

FEDERAL REGISTER

VOLUME 33 • NUMBER 95

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PART I

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Agencies in this issue—

The President
Agricultural Research Service
Atomic Energy Commission
Consumer and Marketing Service
Defense Department
Federal Aviation Administration
Federal Communications Commission
Federal Maritime Commission
Federal Power Commission
Federal Trade Commission
General Services Administration
Housing and Urban Development
Department
Internal Revenue Service
Interstate Commerce Commission
Land Management Bureau
Secret Service
Securities and Exchange Commission
Small Business Administration

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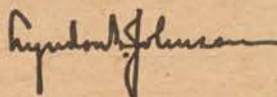
Presidential Documents

Title 3—THE PRESIDENT

Executive Order 11411

AMENDING EXECUTIVE ORDER NO. 11394, RELATING TO THE PRESIDENT'S COMMISSION FOR THE OBSERVANCE OF HUMAN RIGHTS YEAR 1968

By virtue of the authority vested in me as President of the United States, Executive Order No. 11394¹ of January 30, 1968, entitled "Establishing the President's Commission for the Observance of Human Rights Year 1968," is hereby amended by substituting for the words "ten other members to be appointed by the President from public or private life" in section 1(b) thereof the following: "such other members as the President may appoint from public or private life".



THE WHITE HOUSE,
May 13, 1968.

[F.R. Doc. 68-5844; Filed, May 13, 1968; 2:45 p.m.]

¹33 F.R. 2429.

Rules and Regulations

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

[Reg. Docket No. 8873, Amdt. 95-167]

PART 95—IFR ALTITUDES

Miscellaneous Changes

The purpose of this amendment to Part 95 of the Federal Aviation Regulations is to make changes in the IFR altitudes at which all aircraft shall be flown over a specified route or portion thereof. These altitudes, when used in conjunction with the current changeover points for the routes or portions thereof, also assure navigational coverage that is adequate and free of frequency interference for that route or portion thereof.

As a situation exists which demands immediate action in the interest of safety, I find that compliance with the notice and procedure provisions of the Administrative Procedure Act is impracticable and that good cause exists for making this amendment effective within less than 30 days from publication.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 95 of the Federal Aviation Regulations is amended, effective June 20, 1968 as follows:

1. By amending Subpart C as follows:

From, to, and MEA

Section 95.1001 *Direct routes—United States* is amended to delete:

Stadium INT, Tex.; Joshua INT, Tex.; 2,500.
Maypearl INT, Tex.; Britton, Tex., VOR;
*2,500. *2,200—MOCA.
Lewisville INT, Tex.; Dallas, Tex., ILS/LOM;
*2,600. *2,200—MOCA.
Joshua INT, Tex.; Int. 085° M rad, MWL and
220° M rad, DAL; *2,700. *2,000—MOCA.
Int. NW crs, DAL ILS, and 040° M rad, BEO;
Benbrook, Tex., VOR; 2,700.
Hensley INT, Tex., via GSW VOR 128° M rad;
Alma INT, Tex.; 2,500.
Greater Southwest, Tex., VOR; Parker INT,
Tex.; 2,100.
Greater Southwest, Tex., VOR; Joshua INT,
Tex.; 2,500.
Greater Southwest, Tex., VOR; Dallas, Tex.,
VOR; 2,200.
Great Southwest, Tex., VOR; Int. 070° M
rad, GSW and 089° M rad, DAL; *2,800.
*2,000—MOCA.
Fox INT, Tex.; Sunset INT, Tex.; *3,000.
*2,100—MOCA.
Fort Worth, Tex., LOM via N crs, FTW ILS;
Justin INT, Tex.; 2,000.
Britton, Tex., VORTAC; Lucas INT, Tex.;
2,800.
Bridgeport, Tex., VOR; Aledo INT, Tex.;
*2,500. *2,400—MOCA.

From, to, and MEA

Bridgeport, Tex., VOR; Int. 148° M rad,
Bridgeport VOR and 201° M rad, Eagle
Mountain Lake VOR; 2,500.
Benbrook, Tex., VOR; Int. 255° M rad,
Britton VOR and 170° M rad, Benbrook
VOR; 2,500.
Benbrook, Tex., VOR; Mill INT, Tex.; *3,500.
*2,300—MOCA.
Alvord INT, Tex.; Lewisville INT, Tex.; *4,500.
*2,600—MOCA. MAA—10,000.
Addison, Tex., VOR; Lakeside INT, Tex.;
2,000.
Grand Junction, Colo., VOR; *Palisade INT,
Colo.; westbound, **10,000; eastbound,
**13,000; *12,700—MRA. *9,600—MOCA.
Palisade INT, Colo.; Crystal INT, Colo.;
westbound, *13,000; eastbound, *14,000.
*12,600—MOCA.

Section 95.1001 *Direct routes—United States* is amended to read in part:

Allendale, S.C., VOR; Mariow INT, Ga.; 1,700.
Red Bluff, Calif., VORTAC; Napa, Calif.,
VORTAC, COP 55 NM APC; *6,000. *4,800—
MOCA.
Russell Ranch INT, Calif., via BFL 296° M
rad/LSN 115° M rad, COP 70 NM BFL/40
NW LSN; Los Banos, Calif.; VOR; *5,500.

Section 95.1001 *Direct routes—United States* is amended by adding:

Augusta, Ga., VOR; Woodford INT, S.C.;
2,100.
Allendale, S.C., VOR; Steedman INT, S.C.;
2,000.
Northbrook, Ill., VORTAC; Des Moines, Iowa,
VORTAC; 18,000. MAA—45,000.

Section 95.6001 *VOR Federal airway 1* is amended to read in part:

Cape Charles, Va., VOR; Salisbury, Md.,
VOR; 2,000. Atlantic City, N.J., VOR; Int.
058° M rad, Atlantic City VOR and 227° M
rad, Riverhead VOR; *3,000. *2,000—
MOCA.

Section 95.6002 *VOR Federal airway 2* is amended to read in part:

James INT, Mich., via S alter.; Grand Rapids,
Mich., VOR via S alter.; 2,500.

Section 95.6003 *VOR Federal airway 3* is amended to read in part:

Modena, Pa., VOR; Int. 056° M rad, Modena
VOR and 166° M rad, Pottstown VOR;
*2,400. *2,000—MOCA.

Section 95.6004 *VOR Federal airway 4* is amended to read in part:

Russell, Kans., VOR; *Glendale INT, Kans.;
*3,600. *4,000—MRA. *2,900—MOCA.
Glendale INT, Kans.; Salina, Kans., VOR;
*3,600. *2,500—MOCA.

Section 95.6005 *VOR Federal airway 5* is amended to read in part:

Nashville, Tenn., VOR; *Cottontown INT,
Tenn.; 2,000. *3,000—MRA.
*Cottontown INT, Tenn.; Bowling Green,
Ky., VOR; 2,700. *2,300—MCA Cottontown,
INT, northbound.

Section 95.6008 *VOR Federal airway 8* is amended to read in part:

Garrett INT, Ind.; Antwerp INT, Ind.; *4,000.
*2,200—MOCA.

From, to, and MEA

Section 95.6008 *VOR Federal airway 8* is amended by adding:

Grand Junction, Colo., VOR via S alter.;
*Palisade INT, Colo., via S alter.; 11,000.
*12,700—MCA Palisade INT, eastbound.
Palisade INT, Colo., via S alter.; Crystal INT,
Colo., via S alter.; eastbound, 14,000;
westbound, 13,000.
Crystal INT, Colo., via S alter.; Glenwood
Springs INT, Colo., via S alter.; 14,000.
Glenwood Springs INT, Colo., via S alter.;
Frying Pan INT, Colo., via S alter.; 14,000.
Frying Pan INT, Colo., via S alter.; Kremm-
ling, Colo., VOR via S alter.; *14,000.
*13,300—MOCA.

Section 95.6012 *VOR Federal airway 12* is amended to read in part:

*Albuquerque, N. Mex., VOR; Otto, N. Mex.,
VOR; 12,000. *10,700—MCA Albuquerque
VOR, eastbound.

Section 95.6016 *VOR Federal airway 16* is amended to read in part:

Coyle, N.J., VOR; Beachwood INT, N.J.; 3,000.
Beachwood INT, N.J.; Riverhead, N.Y., VOR;
*3,000. *2,000—MOCA.

Section 95.6018 *VOR Federal airway 18* is amended to read in part:

Jackson, Miss., VOR; *Barnett INT, Miss.;
**2,300. *3,500—MRA. **1,700—MOCA.
Barnett INT, Miss.; *Decatur INT, Miss.;
**2,300. *3,000—MRA. **1,700—MOCA.

Section 95.6021 *VOR Federal airway 21* is amended to read in part:

Idaho Falls, Idaho, VOR; *Dubois, Idaho,
VOR; 7,500. *8,600—MCA Dubois VOR,
northbound.

Section 95.6023 *VOR Federal airway 23* is amended to read in part:

Mayfield INT, Wash.; McKenna INT, Wash.;
5,000.
McKenna INT, Wash.; McChord INT, Wash.;
southbound, 5,000; northbound, 3,000.

Section 95.6039 *VOR Federal airway 39* is amended to read in part:

Brandy INT, Va., via E alter.; Nakesville INT,
Va., via E alter.; *2,000. *1,500—MOCA.

Section 95.6044 *VOR Federal airway 44* is amended to read in part:

Livonia INT, Ind.; Nabb, Ind., VOR; *2,700.
*2,100—MOCA.
Atlantic City, N.J., VOR; Riverhead, N.Y.,
VOR; *3,000. *2,000—MOCA.

Section 95.6045 *VOR Federal airway 45* is amended to read in part:

Kimes INT, N.C.; Greensboro, N.C., VOR;
*2,500. *2,300—MOCA.

Section 95.6046 *VOR Federal airway 46* is amended to read in part:

Hampton, N.Y., VOR; Nantucket, Mass.,
VOR; 2,000.

Section 95.6048 *VOR Federal airway 48* is amended to read in part:

Ottumwa, Iowa, VOR; Burlington, Iowa,
VOR; *2,300. *2,100—MOCA.

From, to, and MEA

Section 95.6052 *VOR Federal airway 52* is amended to read in part:

Cartter INT, Ill.; Phillipstown INT, Ill.; *4,500. *2,100—MOCA.

Section 95.6055 *VOR Federal airway 55* is amended to read in part:

Park Rapids, Minn.; Beltrami INT, Minn.; *4,500. *2,800—MOCA.

Section 95.6056 *VOR Federal airway 56* is amended to read in part:

Fayetteville, N.C.; Wallace INT, N.C.; *2,000. *1,500—MOCA. MAA—4,000.

Section 95.6071 *VOR Federal airway 71* is amended to read in part:

Danville INT, Ark., via W alter.; *Scranton INT, Ark., via W alter.; *9,500. *3,300—MRA. *3,800—MOCA.

Scranton INT, Ark., via W alter.; Fayetteville, Ark., VOR via W alter.; *6,500. *3,500—MOCA.

Section 95.6074 *VOR Federal airway 74* is amended to read in part:

Branch INT, Ark., via N alter.; *Scranton INT, Ark., via N alter.; *2,500. *3,300—MRA. *2,400—MOCA.

Scranton INT, Ark., via N alter.; Houston INT, Ark., via N alter.; *4,500. *3,000—MOCA.

Section 95.6155 *VOR Federal airway 155* is amended to read in part:

Blythewood INT, S.C.; Chesterfield, S.C., VOR; *2,100. *1,700—MOCA.

Section 95.6181 *VOR Federal airway 181* is amended by adding:

Kirkville, Mo., VOR; Lamoni, Iowa, VOR; *2,800. *2,400—MOCA.

Lamoni, Iowa, VOR; Emerson INT, Iowa; *2,000. *2,500—MOCA.

Emerson INT, Iowa; Omaha, Nebr., VOR; *2,800. *2,500—MOCA.

Section 95.6184 *VOR Federal airway 184* is amended to read in part:

Tidiloute, Pa., VOR; Cooksburg INT, Pa.; 4,000.

Cooksburg INT, Pa.; Phillipsburg, Pa., VOR; *4,000. *3,700—MOCA.

Delroy INT, Pa.; Paradise INT, Pa.; *2,700. *2,500—MOCA.

Section 95.6187 *VOR Federal airway 187* is amended to read in part:

Boysen Reservoir, Wyo., VOR; *Pryor DME Fix, Mont.; 11,000. *9,300—MCA Pryor DME Fix, southbound.

Pryor DME Fix, Mont.; *Billings, Mont., VOR; *7,000. *6,500—MCA Billings VOR, southbound. *6,800—MOCA.

Cody, Wyo., VOR via W alter.; Edgar DME Fix, Mont., via W alter.; 8,400.

Edgar DME Fix, Mont., via W alter.; Billings, Mont., VOR via W alter.; *7,000. *6,800—MOCA.

Great Falls, Mont., VOR; Missoula, Mont., VOR; *13,000. *11,400—MOCA.

Section 95.6191 *VOR Federal airway 191* is amended by adding:

Decatur, Ill., VOR via E alter.; Champaign, Ill., VOR via E alter.; *2,600. *2,100—MOCA.

Champaign, Ill., VOR via E alter.; Roberts, Ill., VOR via E alter.; *2,600. *2,100—MOCA.

Oshkosh, Wis., VOR via E alter.; Rhinelander, Wis., VOR via E alter.; *4,500. *3,000—MOCA.

From, to, and MEA

Section 95.6204 *VOR Federal airway 204* is amended by adding:

*Olympia, Wash., VOR; McKenna INT, Wash.; westbound, 4,000; eastbound, 5,000. *3,200—MCA Olympia VOR, westbound.

McKenna INT, Wash.; Tampico INT, Wash.; 10,000.

Tampico INT, Wash.; *Yakima, Wash., VOR; westbound, *8,000; eastbound, 6,000.

*5,300—MCA Yakima VOR, westbound. *6,000—MOCA.

Section 95.6257 *VOR Federal airway 257* is amended to read in part:

*Dubois, Idaho, VOR; Dillon, Mont., VOR; *12,000. *8,600—MCA Dubois VOR, northbound. *11,100—MOCA.

Section 95.6276 *VOR Federal airway 276* is amended to read in part:

Yardley, Pa., VOR; Robbinsville, N.J., VOR; 2,000.

Section 95.6298 *VOR Federal airway 298* is amended to read in part:

*Dubois, Idaho, VOR; Lamont INT, Idaho; westbound, 9,000; eastbound, 13,000. *9,800—MCA Dubois VOR, westbound. *9,200—MCA Dubois VOR, eastbound.

Section 95.6304 *VOR Federal airway 304* is amended by adding:

Liberal, Kans., VOR; Lamar, Colo., VOR; *6,000. *5,000—MOCA.

