 6, 1962.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-1402; Filed, Feb. 9, 1962;
8:49 a.m.]

[Docket No. 14261; FCC 62M-168]

CLAY SERVICE CORP.

Order Continuing Hearing

In re application of Clay Service Corp., Ashland, Ala., Docket No. 14261, File No. BP-13795; for construction permit.

Pursuant to verbal request by both counsel for applicant and Chief, Broadcast Bureau: *It is ordered, This 5th day of February 1962, that the hearing now scheduled for February 6, 1962, be and the same is hereby rescheduled for March 5, 1962, 10:00 a.m., in the Commission's Offices, Washington, D.C.*

Released: February 6, 1962.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-1403; Filed, Feb. 9, 1962;
8:49 a.m.]

FEDERAL MARITIME COMMISSION

[Docket No. 972]

A. H. BULL STEAMSHIP CO.

Order To Show Cause

It appearing that on or about February 1, 1962, the A. H. Bull Steamship Co., a common carrier by water engaged in the carriage of goods between ports in Puerto Rico and United States North Atlantic ports, issued a notice to all shippers, entitled "Embargo Notice" wherein said carrier advised shippers that effective March 3, 1962, it is necessary for said carrier to place an "embargo" on the carriage of sugar, refined and turbinated, in bags, from ports in Puerto Rico to United States North Atlantic ports of Baltimore, Philadelphia, and New York; and

It further appearing that on or about February 5, 1962, said A. H. Bull Steamship Co. also issued an "Embargo Notice" wherein said carrier stated that effective February 10, 1962, due to a realignment of schedules and a curtailment of service, freight for Ponce and

Mayaguez, Puerto Rico, will no longer be accepted; this notice to apply to service from the United States North Atlantic ports of New York, Baltimore, and Philadelphia; and

It further appearing that there is no evidence of any emergency condition or physical limitations of said carrier necessitating the imposition of embargoes; and

It further appearing that said carrier has on file with this Commission a schedule of freight rates which includes a rate for the carriage of sugar, refined and turbinated, in bags, from Puerto Rican ports to the United States North Atlantic ports of Baltimore, Philadelphia, and New York; neither a supplemental schedule nor a new schedule has been filed with the Commission by said carrier cancelling the aforementioned schedule of rates; and

It further appearing that said carrier also has on file with this Commission a schedule of freight rates for the carriage of commodities from the United States North Atlantic ports of Baltimore, Philadelphia, and New York to Puerto Rican ports including Ponce and Mayaguez; said carrier has not filed a new or supplemental schedule with this Commission cancelling this aforementioned schedule; and

It further appearing that section 2 of the Intercoastal Shipping Act, 1933, and this Commission's Freight and Passenger Tariff Regulations require a carrier to file with this Commission a new schedule or schedules to become effective not earlier than thirty days after date of filing, before any change shall be made in the rates, fares, charges, classifications, rules or regulations that have previously been filed with the Commission; and

It further appearing that the imposition of said embargoes may constitute unjust and unreasonable practices in violation of section 18(a) of the Shipping Act, 1916:

Now, therefore, it is ordered, Pursuant to section 2 of the Intercoastal Shipping Act, 1933, and sections 18 and 22 of the Shipping Act, 1916, that the A. H. Bull Steamship Co. show cause on or before February 20, 1962, why it should not be ordered to withdraw the aforementioned embargoes and to file and post new schedules cancelling the schedules now in force for the commodity and service which it proposes to discontinue; and

It is further ordered, That this order be published in the FEDERAL REGISTER and served on the A. H. Bull Steamship Co. who is named as respondent in this proceeding. Oral argument in this proceeding will be heard by the Commission on February 20, 1962, in Room 4519, 441 G Street NW., Washington, D.C., at 9:00 a.m., e.s.t. Notwithstanding the rules as to time and service of documents of this Commission's rules of practice and procedure, the parties to this proceeding shall adhere to the following schedule: Affidavits of fact and memoranda of law may be submitted to the Commission on or before the close of business on February 16, 1962, and replies thereto on or before the close of business on February 19, 1962. All persons having an interest in this proceeding, desiring to

intervene therein, should notify the Secretary of the Commission promptly and may file petitions for leave to intervene up to the time of oral argument before the Commission; replies to petitions for leave to intervene shall be filed on or before the close of business on February 23, 1962. Parties seeking leave to intervene may file affidavits of fact and memoranda of law and replies in accordance with the schedule previously set forth. All documents or pleadings filed in this proceeding including petitions to intervene and replies thereto must be served by the person filing same upon all parties of record. The parties to this proceeding are directed to file their requests for time allotment for oral argument with the Secretary of the Commission on or before February 19, 1962.

By the Commission.

THOMAS LIST,
Secretary.

[F.R. Doc. 62-1471; Filed, Feb. 9, 1962;
11:21 a. m.]

FEDERAL POWER COMMISSION

[Docket No. CI62-627]

HUMBLE OIL & REFINING CO.

Order on Motion To Dismiss Order To Show Cause and Terminate Proceedings

FEBRUARY 5, 1962.

On January 16, 1962, Humble Oil and Refining Company (Humble), filed a response to the Commission's order issued December 13, 1961, which required Humble to show cause why it should not file an application pursuant to section 7(c) of the Natural Gas Act to acquire by stock ownership the facilities of Olin Gas Transmission Corporation.

Humble, by its response, asks in the alternative, that (1) the Commission terminate its show cause proceeding and issue an order declaring that section 7(c) does not require that Humble obtain a certificate of public convenience and necessity before it consummates the acquisition of the stock of Olin Gas Transmission; (2) the Commission issue forthwith a certificate of public convenience and necessity authorizing it to acquire all the outstanding capital stock of Olin Gas Transmission, if such a certificate is deemed required by section 7(c); (3) that, if the relief requested under (1) and (2) is denied, the Commission advance the date of hearing to February 19, 1961.

Humble's motion to terminate the proceeding and dismiss the Commission's order to show cause is predicated on the assumption that the acquisition of all the outstanding stock of Olin Gas Transmission by Humble does not constitute an "acquisition of facilities" within the meaning of section 7(c) of the Natural Gas Act. However, the order to show cause does not preclude Humble from asserting this contention in course of the proceedings. Humble may renew its

motion after presenting evidence in support of its application.

The instant order is not to be construed in any way as a determination by the Commission, at this time, of the legal question of jurisdiction raised by Humble to the Commission's order to show cause.

The Commission finds:

(1) There are sufficient grounds for going forward with the proceedings instituted by the order to show cause.

(2) The motion for termination of the proceedings should be denied, without prejudice to its renewal at a subsequent stage of the case.

(3) The motion for issuance of a certificate after an abridged hearing should be denied on the ground that the Commission would not be in a position to make a determination of the issues which would be involved in certification without a record.