Section 95.6310 *VOR Federal airway 310* is amended to read in part:

Greensboro, N.C., VOR; Kimes INT, N.C.; *2,500. *2,300—MOCA.

Section 95.6313 *VOR Federal airway 313* is amended to delete:

Cape Girardeau, Mo., VOR via E alter.; Marion, Ill., VOR via E alter.; 3,000. Marion, Ill., VOR; via E alter.; Centralia, Ill., VOR; via E alter.; *2,300. *1,900—MOCA.

Section 95.6328 *VOR Federal airway 328* is amended to read:

*Jackson, Wyo., VOR; *Dubois, Idaho, VOR; 15,000. *14,200—MCA Jackson VOR, westbound. *8,900—MCA Dubois VOR, eastbound.

Section 95.6333 *VOR Federal airway 333* is added to read:

Crossville, Tenn., VOR; Jamestown INT, Tenn.; 5,000.

Jamestown INT, Tenn.; Lexington, Ky., VOR; 4,000.

Section 95.6334 *VOR Federal airway 334* is amended by adding:

San Jose, Calif., VOR; Altamont INT, Calif.; *5,000. *4,900—MOCA.

Altamont INT, Calif.; Isleton INT, Calif.; 4,500.

Isleton INT, Calif.; Sacramento, Calif., VOR; southbound, 3,000; northbound, 2,000.

Section 95.6337 *VOR Federal airway 337* is added to read:

Akron, Ohio, VOR; United States-Canadian border; 3,500.

Section 95.6341 *VOR Federal airway 341* is added to read:

Dubuque, Iowa, VOR; Truax, Wis., VOR; 3,200.

Truax, Wis., VOR; Oshkosh, Wis., VOR; *2,800. *2,200—MOCA.

From, to, and MEA

Section 95.6429 *VOR Federal airway 429* is amended to delete:

Decatur, Ill., VOR; Champaign, Ill., VOR; *2,600. *2,100—MOCA.

Section 95.6429 *VOR Federal airway 429* is amended by adding:

Cape Girardeau, Mo., VOR; Marion, Ill., VOR; 3,000.

Marion, Ill., VOR; Cartter INT, Ill., *2,400. *2,100—MOCA.

Cartter INT, Ill.; Bible Grove, Ill., VOR; *2,300. *2,000—MOCA.

Bible Grove, Ill., VOR; Mattoon, Ill., VOR; *2,300. *2,000—MOCA.

Mattoon, Ill., VOR; Champaign, Ill., VOR; 2,300.

Section 95.6438 *VOR Federal airway 438* is amended to read in part:

Fairbanks, Alaska, VOR; Fort Yukon, Alaska, VOR; *8,000. *7,230—MOCA.

Section 95.6448 *VOR Federal airway 448* is amended to read in part:

White Swan INT, Wash., via S alter.; Hitchcock DME Fix, Wash., via S alter.; north-eastbound, *7,000; south-westbound, *8,000. *6,500—MOCA.

Hitchcock DME Fix, Wash., via S alter.; Yakima, Wash., VOR via S alter.; north-eastbound, *5,000; south-westbound, *7,000. *4,500—MOCA.

Section 95.7019 *Jet Route No. 19* is added to read:

Phoenix, Ariz., VORTAC; St. Johns, Ariz., VORTAC; 18,000; 45,000.

St. Johns, Ariz., VORTAC; Albuquerque, N. Mex., VORTAC; 18,000; 45,000.

Albuquerque, N. Mex., VORTAC; Las Vegas, N. Mex., VORTAC; 18,000; 45,000.

Las Vegas, N. Mex., VORTAC; Liberal, Kans., VORTAC; 18,000; 45,000.

Liberal, Kans., VORTAC; Wichita, Kans., VORTAC; 18,000; 45,000.

Wichita, Kans., VORTAC; Butler, Mo., VORTAC; 18,000; 45,000.

Butler, Mo., VORTAC; St. Louis, Mo., VORTAC; 18,000; 45,000.

Section 95.7148 *Jet Route No. 148* is amended by adding:

Delta, Utah, VORTAC; Myton, Utah, VORTAC; 18,000; 45,000.

Myton, Utah, VORTAC; Cheyenne, Wyo., VORTAC; #21,000; 45,000. #MEA is established with a gap in navigation signal coverage.

Cheyenne, Wyo., VORTAC; O'Neill, Nebr., VORTAC; #21,000; 45,000. #MEA is established with a gap in navigation signal coverage.

Section 95.7150 *Jet Route No. 150* is added to read:

Hampton, N.Y., VORTAC; Hyannis, Mass., VORTAC; 18,000; 45,000.

Hyannis, Mass., VORTAC; Striper INT, Mass.; 18,000; 45,000.

Section 95.7150 *Jet Route No. 174* is added to read:

Hampton, N.Y., VORTAC; Hyannis, Mass., VORTAC; 18,000; 45,000.

Hyannis, Mass., VORTAC; Herring INT, Mass.; 18,000; 45,000.

2. By amending subpart D as follows:
Section 95.8003 VOR Federal airway
changeover points:

Airway segment: From; to—Changeover
point: Distance; from

J-6 is amended by adding:
Front Royal, Va., VORTAC; Westminster, Md.,
VORTAC; 47; Front Royal.

J-8 is amended by adding:
Front Royal, Va., VORTAC; Westminster, Md.,
VORTAC; 47; Front Royal.

J-42 is amended by adding:
Front Royal, Va., VORTAC; Westminster, Md.,
VORTAC; 47; Front Royal.

V-184 is amended by adding:
Millville, N.J., VOR; Atlantic City, N.J., VOR;
10; Millville.

(Secs. 307, 1110, Federal Aviation Act of 1958;
49 U.S.C. 1348, 1510)

Issued in Washington, D.C., on May 6,
1968.

JAMES F. RUDOLPH,
Director,
Flight Standards Service.

[F.R. Doc. 68-5688; Filed, May 14, 1968;
8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

PART 15—ADMINISTRATIVE OPINIONS AND RULINGS

Trade Association Publication Recom- mending Procedures for Freight Prepayment by Manufacturers

§ 15.246 Trade association publication
recommending procedures for
freight prepayment by manufactur-
ers.

(a) The Commission rendered an ad-
visory opinion informing a trade asso-
ciation of wholesalers that it could not
give its approval to a proposal to conduct
a study of various policies for prepaying
freight being used by manufacturers and
to publish the results as a recommended
procedure for prepaying freight.

(b) The Association advised that a
certain number of manufacturers who
sell to its members have a "paid freight"
policy whereby they will pay the freight,
on one of a number of bases, on orders
above a certain quantity which are
shipped to the members. Many manu-
facturers do not have such a policy.
Among those that do, there are 15 to 20
different procedures for handling pay-
ment, most of which involve a lapse of
time of from 60 days to 6 months before
the wholesaler can collect the allowance.
The Association is interested in conduct-
ing a study of these practices with the
ultimate view of reducing the 15 or 20
procedures now in effect to perhaps two
or three and also to reduce the time
period for the recovery of the funds to
no more than 60 days, thus eliminating
the long period in which capital of the
members is tied up in what is supposedly
prepaid freight.

(c) The Association stated that these
efforts are not in any way intended to
coerce manufacturers into giving freight
allowances they do not care to give, but
are solely to reduce the complexity and
cost of doing business. It definitely plans
to publish the results as a "recommended
procedure for prepaying freight", but
does not plan any efforts to enforce this
recommendation or to put any pressure
on the manufacturers to adopt the rec-
ommendation beyond the simple pub-
lication of the results of the study and
the recommended procedure.

(d) The Commission advised that even
though the study and published recom-
mendation may be motivated by a pur-
pose to remove evils affecting the
industry, it appears to go further than
is reasonably necessary to accomplish
such result. Even if unaccompanied by
any intent to force the manufacturers to
adopt the policies set forth in the
recommendation, there is implicit in
such recommendation by the wholesalers
too grave a danger that it will serve as
a device whereby the concerted power
of the members of the Association is
brought to bear to coerce the manufactur-
ers to conform their pricing policies
to the restrictive standards of the recom-
mendation, or at the very least as an
invitation to enter into agreements
among themselves to do so. The Com-
mission would, however, have no objec-
tion to the preparation by the Association
of an objective study of these practices
for the members of the Association pro-
vided the study did not contain any
recommendations.

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

Issued: May 14, 1968.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 68-5751; Filed, May 14, 1968;
8:46 a.m.]

PART 15—ADMINISTRATIVE OPINIONS AND RULINGS

Disclosure of Origin of Crib Mat- tresses, etc. Made in This Country Using Imported Outside Covers

§ 15.247 Disclosure of origin of crib
mattresses, etc. made in this country
using imported outside covers.

(a) The Commission was requested to
render an advisory opinion concerning
the proper labeling as to origin of crib
mattresses, play pen pads and bumpers
which will be manufactured in this
country using imported outside covers.
The manufacturer advised that the rel-
ative manufacturing cost of the im-
ported part to the American parts will
be from one-fifth to one-seventh and
that a comparison of the cost of the im-
ported sheeting to the selling price will
run about one-seventh to one-twelfth.

(b) The opinion advised that in the
absence of any affirmative representa-
tion that these products are made in the
United States, or any other representa-
tion that might mislead the public as to

the country of origin, the Commission is
of the opinion that, under the facts as
presented, the failure to mark the origin
of these goods will not be regarded by
the Commission as deceptive.

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

Issued: May 14, 1968.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 68-5750; Filed, May 14, 1968;
8:46 a.m.]

PART 15—ADMINISTRATIVE OPINIONS AND RULINGS

Validation of Guarantee—Time Requirement

§ 15.248 Validation of guarantee—time
requirement.

(a) The Commission interpreted for a
requesting party one aspect of the Com-
mission's Guides Against Deceptive Ad-
vertising of Guarantees. These guides, in
general, provide that any guarantee used
in advertising shall clearly and con-
spicuously disclose (1) the nature and
extent of the guarantee; (2) the manner
in which the guarantor will perform; and
(3) the identity of the guarantor.

(b) The language proposed for the
guarantee of a product sold by mail was:
"If for any reason you are not satisfied
with your purchase, return it to us at
once * * * ." In the Commission's view
the expression "at once" was too vague
and accordingly the proposed guarantee
did not conform to the guides.

(c) The Commission approved the
proposed guarantee when it was modified
to read: "If for any reason you are not
satisfied with your purchase, return it
to us within x days"; "x" being a number
of days certain.

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

Issued: May 14, 1968.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 68-5752; Filed, May 14, 1968;
8:46 a.m.]

Title 31—MONEY AND FINANCE: TREASURY

Chapter IV—Secret Service, Depart- ment of the Treasury

PART 407—REGULATIONS GOVERN- ING CONDUCT IN THE TREAS- URY BUILDING AND THE TREAS- URY ANNEX

Chapter IV of Title 31 of the Code of
Federal Regulations is amended by
adding at the end thereof the following
Part:

Sec.
407.1 Authority.
407.2 Applicability.
407.3 Recording presence.

Sec.	
407.4	Preservation of property.
407.5	Conformity with signs and directions.
407.6	Nuisances.
407.7	Gambling.
407.8	Intoxicating beverages and narcotics.
407.9	Soliciting, vending, debt collection, and distribution of handbills.
407.10	Photographs for news, advertising, or commercial purposes.
407.11	Dogs and other animals.
407.12	Vehicular and pedestrian traffic.
407.13	Weapons and explosives.
407.14	Penalties and other law.

AUTHORITY: The provisions of this Part 407 issued under 5 U.S.C. 301; 32 F.R. 11968; T.D. Order 177-25, 32 F.R. 17490.

§ 407.1 Authority.

The regulations in this part governing conduct in and on the Treasury Building and grounds and the Treasury Annex Building and grounds are promulgated pursuant to the authority vested in the Secretary of the Treasury, including 5 U.S.C. 301 and that vested in him by delegation from the Administrator of General Services, 32 F.R. 11968 (1967), and in accordance with the authority vested in the Director of the U.S. Secret Service by Treasury Department Order No. 177-25 dated November 28, 1967, 32 F.R. 17490 (1967).

§ 407.2 Applicability.

The regulations in this part apply to the building and grounds of the Main Treasury Building and the Treasury Annex Building located in Washington, D.C., at 15th Street and Pennsylvania Avenue NW., and Madison Place and Pennsylvania Avenue NW., respectively, and to all persons entering in or on such property. The Main Treasury Building and grounds and the Treasury Annex Building and grounds shall hereafter be referred to in the regulations in this part as "property".

§ 407.3 Recording presence.

Except as otherwise ordered, the property shall be closed to the public after normal working hours and at such other times as may be necessary for the orderly conduct of the business of the Treasury Department. The property shall also be closed to the public when, in the opinion of the Assistant Secretary for Administration, or his delegate, an emergency situation exists. Admission to the property during periods when the property is closed to the public will be limited to authorized individuals who may be required to sign the register and/or display identification documents when requested by Treasury guards or other authorized individuals.

§ 407.4 Preservation of property.

No person shall, without proper authority, willfully destroy, damage, deface, or remove property or any part thereof, or any furnishings therein.

§ 407.5 Conformity with signs and directions.

Persons in and on the property shall comply with the instructions of Treasury guards, with official signs of a prohibitory or directory nature, and with the directions of other authorized officials.

§ 407.6 Nuisances.

The use of loud, abusive, or profane language, unwarranted loitering, unauthorized assembly, the creation of any hazard to persons or things, improper disposal of rubbish, spitting, prurient prying, the commission of any obscene or indecent act, or any other disorderly conduct on the property is prohibited. The throwing of any articles of any kind in, upon, or from the property and climbing upon any part thereof is prohibited.

§ 407.7 Gambling.

Participating in games for money or other property, the operation of gambling devices, the conduct of a lottery or pool, the selling or purchasing of numbers tickets, or any other gambling, in or on the property is prohibited.

§ 407.8 Intoxicating beverages and narcotics.

Entering or being on the property, or operating a motor vehicle thereon, by a person under the influence of intoxicating beverages or narcotic drugs is prohibited.

§ 407.9 Soliciting, vending, debt collection, and distribution of handbills.

The unauthorized soliciting of alms and contributions, the commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, or the collecting of private debts, in or on the property is prohibited. This prohibition does not apply to Department of Treasury concessions or notices posted by authorized employees on the bulletin boards. Distribution of material such as pamphlets, handbills, and flyers is prohibited without prior approval from the Assistant Secretary for Administration, or his delegate.

§ 407.10 Photographs for news, advertising, or commercial purposes.