(4) It is necessary and appropriate in the public interest that the date of hearing be advanced to a date earlier than set in the Commission's order of December 13, 1961.

The Commission orders:

(A) The motion of Humble Oil and Refining Company to dismiss the order to show cause contained in its response to the Commission's order of December 13, 1961, is hereby denied, without prejudice.

(B) For the reasons stated above, the motion requesting the issuance of a certificate of public convenience and necessity after an abridged hearing is hereby denied.

(C) The public hearing in this proceeding, heretofore set for March 27, 1962, is advanced to March 2, 1962, at the same hour and place provided in the Commission's order of December 13, 1961.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 62-1367; Filed, Feb. 9, 1962;
8:45 a.m.]

[Docket No. RP62-6]

NORTHERN NATURAL GAS CO.

Order Providing for Hearing on and Suspension of Rate Schedule and Related Service Agreement, Allowing Rate Schedule to Take Effect and Consolidating Proceedings

FEBRUARY 2, 1962.

On January 4, 1962, Northern Natural Gas Company (Northern), tendered filings relating to sales of natural gas subject to the jurisdiction of the Commission. Tendered were pipeline service Rate Schedule PL-B, pipeline overrun service Rate Schedule PO-B,¹ together with a related 20-year service agreement with Michigan Wisconsin Pipe Line Company, to become effective February 27, 1962, and interim Rate Schedule LPS-B,² the latter to be effective for the

¹ Original Sheet Nos. 18p, 18q, 18r, 33m, and 33n to FPC Gas Tariff, First Rev. Vol. No. 1.

² Original Sheet No. 18s to FPC Gas Tariff, First Rev. Vol. No. 1.

period extending from January 8, 1962, through February 26, 1962. These filings were submitted to implement the sale of up to 75,000 Mcf per day to Michigan Wisconsin in Northern's Rate Zone B as authorized in Docket No. G-20571 by order and Opinion No. 345, issued June 28, 1961. An effective date of January 8, 1962, is requested for interim Rate Schedule LPS-B; all other filings referred to herein are proposed to become effective February 27, 1962.

Proposed Rate Schedule PL-B is available for contract demand service in Northern's Rate Zone B to pipeline companies. The rate provided is \$4.259 per Mcf of contract demand and 23.4 cents per Mcf of gas delivered. The monthly minimum bill is the demand charge plus the charge for 75 percent load factor use of contract demand. A 14.2 cents per Mcf demand charge adjustment is provided for under-deliveries and penalties are provided for unauthorized excess takes at \$2.00 per Mcf for the larger of 3 percent of contract demand or 50 Mcf plus \$10.00 per Mcf for additional volumes.

Proposed Rate Schedule PO-B is available to PL-B customers for over-run deliveries specifically authorized by Northern pursuant to advance operating arrangements. The rate provided is 23.4 cents per Mcf, the commodity rate under the PL-B Schedule.

The interim Rate Schedule LPS-B provides a straight rate of 37.4 cents per Mcf. Such rate is the 100 percent load factor average charge under Rate Schedule PL-B.

The service agreement provides for deliveries up to the contract demand of 75,000 Mcf per day at an interconnection in Janesville, Wisconsin. Estimated sales for the first year of service are 23,495,007 Mcf (about 86 percent load factor) for \$9,330,931, or 39.7 cents per Mcf.

The proposed rates described above are based upon the settlement cost of service accepted in Docket Nos. G-19040, et al. However, inasmuch as the rates and charges set forth in Northern's Rate Schedules PL-B, PO-B and related service agreement reflect certain issues presently subject to determination in Docket Nos. G-19040, et al., these issues should be determined in a proceeding consolidated for hearing with the matters to be heard in Docket Nos. G-19040, et al.

The Commission finds:

(1) It is necessary and proper in the public interest to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a public hearing concerning the issues indicated above as presented in Original Sheet Nos. 18p, 18q, 18r, 33m, and 33n to Northern's FPC Gas Tariff, First Revised Volume No. 1, and that such tariff sheets be suspended and the use thereof deferred as hereinafter ordered; the proceeding instituted herein should be consolidated with the consolidated proceedings in Docket Nos. G-19040, et al., for purposes of hearing and decision.

(2) Northern's service agreement referred to above should become effective February 28, 1962.

¹ I.e., after an abridged hearing.

(3) Good cause has been shown that Original Sheet No. 18s to Northern's FPC Gas Tariff, First Revised Volume No. 1 be accepted for filing and that it be permitted to become effective January 8, 1962, through February 27, 1962.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. 1), the issues presented by Northern's proposed tariff sheets referred to in (1) above shall be set for hearing, the proceeding hereby instituted to be consolidated for purposes of hearing and decision with the proceedings in Docket Nos. G-19040, et al.

(B) Pending hearing and decision thereon, Original Sheet Nos. 18p, 18q, 18r, 33m, and 33n to Northern's FPC Gas Tariff, First Revised Volume No. 1, are hereby suspended and the use thereof deferred until February 28, 1962, and until such further time as they may be made effective in the manner herein-after prescribed.

(C) The rates, charges, classifications, and services set forth in the above-designated filings shall be effective as of February 28, 1962: *Provided, however*, That, within 20 days from the date of this order, Northern shall file a motion as required by section 4(e) of the Natural Gas Act to place the filings in effect on such date.

(D) Northern's service agreement relating to the tariff sheets set forth in paragraph (B) above shall be effective February 28, 1962.

(E) Original Sheet No. 18s to Northern's FPC Gas Tariff, First Revised Volume No. 1, is hereby accepted for filing and is allowed to become effective January 8, 1962, through February 27, 1962.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 62-1368; Filed, Feb. 9, 1962;
8:45 a.m.]

[Docket No. G 19115 etc.]

HASSIE HUNT TRUST ET AL.

Notice of Applications, Consolidation of Proceedings and Setting Date for Hearing

FEBRUARY 7, 1962.

Hassie Hunt Trust, Operator, et al., Docket No. G-19115; H. L. Hunt, Operator, et al., Docket No. G-19116; Hunt Oil Co., Docket No. G-19117; William Herbert Hunt Trust Estate, Operator, Docket No. G-19118; Lamar Hunt Trust Estate, Docket Nos. G-19124 and G-19125; H. L. Inc., Operator, et al., Docket No. G-19123; Placid Oil Co., Operator, et al., Docket Nos. G-19124 and G-19125; H. L. Hunt, Operator, et al., Docket No. CI61-1221; H. L. Hunt, Docket No. CI61-1282; Hassie Hunt Trust, Operator, et al., Docket No. CI61-1283; Caroline Hunt Sands, Docket No. CI61-1343; Caroline Hunt Trust Estate, Docket No. CI61-1344; Lamar Hunt Trust Estate, Docket No. CI61-1345; Nelson Bunker Hunt, Docket No. CI61-1346; Lamar Hunt, et al., Docket No. CI61-1736.