Except where security regulations apply, or a Federal court order or rule prohibits it, photographs for news purposes may be taken in areas on the property to which the public customarily has access without prior permission. Photographs for advertising and commercial purposes may be taken in such areas only with the prior written permission of the Assistant Secretary for Administration, or his delegate.

§ 407.11 Dogs and other animals.

Dogs and other animals, except seeing-eye dogs, shall not be brought upon the property for other than official purposes.

§ 407.12 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles in or on the property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of Treasury guards and all posted traffic signs.

(b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on the property is prohibited.

(c) Parking in or on the property is not allowed without a permit or specific authority. Parking without authority, parking in unauthorized locations, or in locations reserved for other persons, or contrary to the directions of Treasury guards or posted signs is prohibited.

(d) This section may be supplemented from time to time with the approval of the Assistant Secretary for Administration, or his delegate, by the issuance and posting of specific traffic directives as may be required and when so issued and posted such directives shall have the same force and effect as if made a part hereof.

§ 407.13 Weapons and explosives.

No person while on the property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.

§ 407.14 Penalties and other law.

Whoever shall be found guilty of violating the regulations in this part while on the property is subject to a fine of not more than \$50 or imprisonment of not more than 30 days, or both (see 40 U.S.C. 318c). Nothing contained in these regulations shall be construed to abrogate any other Federal laws or regulations of the District of Columbia applicable to the property referred to in § 407.2 and governed by the regulations.

[SEAL]

JAMES J. ROWLEY,
Director, U.S. Secret Service.

[F.R. Doc. 68-5786; Filed, May 14, 1968;
8:47 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 9—Atomic Energy Commission

PART 9-3—PROCUREMENT BY NEGOTIATION

Subpart 9-3.8—Price Negotiation Policies and Techniques

BASIC POLICY

The following amendment establishes the policy for payment of cost of access authorizations (security clearances).

In § 9-3.801, *Basic policy*, paragraph (b) is revised to read as follows:

§ 9-3.801 Basic policy.

(b) The use of negotiation, as a method of procurement, does not relax the requirements for competition. Access authorizations shall not be a limiting factor in obtaining full and free competition except where time will not permit securing additional clearances. If access to classified information is required either (1) to submit proposals in response to AEC requests for such proposals, (2) to respond to requests by AEC for expressions of interest, (3) to inspect facilities in connection with subparagraph (1) or (2) of this paragraph, or (4) to attend

preproposal or information conferences in connection with subparagraph (1) or (2) of this paragraph, a reasonable number of access authorizations will be furnished without charge.

(Sec. 161, Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205, Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486)

Effective date: This amendment is effective upon publication in the FEDERAL REGISTER.

Dated at Germantown, Md., this 8th day of May 1968.

For the U.S. Atomic Energy Commission.

ROBERT A. KOHLER,
Acting Director,
Division of Contracts.

[F.R. Doc. 68-5735; Filed, May 14, 1968; 8:45 a.m.]

Chapter 101—Federal Property Management Regulations

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

Subpart 101-26.5—GSA Procurement Programs

PROCUREMENT OF ELECTRONIC DATA PROCESSING TAPE

Procedures are established for the procurement of electronic data processing tape by GSA for Government agencies and, as authorized by appropriate Government agencies, Government contractors and grantees.

The table of contents for Part 101-26 is amended by the addition of the following new entries:

- 101-26.508 Electronic data processing tape.
- 101-26.508-1 Tape, 800 BPI, one-half inch (Interim Federal Specification W-T-0051a (GSA-FSS)).
- 101-26.508-2 Tape not covered by Interim Federal Specification W-T-0051a (GSA-FSS).

Subpart 101-26.5 is amended by the addition of new §§ 101-26.508, 101-26.508-1, and 101-26.508-2 as follows:

§ 101-26.508 Electronic data processing tape.

Procurement by executive agencies of electronic data processing tape shall be accomplished in accordance with the provisions of this § 101-26.508. Government contractors and grantees authorized by appropriate Government agencies to use GSA supply sources and other Federal agencies may participate in this program.

§ 101-26.508-1 Tape, 800 BPI, one-half inch (Interim Federal Specification W-T-0051a (GSA-FSS)).

Federal Supply Schedule, FSC Group 58, Part V, section A, includes contracts

for Government requirements of 800 BPI, one-half inch, electronic data processing tape (Interim Federal Specification W-T-0051a (GSA-FSS)). Agencies required to utilize this schedule shall, and other agencies may, order therefrom such tape requirements in accordance with the applicable provisions of the current Schedule. In addition, the Schedule is available for purchases by Government contractors and grantees which have been so authorized by a Government agency to use this source.

(a) To the maximum extent feasible, agencies shall develop procedures which will permit planned requirements consolidation on an agencywide basis when the efforts are expected to result in significant price advantages to the Government. If agencywide consolidation is not feasible, consideration shall be given to the potential for consolidation of individual small requirements at any agency level which is expected to enable the Government to benefit from lower prices generally obtainable through contracts for large volume procurements.

(b) Requirements exceeding the maximum order limitation of Federal Supply Schedule, FSC Group 58, Part V, Section A, shall be forwarded to General Services Administration, Federal Supply Service, Procurement Operations Division—FPN, Washington, D.C. 20406, for purchase action as specified in the special provisions of the current Schedule. In those cases where an agency anticipates a need for scheduled deliveries, minimum or maximum order quantities, or other special arrangements, GSA will develop specific provisions designed to accommodate the needs of the particular agency. These provisions will be based on information furnished by the agency concerned, for inclusion in solicitations for offers and resultant contracts. Agencies should allow sufficient leadtime (see § 101-26.102-3) in establishing required delivery dates to permit orderly procurement by GSA, including acceptance testing and delivery to destination.

§ 101-26.508-2 Tape not covered by Interim Federal Specification W-T-0051a (GSA-FSS).

Requirements for types of electronic data processing tape other than those covered by Interim Federal Specification W-T-0051a (GSA-FSS) or current Federal Supply Schedules shall be submitted to GSA in a manner similar to that set forth in § 101-26.401-3. GSA will either arrange for the procurement of such requirements or advise the submitting agency as to other appropriate action to be taken.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date: This regulation is effective upon publication in the FEDERAL REGISTER.

Dated: May 8, 1968.

LAWSON B. KNOTT, JR.,
Administrator of General Services.

[F.R. Doc. 68-5798; Filed, May 14, 1968; 8:49 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4415]

[Idaho 016471]

IDAHO

Withdrawal for Bear Lake National Wildlife Refuge

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

Subject to valid existing rights, and to valid claims, if any, of the State of Idaho, the following described public lands which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, for the Bear Lake National Wildlife Refuge:

BOISE MERIDIAN

- T. 14 S., R. 44 E.
- Sec. 5, lots 7, 8, and 9;
- Sec. 6, lots 11 to 14, inclusive;
- Sec. 7, lots 9 to 18, inclusive, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
- Sec. 8, lots 5 to 20, inclusive;
- Sec. 16, unsurveyed part of SW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$;
- Sec. 17, lots 2 to 6, inclusive, all of the unsurveyed part of the S $\frac{1}{2}$ N $\frac{1}{2}$ and S $\frac{1}{2}$;
- Sec. 18, lot 9 and all of the unsurveyed part of the E $\frac{1}{2}$;
- Sec. 19, all of the unsurveyed part of the E $\frac{1}{2}$;
- Sec. 20, unsurveyed;
- Sec. 21, lots 1 to 4, inclusive, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and all of the remaining unsurveyed part;
- Sec. 22, lots 1, 2, 3, and all of the remaining unsurveyed part;
- Sec. 23, unsurveyed part of the W $\frac{1}{2}$ SW $\frac{1}{4}$;
- Sec. 26, S $\frac{1}{2}$ NE $\frac{1}{4}$, and all of the unsurveyed part of the W $\frac{1}{2}$;
- Secs. 27, 28, 29, 32, 33, and 34, unsurveyed;
- Sec. 30, unsurveyed part of the E $\frac{1}{2}$;
- Sec. 31, unsurveyed part of E $\frac{1}{2}$ W $\frac{1}{2}$ and E $\frac{1}{2}$;
- Sec. 35, lots 3 and 4 and all the unsurveyed part.
- T. 15 S., R. 44 E.
- Sec. 1, lots 5, 6, 9, 10, and the unsurveyed portion of the W $\frac{1}{2}$ W $\frac{1}{2}$;
- Secs. 2 to 5, inclusive, unsurveyed;
- Sec. 6, lots 1 to 5, inclusive and all the unsurveyed part;
- Sec. 7, the unsurveyed parts of the E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ SW $\frac{1}{4}$;
- Secs. 8 to 11, inclusive, unsurveyed;
- Sec. 12, lots 2, 3, 6, 7, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and all the remaining unsurveyed part of the W $\frac{1}{2}$;
- Sec. 13, lots 2, 3, 6, and all of the unsurveyed part of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ W $\frac{1}{2}$;
- Sec. 14, lot 1 and the unsurveyed part of the N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$ lying north of lots 1 to 4, inclusive;
- Sec. 15, all the unsurveyed part of the N $\frac{1}{2}$ lying north of lots 1 to 4, inclusive;
- Sec. 16, all the unsurveyed part of the N $\frac{1}{2}$ N $\frac{1}{2}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ lying north of lots 1 to 4, inclusive;

Sec. 17, all the unsurveyed part of the N $\frac{1}{2}$ N $\frac{1}{2}$;
 Sec. 18, all the unsurveyed part of the N $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 23, all the unsurveyed part of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ lying northeast of lot 1;
 Sec. 24, all of the unsurveyed part lying north of lot 2.

The areas described aggregate approximately 17,573 acres in Bear Lake County.

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

MAY 9, 1968.

[F.R. Doc. 68-5755; Filed, May 14, 1968;
 8:46 a.m.]

Title 46—SHIPPING

Chapter IV—Federal Maritime Commission

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

[General Order 13, Amdt. 1]

PART 536—FILING OF TARIFFS BY COMMON CARRIERS BY WATER IN THE FOREIGN COMMERCE OF THE UNITED STATES AND BY CONFERENCE OF SUCH CARRIERS

Transportation of U.S. Military Cargo by American-Flag Common Carriers by Water; Special Permission

Section 18(b), Shipping Act, 1916, as amended, and Commission General Order No. 13 provide tariff filing requirements applicable to common carriers by water in the foreign commerce of the United States.

With respect to the transportation of military cargo, Public Law 198, approved April 28, 1904, with certain exceptions, restricts the carriage of military cargo to American-flag vessels on the one hand and limits the assessment of freight charges to a level not greater than that charged for the transportation of like goods for private parties or companies, on the other.

Unlike regulations covering the transportation of Government property at free or reduced rates in the domestic commerce, there are no regulations which either prohibit or provide for the establishment of such special rates applicable to U.S. Government property or military supplies moving in our foreign commerce. However, it is customary for American-flag common carriers to provide lower freight rates for Government cargo than the rates which are established for commercial trade.

The Military Sea Transportation Service (MSTS), pursuing its mission of providing ocean transportation for the movement of U.S. military cargo, presently procures commercial common carrier service at negotiated rates under a competitive bidding system.

There is no exemption from the filing requirements set forth in section 18(b) of the Act and in General Order No. 13. Therefore, the American-flag carriers which tender rates to MSTS for ap-

proval, have been required to file such rates with the Federal Maritime Commission pursuant to the above requirements. In order to relieve such carriers of these requirements, the Federal Maritime Commission hereby adopts regulations which will govern the submission to the Commission of quotations or tenders of rates or charges for the transportation of military cargo.

Therefore, pursuant to the provisions of section 4, Administrative Procedure Act (5 U.S.C. 553), and sections 18(b) (2) and 43, Shipping Act, 1916, as amended (46 U.S.C. 817(b), 841(a)), Part 536 of Title 46 Code of Federal Regulations is hereby amended by adding a new § 536.14 reading as follows:

§ 536.14 Transportation of U.S. Department of Defense cargo under competitive rates approved by Military Sea Transportation Service.

(a) All American-flag carriers operating in the foreign commerce of the United States, are hereby granted continuing special permission to file on one day's notice in the form and manner indicated in paragraph (c) of this section, all rates or charges for the transportation of U.S. Department of Defense cargo transported under rates, terms and conditions negotiated and approved by the MSTS.

(b) The provisions of this special permission shall apply to copies of quotations or tenders made by American-flag common carriers by water in the foreign commerce of the United States to the MSTS.

(c) Copies of all quotations or tenders by common carriers to which this special permission applies shall be submitted to this Commission on or after the effective date of this special permission and shall comply with subparagraphs (1) through (6), inclusive, of this paragraph.

(1) Copies to be submitted to the Federal Maritime Commission after approval by MSTS. Exact copies of the quotation or tender shall be filed with this Commission as soon as possible after the quotation or tender is approved by MSTS on not less than 1 day's filing notice prior to the effective date thereof.

(2) Filing in triplicate required. All quotations or tenders shall be filed in triplicate, one copy of which shall be signed and maintained at the Washington office of this Commission for public inspection. The tender shall represent only rates and conditions which have been accepted by the MSTS.

(3) Filing procedure. Three copies of the quotations or tenders shall be filed together with a letter of transmittal which clearly indicates that they are being filed in accordance with the requirements of section 18(b), Shipping Act, 1916, and this section.

(4) Numbering. The copies of quotations or tenders which are filed with the Commission by each carrier or agent shall be numbered consecutively in a series maintained by such carrier or agent beginning with the number "1".

(5) Quotation or tender superseding prior one. A quotation or tender which supersedes a prior quotation or tender

shall cancel the prior document by number.

(6) Amendments or supplements to quotations or tenders. When amendments or supplements are filed to quotations or tenders, they shall have been first approved by MSTS and shall contain appropriate reference to the original tender which the supplement amends.

Notice and public procedure are not necessary prerequisites for the promulgation of this amendment since it grants a limited waiver of the requirements otherwise imposed by the rules of Part 536.

Effective date: The amendment contained herein shall become effective 30 days following the date of publication in the FEDERAL REGISTER.

By the Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 68-5795; Filed, May 14, 1968;
 8:48 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 68-498]

PART 0—COMMISSION ORGANIZATION

PART 1—PRACTICE AND PROCEDURE

Authority Delegated and Pleadings; Filing Periods

1. The amendments to the rules and regulations set forth below are intended to provide for the more efficient and expeditious disposition of certain matters coming before the Commission for consideration.

2. Under § 0.371, as amended, the Chief, Office of Opinions and Review, is authorized to act on all motions or petitions for extensions of time in hearing matters pending before the Commission, including those which are contested. Normally oppositions to such motions do not raise questions warranting Commission consideration. He is also authorized to issue orders, in accordance with Commission instruction, specifying or changing the day or hour of oral argument. The day and hour of argument are dependent upon the availability of the Commissioners at the time selected and are determined by them in consultation. The delegation will expedite the issuance of orders implementing that determination.

3. In view of the need for prompt action on requests for temporary relief, we are reducing the filing period for oppositions to such requests and are precluding the filing of replies to oppositions. Under § 1.45(d), as amended, 7 days, including Saturdays, Sundays, and holidays, are allowed for filing oppositions, and additional time will not be allowed under § 1.4(g) when the request is served by mail.

4. Authority for the amendments set forth in the attached appendix is set forth in sections 4 (i) and (j), 5(d), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 155(d), and 303(r). Because the amendments relate to matters of procedure and internal Commission organization, the prior notice and effective date provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. 553, do not apply.

5. In view of the foregoing: *It is ordered*, Effective May 17, 1968, that Parts 0 and 1 of the rules and regulations are amended as set forth below.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303)

Adopted: May 8, 1968.

Released: May 10, 1968.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Secretary.

A. Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In § 0.371(a), subparagraph (1) is revised, and subparagraph (4) is added, to read as follows:

§ 0.371 Authority delegated.

(a) * * *

(1) Motions or petitions for extension of time.

(4) To issue orders, in accordance with Commission instructions, specifying or changing the day or hour of oral argument.

B. Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In § 1.45, paragraph (d) is amended as follows:

§ 1.45 Pleadings; filing periods.

(d) *Requests for temporary relief; shorter filing periods.* Oppositions to a request for stay of any order or to a request for other temporary relief shall be filed within 7 days after the request is filed. Replies to oppositions should not be filed and will not be considered. The provisions of § 1.4(g) shall not apply in computing the filing date for oppositions to a request for stay or for other temporary relief.

[F.R. Doc. 68-5788; Filed, May 14, 1968; 8:48 a.m.]

[Docket No. 17989; FCC 68-500]

PART 0—COMMISSION ORGANIZATION

PART 97—AMATEUR RADIO SERVICE

Miscellaneous Amendments

Report and order. In the matter of amendment of Parts 0 and 97 of the

¹ Commissioner Loevinger absent.

Commission's rules to permit disabled persons to obtain Amateur Extra Class and Advanced Class licenses by mail examinations, Docket No. 17989.

1. On February 5, 1968, the Commission released a notice of proposed rule making in the above-entitled matter. The notice was duly published in the FEDERAL REGISTER on February 8, 1968 (33 F.R. 2713), and all comments filed in response thereto have been fully considered.

2. The proposal in this docket would provide for examinations-by-mail for the Amateur Extra Class and Advanced Class licenses to be administered by volunteer examiners to disabled persons who are unable to appear for Commission-supervised examinations for these licenses.

3. Comments on the proposal were received from Mr. V. M. Di Napoli (WB2BBW) and from the American Radio Relay League, Inc. (ARRL). Mr. Di Napoli is the holder of a Conditional Class license which he obtained by reason of a permanent disability. He requests the Commission to promptly adopt the proposed rule changes and notes that he had hoped for this opportunity to advance himself and has now started his studies for the Advanced Class license "with full vitality." In its comment, the ARRL requests adoption of the proposed amendments at an early date and states:

The League is pleased that the Commission has recognized the very real concerns and problems of disabled amateurs who are unable to appear for Commission supervised examinations and whole heartedly supports the proposed amendments * * *

4. For the reasons set forth herein and in the notice of proposed rule making, the Commission finds that amendment of its rules as proposed is in the public interest, convenience and necessity. Authority for these rule changes is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended. *Accordingly, it is ordered*, That, effective June 17, 1968, Parts 0 and 97 of the Commission's rules are amended as set forth below. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended 1066, 1082; 47 U.S.C. 154, 303)

Adopted: May 8, 1968.

Released: May 10, 1968.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Secretary.

A. Part 0 of the Commission's rules is amended as follows:

1. Section 0.331(b) (10) is amended to read as follows:

§ 0.331 Authority delegated.

(b) * * *

(10) To cancel amateur operator licenses as provided in § 97.35 of this chapter.

B. Part 97 of the Commission's rules is amended as follows:

¹ Commissioner Loevinger absent.

1. New § 97.28 is added to read as follows:

§ 97.28 Mail examinations for disabled applicants for Amateur Extra and Advanced Class licenses.

(a) The Commission may permit the examination for an Amateur Extra or Advanced Class license to be administered by a volunteer examiner selected by the applicant when it is shown by a physician's certificate that the applicant is unable to appear for a Commission supervised examination because of protracted disability.

(b) The volunteer examiner for an Amateur Extra or Advanced Class license examination shall be at least 21 years of age and shall be the holder of a class of amateur operator license equal to or higher than the class of license for which the applicant is being examined. The written portion of the examination shall be obtained, supervised, and submitted in accordance with the procedures set forth in § 97.29(b).

2. Paragraph (a) and Note to subparagraph (b) (1) of § 97.29 are amended to read as follows:

§ 97.29 Manner of conducting examinations.

(a) Except as provided by § 97.28, the examination for Amateur Extra, Advanced and General Classes of amateur operator licenses will be conducted by an authorized Commission employee or representative at locations and at times specified by the Commission.

(b) * * *

(1) * * *

NOTE: When the applicant is entitled to examination credit for the code test under one of the provisions of § 97.25, an application may be submitted without regard to the 10 day limitation. The examiner's request should then state that a code test was not administered for that reason. The applicant should furnish details as to the class, number, and expiration date of any Commercial radiotelegraph license involved.

3. Section 97.35(a) is amended to read as follows:

§ 97.35 Additional examination for holders of operator licenses obtained by mail.

(a) A licensee who holds an amateur license which was obtained by a mail examination under the supervision of a volunteer examiner may be required to appear for a Commission supervised license examination at a location designated by the Commission. If the licensee fails to appear for this examination when directed to do so, or fails to pass such examination, the operator license involved shall be subject to cancellation. When a Novice, Technician, or Conditional Class license is cancelled under this provision, a new license will not be issued for the same class operator license as that cancelled.

[F.R. Doc. 68-5789; Filed, May 14, 1968; 8:48 a.m.]

[Docket No. 17870; FCC 68-501]

PART 87—AVIATION SERVICES**Eligibility of Licensee**

Report and order. In the matter of amendment of Part 87—Aviation Services, to broaden the scope of persons eligible for flight test station licenses under § 87.333 Docket No. 17870.

1. The Commission on November 15, 1967, adopted a notice of proposed rule making in the above-entitled matter (FCC 67-1251) which made provision for the filing of comments. The notice was published in the FEDERAL REGISTER on November 22, 1967 (32 F.R. 16055-16056). By Order dated December 19, 1967, the time for filing comments and reply comments was extended to February 15, and March 4, 1968, respectively. The time for filing comments and reply comments has passed.

2. The notice of proposed rule making was based on information gained from administering flight test stations and the numerous requests for waiver of the present eligibility requirements that have been received and referred to the Commission. The present scope of persons eligible for flight test station licenses under § 87.333 of the Commission's rules is limited to (a) manufacturers of aircraft or major aircraft components, or (b) a parent corporation or its subsidiary if either corporation is a manufacturer of aircraft or major aircraft components. The proposed amendment conforms with the past Commission precedents established by such waivers and recognizes the changed conditions and circumstances affecting the manufacture and flight testing of aircraft or major aircraft components by broadening the scope of the present eligibility requirements to permit educational institutions and persons primarily engaged in the design, development, modification, and flight test evaluation of aircraft or major aircraft components to qualify as licensees. In addition, each applicant will be required to submit a statement containing sufficient facts to establish its eligibility under the revised criteria.

3. Formal comments were filed by the Aerospace and Flight Test Radio Coordinating Council (AFTRCC), whose membership consists of major companies

in the aerospace manufacturing field. No other comments or reply comments were received, either during or after the close of the dates for filing comments and replies. AFTRCC's comments are treated in detail in the following paragraphs.

4. AFTRCC is sympathetic with the Commission's desire to reduce its administrative workload by reducing the number of requests for waivers of the present eligibility requirements of § 87.333 of the rules. However, the Council recommends that the present rule be left unchanged for fear that if the eligibility requirements are relaxed a large number of applicants having marginal justification are likely to file and become licensees on a routine basis. We believe that the respondent's apprehensive position is unfounded since under the proposed amendment the Commission will be free to refuse to license a flight test station if the applicant fails to submit a statement containing facts sufficient to establish its eligibility for license.

5. In addition, AFTRCC requests clarification as to whether the Commission plans to keep the frequencies 123.15, 123.25, 123.35, 123.45, and 123.55 Mc/s for the exclusive use of aircraft manufacturers in the event the proposed expanded eligibility requirements are adopted. The flight test frequencies now designated in § 87.331(a) of the Commission's rules as available "only to aircraft manufacturers" remain so designated. Only those frequencies not specifically assigned to aircraft manufacturers under § 87.331 may be made available for shared use under the proposed amendment.

6. Finally AFTRCC maintains that whether or not the expanded eligibility requirements as proposed in the Notice are adopted, it has become imperative for the Commission to establish mandatory coordination procedures for the use of all flight test frequencies under § 87.331 of the rules. For this purpose AFTRCC recommends that its petition for rule making (RM-1198, filed Sept. 7, 1967) to revise § 87.331 of the rules to provide for the establishment of an industry frequency advisory committee for coordination of frequencies in the 1485-1535 Mc/s band under § 87.331(c),

be amended to include flight test frequencies under § 87.331(a). It further recommends that information contained in its petition for rule making (RM-1198) be incorporated and made part of its comments in this proceeding. This matter will be considered in a separate proceeding in RM-1198.

7. In view of the foregoing: *It is ordered*, Pursuant to the authority contained in sections 4(i) and 303(b) and (r) of the Communications Act of 1934, as amended, that effective June 17, 1968, Part 87 of the Commission's rules is amended as set forth below. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended 1066, 1082; 47 U.S.C. 154, 303)

Adopted: May 8, 1968.

Released: May 10, 1968.

FEDERAL COMMUNICATIONS

COMMISSION,¹

[SEAL]

BEN F. WAPLE,

Secretary.

Section 87.333 is amended to read as follows:

§ 87.333 Eligibility of licensee.

(a) A flight test station license may be granted only for use by the following persons:

(1) Manufacturers of aircraft or major aircraft components, or

(2) A parent corporation or its subsidiary if either corporation is a manufacturer of aircraft or major aircraft components, or

(3) Educational institutions engaged in the design, development, modification, and flight test evaluation of aircraft or major aircraft components and persons primarily engaged in the design, development, modification, and flight test evaluation of aircraft or major aircraft components.

(b) Each application shall be accompanied by a statement containing facts sufficient to establish the applicant's eligibility for license under the criteria set forth in paragraph (a) of this section.

[F.R. Doc. 68-5790; Filed, May 14, 1968; 8:48 a.m.]

¹ Commissioner Loevinger absent.

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Industrial Development Bonds; Postponement of Hearing

On March 23, 1968, it was announced that a public hearing would be held on Monday, May 20, 1968, on the provisions of a proposed amendment to the regulations under section 103 of the Internal Revenue Code, relating to interest on certain governmental obligations (33 F.R. 4950).

Since Congress has under active consideration at this time a proposed amendment to section 103 of the Internal Revenue Code dealing with industrial development bonds, the public hearing on the proposed amendment to the regulations is postponed until further notice.

Lester R. Uretz,
Chief Counsel.

By: JAMES F. DRING,
Director, Legislation and
Regulations Division.

[F.R. Doc. 68-5882; Filed, May 14, 1968;
11:42 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

[7 CFR Part 301]

FORMOSAN SUBTERRANEAN TERMITE

Notice of Withdrawal of Proposed Quarantine

Pursuant to notices of public hearing which appeared in the FEDERAL REGISTER on May 25, 1967, and June 23, 1967 (32 F.R. 7631, 8973), a public hearing was held at New Orleans, La., on June 27, 1967, to consider invoking a Federal quarantine on account of the Formosan subterranean termite (*Coptotermes formosanus* Shiraki) to include the States of Hawaii, Louisiana, South Carolina, and Texas, and Guam and Midway Islands.

After careful consideration of all the testimony presented at the hearing and other available information, it has been decided that a Federal quarantine is not in the public interest. Accordingly, the proposal is not being implemented and is hereby withdrawn. Affected States within the conterminous United States are invoking necessary quarantine action to prevent spread from any established infested areas. Personnel of the Plant Quarantine Division will continue to in-

spect products, articles, or means of conveyance which may introduce the pest from the State of Hawaii, and Guam and Midway Islands, as well as other areas in the world where the pest is known to occur, and any products or articles found infested will be disposed of in accordance with the Federal Plant Pest Act (7 U.S.C. 150aa et seq.).

Done at Washington, D.C., this 9th day of May 1968.

[SEAL]

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

[F.R. Doc. 68-5760; Filed, May 14, 1968;
8:47 a.m.]

Consumer and Marketing Service

[7 CFR Ch. IX]

[Docket No. AO-363]

MELONS GROWN IN SOUTH TEXAS

Decision With Respect to Proposed Marketing Agreement and Order

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674) and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Edinburg, Tex., on December 19-21, 1967, pursuant to notice thereof which was published in the FEDERAL REGISTER on November 25, 1967 (32 F.R. 16164), upon a proposed marketing agreement and order regulating the handling of melons grown in South Texas.

On the basis of evidence introduced at the hearing and the record thereof, the Deputy Administrator, Consumer and Marketing Service, on April 3, 1968, filed with the Hearing Clerk, U.S. Department of Agriculture, a recommended decision in this proceeding. The notice of the filing of such recommended decision, affording opportunity to file written exception thereto, was published in the FEDERAL REGISTER, April 6, 1968 (33 F.R. 5465). None was filed.

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The need for, and justification and desirability of, a proposed regulatory program as a means of effectuating the declared policy of the Act;

(2) The existence of the right to exercise Federal jurisdiction; and

(3) The specific terms and provisions of a proposed marketing agreement and order, including the production area to be covered by the proposed regulatory program.

Findings and conclusions. The findings and conclusions on the aforementioned

material issues, all of which are based on evidence adduced at the hearing and the record thereof, are as follows:

The evidence adduced at the hearing does not permit issuance, under the act, of a sound, workable marketing agreement and order of the general nature proposed that would be limited only to the four counties proposed in the hearing notice. This is so because of the failure of the record evidence to support a required statutory finding under section 8(c)(11) of the Agricultural Marketing Agreement Act of 1937, as amended, that the counties of Cameron, Hidalgo, Starr, and Willacy in the State of Texas constitute the smallest practicable area consistent with carrying out the declared policy of the act. A finding to that effect is made a condition precedent to the issuance of an order.