By order issued December 28, 1961, the matters involved in Docket Nos. G-19115, G-19116, G-19117, G-19118, G-19119, G-19123, G-19124, and G-19125 were set for hearing commencing March 28, 1962, at 10:00 a.m. e.s.t., in a hearing room of the Federal Power Commission (27 F.R. 132).

Take notice that each of the following listed Applicants has filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale of natural gas in interstate commerce, as hereinafter described, all as more fully set forth in the respective applications which are on file with the Commission and open to public inspection.

Each applicant herein proposes to sell natural gas to Natural Gas Pipeline Company of America for transportation in interstate commerce for resale as indicated below:

Docket No., Seller, Date Application Filed, and Field and Location

CI61-1221; H. L. Hunt, Operator, et al.; February 15, 1961; Alvin City Field, Brazoria County, Tex.
CI61-1282; H. L. Hunt; February 27, 1961; Alta Loma Area, Galveston County, Tex.
CI61-1283; Hassie Hunt Trust, Operator, et al.; February 27, 1961; Alta Loma Area, Galveston County, Tex.
CI61-1343; Caroline Hunt Sands; March 15, 1961; Chenango Field, Brazoria County, Tex.
CI61-1344; Caroline Hunt Trust Estate; March 15, 1961; Chenango Field, Brazoria County, Tex.
CI61-1345; Lamar Hunt Trust Estate; March 15, 1961; Chenango Field, Brazoria County, Tex.
CI61-1346; Nelson Bunker Hunt; March 15, 1961; Chenango Field, Brazoria County, Tex.
CI61-1736; Lamar Hunt, et al.; June 6 1961; Zoller Field, Aransas and Calhoun Counties, Tex.

Applicants propose to make each of the above sales at an initial price of 20.0 cents per Mcf (including tax reimbursement) at 14.65 psia.

The public convenience and necessity require that the matters listed in the caption above be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held commencing on March 28, 1962, at 10:00 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by the above-listed applications.

Those parties who have been permitted to intervene in Docket Nos. G-19115, G-19116, G-19117, G-19118, G-19119, G-19123, G-19124, and G-19125 are considered interveners in those matters only.

Further protests, petitions to intervene or notices of intervention may be filed with the Federal Power Commission,

Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) in Docket Nos. CI61-1221, CI61-1282, CI61-1283, CI61-1343, CI61-1344, CI61-1345, CI61-1346, and CI61-1736 on or before February 28, 1962.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 62-1396; Filed, Feb. 9, 1962;
8:49 a.m.]

FEDERAL RESERVE SYSTEM

FIRST VIRGINIA CORP.

Notice of Application for Approval of Acquisition of Shares of a Bank

Notice is hereby given that application has been made to the Board of Governors of the Federal Reserve System pursuant to section 3(a) (2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), by The First Virginia Corporation, which is a bank holding company located in Arlington, Virginia, for the prior approval of the Board of the acquisition by applicant of 80 percent or more of the voting shares of Peoples' Bank, Mount Jackson, Virginia.

In determining whether to approve this application submitted pursuant to section 3(a) (2) of the Bank Holding Company Act, the Board is required by that Act to take into consideration the following factors: (1) The financial history and condition of the company and the bank concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs, and welfare of the communities and the area concerned; and (5) whether or not the effect of such acquisition would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington 25, D.C.

Dated at Washington, D.C., this 6th day of February 1962.

By order of the Board of Governors.

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 62-1369; Filed, Feb. 9, 1962;
8:45 a.m.]

FIRST VIRGINIA CORP.

Notice of Application for Approval of Acquisition of Shares of a Bank

Notice is hereby given that application has been made to the Board of Governors of the Federal Reserve System pursuant to section 3(a) (2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), by The First Virginia Corporation, which is a bank holding company located in Arlington, Virginia, for the prior

approval of the Board of the acquisition by applicant of 80 percent or more of the voting shares of Southern Bank of Norfolk, Norfolk, Virginia.

In determining whether to approve this application submitted pursuant to section 3(a)(2) of the Bank Holding Company Act, the Board is required by that Act to take into consideration the following factors: (1) The financial history and condition of the company and the bank concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs, and welfare of the communities and the area concerned; and (5) whether or not the effect of such acquisition would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington 25, D.C.

Dated at Washington, D.C., this 6th day of February 1962.

By order of the Board of Governors.

[SEAL]

MERRITT SHERMAN,
Secretary.

[F.R. Doc. 62-1370; Filed, Feb. 9, 1962;
8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 37-62]

CON-GAS SERVICE CORP. AND CONSOLIDATED NATURAL GAS CO.

Notice of Proposed Organization and Conduct of Business of Subsidiary Service Company and Acquisition of Securities Thereof

FEBRUARY 5, 1962.

Notice is hereby given that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and Con-Gas Service Corporation ("Con-Gas"), 30 Rockefeller Plaza, New York 20, N.Y., a corporation recently organized by Consolidated, have filed a joint application-declaration and amendments thereto pursuant to sections 9(a), 10, and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 88 promulgated thereunder with respect to the organization and conduct of business of Con-Gas as a subsidiary service company in the Consolidated holding-company system and the acquisition by Consolidated of all of the capital stock and long-term notes proposed to be issued by Con-Gas.

All interested persons are referred to said amended application-declaration, on file in the office of the Commission, for a statement of the transactions pro-

posed therein which are summarized as follows:

Consolidated owns all of the outstanding capital stock of six subsidiary companies which are engaged in the purchase, production, storage, transmission, and distribution of natural gas in the States of Ohio, Pennsylvania, and West Virginia. As at December 30, 1960, total consolidated assets of the holding-company system amounted to \$782,000,000, and consolidated gross operating revenues for the year ended that date amounted to \$363,000,000. Con-Gas was incorporated by Consolidated on October 27, 1961, under the laws of the State of Delaware.

It is proposed that Con-Gas will perform services at cost solely for associate companies in the Consolidated holding-company system. Con-Gas has been organized in order: (1) To centralize in a single service company the services presently being performed for system companies by Consolidated and four of its subsidiary companies; (2) to facilitate expansion of servicing activities in the holding-company system; and (3) to provide the means whereby the costs of services now being rendered by Consolidated to associate companies without charge may be allocated among such companies on an equitable basis.

The operations of Con-Gas are proposed to commence effective as of January 1, 1962, and are to embrace the following services: Executive and administrative; planning and economics; accounting; internal auditing; automatic data processing; employee benefits administration; employee relations; medical; engineering and facility planning; gas supply; gas exploration; market development; purchasing; rates and certificates; research; insurance; and tax. Further increases in servicing activities, including meter repair and testing, are planned in 1963 and 1964.

Of the 10 officers and 31 employees who are now employed by Consolidated, all but one officer and one employee will be transferred to the payroll of Con-Gas, although amounts ranging from 10 to 25 percent of the salaries of five of the officers being transferred will continue to be paid by Consolidated. The salaries and related expenses, payment of which Con-Gas will take over from Consolidated as a result of the aforesaid transfers, are estimated at approximately \$1,107,000 in 1962. Con-Gas states that approximately 77 percent, or \$852,000, of such salaries and related expenses will be billed to operating subsidiary companies and that the balance of \$255,000, or 23 percent, will be billed to Consolidated. The aforesaid service charges to operating subsidiary companies are equivalent to 0.234 percent of the consolidated gross operating revenues of the holding-company system for 1960. Consolidated's operating expenses, after giving effect to the proposed transfers of personnel, are estimated at approximately \$844,000 in 1962, including salaries and employee welfare expenses of \$116,000 and service charges by Con-Gas of \$273,000.

In addition, the 13 System Service Departments maintained by four of Consolidated's subsidiary companies, which

heretofore have performed services for associate companies at cost under the supervision and direction of officers of Consolidated, will transfer to Con-Gas all of their employees, totaling 87, with estimated salaries, wages, and related expenses of approximately \$2,446,500. In order to expand existing services, 16 other employees of the subsidiary companies with salaries, wages, and related costs of \$334,000 will be transferred to Con-Gas, and 24 new employees with salaries and related expenses of \$383,000 will be hired. It is stated that the additional services would be required irrespective of the proposed organization of Con-Gas.

None of the aforesaid proposed transfers of present personnel from Consolidated and its operating subsidiary companies to the payroll of Con-Gas will result in an increase in the consolidated operating expenses of the holding-company system. The salaries and related expenses of the 24 new employees, and a contingency provision estimated at \$17,000 to cover salary upgradings and unforeseen costs in 1962, will result in an increase of approximately \$400,000 in the consolidated operating expenses of the holding-company system.

The costs of the services proposed to be performed by Con-Gas will comprise all expenses of doing business, including interest on long-term notes held by Consolidated, but excluding a return for the use of equity capital for which associate companies will not be charged. It is estimated that such costs will total \$4,425,700 in 1962, and these costs will be recorded in three categories, as follows:

(1) Departmental expenses will include those expenses that are directly attributable to each department of Con-Gas and an appropriate portion of those office and housekeeping expenses that are not directly attributable to the department but which are necessary for its operation. Such departmental expenses will include salaries and wages of officers and employees, rent and utilities, materials and supplies, depreciation, and other expenses attributable to the department.

(2) Company overhead expenses will include all corporate expenses, franchise and other general taxes, employee welfare expenses (which include non-productive time of personnel, retirement and disability benefits, and other costs incurred for the welfare of officers and employees), the expenses of keeping and auditing the accounts of Con-Gas, and all other overhead expenses not directly related to the operations of the departments.

(3) Out-of-pocket expenses will be those costs which are incurred for the direct benefit and convenience of an individual associate company or group of associate companies.

Associate companies will be billed each month for budgeted costs of services rendered, and at the end of the year such billings will be adjusted to an actual expense basis. The officers and employees in each department will be divided for billing purposes into two classes. Class A employees will include all personnel actually engaged in performing services

for associate companies, and such employees will maintain time reports recording their time actually spent in performing services for individual associate companies and groups of associate companies. Class B employees will include all other personnel of the department such as stenographers, clerks and other routine personnel.

Hourly departmental expense rates will be established at the beginning of each year for the purpose of billing associate companies for their respective shares of the expenses of each department. Such hourly rates will be based on estimates of productive time of employees and other costs of the department. Individual associate companies and groups of such companies will be billed amounts of departmental expenses which will be computed by applying the aforesaid hourly rates to time reported by Class A employees. Company overhead expenses will be distributed among associate companies and groups of companies in proportion to departmental expense charges. Out-of-pocket expenses will be billed directly to companies and groups of companies concerned. Charges to groups of associate companies will be allocated among companies comprising the groups on various bases such as gross revenues and numbers of employees of such companies.

In order to provide Con-Gas with initial capital of \$1,000,000, Consolidated proposes to acquire, for cash, 5,000 shares of common stock of Con-Gas at the par value thereof of \$100 per share and \$500,000 principal amount of 4% percent long-term non-negotiable notes at the principal amount thereof. Con-Gas anticipates that additional capital, as needed, will be procured through the issuance and sale of additional long-term notes to Consolidated.

The application-declaration states that the establishment of a single servicing organization in the holding-company system is for the benefit of all associate companies, that costs of services will be more equitably allocated among the associate companies, and that substantial savings in future system costs will be realized. It is also represented that the proposed changes in the servicing arrangements will not of themselves be the basis for seeking an increase in the rates charged by any of the operating subsidiaries and will not affect any pending rate negotiations or proceedings. No material amount of the charges proposed to be made by Con-Gas to operating subsidiary companies for services will be charged to the plant accounts of such subsidiary companies.

Consolidated and Con-Gas request that the amended application-declaration be granted and be permitted to become effective as at January 1, 1962, so as to allow temporary authority for the organization and conduct of business of Con-Gas for a period of 18 months, or such longer period as the Commission may determine, subject to further order of the Commission at the end of such period. Con-Gas agrees that, if the requested authorizations are allowed, it

will supply the Commission during the 18-month temporary period with such reports as the Commission may request with respect to the organization and conduct of business of Con-Gas.

Notice is further given that any interested person may, not later than February 28, 1962, request in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the amended application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicant-declarant, and proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed contemporaneously with the request. At any time after said date, the application declaration, as amended or as further amended, may be granted and permitted to become effective, or the Commission may take such other action as it may deem appropriate.

By the Commission.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F.R. Doc. 62-1379; Filed, Feb. 9, 1962;
8:46 a.m.]—

[File No. 70-4012]

CONSOLIDATED NATURAL GAS CO.

Notice of Proposed Issuance and Sale of \$25,000,000 Principal Amount of Debentures Pursuant to the Competitive Bidding Requirements

FEBRUARY 2, 1962.

Notice is hereby given that Consolidated Natural Gas Company ("Consolidated"), 30 Rockefeller Plaza, New York 20, N.Y., a registered holding company, has filed a declaration with this Commission pursuant to the provisions of the Public Utility Holding Company Act of 1935 ("Act") and the rules and regulations promulgated thereunder. Consolidated has designated sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction.

All interested persons are referred to the declaration on file at the office of the Commission for a statement of the transaction therein proposed, which is summarized as follows:

Consolidated proposes to issue and sell, pursuant to the competitive bidding requirements of Rule 50 promulgated under the Act, \$25,000,000 principal amount of -- percent Debentures due March 1, 1987. The interest rate (to be a multiple of $\frac{1}{8}$ of 1 percent) and the price to be paid to Consolidated (to be not less than 99 percent nor more than 102 percent of the principal amount thereof,

exclusive of accrued interest) will be determined by the bidding. The Debentures will be issued as an initial series under an Indenture dated as of March 1, 1962, between Consolidated and Morgan Guaranty Trust Company of New York, as Trustee. It is proposed that a sinking fund of \$1,000,000 will be deposited annually commencing March 1, 1967, thereby leaving a balance of \$5,000,000 payable at the maturity of the issue.