The evidence of record shows that the four counties included in the proposal contain less than two-thirds of the Texas spring cantaloup acreage. There was almost unanimous testimony that an adjacent region in Texas—the Laredo district with over 3,000 acres used in the production of cantaloups—should be included as part of the production area for the program to be effective, due to the competition of such cantaloups for the same markets as those of the four-county area in the notice of hearing. There was substantial testimony that the Winter Garden area—another nearby spring cantaloup producing region—should also be included for effective program operations. In addition, there are other nearby competing counties, including two of the top six in Texas spring melon acreage, that are not covered by the production area proposed in the notice.

Rulings on briefs of interested parties. At the conclusion of the hearing the Presiding Officer fixed January 24, 1968, which was later extended to February 5, as the latest day for filing briefs.

A brief was filed within the allotted time by Mr. Sid Hardin, attorney representing the Independent Cantaloupe Growers' Association of the Lower Rio Grande Valley of Texas. It was carefully considered along with the record evidence in reaching the findings and conclusions herein set forth. To the extent that the findings and conclusions proposed in the brief are inconsistent with those contained herein, the request to make such findings or to reach such conclusions is denied.

Therefore, it is concluded that a marketing agreement will not be entered into and an order will not be issued to regulate the handling of melons grown in South Texas on the basis of this record. Hence, there is no need for further findings or conclusions on issues which relate to Federal jurisdiction, need, or the other specific provisions of a proposed regulatory program.

It is hereby ordered, That this decision shall be published in the FEDERAL REGISTER and there shall be no further action in this proceeding.

Dated: May 9, 1968.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 68-5761; Filed, May 14, 1968;
8:47 a.m.]

[7 CFR Part 1036]

[Docket Nos. AO-268-A12-RO2,
AO-179-A28-RO2, AO-325-A8-RO2]

MILK IN EASTERN OHIO-WESTERN PENNSYLVANIA 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 with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 5th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. A hearing on the Northeastern Ohio (Part 1036), Greater Youngstown-Warren (Part 1048) and Greater Wheeling (Part 1008) orders was held in March and April 1967 under Docket Nos. AO-268-A12, AO-179-A28 and AO-325-A8. On the basis of that hearing, the three orders were amended and merged into one order (Part 1036) for the Eastern Ohio-Western Pennsylvania marketing area. The merged order was issued April 15, 1968, to be effective July 1, 1968 (33 F.R. 5988).

The hearing held under these docket numbers was reopened on February 23, 1968, at Memphis, Tenn., pursuant to notice thereof issued on February 6, 1968 (33 F.R. 2784). This hearing, held jointly for 71 Federal orders, including the Northeastern Ohio, Greater Youngstown-Warren and Greater Wheeling orders, was convened for the purpose of considering proposals to continue beyond April 1968, the temporary emergency Class I price increases in effect under the orders involved. This decision is limited

to the issues considered at the Memphis hearing.

The material issues on the record of the hearing as it pertains to the order for the Eastern Ohio-Western Pennsylvania marketing area relate to:

1. Continuing under the Eastern Ohio-Western Pennsylvania order the temporary Class I price increases effective under the Northeastern Ohio, Greater Youngstown-Warren and Greater Wheeling orders; and
2. The need for emergency action.

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. **Class I price level.** The Class I price differential under the Eastern Ohio-Western Pennsylvania order should be increased 20 cents per hundredweight from the effective date of that order through April 1969. Also, for the purpose of computing Class I prices through April 1969, the basic formula price should be not less than \$4.33.

On the basis of the record of the Memphis hearing, temporary Class I price increases that had been effective through April 1968, under 71 milk orders, including the Northeastern Ohio, Youngstown-Warren and Wheeling orders, are being continued through April 1969. These price increases under the three named orders are effective only through June 1968, since these orders are to be merged July 1, 1968, into one order for the Eastern Ohio-Western Pennsylvania marketing area.

A decision issued April 15, 1968 (33 F.R. 6016), set forth the basis for the temporary price increases that became effective May 1, 1968, under the three orders to be merged. The marketing conditions which warranted the temporary price increases in the marketing areas currently regulated by these orders exist similarly in the Eastern Ohio-Western Pennsylvania marketing area. The findings and conclusions of that decision, of which official notice is taken, are equally applicable to the Eastern Ohio-Western Pennsylvania marketing area and are adopted herein.

2. **The need for emergency action.** The recommended decision in this proceeding should not be omitted as was generally requested with respect to all orders involved in the Memphis hearing. Since the Eastern Ohio-Western Pennsylvania order does not become effective until July 1, 1968, there is adequate time for normal procedures. This recommended decision proposing temporary price increases under the Eastern Ohio-Western Pennsylvania order should assist those dairy farmers in the Eastern Ohio-Western Pennsylvania market in planning their future production programs.

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 order for the Eastern Ohio-Western Pennsylvania marketing area; 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 Eastern Ohio-Western Pennsylvania 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. Section 1036.50 is revised to read as follows:

§ 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 Department for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential (rounded to the nearest one-tenth cent) at the rate of the Chicago butter price times 0.12 and rounded to the nearest cent. For the purpose of computing Class I prices from the effective date hereof

through April 1969, the basic formula price shall not be less than \$4.33.

2. Section 1036.51(a) (1) is revised to read as follows:

§ 1036.51 Class prices.

(a) * * *

(1) Add \$1.67 for plants in the Cleveland-Erie district and \$1.77 for plants in the Pittsburgh district, plus 20 cents for each district through April 1969. At a plant outside the marketing area, add the amount applicable pursuant to this paragraph at the location of the city hall of the following cities that is nearest (by the shortest hard-surfaced highway distance as determined by the market administrator) such plant: Canton and Cleveland, Ohio; and Erie, Pittsburgh, and Uniontown, Pa.

Signed at Washington, D.C., on May 10, 1968.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 68-5800; Filed, May 14, 1968;
8:49 a.m.]

[7 CFR Part 1205]

COTTON BOARD RULES AND REGULATIONS

Proposed Revisions

Pursuant to authority contained in the Cotton Research and Promotion Order (7 CFR 1205.301-1205.342), effective under the Cotton Research and Promotion Act (80 Stat. 279; 7 U.S.C. 2101 et seq.), notice is hereby given that the Cotton Board has formulated and submitted to the Secretary of Agriculture for approval certain revisions, hereinafter set forth, of the Subpart—Cotton Board Rules and Regulations (7 CFR 1205.500-1205.540; 32 F.R. 7068).

As a result of experience gained during the first year of operation, the Cotton Board has found that certain revisions in the Cotton Board's rules and regulations should be made for more efficient program operations. Such revisions would (1) clarify the time limit during which a producer must mail the application for a refund of an assessment he paid, (2) eliminate the monthly report required of ginners, (3) advance the dates for end-of-season gin reports, and (4) provide for the submission of a certificate in lieu of an end-of-season gin report by any gin that is the collecting handler on every bale of cotton it ginned.

The Secretary has not approved these proposed revisions and desires to give persons subject to the regulations an opportunity to express their views. The Cotton Board's proposed revisions are as follows:

§ 1205.520 [Amended]

1. In § 1205.520, the first sentence of paragraph (b) is revised by adding the

words "by such producer" at the end of the first sentence and as revised reads as follows:

(b) *Submission of refund application to Cotton Board.* Any producer requesting a refund shall mail an application on the prescribed form to the Cotton Board within 90 days from the date the assessment was paid on the cotton by such producer.

2. Section 1205.530 is revised to read as follows:

§ 1205.530 Gin reports and reporting schedule.

(a) *Gin reports.* Each year each cotton gin in the United States shall submit reports to the Cotton Board on forms or certificates made available or approved by the Cotton Board as follows:

(1) *End-of-season report.* Except as provided in subparagraph (2) of this paragraph, each gin shall report to the Cotton Board an alphabetical listing of producer names, their addresses, and the number of bales ginned for each such producer during its ginning season.

(2) *Certificate in lieu of end-of-season report.* If a gin is the collecting handler on every bale ginned at such gin and collecting handler reports and remittances of assessments have been made in accordance with § 1205.513, a certification to that effect may be made to the Cotton Board in lieu of an end-of-season report.

(b) *Reporting schedule.* The schedule for submitting gin reports is as follows:

(1) Each gin that completes ginning operations prior to January 16 shall make a report to the Cotton Board within 10 days after completion of ginning.

(2) Each gin that operates on or after January 16 will make a report to the Cotton Board not later than January 25 covering bales ginned through January 15.

(3) Each gin that operates after January 15 shall make a supplemental report to the Cotton Board within 10 days after the close of ginning operations covering bales ginned after January 15.

All persons who desire to submit written data, views, or arguments in connection with the proposed revisions in regulations may file the same in triplicate with the Hearing Clerk, Room 112, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 15 days after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: May 10, 1968.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 68-5801; Filed, May 14, 1968;
8:49 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 21, 23, 25, 73, 74, 87, 89, 91, 93]

[Docket No. 18180; FCC 68-516]

TABLE MOUNTAIN, BOULDER, COLO.

Protection From Radio Interference

In the matter of amendments to Parts 21, 23, 25, 73, 74, 87, 89, 91, and 93 of the Commission's rules relative to the protection of Table Mountain, Boulder, Colo., from radio interference, Docket No. 18180.

1. The Department of Commerce has developed over the past several years, an extensive radio experimental receiving station at Table Mountain, in the vicinity of Boulder, Colo. This site is the principal field experimental laboratory for the telecommunication sciences program of the Department's Environmental Science Service Administration, and is used for the reception of weak signals from distant transmitters, from emissions from the sun and other astronomical sources, from satellites, from weak scattering and emission from the earth's atmosphere and from terrestrial radar echoes from several thousands of miles away. Reception is carried out in many bands throughout the radio spectrum.

2. The site is an elevated flat-top butte in a rural area and enjoys a relatively low ambient radio noise level. The Department of Commerce has exercised great care in its electrical installations at the site to preserve the prevailing low noise level. Additionally, the State of Colorado has adopted legislation making it unlawful to install or operate electrical equipment within one-half mile of the facility if such equipment causes interference to reception at the site. The law also specifies levels of radiation, as a function of frequency, which shall not be exceeded by electrical equipment within two miles of the site. These legal restrictions do not apply, however, to stations licensed by the Commission or to duly authorized stations of the Federal Government. Consequently, the Department of Commerce has requested the assistance of the Commission and the Director of Telecommunications Management to ensure that signal levels at the site from new or modified stations are not excessive.

3. The Department of Commerce has requested institution of an application-screening process such as is used to protect the National Radio Astronomy Observatory at Greenbank, W. Va. Since the establishment of the Greenbank "quiet zone", numerous requests to establish similar protected areas in different parts of the country have been denied. In this instance, however, the Commission is persuaded that some of the activities at Table Mountain are of such a nature that special effort should be made

to protect them from harmful interference. The Director of Telecommunications Management has expressed similar concern and is prepared to take steps to minimize interference to the site from Federal Government stations. Because of the administrative burden that would be imposed by an additional Greenbank-type screening process, the Commission finds it necessary to adopt an alternative approach. Appropriate rule parts are proposed to be amended herein to include a cautionary section, drawing the attention of prospective applicants to the need for consultation with ESSA authorities, in advance of making application for a station that might create harmful interference at the Table Mountain site. The Commission will not screen applications to determine whether the recommended consultation has taken place. However, if an application is filed with this Commission after the effective date of the instant rule change without prior consultation with ESSA authorities which results in the installation of a radio station which in fact delivers a signal at the reference point in excess of the field strength specified herein, the Commission may find it in the public interest to institute proceedings looking toward a requirement that the power level of the offending station be adjusted to a point where the specified field strength is not exceeded.

4. The Commission will make available to the Department of Commerce, copies of all public notices relating to applications accepted for filing in Parts 21, 23, 25, 73, 74, 87, 89, 91, and 93, noting that such notices do not relate to many applications for stations in the last four parts named. The Department will be expected to screen such notices and file, within 30 days of the date of such notice, its views with the Commission in those instances where there appears to be a potential interference problem. The Commission will take such views into account in dealing with the application in question, deciding each case on its merits in the public interest.

5. Authority for the amendments proposed as set forth below is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

6. Any interested person who is of the opinion that the proposed amendment should not be adopted in the form set forth herein may file with the Commission on or before June 18, 1968, written data, views, or arguments setting forth his comments. Comments in support of the proposal may also be filed on or before the same date. Comments or briefs in reply to the original comments may be filed on or before June 28, 1968. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

7. In accordance with § 1.419 of the Commission's rules, an original and 14

copies of all statements, views, or comments filed shall be furnished the Commission.

Adopted: May 8, 1968.

Released: May 10, 1968.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Secretary.

It is proposed to amend the Commission's rules by inserting new §§ 21.15(q), 23.20(d), 25.390(p), 73.18(c), 73.215(c), 73.515(c), 73.623(c), 73.712(c), 74.12(c), 87.31(f), 89.55(g), 91.54(g), and 93.54(g), each of which will read as follows:

Protection for Table Mountain Radio Receiving Zone, Boulder County, Colo.: Applicants for a station authorization to operate in the vicinity of Boulder County, Colo., under this part are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. This is the receiving site of the Research Laboratories of the Environmental Science Services Administration (ESSA), Department of Commerce, Boulder County, Colo. To prevent degradation of the present relatively low ambient radio noise level at that site, the Department of Commerce seeks to ensure that field strengths at 40°07'50" N. latitude, 105°14'40" W. longitude, resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values:

Frequency Range	Field Strength (mv/m)
Below 540 kc/s-----	10
540-1600 -----	20
1.6-470 Mc/s-----	10
470-890 Mc/s-----	30
Above 890 Mc/s-----	1

Advance consultation is recommended particularly for those applicants whose proposed stations would be within the following distances of the point defined above:

1. All stations within 1.5 statute miles;
2. Stations with 50 watts or more effective radiated power (ERP) within 3 statute miles;
3. Stations with 1 kw or more ERP within 10 statute miles; and
4. Stations with 25 kw or more ERP within 50 statute miles.

Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, ESSA/NBS Boulder Laboratories, Boulder, Colo. 80302; telephone 303, 447-1000 in advance of filing their applications with the Commission.

The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid the filing of petitions to deny or objections by the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the reference point in excess of the field strength specified herein.

[F.R. Doc. 68-5791; Filed, May 14, 1968;
8:48 a.m.]

¹ Commissioner Loevinger absent.

[47 CFR Part 73]

[Docket No. 18179; FCC 68-511]

TELEVISION BROADCAST STATIONS

Territorial Exclusivity Agreements in Nonnetwork Program Arrangements

In the matter of amendment of Part 73 of the Commission's rules with respect to television programs produced by non-network suppliers and not made available to certain television stations, Docket No. 18179.