The proceeds from the proposed sale of Debentures will provide the long-term financing required for the 1962 construction program of the subsidiaries of Consolidated, presently estimated at \$69,600,000. It is expected that the balance of the required construction funds will be obtained by Consolidated through a short-term bank loan, presently estimated at \$20,000,000, and from internal cash sources of the Consolidated system.

Until funds are required by the subsidiary companies for their construction programs, the proceeds from the proposed sale of Debentures will be used temporarily to reduce Consolidated's seasonal gas storage bank loans, and to make short-term investments in U.S. Treasury bills.

The declaration states that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

It is estimated that the fees and expenses of Consolidated will aggregate \$96,000 including printing costs of \$38,000; Trustee's fees and expenses of \$11,000, including counsel fees of \$1,500; accounting fees and expenses of Price Waterhouse & Co. of \$5,000; consulting geologist's fees and expenses of \$5,000; Federal original issue tax of \$27,500; New York Stock Exchange listing fees of \$3,000; Securities and Exchange Commission filing fee of \$2,575; and miscellaneous fees and expenses of \$3,925. Counsel fees of Cahill, Gordon, Reindel & Ohl, counsel for the underwriters, which are to be paid by the successful bidder, will be supplied by amendment.

Notice is further given that any interested person may, not later than February 19, 1962, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon declarant, and proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed contemporaneously with the request. At any time after said date, the declaration, as amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof

or take such other action as it may deem appropriate.

By the Commission.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F.R. Doc. 62-1380; Filed, Feb. 9, 1962;
8:46 a.m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 1 (Rev. 1);
Amdt. 1]

ASSISTANT ADMINISTRATOR (MANAGEMENT)

Delegation Relating to Management and Size Standards

Delegation of Authority No. 1 (Revision 1) (26 F.R. 8611) is hereby amended by adding the following Subsection ID:

ID. *Subpoenas.* To issue in the name of the Administration subpoenas authorized by sections 309 and 310 of the Small Business Investment Act Amendments of 1961 (75 Stat. 752).

Effective date: January 17, 1962.

JOHN E. HORNE,
Administrator.

[F.R. Doc. 62-1382; Filed, Feb. 9, 1962;
8:46 a.m.]

[Delegation of Authority No. 7]

ADMINISTRATIVE SECRETARY

Delegation Relating to Administrative Hearings

Pursuant to the authority delegated to the Assistant Administrator (Management) by the Administrator by Delegation of Authority No. 1 (Revision 1), Amendment 1, dated January 17, 1962, there is hereby redelegated to the Administrative Secretary the authority:

To issue in the name of the Administration subpoenas authorized by sections 309 and 310 of the Small Business Investment Act Amendments of 1961 (75 Stat. 352).

Effective date: January 17, 1962.

D. J. CARR,
Assistant Administrator
(Management).

[F.R. Doc. 62-1383; Filed, Feb. 9, 1962;
8:47 a.m.]

[Delegation of Authority No. 50 (Rev. 3);
Amdt. 2]

DEPUTY ADMINISTRATOR FOR INVESTMENT DIVISION

Delegation Relating to the Investment Division

Delegation of Authority No. 50 (Revision 3) (25 F.R. 7418) as amended (26 F.R. 4440), is hereby amended by: Adding the following subsection IC:

IC. *Subpoenas.* To issue in the name of the Administration subpoenas under

section 310 of the Small Business Investment Act Amendments of 1961 (75 Stat. 752).

Effective date: January 17, 1962.

JOHN E. HORNE,
Administrator.

[F.R. Doc. 62-1384; Filed, Feb. 9, 1962;
8:47 a.m.]

[Delegation of Authority No. 80]

HEARING EXAMINERS

Delegation Relating to Hearings Under the Small Business Investment Act Amendments of 1961

I. Pursuant to the authority vested in the Administrator by the Small Business Act (1958) (72 Stat. 384), as amended, and the Small Business Investment Act of 1958 (72 Stat. 689), as amended (75 Stat. 752), there is hereby delegated to the Hearing Examiners, appointed or selected in accordance with section 11 of the Administrative Procedure Act (60 Stat. 244), the authority:

To issue subpoenas authorized by section 309 of the Small Business Investment Act Amendments of 1961 (75 Stat. 752), in connection with adjudicative proceedings under said section 309.

II. The authority delegated herein may not be redelegated.

Effective date: January 17, 1962.

JOHN E. HORNE,
Administrator.

[F.R. Doc. 62-1385; Filed, Feb. 9, 1962;
8:47 a.m.]

DESCRIPTION OF ORGANIZATION AND FUNCTIONS

Authority. The Small Business Administration exercises its responsibilities under the Small Business Act (1958), 72 Stat. 384, as amended, and the Small Business Investment Act of 1958, 72 Stat. 689, as amended.

Purpose. To aid, counsel, assist, and protect, insofar as possible, the interest of small business concerns in order to preserve free competitive enterprise; to insure that a fair proportion of the total purchases in contracts for supplies and services for the Government be placed with small business enterprises; and to maintain and strengthen the overall economy of the Nation. To aid and assist victims of floods or other catastrophes. To stimulate and supplement the flow of private equity capital and long-term loans to small business by small business investment companies and state and local development companies.

Functions. To make a detailed definition of what constitutes a small business concern using, among other criteria, number of employees and dollar volume of business; make loans to small business concerns to finance plant construction, conversion, or expansion or to finance the acquisition of equipment, facilities, machinery, supplies, or materials, and to supply such concerns with working capital; make loans to aid victims of floods or other catastrophes and displaced business disaster loans; certify

the competency of small business concerns or production pools to perform Government contracts; enter into joint determinations with Government procuring agencies with respect to procurements and sales that are suitable for award to small business concerns; consult with procurement officials in order to attain full use of productive capacity of small business concerns; recommend approval of small business defense production pools; take prime contracts and sublet their performance to small businesses; provide technical and managerial aids to small business; make an inventory of productive facilities of small concerns; to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and cooperatively develop with the Department of Defense and the General Services Administration a small business subcontracting program to enable small business concerns to be considered fairly as subcontractors to Government prime contractors; consult with Government agencies to insure fair and reasonable treatment for small business concerns; counsel and advise small firms on foreign trade matters; assist small firms obtain Government contracts for research and development and obtain the benefits of research and development performed with Government funds; license and regulate small business investment companies; and make loans to small business investment companies and state and local development companies, and under authority delegated by the Secretary of Commerce, perform relevant functions provided for in the Area Redevelopment Act.

Organization. Management of the Small Business Administration is vested in an Administrator appointed by the President with the advice and consent of the Senate. The Administrator is authorized to appoint three Deputy Administrators under the Small Business Act and one Deputy Administrator under the Small Business Investment Act. The Administrator is authorized, subject to the Civil Service and Classification Laws, to select employees, appoint and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of the Small Business Act of 1958 and the Small Business Investment Act of 1958.

The Small Business Act of 1958 created the Loan Policy Board of the Small Business Administration which consists of the following members: The Administrator as chairman, the Secretary of the Treasury, and the Secretary of Commerce (or the presidentially appointed designee of each of said Secretaries). The Loan Policy Board is charged with the establishment of general policies (particularly with reference to the public interest) which govern the granting and denial of applications for financial assistance by the Administration.

A Hearing Examiner or Hearing Examiners appointed or selected in accordance with section 11 of the Administrative Procedure Act, shall conduct hearings pursuant to section 309 of the Small Business Investment Act of 1958,

as amended, and whose functions in such capacity shall be appropriately separated from investigative and prosecuting functions of the staff as required by law.

The Investment Division of the Agency, through its Compliance Branch, conducts prosecuting and investigative functions under sections 309 and 310 of the Small Business Investment Act.

The headquarters office of the Small Business Administration is located at 811 Vermont Avenue NW., Washington 25, D.C. Further information concerning the organization and functions of SBA can be obtained by calling the Agency Information and Reception Center, DUDLEY 2-3301. The organization of the Washington Office is as follows:

Administrator—

- Office of Hearing Examiners.
- Office of Economic Adviser.
- Office of the General Counsel:
 - Liquidation and Litigation Division.
 - Loan Division.
- Legal Investment Division:
 - Licensing and Operations Branch.
 - Development Companies Branch.
 - Regulations Branch.
- Legislative Division.
- Procurement and Administrative Division.

Deputy Administrator for Financial Assistance—

- Office of Loan Processing:
 - Area Loan Groups (4).
- Office of Loan Administration:
 - Loan Servicing Division.
 - Liquidation Division.
- Office of Financial Services:
 - Reports and Special Studies Division.
 - Procedures and Program Division.

Deputy Administrator for Procurement and Technical Assistance—

- Office of Procurement and Technical Assistance:
 - Plans and Program Coordination Staff.
- Technical Services Division:
 - Production Assistance Branch.
 - Industrial Services Branch.
 - Research and Development Branch.
- Procurement and Contract Services Division:
 - Procurement Operations Branch.
 - Counseling and Subcontracting Branch.
 - Property Sales Branch.
- Liaison Activities Division.
- Loan Appraisal Division.
- Foreign Trade Division:
 - Export Trade Promotion Branch.
 - Export Trade Operations Branch.

- Office of Management and Research Assistance:
 - Research Studies Division.
 - Management Development Division.
 - Management Methods Division.
 - Counseling and Conference Division.

Deputy Administrator for the Investment Division—

- Office of Investment:
 - Program Administration and Compliance Division:
 - Program Administration Branch.
 - Compliance Branch.
- Investment Activities Division:
 - Licensing Branch.
 - Post-Licensing Branch.
- Development Company Activities Division.

Assistant Administrator (Management)— Administrative Secretary.

Office of Organization and Management: Mobilization Program and Planning Staff.

- Administrative Services Division:
 - Graphics and Design Branch.
 - Office Services Branch.
 - Procurement and Supply Branch.
 - Records and Files Branch.

Management Analysis Division. Issuances and Control Division.

Office of Program Analysis.

Office of Personnel:

- Classification Division.
- Employment Division.
- Security and Investigations Division.
- Office of Small Business Size Standards.

Assistant Administrator (Controller)—

- Office of Audits.
- Office of Finance and Accounts:
 - Systems and Planning Staff.
- Accounting Division:
 - Financial Reports and Administrative Accounting Branch.
 - Loan Accounting Branch.
 - Electronic Data Processing Division.
- Fiscal Examination Division:
 - Program and Administrative Examination Branch.
 - Employee Accounts Branch.
- Office of Budget:
 - Estimates and Allotments Division.
 - Reports and Statistics Division.

Assistant Administrator (Information Services)—

- Office of Information Services.

FIELD ORGANIZATION

The programs of the Small Business Administration are administered by the following regional and subordinate field offices:

Region I. 470 Atlantic Avenue, Boston Mass. Serving Massachusetts, Maine, New Hampshire, Vermont, and Rhode Island.

Field offices—

1. 116 State Street, Augusta, Maine.
2. 72 North Main Street, Concord, N.H.
3. 79 Main Street, Montpelier, Vt.
4. 57 Eddy Street, Providence, R.I.

Region II. 42 Broadway, New York 4, N.Y. Serving New York, Connecticut, and New Jersey counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren.

Field offices—

1. 44 Gillett Street, Hartford, Conn.
2. 500 South Salina Street, Syracuse, N.Y.

Region III. 1015 Chestnut Street, Philadelphia 7, Pa. Serving Pennsylvania, Delaware, New Jersey, counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem; and West Virginia counties of Brook, Hancock, Marshall, Monongalia, Ohio, Preston, and Wetzel.

Field office—

1. 107 Sixth Street, Pittsburgh 22, Pa.

Region IV. 900 North Lombardy Street, Richmond 20, Va. Serving Virginia, District of Columbia, Maryland, North Carolina, South Carolina, and West Virginia except the counties of Brooke, Hancock, Marshall, Monongalia, Ohio, Preston, and Wetzel.

Field offices—

1. Fayette and St. Paul Streets, Baltimore 2, Md.
2. 500 Quarrier Street, Charleston, W. Va.
3. 102 West Trade Street, Charlotte, N.C.
4. 227 West Pike Street, Clarksburg, W. Va.

5. 1745 Sumter Street, Columbia, S.C.
6. 608 13th Street NW., Washington 25, D.C.

Region V. 90 Fairlie Street NW., Atlanta 3, Ga. Serving Georgia, Alabama, Florida, Mississippi, Tennessee, Commonwealth of Puerto Rico, and the Virgin Islands.

Field offices—

1. 2030 First Avenue North, Birmingham, Ala.
2. Capital and West Streets, Jackson 1, Miss.
3. 502 South Gay Street, Knoxville, Tenn.
4. 168 Southeast First Street, Miami 32, Fla.
5. Sixth Avenue and Church Street, Nashville 3, Tenn.
6. 1200 Ponce de Leon Avenue, Santurce, P.R.

7. 47 West Forsyth, Jacksonville 2, Fla.

Region VI. 1370 Ontario Street, Cleveland 13, Ohio. Serving Ohio and Kentucky.