1. Notice of proposed rule making, as indicated hereinbelow, is given with respect to the above-entitled matter.

2. The Commission has before it for consideration a resolution, adopted April 13, 1967, by the Committee for the Full Development of All-Channel Broadcasting (CAB), an Industry-Commission group formed to promote the development of UHF, that reads as follows:

Resolved: As favoring the issuance of a notice of inquiry to all television stations to determine what current territorial exclusivity practices exist between the station and all of its nonnetwork program sources and to determine the extent (sic) that such practices may have on the unreasonable limitation of the availability of programming in other small and large cities, and the extent to which territorial exclusivity affects the future growth of all-channel broadcasting.

The resolution deals with the unavailability of nonnetwork programs (syndicated and feature films, etc.) to some television stations, usually in smaller markets located some distance from, though not entirely out of reach of, the possible reception range of other television stations located in larger markets. This unavailability arises out of territorial exclusivity agreements contained in contracts between the program suppliers and the large market station. We have received other complaints on this subject, for example, of the nonavailability of certain films to Springfield (Mass.) UHF stations because of exclusivity provisions in the arrangements between the supplier and the New Haven (Conn.) VHF station (these cities are about 58 miles apart).

3. Since (unlike agreements concerning network programming), agreements concerning nonnetwork programs are not required to be filed with the Commission, and there are no rules or policy statements on this matter, there is relatively little information now available on the subject. From the information we have, it appears that there is considerable variation in exclusivity agreements, both with respect to different markets and as between stations and programs in the same city. For example, Boston, Providence, and Worcester are approximately the same distance from each other; and it appears that, in some instances, programs presented by Boston stations are not available in either Providence or Worcester, but programs presented in Providence are available to a Worcester station. New York City stations have various provisions including exclusivity within the Grade A contour, the Grade

B contour, the "metropolitan area", 60 miles from the Empire State Building, and 75 miles from that location but not including New Haven. Los Angeles stations' exclusivity clauses vary as follows: "primary area," "coverage area excluding San Diego and Santa Barbara," Grade A, Grade B, and 60 miles. Thus, not only are stations in smaller markets around these cities precluded from presenting many programs, but it is sometimes difficult for them to determine exactly what programs are and are not available to them.

4. We recognize the legitimate interest of a station purchasing a program to a degree of exclusivity, as against its presentation on another station serving all or a very large portion of the same audience. The program supplier likewise has an interest, since if he were prohibited from guaranteeing some exclusivity he might not be able to command a reasonable price for his product. But there are very substantial public interests involved, which these considerations should not be permitted to thwart—the interest of the public beyond the reach of the original station in having desirable programs available for viewing, and of other stations in being able to present such program fare. In view of the restrictive effects which exclusivity agreements have, there may well be situations where they are not consistent with the public interest, e.g., where another station is willing to purchase the program on reasonable terms, and there is a relatively small overlap of service area between the original station and the other station. Our television network rule (§ 73.658(b)) prohibits territorial exclusivity agreements concerning network programming except as against other stations in same community.¹

5. We are tentatively of the view that the same territorial exclusivity rule should be adopted for nonnetwork programs, since the public interest considerations appear to be much the same.² Therefore, as set forth below, we propose to adopt a new rule prohibiting contracts,

arrangements, or understandings between stations and nonnetwork program suppliers, which prevent or hinder another television station in a different community from presenting the program (as in the network rule, the term "community" would be defined as the community specified in the station's authorization as the location of the station).

6. As mentioned above, we have relatively little information on this subject at present, and it may be, as we obtain more through this proceeding, that a somewhat less restrictive rule may be preferable, at least for certain types of programs. We invite comments on whether, assuming a less restrictive rule is desirable, standards should be adopted such as prohibiting stations from entering into agreements with program suppliers giving them exclusive rights as against stations beyond a certain distance or a certain signal-intensity contour, or as against stations having no more than a certain degree of service overlap or more than a certain amount of additional audience not served by the original station. Comments are of course invited on what such standards, if adopted, should be. As mentioned above it appears desirable, if it is feasible, to adopt a uniform, known standard in this area, so that stations may know what programs are or are not likely to be available to them. Comments are invited on whether this should be done, or whether there should be different standards (e.g., different permissible distances) for different types of programs or other different situations. We also invite comments on whether—assuming it is appropriate to adopt a standard, such as distance, which is the maximum distance within which exclusivity will be permitted—presentation by stations within that distance should be made possible on certain terms and conditions, for example as to program costs or time lag between presentation on the original station and the other station.

7. We have set forth above our tentative view, which, admittedly, is based on relatively little information. Parties urging a less restrictive rule (or no rule in this area at all) should supply specific factual data to support their recommendations if they wish to have their suggestions considered. It is our hope that as many parties as possible—particularly television stations and program suppliers—will file meaningful and factual comments herein.

8. Comments concerning territorial exclusivity provisions in program contracts between a television station and the nonnetwork station should encompass the following areas:

(a) Types of programs covered by such exclusivity contracts;

(b) The time of duration of the contracts;

(c) Geographic limit of exclusivity (distance, signal intensity contour, etc., with any specific cities or areas included or excluded, and, if the limit is "metropolitan area", etc., a statement as to what this means in fact).

(d) The extent to which such programs are assignable to other licensees;

(e) Whether the territorial exclusivity agreements cover first, second, or third run of the program, or are flat term, and any other pertinent provisions affecting the degree of exclusivity such as time differential.

(f) The extent to which nonnetwork programs have been purchased under an arrangement calling for territorial exclusivity and have not been used by the purchasing station, in terms of number of programs and date first purchased;

(g) The extent to which the terms of nonnetwork program contracts with territorial exclusivity provisions may prevent the purchase of these programs by: (a) Other existing stations; or (b) potential stations for which a channel assignment is in the Table of Assignments;

(h) If exclusivity is to be permitted beyond the same community, to what extent should nonnetwork television programs be made available on a reasonably extensive basis to television stations in other markets located at some distance (e.g., 50 miles or outside the Grade A contour) from a television station that purchases such programs, but within possible reception range of such purchasing station? Should the standard be the same for all programs and stations?

(i) What standards, terms and conditions are appropriate for use in determining the answer to Question (h) taking into account the following factors:

(i) "Duplicated" or "incremental" circulation;

(ii) Cost to the other station, assuming it to be in a smaller market than the original purchasing station; and

(iii) Whether, assuming purchase by both stations, the presentation should or should not be simultaneous?

Possible standards might include the location of the other station with respect to the signal intensity of the original purchasing station; extent of overlap of signal-intensity contours; amount or percentage of "duplicated" circulation and amount or percentage of "incremental" circulation (or a combination of the two); circulation of the original purchasing station in the home county of the other station. Possible terms might cover the question as to whether a sliding scale as to the cost of the program, based on a realistic criterion or criteria (such as net weekly circulation, etc.) should be set up by the nonnetwork program supplier for the two competing stations. Possible conditions might be whether both the original purchasing station and the other station desiring to purchase the program should be permitted to show the program simultaneously, or whether the nonnetwork program supplier and the original purchasing station may impose reasonable conditions, such as a time lag before the other station may show the program. Comments are also invited on whether rules should be adopted forbidding all territorial exclusivity arrangements applying beyond a particular distance or contour and also requiring that the program shall remain

¹ This rule was amended in 1955; previously it permitted exclusivity agreements except against stations "serving a substantially different area". The former language still obtains in radio (§§ 73.132 and 73.232).

² The program exclusivity provisions of the rules governing CATV systems rest on different considerations. If a broadcast station cannot obtain programs presented by a station in another community the public within the former's service area may be precluded from viewing the program at all or may be forced to rely on the weaker signal of the more distant station with exclusivity. By contrast, barring the unusual situation (footnote 69, second report), a CATV system located within the Grade B contour of any station can provide its subscribers with a good signal from that station. Accordingly, there is no need for the CATV system to present the same programs to its subscribers via the signal of a station located in another community. As to the questions of a TV station's exclusivity within the service area vis-a-vis the program originations of a CATV system, different considerations are applicable and that question is not involved in this proceeding.

available to other stations within that distance or contour on certain terms or conditions, such as a delayed presentation in relation to that of the original purchasing station.

9. Authority for the institution of this proceeding, and adoption of rules concerning the matters involved, is found in sections 4(i) and 303 (f), (g), and (r) of the Communications Act of 1934, as amended.

10. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules and regulations, interested persons may file comments on or before July 8, 1968, and reply comments on or before August 8, 1968. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into

account other relevant information before it, in addition to the specific comments invited by this notice.

11. In accordance with the provisions of § 1.419 of the rules, and original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission.

Adopted: May 8, 1968.

Released: May 10, 1968.

FEDERAL COMMUNICATIONS
COMMISSION,*

[SEAL] BEN F. WAPLE,
Secretary.

Part 73 of the Commission's rules is amended as follows:

1. A new § 73.659 is added that reads as follows:

* Commissioner Loevinger absent.

§ 73.659 Territorial exclusivity agreements in nonnetwork program arrangements.

No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with a nonnetwork program supplier which prevents or hinders another television broadcast station located in a different community from broadcasting the programs purchased by the former station. As used in this section, the term "community" is defined as the community specified in the instrument of authorization as the location of the station.

2. Sections 73.659, 73.660, 73.661, and 73.662 are renumbered as §§ 73.660, 73.661, 73.662, and 73.663 respectively.

[F.R. Doc. 68-5792; Filed, May 14, 1968; 8:48 a.m.]

Notices

DEPARTMENT OF DEFENSE

Office of the Secretary

SURPLUS PERSONAL PROPERTY

Donation to Educational Activities of Special Interest to the Armed Services; Correction

In notice published at 33 F.R. 6485 (Apr. 27, 1968), "Donation of Surplus Personal Property to Educational Activities of Special Interest to the Armed Services (DoD Directive 5100.13)," references to "40 U.S.C. 484(j) (3)" appearing in references (a) and in subsection I.A., should be corrected to read "40 U.S.C. 484(j) (2)."

MAURICE W. ROCHE,
Director, Correspondence and
Directives Division, OASD
(Administration).

[F.R. Doc. 68-5737; Filed, May 14, 1968;
8:45 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA

Notice of Classification of Public Lands for Multiple Use Management; Correction

MAY 8, 1968.

In F.R. Doc. 68-5193, appearing at pages 6670-71 of the issue for Wednesday, May 1, 1968, the following changes should be made:

Under Yolla Bolly Planning Unit (S 1262), Block I, "T. 27 N., R. 9 W., Secs. 4 to 10, inclusive; Secs. 13 to 27, inclusive; Secs. 34, 35, and 36" should be "T. 27 N., R. 8 W., Secs. 4 to 10, inclusive; Secs. 13 to 27, inclusive; Secs. 34, 35, and 36".

Under Feather River Planning Unit (S 1263), Block III, Except for the public lands in: T. 22 N., R. 3 E., Sec. 3, "NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ " should be "NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ".

For State Director.

RICHARD L. THOMPSON,
District Manager.

[F.R. Doc. 68-5759; Filed, May 14, 1968;
8:47 a.m.]

[C-3888]

COLORADO

Notice of Proposed Classification of Public Lands

MAY 8, 1968.

Notice is hereby given of a proposal to classify the public lands described below for disposal through exchange under sec. 8 of the Taylor Grazing Act (43

U.S.C. 315g) for lands within the Bureau of Land Management, Canon City District, Colo., or through public sale under Revised Statutes 2455. This publication is made pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1412). As used herein "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for Federal use or purpose.

Publication of this notice has the effect of segregating all the public land described from all forms of appropriation except exchanges under sec. 8 of the Taylor Grazing Act, 43 U.S.C. 315g or public sale under 2455 Revised Statutes, 43 U.S.C. 1171.

This proposal has been discussed with the District Advisory Board, local government officials and other interested parties. Information derived from field data, discussions with the public and from other sources indicate that these lands meet the criterion of 43 CFR 2410.1-3 which authorized classification of lands for disposal under appropriate authority where they are found to be chiefly valuable for exchange or public sale for grazing use and other values and which lands are not needed for support of a Federal program.

Information concerning the lands, including the record of public discussions is available for inspection and study at the Canon City District Office, Bureau of Land Management, 1001 Main Street, Canon City, Colo.

The lands affected by this proposal are located in the following described area and are shown as Blocks 2 and 3 on maps in the Canon City District Office, 1001 Main Street, Canon City and the Land Office, Bureau of Land Management, 1961 Stout Street, Denver, Colo.

NEW MEXICO PRINCIPAL MERIDIAN, COLORADO
SAGUACHE COUNTY

Block 2

T. 41 N., R. 7 E.,
Sec. 17;
T. 41 N., R. 10 E.,
Sec. 12;
T. 42 N., R. 9 E.,
Secs. 1, 2, 5, 12, 13, and 24.
T. 42 N., R. 10 E.,
Secs. 12, 13, 18, 24, and 25.
T. 43 N., R. 7 E.,
Sec. 14.
T. 43 N., R. 9 E.,
Secs. 12, 27, 28, 32, 33, and 34.
T. 43 N., R. 10 E.,
Secs. 14, 18, and 34.
T. 43 N., R. 11 E.,
Secs. 1, 2, 3, 4, and 11.
T. 43 N., R. 12 E.,
Secs. 6 and 7.
T. 44 N., R. 8 E.,
Secs. 2 to 6, inclusive.
T. 44 N., R. 9 E.,
Sec. 14.

T. 44 N., R. 10 E.,
Sec. 13.
T. 44 N., R. 11 E.,
Secs. 4, 6, 8, 9, 18, 20, 34, 35, and 36.
T. 45 N., R. 9 E.,
Sec. 13.
T. 45 N., R. 10 E.,
Sec. 18.

Block 3

T. 46 N., R. 7 E.,
Secs. 1, 2, and 12.
T. 46 N., R. 8 E.,
Secs. 7, 8, and 17;
Secs. 21 to 23, inclusive;
Secs. 26, 27, and 28;
Secs. 33, 34, and 35.
T. 47 N., R. 7 E.,
Secs. 25, 35, and 36.

The area described comprises 12,357.65 acres of public land more or less.

For a period of sixty (60) days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the Canon City District Manager, Bureau of Land Management, Canon City, Colo.

A public hearing on the proposed classification will be held at 7:30 p.m., on June 6, 1968, in the Saguache County Courthouse, Saguache, Colo.

J. ELLIOTT HALL,
Acting State Director.

[F.R. Doc. 68-5754; Filed, May 14, 1968;
8:46 a.m.]

IDAHO

Notice of Opening of Lands

MAY 8, 1968.