Field office—

1. Fourth and Broadway, Louisville 2, Ky.

Region VII. 105 West Adams Street, Chicago 3, Ill. Serving Illinois counties of Boone, Bureau, Carroll, Cass, Champaign, Christian, Clark, Coles, Cook, Cumberland, De Kalb, De Witt, Douglas, Du Page, Edgar, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kane, Kankakee, Kendall, Knox, Lake, La Salle, Lee, Livingston, Logan, McDonough, McHenry, McLean, Macon, Marshall, Mason, Menard, Mercer, Morgan, Moultrie, Ogle, Peoria, Platt, Putnam, Rock Island, Sangamon, Schuyler, Shelby, Stark, Stephenson, Tazewell, Vermillion, Warren, Whiteside, Will, Winnebago, and Woodford; Iowa; Indiana; and Southern Wisconsin counties of Adams, Brown, Calumet, Clark, Columbia, Crawford, Dane, Dodge, Door, Fond du Lac, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Manitowoc, Marathon, Marinette, Marquette, Milwaukee, Monroe, Oconto, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood.

Field offices—

1. Fifth and Grand Avenue, Des Moines, Iowa.
2. 130 East Washington Street, Indianapolis 4, Ind.
3. 114 North Carroll Street, Madison, Wis.

Region VIII. 603 Second Avenue, Minneapolis 2, Minn. Serving Minnesota, North Dakota, South Dakota, and Wisconsin counties of Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Lincoln, Oneida, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Trempealeau, Vilas, and Washburn.

Field offices—

1. 207 North Fifth Street, Fargo, N. Dak.
2. 109½ North Main Avenue, Sioux Falls, S. Dak.

Region IX. 1006 Grand Avenue, Kansas City 6, Mo. Serving Missouri, Kansas, Nebraska, and Illinois counties of Adams, Alexander, Bond, Brown, Calhoun, Clay, Clinton, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Perry, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Scott, Union, Wabash, Washington, Wayne, White and Williamson.

Field offices—

1. 215 North 17th Street, Omaha 2, Nebr.
2. 1520 Market Street, St. Louis 3, Mo.

3. 120 South Market Street, Wichita, Kans.
Region X. 1000 Main Street, Dallas 2, Tex. Serving Texas, Arkansas, Oklahoma, and Louisiana.

Field offices—

1. 1424 Hadley Street, Houston 2, Tex.
2. 700 West Capitol Avenue, Little Rock, Ark.
3. 1616 19th Street, Lubbock, Tex.
4. 610 South Street, New Orleans 12, La.
5. 114 North Broadway, Oklahoma City 2, Okla.

6. 434 South Main Avenue, San Antonio, Tex.

7. 420 South Main Street, Tulsa, Okla.
Region XI. 909 17th Street, Denver 2, Colo. Serving Colorado, New Mexico, Utah, and Wyoming.

Field offices—

1. Fifth and Gold Avenue SW., Albuquerque, N. Mex.
2. 136 South Main Street, Salt Lake City, Utah.

Region XII. 525 Market Street, San Francisco 5, Calif. Serving Nevada, except Clark County; California, except the counties of Imperial, Inyo, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura; and Hawaii.

Field office—

1. 195 South King Street, Honolulu, Hawaii.

Region XIII. 506 Second Avenue, Seattle 4, Wash. Serving Washington, Idaho, Montana, Oregon, and Alaska.

Field office—

1. P.O. Box 1253 620 "C" Street, Anchorage, Alaska.
2. 910 Main Street, P.O. Box 933, Boise, Idaho.
3. Corner Main and Sixth Avenue, mailing address: P.O. Box 1690, Helena, Mont.
4. 208 Southwest Fifth Avenue, Portland 4, Oreg.

Region XIV. 312 West Fifth Street, Los Angeles 13, Calif. Serving California counties of Imperial, Inyo, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura; Clark County, Nevada; and Arizona.

Field Office—

1. 2727 North Central Avenue, Phoenix, Ariz.

Region XV. 232 West Grand River Avenue, Detroit 26, Mich. Serving Michigan.

Dated: January 17, 1962.

JOHN E. HORNE,
Administrator.

[F.R. Doc. 62-1386; Filed, Feb. 9, 1962; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

FEBRUARY 7, 1962.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 37545: *Machinery, etc., from and to Wyoming points.* Filed by Western Trunk Line Committee, agent (No. A-2222), for interested rail carriers. Rates on machines, machinery and parts, also related articles: vacuum cleaners,

noilbn, aluminum articles, containers, empty returned, all as described in the application, in carloads, between points in Wyoming, on the one hand, and points in western trunk-line territory, on the other.

Grounds for relief: Market competition, modified shortline distance formula and grouping.

Tariff: Western Trunk Line Committee tariff I.C.C. A-4422.

FSA No. 37546: *Scrap iron or steel from and to Wyoming points.* Filed by Western Trunk Line Committee, agent (No. A-2223), for interested rail carriers. Rates on scrap, iron or steel, as described in the application, in carloads, between points in Wyoming, on the one hand, and points in western trunk-line territory, on the other.

Grounds for relief: Market competition, modified shortline distance formula and grouping.

Tariff: Western Trunk Line Committee tariff I.C.C. A-4422.

FSA No. 37547: *Brick from and to points in Western Trunk Line territory.* Filed by Western Trunk Line Committee, agent (No. A-2224), for interested rail carriers. Rates on brick and related articles, in carloads (returned shipments), from points in western trunk-line territory, to specified points in western trunk-line territory.

Grounds for relief: Carrier competition.

Tariff: Supplement 44 to Western Trunk Line Committee tariff I.C.C. A-4338.

FSA No. 37548: *Tin orterne plate to Texas points.* Filed by Southwestern Freight Bureau, agent (No. B-8147), for interested rail carriers. Rates on tin orterne plate, as described in the application, in carloads, from points in official (including Illinois) and southern territories to specified points in Texas.

Grounds for relief: Carrier competition.

Tariff: Supplement 240 to Southwestern Freight Bureau tariff I.C.C. 4308.

FSA No. 37549: *Iron and steel articles to Sharpstown, Tex.* Filed by Southwestern Freight Bureau, agent (No. B-8148), for interested rail carriers. Rates on iron and steel articles, in carloads, from specified points in official, southern and western trunk-line territories, to Sharpstown, Tex.

Grounds for relief: Market competition.

Tariff: Supplement 240 to Southwestern Freight Bureau tariff I.C.C. 4308.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 62-1392; Filed, Feb. 9, 1962; 8:48 a.m.]

[Notice 593]

MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 7, 1962.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

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

No. MC-FC 64399. By order of January 31, 1962, the Transfer Board approved the transfer to Dalen Rickard, Linden, Wisconsin, of Certificate in No. MC 100846, issued May 1, 1958, to Burton Nodorf, Platteville, Wis., authorizing the transportation of: livestock, agricultural commodities, dairy cattle, feed, fertilizer, tankage, building materials, agricultural machinery, and farm machinery, from, to, or between specified points in Illinois, Wisconsin, Minnesota, and Iowa. John L. Bruemmer, 121 West Doty Street, Madison 3, Wis., Attorney for applicants.