1. Notice is hereby given that in accordance with the regulations in 43 CFR 2411, the Bureau motion classification dated January 6, 1967, classifying the following described tract as proper for sale as a business site under the Small Tract Act, was revoked May 6, 1968, insofar as it affected these lands:

BOISE MERIDIAN, IDAHO

T. 50 N., R. 4 W.,
Sec. 14, lot 49, tract 39.

The area described aggregates 0.216 acre.

2. This tract is hereby opened to the operation of the public land laws generally. All valid applications received prior to 10 a.m., May 17, 1968, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Boise, Idaho.

ORVAL G. HADLEY,
Manager, Land Office.

[F.R. Doc. 68-5753; Filed, May 14, 1968;
8:46 a.m.]

[Serial No. 5838]

NEW MEXICO

Notice of Proposed Withdrawal and Reservation of Lands

MAY 9, 1968.

The Forest Service, U.S. Department of Agriculture, has filed application, Serial No. New Mexico 5838, for the withdrawal of the lands described below. The lands were conveyed to the United States pursuant to section 8 of the Taylor Grazing Act. They lie within the exterior boundary of the Lincoln National Forest. They have not been open to entry under the public land laws. The applicant desires the lands for the addition to, and the consolidation with national forest lands to permit more efficient administration thereof in the conservation of natural resources.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Chief, Division of Lands and Minerals, Program Management and Land Office, Post Office Box 1449, Santa Fe, N. Mex. 87501.

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

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

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

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

The lands involved in the application are:

NEW MEXICO PRINCIPAL MERIDIAN

T. 18 S., R. 11 E.,

Sec. 8, W $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$;Sec. 14, S $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$;Sec. 15, W $\frac{1}{2}$ E $\frac{1}{2}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$;

Secs. 17 and 18;

Sec. 19, lots 1, 2, E $\frac{1}{2}$, and E $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 20;

Sec. 21, N $\frac{1}{2}$, SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 22;

Sec. 23, W $\frac{1}{2}$;Sec. 26, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;Sec. 27, N $\frac{1}{2}$, SW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$;Sec. 28, NE $\frac{1}{4}$ and S $\frac{1}{2}$;

Sec. 29;

Sec. 30, lots 3, 4, E $\frac{1}{2}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$;

Secs. 31, 32, and 33;

Sec. 34, W $\frac{1}{2}$ E $\frac{1}{2}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 35.

The area described aggregates 10,714 acres in Otero County.

MICHAEL T. SOLAN,
Chief, Division of Lands and
Minerals, Program Manage-
ment and Land Office.

[F.R. Doc. 68-5799; Filed, May 14, 1968;
8:49 a.m.]

FEDERAL COMMUNICATIONS
COMMISSION

[Docket No. 18177; FCC 68-502]

CARPENTER RADIO CO.

Memorandum Opinion and Order
Instituting a Hearing

In the matter of application of James M. Carpenter and Miriam Carpenter, doing business as Carpenter Radio Co., Docket No. 18177; pursuant to section 201(a) of the Communications Act of 1934, as amended, for establishment of physical connection between its facilities and those of the Lima Telephone Co. at Lima, Ohio.

1. The Commission has before it:

(A) An "Application" filed November 30, 1967, by James M. Carpenter and Miriam Carpenter, a partnership, doing business as the Carpenter Radio Co. (Carpenter), a communications common carrier providing domestic public land mobile radio service. Carpenter requests interconnection with the facilities of Lima Telephone Co. so that its mobile stations may place and receive interstate telephone calls. Carpenter alleges that the Lima Telephone Co. has refused to allow it to interconnect with the facilities of the telephone company. Carpenter, therefore, requests that the Commission order permanent interconnection, after hearing, and order temporary interconnection during the interim.

(B) An "Answer," accompanied by a "Motion to Dismiss," filed March 4, 1968, by the Lima Telephone Co. alleging that it is not necessary or desirable in the public interest to have interconnection with Carpenter's facilities since the Lima Telephone Co. is presently providing interstate and foreign public mobile radio and landline telephone services in Lima, Ohio.

2. We believe that Carpenter raises substantial questions as to whether the public interest requires the requested interconnection. Since Carpenter and the Lima Telephone Co. have been unable

¹ Although Carpenter's pleading is designated an application, we will treat it as a petition filed pursuant to section Subpart A of the Commission's rules (47 CFR Part 1).

to reach any interconnection agreement and since the pleadings do not of themselves present sufficient facts to make a determination of the public interest, an evidentiary hearing is required. Further, Carpenter's request of interim relief cannot be granted since the Commission cannot require the establishment of physical connections without an opportunity for hearing and requisite public interest findings.

3. Accordingly, it is ordered, That pursuant to section 201(a) of the Communications Act of 1934, as amended, a hearing shall be held in this proceeding at the Commission's offices in Washington, D.C., at a time to be specified, and that the examiner to be designated to preside at the hearing shall certify the record, without preparation of an initial or recommended decision, and the Chief of the Common Carrier Bureau shall thereafter issue a recommended decision which shall be subject to the submittal of exceptions and requests for oral argument as provided in 47 CFR 1.276 and 1.277, after which the Commission shall issue its decision as provided in 47 CFR 1.282;

4. It is further ordered, That without in any way limiting the scope of the proceeding, it shall include inquiry into the following:

(a) Whether it is necessary or desirable in the public interest to establish physical connections between Carpenter and Lima Telephone Co. at Lima, Ohio, to establish through routes and charges applicable thereto and the division of such charges, and to establish and provide facilities and regulations for operating such through routes within the meaning of section 201(a) of the Communications Act of 1934, as amended; and, if so, what connections, through routes, charges, divisions, facilities, and regulations should be established;

(b) Whether the refusal of Lima Telephone Co. to interconnect with Carpenter Radio Co. when it is itself furnishing a competing mobile radio service is contrary to the policies of the antitrust laws and, if so, the effect of such refusal on the determinations to be made on the foregoing issue.

5. It is further ordered, That Lima Telephone Co.'s motion to dismiss is denied without prejudice;

6. It is further ordered, That a copy of this order shall be served on the Lima Telephone Co. and the Carpenter Radio Co. which are hereby designated parties in this proceeding.

Adopted: May 8, 1968.

Released: May 10, 1968.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-5793; Filed, May 14, 1968;
8:48 a.m.]

¹ Commissioner Loevinger absent.

[Docket Nos. 18085-18087; FCC 68M-741]

**VINITA BROADCASTING CO., INC.,
AND WAGONER RADIO CO.****Order Continuing Prehearing
Conference**

In re applications of Vinita Broadcasting Co., Inc., Docket No. 18085, File No. BR-3059; for renewal of license of standard broadcast station KVIN, Vinita, Okla.; Lum A. Humphries, trading as Wagoner Radio Co., Docket No. 18086, File No. BR-4519; for renewal of license of standard broadcast station KWLK, Wagoner, Okla.; Vinita Broadcasting Co., Inc., Vinita, Okla., Docket No. 18087, File No. BR-5558; for construction permit.

On the oral request of counsel for the Commission's Broadcast Bureau, with which counsel for the applicants in the above-entitled proceeding appears to have concurred: *It is ordered*, That the prehearing conference scheduled to convene at 9 a.m., May 17, 1968, at the Commission's office, Washington, D.C., is hereby rescheduled to 9 a.m., Monday, June 3, 1968, at the same place.

Issued: May 9, 1968.

Released: May 9, 1968.

FEDERAL COMMUNICATIONS
COMMISSION,[SEAL] BEN F. WAPLE,
Secretary.[F.R. Doc. 68-5794; Filed, May 14, 1968;
8:48 a.m.]**FEDERAL MARITIME COMMISSION****FARRELL LINES, INC., AND NIGERIAN
NATIONAL STEAMSHIP LINE****Notice of Agreement Filed for
Approval**

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 40 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement(s) at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 609; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. Baldwin Einarson, Kiriln, Campbell and Keating, One Twenty Broadway, New York, N.Y. 10005.

In accordance with telegrams exchanged between the parties, Agreement No. 9717 between Farrell Lines, Inc., and Nigerian National Steamship Line establishes Farrell Lines as agent in the United States for the Nigerian National Line's vessel NNAMDI AZIKIWE operating between West African and U.S. Great Lakes ports.

Dated: May 10, 1968.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.[F.R. Doc. 68-5796; Filed May 14, 1968;
8:48 a.m.]**TRANSAMERICAN TRAILER TRANSPORT, INC., AND SACAL, V.I., INC.****Notice of Agreement Filed for
Approval**

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 609; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

John Mason, Ragan and Mason, The Farragut Building, 900 17th Street NW., Washington, D.C. 20006.

Agreement No. DC-33 between Transamerican Trailer Transport, Inc. and SACAL, V.I., Inc., provides for the transportation of cargo under through bills of lading between the Port of New York and ports in the Virgin Islands with transshipment at San Juan, P.R. The through rates and terms of transportation will be combination rates those separately published by Transamerican Trailer Transport, Inc., between New York and Puerto Rico and those separately published by SACAL, V.I., Inc., between Puerto Rico and the Virgin Islands. All shipments pursuant to this agreement moving from New York will be delivered by Transamerican Trailer Transport, Inc. to the SACAL, V.I., Inc., terminal at San Juan. Shipments moving from the Virgin Islands will be delivered by SACAL, V.I., Inc., also to the SACAL, V.I., Inc., terminal at San Juan. Either party may terminate this agree-

ment upon 30 days written notice to the other party.

The agreement shall become effective upon approval by the Commission pursuant to section 15, Shipping Act, 1916.

Dated: May 10, 1968.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.[F.R. Doc. 68-5797; Filed, May 14, 1968;
8:48 a.m.]**FEDERAL POWER COMMISSION**

[Docket No. CP61-39]

EL PASO NATURAL GAS CO.**Notice of Petition To Amend**

MAY 9, 1968.

Take notice that on May 3, 1968, El Paso Natural Gas Co. (Petitioner), Post Office Box 1492, El Paso, Tex. 79999, filed in Docket No. CP61-39 a petition to amend the order issued November 4, 1960 (24 FPC 918), as amended August 21, 1961 (26 FPC 412), authorizing it to modify an existing measuring and regulating station and to sell and deliver natural gas to Western Slope Gas Co. (Western Slope) for direct sale and delivery to Equity Oil Co. (Equity) in Rio Blanco County, Colo., all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By the said order, as amended, Petitioner was authorized to sell and deliver natural gas to Western Slope for sale and delivery to Public Service Company of Colorado for resale and distribution in the community of Rifle, Colo., and environs. The petition states that Western Slope now proposes to supply Equity with natural gas for use in its in situ oil shale pilot extraction facilities located in Rio Blanco County, Colo. The petition further states that Western Slope is to construct, at an estimated cost of \$268,600, approximately 3,700 feet of 6½ inch O.D. pipeline and approximately 14 miles of 4½ inch O.D. pipeline, together with metering facilities in order to render the proposed service. Western Slope proposes to finance such cost by internally generated funds.

Petitioner proposes to modify the existing Rifle Meter Station located at a point adjacent to the 10¾ inch O.D. Piceance Creek Lateral in the NW¼ of sec. 8, T. 2 S., R. 96 W., Rio Blanco County, Colo., by replacement of the existing 4½ inch O.D. orifice-type meter run and installation of an additional 4½ inch O.D. orifice-type meter run and necessary appurtenances.

The total estimated cost of the proposed modification is estimated to be \$6,850, which cost is to be financed out of working funds.

The natural gas requirements of Western Slope to serve Equity are estimated to be 6,000 Mcf per day for a period of approximately 8 months of research and development and then are

expected to approximate 2,000 Mcf per day.

Protest or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before June 6, 1968.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5738; Filed, May 14, 1968;
8:45 a.m.]

[Docket No. CP68-250]

LAKE SUPERIOR DISTRICT POWER CO. AND NORTHERN NATURAL GAS CO.

Notice of Further Amendment

MAY 9, 1968.

Take notice that on May 3, 1968, Lake Superior District Power Co. (Applicant), 101 West Second Street, Ashland, Wis. 54806, filed in Docket No. CP68-250 an amendment to its application in this Docket No. CP68-250, filed March 15, 1968 (see notice of application, 33 F.R. 5279), pursuant to section 7(a) of the Natural Gas Act for an order of the Commission directing Northern Natural Gas Co. (Respondent) to extend its gas transmission facilities, to establish physical connection of its facilities with gas distribution facilities to be constructed by Applicant in the cities of Mellen and Park Falls, the village of Butternut and the town of Jacobs (Glidden) in Ashland County, Wis., and to sell and deliver natural gas to Applicant. In addition, Applicant requests that the added relief requested in its original application be consolidated with Respondent's application in Docket No. CP68-193. All relief and proposals of Applicant in this Docket No. CP68-250 are more fully set forth in the application and amendment to the application which are on file with the Commission and open to public inspection.

Specifically, Applicant, by this amendment to its application, requests an order of the Commission directing Respondent to extend its gas transmission facilities a distance of 45.9 miles from a point near Ashland, Wis., to Park Falls, Wis., in order to enable Applicant to serve the aforementioned communities.

Estimated third year annual and peak day requirements are 2,560,359 Mcf and 8,578 Mcf, respectively. These quantities include service to a steam and electric generating plant to be constructed by Applicant.

The estimated cost of construction of the distribution systems in the four communities at the end of the third year is \$550,484.

The Applicant further states that it agrees to a condition in the requested order requiring it to comply with any extension formula and contribution requirement, if any, which would result from the formula ultimately approved by the Commission in Docket No. CP68-

193 with respect to the construction of transmission and delivery facilities by Respondent from a point near Ashland, Wis., to deliver gas to Applicant at Mellen, Glidden, Butternut, and Park Falls, Wis., as requested in this amendment.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before June 7, 1968.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5739; Filed, May 14, 1968;
8:45 a.m.]

[Docket No. CP68-304]

MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Application

MAY 9, 1968.

Take notice that on May 3, 1968, Michigan Wisconsin Pipe Line Co. (Applicant), 1 Woodward Avenue, Detroit, Mich. 48226, filed in Docket No. CP68-304 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, the acquisition of facilities by purchase, and the sale and delivery of natural gas to Wisconsin Public Service Corp. (Service Corporation) for resale and distribution in the communities of Lake Tomahawk, Minocqua, Woodruff, Monico, Three Lakes, Eagle River, Crandon, Laona, and Wabeno, all in Wisconsin, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to acquire from Service Corp. the Tomahawk-Rhineland line, extending 17.9 miles from Tomahawk to Rhineland, Wis., at original cost less depreciation, estimated to be \$512,931.58. Applicant further proposes to construct a new 6 $\frac{3}{4}$ -inch O.D. pipeline extending from the northern terminus of the Tomahawk-Rhineland line in a generally easterly direction for a distance of approximately 35.7 miles to a point approximately 1 mile west of Laona in Forest County, Wis. The cost of the new line is estimated to be \$797,610. The cost of the proposed acquisition and construction is to be financed with funds on hand or with funds generated internally.