No. MC-FC 64409. By order of January 31, 1962, the Transfer Board approved the transfer to Penbrook Hauling Company, Inc., 701 Bosler Avenue, Le Moyne, Pa., of a portion of the operating rights in Certificate No. MC 117574, issued May 12, 1959, to Daily Express, Inc., P.O. Box 311, Carlisle, Pa., authorizing the transportation of: Truck bodies and trailers, in initial movements, in truck-away service, from Camp Hill, Pa., to points in the United States, and damaged or returned trailers from points in the United States to Camp Hill, Pa.

No. MC-FC 64456. By order of January 31, 1962, the Transfer Board approved the transfer to Connell Transport Co., Inc., Dover, Del., of Permits Nos. MC 111442 Sub 1, and MC 111442 Sub 5, issued February 12, 1957, and February 8, 1961, respectively, to Connell Transport Co., a corporation, Genesee Depot, Wis., authorizing the transportation of: raw and pasteurized milk and cream and condensed skim milk, in containers, empty containers, eggs, empty egg cases, meat, meat products, and by-products, dairy products and articles distributed by meat packinghouses, bakery products, confectionery, prepared foods, and frozen foods, from, to, or between specified points in Wisconsin, Texas, New Mexico, New Jersey, and Illinois. William C. Dineen, 710 North Plankinton Avenue, Milwaukee, Wis., attorney for applicants.

No. MC-FC 64676. By order of January 31, 1962, the Transfer Board approved the transfer to Frick Transport Inc., Wawaka, Ind., of the operating rights in Certificate No. MC 90897, issued November 30, 1960, to O. W. Martin, doing business as Martin Trucking, Cromwell, Ind., authorizing the transportation, over irregular routes, of feed, fertilizer, and binder twine, from Chicago and Chicago Heights, Ill., to points in DeKalb, Steuben, Noble, and LaGrange Counties, Ind., and fertilizer, from Chicago, Ill., to points in Defiance and Williams Counties, Ohio. Donald W. Smith, 511 Fidelity Building, Indianapolis 4, Ind., applicant's attorney.

No. MC-FC 64688. By order of January 31, 1962, the Transfer Board approved the transfer to Leonard J. Krantz, Eau Claire, Wis., of the entire operating rights in Certificate No. MC 109680 and a portion of the operating rights in Certificate No. MC 109680 Sub 2, issued January 19, 1956, and August 7, 1958, respectively, to Leo Burns and Earl Burns, a partnership, doing business as Burns Trucking Company, Schofield, Wis., authorizing the transportation, over irregular routes, of livestock, from points in Marathon County, Wis., to South St. Paul and Newport, Minn., feed, fertilizer, tankage, and farm machinery, from South St. Paul, Newport, St. Paul, and Minneapolis, Minn., to points in Marathon County, Wis., and animal and poultry feed and animal and poultry feed concentrates, in bulk, from Minneapolis and St. Paul, Minn., to points in Wisconsin. Edward Solie, 1 South Pinckney Street, Madison 3, Wis., applicants' attorney.

No. MC-FC 64691. By order of January 31, 1962, the Transfer Board approved the transfer to The Gem Van and Storage Company, a corporation, Hartford, Conn., of the operating rights in Certificate No. MC 34376, issued January 21, 1941, to Charles Lewis, doing business as Roland Lewis & Son, New Haven, Conn., authorizing the transportation of household goods, over irregular routes, between points in Connecticut, on the one hand, and, on the other, points in Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and the District of

Columbia, and of new and used store fixtures, over irregular routes, between points in Connecticut, on the one hand, and, on the other, points in Massachusetts, New Jersey, and New York. Sidney L. Goldstein, 109 Church Street, New Haven, Conn., applicants' attorney.

No. MC-FC 64703. By order of January 31, 1962, the transfer Board approved the transfer to Sheehan Carriers, Inc., Suffern, N.Y., of the operating rights in Certificate No. MC 59655, issued March 18, 1954, to Sheehan Transport, Inc., Suffern, N.Y., authorizing the transportation, over regular routes, of general commodities, excluding household goods, commodities, in bulk, and other specified commodities, between Albany, N.Y., and Newark, N.J., between Lodi, N.Y., and Newburgh, N.Y., and piece goods, finished and unfinished, felt, hatters' fur, and paper bags, between Newark, N.J., and Philadelphia, Pa., and over irregular routes, of oil, alcohol, and chemicals, from Grasselli, N.J., and Gulfport, N.Y., to Monticello, Port Jervis, Liberty, and Livingston Manor, N.Y., groceries, from New York, N.Y., to Monticello, Port Jervis, Liberty, and Livingston Manor, N.Y., and general commodities, excluding household goods, commodities, in bulk, and other specified commodities, between points in Passaic, Bergen, Hudson, Essex, and Union Counties, N.J., on the one hand, and, on the other, New York, N.Y., and points in Westchester, Rockland, and Orange Counties, N.Y. Martin Werner, 2 West 45th Street, New York 36, N.Y., applicants' attorney.

No. MC-FC 64735. By order of January 31, 1962, the Transfer Board ap-

proved the transfer to Jeff A. Robertson, doing business as Topeka Motor Freight, 705 East Highway 24, Topeka, Kans., of Certificates Nos. MC 106904 and MC 106904 Sub 3, issued May 15, 1956, and May 1, 1961, to Topeka Motor Freight, Inc., 705 East Highway 24, Topeka, Kans., authorizing the transportation of: General commodities excluding household goods, commodities in bulk, and other specified commodities, between Kansas City, Mo., and Topeka, Kans., serving all intermediate points on U.S. Highway 40, and the off-route points in the Kansas City, Mo.-Kansas City, Kans., Commercial Zone, and the site of the Goodyear plant northwest of the city limits of Topeka; and between Atchinson, Kans., and Kansas City, Mo., over specified highways, serving the intermediate points of Victory Junction, Lansing, Richardson, Soldiers' Home, Leavenworth, Fort Leavenworth, and Lowemont, Kans., and the intermediate and off-route points in the Kansas City, Mo.-Kansas, Commercial Zone; malt beverages, pickles, spices, and mustard, from St. Louis, Mo., over U.S. Highway 40 to Topeka, Kans.; malt beverages, from St. Louis, Mo., over U.S. Highway 40 to St. Louis, Mo.; and empty malt beverage containers, from Topeka, Kans., over U.S. Highway 40 to St. Louis, Mo., and from Lawrence, Kans., over U.S. Highway 40 to St. Louis, Mo.

[SEAL]

HAROLD D. McCoy,
Secretary.[F.R. Doc. 62-1393; Filed, Feb. 9, 1962;
8:49 a.m.]

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