Estimated third year annual and peak-day requirements are 851,930 Mcf and 5,338 Mcf, respectively.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before June 6, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and

the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5740; Filed, May 14, 1968;
8:45 a.m.]

[Docket No. CP68-303]

MOUNTAIN GAS CO.

Notice of Application

MAY 9, 1968.

Take notice that on May 2, 1968, Mountain Gas Co. (Applicant), Post Office Box 1473, Charleston, W. Va. 25325, filed in Docket No. CP68-303 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of certain facilities and the transportation and sale of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to lease the operating rights to certain pipelines owned by its parent corporation, Cabot Corp. The Applicant states that these pipelines are substantially unused at the present time. The Applicant proposes to use the facilities to gather gas from producers principally in the Newburg Field in the Rocky Fork area, Kanawha County, W. Va. The gas is then to be sold in interstate commerce.

Applicant seeks to sell from 5,000 Mcf to 12,000 Mcf per day to Consolidated Gas Supply Corp. (Consolidated) at a point of interconnection of Applicant's facilities with Consolidated's pipeline TL-249, Kanawha County, W. Va., and from 8,000 Mcf to 13,000 Mcf per day to The Manufacturers Heat & Light Co. (Manufacturers) at an intersection of Applicant's and Manufacturers' existing pipelines in Sheridan District, Calhoun County, W. Va., at approximately Manufacturers' Inventory Station 1,088+24. The Applicant also proposes to sell additional volumes if available to Applicant and if needed by Consolidated and Manufacturers.

The Applicant further states that Consolidated and Manufacturers desire the gas in order to meet future requirements of their customers and that they do not propose to serve new markets with this gas.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before June 6, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5741; Filed, May 14, 1968;
8:45 a.m.]

[Docket No. E-7415]

NORTHWESTERN PUBLIC SERVICE CO.

Notice of Application

MAY 9, 1968.

Take notice that on May 3, 1968, Northwestern Public Service Co. (Applicant) filed an application seeking an order pursuant to section 204 of the Federal Power Act authorizing the issuance from time to time of short-term promissory notes on or before December 31, 1968, of not to exceed an aggregate total of \$3,800,000.

Applicant is incorporated under the laws of the State of Delaware with its principal business office at Huron, S. Dak., and is engaged in the electric utility business in the States of North Dakota and South Dakota.

The notes will be issued on or before December 31, 1968, and the maturity dates thereof will not be later than 360 days from the date of issuance. The notes will be issued to a commercial bank or banks and the interest rate is expected to be the prime commercial rate of The Chase Manhattan Bank as in effect from time to time when the notes are outstanding.

Applicant's construction program for 1968 total approximately \$3,900,000 of which approximately \$135,000 is for electric production, \$870,000 for major electric transmission lines, \$1,140,000 for major electric substations, \$945,000 for routine extensions and additions to electric system, \$590,000 for routine extensions and additions to natural gas distribution systems, and \$220,000 for miscellaneous and general items.

Any person desiring to be heard or to make any protest with reference to the application should, on or before May 27, 1968, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and is available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5742; Filed, May 14, 1968;
8:45 a.m.]

[Docket No. CP68-305]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Application

MAY 9, 1968.

Take notice that on May 3, 1968, Transcontinental Gas Pipe Line Corp. (Applicant), Post Office Box 1396, Houston, Tex. 77001, filed in Docket No. CP68-305 an application pursuant to section 7(b) of the Natural Gas Act for an order of the Commission authorizing the abandonment by sale of a portion of its St. Charles lateral, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to abandon approximately 7.45 miles of 10-inch purchase lateral by sale to Suntime Pipeline Co. (Suntime) for \$56,000. Suntime proposes to use the line in its refining operations.

The Applicant states that it desires to abandon the facilities because the production available to it from the St. Charles Field has declined to the point where it is no longer economically feasible for it to own and operate the section of line in question in order to purchase such production. The Applicant is not proposing to abandon a 1.9-mile portion of the lateral extending between its main line and the main line of Natural Gas Pipeline Company of America. Such line is proposed to be used in a subsequently agreed upon emergency exchange agreement.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before June 6, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a protest

or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5743; Filed, May 14, 1968;
8:45 a.m.]

[Docket No. E-7413]

UNION ELECTRIC CO.

Notice of Application

MAY 9, 1968.

Take notice that on April 30, 1968, Union Electric Co. (Applicant) filed an application seeking an order pursuant to section 204 of the Federal Power Act authorizing the issuance of unsecured promissory notes in the amount of \$110 million.

Applicant is incorporated under the laws of the State of Missouri with its principal business office at St. Louis, Mo., and authorized to do business in the States of Illinois and Iowa.

The interest rate applicable to the promissory notes will be, in the case of demand notes issued to commercial banks, the prime rate in effect during the period they are; in the case of notes issued to commercial paper dealers, the market rate (or discount rate) at the date of issuance for commercial paper of comparable quality and of the particular maturity sold to commercial paper dealers; and in the case of commercial paper placed directly with regular purchasers of such commercial paper for their own accounts, the market rate (or discount rate) at the date of issuance for commercial paper of comparable quality and of the particular maturity placed directly by the issuer thereof. The Applicant contemplates the issuance of promissory notes, including the "rollover" of commercial paper promissory notes, without further application to this Commission, at any time and from time to time, each of such notes to have a maturity date of not later than December 31, 1970.

The proceeds will be used to finance in part Applicant's construction program. The construction program of the Applicant as now scheduled, calls for plant expenditures of approximately \$650 million for the 5-year period 1968-72. This program includes two generating units of 600 megawatts each which are being installed in a new generating plant, the Labadie plant, located on the Missouri River approximately 38 miles from St. Louis, Mo. The first unit on which approximately \$69 million will be spent during the period, is expected to be placed in service January 1, 1970, and the second unit, on which approximately \$68 million will be spent during the period is scheduled for operation January 1, 1971. Approximately \$15 million has been expended to January 1, 1968, on the first

unit and the power plantsite with an estimated total cost of \$84 million and approximately \$3 million had been expended to January 1, 1968, on the second unit which is estimated to cost \$71 million.

Any person desiring to be heard or to make any protest with reference to the application should, on or before May 28, 1968, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and is available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5744; Filed, May 14, 1968;
8:45 a.m.]

[Docket No. CP68-302]

UNITED NATURAL GAS CO.

Notice of Application

MAY 8, 1968.

Take notice that on May 2, 1968, United Natural Gas Co. (Applicant), 308 Seneca Street, Oil City, Pa. 16301, filed in Docket No. CP68-302 an application pursuant to section 7(c) of the Natural Gas Act authorizing the construction, replacement and operation of certain natural gas facilities in Crawford and Potter Counties, Pa., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The proposed construction and replacement, and the stated reasons therefor, are as follows:

1. 5.9 miles of 6-inch pipeline to increase the service to Applicant's Saegertown distribution area in Crawford County, the "Saegertown Project";
2. Replacement of 4.4 miles of existing 8-inch pipeline with a 16-inch pipeline to increase the capacity from the Wharton Storage Pool coincidental with the deliveries from Transcontinental Gas Pipe Line Corp. (Transco), referred to as the "Costello Project", in Potter County.

The total estimated cost of the above facilities is \$419,098, which cost is to be financed in part out of available company funds and in part from funds to be obtained by issuing notes or stock, or both, to its parent corporation, National Fuel Gas Co.

The Applicant further states that the Saegertown Project is proposed in order to provide for an increase in the supply capacity for existing customer growth from 9,400 Mcf per day to 15,400 Mcf per day. The Applicant also states that the Costello Project is proposed since present pipeline capacity from Wharton and Transco supplies is 48,000 Mcf per day; the available deliverability from Wharton (40,000 Mcf per day) plus the present contract quantity available from Transco (20,000 Mcf per day) exceeds the capacity of existing facilities. The Applicant states that, in addition to the present deficiency, supplies in the immediate future to be made available by Transco will be 25,000 Mcf per day.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before June 5, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5745; Filed, May 14, 1968;
8:45 a.m.]

[Docket No. E-7188]

DEPARTMENT OF THE INTERIOR, SOUTHEASTERN POWER ADMINISTRATION

Notice of Application

MAY 7, 1968.

Notice is hereby given that the Secretary of the Interior, on behalf of the Southeastern Power Administration (SEPA), pursuant to the provisions of section 5 of the Flood Control Act of 1944 (58 Stat. 877) has filed with the Federal Power Commission a request for confirmation and approval of Wholesale Power Rate Schedules CR-1A and CR-2A, applicable to the power marketed from the Cumberland River Power System, consisting of six hydroelectric projects. These projects are Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, and Barkley.

These rate schedules are essentially the same as those approved by the Commission's order issued March 21, 1966, for a period ending June 30, 1968.

Wholesale Power Rate Schedule CR-1A provides for the sale of the power from the six projects to the Tennessee Valley Authority (TVA) and contains a list of credits which are to be used to adjust the annual charges to compensate for the retention of peaking power (up to 150,000 kilowatts) and standby power (up to 100,000 kilowatts) by SEPA and the transfer of retained power and energy for sale by SEPA to other customers under terms of Rate Schedule CR-2A.

The payments to the Department of the Interior by TVA for availability of capacity and deliveries of power and energy are estimated to produce over a period of years an average annual payment of \$8,700,000.

The Wholesale Power Rate Schedule CR-2A formerly available only to Big Rivers Rural Electric Cooperative, will now also be available to Indiana Statewide Rural Electric Cooperative, Inc., Hoosier Energy Division, and to Southern Illinois Power Cooperative. The rate schedule is applicable to peaking power and standby power together with accompanying energy.

The electric capacity and energy supplied under this rate schedule will be 3-phase alternating current at a frequency of 60 cycles per second and shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of the Big Rivers Rural Electric Cooperative Corp. The points of delivery will be one at each voltage in the vicinity of the Barkley dam powerplant and another point of delivery at 161,000 volts from the TVA transmission system in the vicinity of Paradise, Ky. Other points of delivery may be as agreed upon.

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge. \$10 per supply year for each kilowatt of the contract peaking demand, payable \$0.83½ per billing month.

\$3 per supply year for each kilowatt of the contract standby demand, payable \$0.25 per billing month for such capacity sold prior to November 1, 1968.

\$2.75 per supply year for each kilowatt of the contract standby demand, payable one-twelfth of the annual charge per billing month for such capacity sold after November 1, 1968.

\$0.04 per calendar day (or fraction thereof) per kilowatt of standby power delivered for emergency purposes in November and between April 1 and October 31 of each supply year, and \$0.06 per calendar day (or fraction thereof) per kilowatt of the standby power delivered for emergency purposes during any other period of the year.

A supply year is a year beginning November 1.

Energy charge. 2.90 mills per kilowatt-hour for all peaking energy.

2 mills per kilowatt-hour for all maintenance standby energy.

3.25 mills per kilowatt-hour for all emergency standby energy.

The above rate schedules and contracts are on file with the Commission for public inspection. Any person desiring to make comments or suggestions for the Commission's consideration with respect to the proposed rates and charges should submit the same in writing on or before May 27, 1968, to the Federal Power Commission, Washington, D.C. 20426.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5746; Filed, May 14, 1968;
8:46 a.m.]

[Docket No. RI68-611]

DARRELL S. WARREN**Order Providing for Hearing on and Suspension of Proposed Change in Rate**

MAY 7, 1968.

On April 8, 1968, Darrell S. Warren (Warren)¹ tendered for filing a proposed change in his presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is designated as follows:

Description: Notice of change,² dated April 1, 1968.

Purchaser and producing area: Transwestern Pipeline Co. (Chenot Field, Pecos County, Tex.) (Railroad District No. 8) (Permian Basin Area).

Rate schedule designation: Supplement No. 4 to Warren's FPC Gas Rate Schedule No. 1.

Effective date: May 9, 1968.³

Amount of annual increase: \$2,360.

Effective rate: 16 cents per Mcf.⁴

Proposed rate: 18 cents per Mcf.⁵

Pressure base: 14.65 p.s.i.a.

Warren requests that his proposed rate increase be permitted to become effective as of April 1, 1968. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit an earlier effective date for Warren's rate filing and such request is denied.

The sale is being made subject to the small producer certificate issued to Warren on August 15, 1966, in Docket No. CS66-100. The order issuing the small producer certificate canceled the related rate schedule and reduced the initial rate of 16 cents to the applicable area base rate of 14.5 cents per Mcf. However, by order issued April 7, 1967, Warren was granted relief;⁶ thus, the rate schedule was reinstated, and Warren was permitted to continue to collect the 16 cents rate as of the effective date of the small producer certificate. The order granting relief also stipulated that the reinstated rate will be subject to rejection as of the effective date of reinstatement in the event the Permian court stay is dissolved or the moratorium provision in Opinion Nos. 468 and 468-A are upheld ultimately upon judicial review.

Since Warren's proposed rate exceeds the applicable area base rate prescribed in Opinion No. 468, as amended, it should be suspended for 5 months from May 9, 1968, the expiration date of the statutory

notice, as herein ordered. The proposed rate will also be subject to rejection, as of the date of filing, if Permian is upheld upon final court review.⁷

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and that Supplement No. 4 to Warren's FPC Gas Rate Schedule No. 1 be suspended and the use thereof deferred as hereinafter ordered.

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. I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed change contained in Supplement No. 4 to Warren's FPC Gas Rate Schedule No. 1.

(B) Pending such hearing and decision thereon, Supplement No. 4 to Warren's FPC Gas Rate Schedule No. 1 is hereby suspended and the use thereof deferred until October 9, 1968, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before June 20, 1968.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5747; Filed, May 14, 1968; 8:46 a.m.]

[Docket No. CS68-52]

ESTATE OF DORSEY A. WILLIAMS
Notice of Application for "Small Producer" Certificate

MAY 9, 1968.

Take notice that on April 24, 1968, John W. Williams and Commerce Trust Co., Executors of Estate of Dorsey A. Williams, Post Office Box 248, Kansas City, Mo. 64141, filed an application pursuant to section 7(c) of the Natural Gas

⁷ The Commission's Permian decision was affirmed by the Supreme Court of the United States on May 1, 1968, in Permian Basin Area Rate Cases (Nos. 90, et al., October Term, 1967), but no mandate has yet been issued.

Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from the Permian Basin area of Texas and New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before June 4, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission providing no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter believes that a grant of the certificate is required by the public convenience and necessity. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5748; Filed, May 14, 1968; 8:46 a.m.]

SECURITIES AND EXCHANGE
COMMISSION

LEEDS SHOES, INC.

Order Suspending Trading

MAY 9, 1968.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Leeds Shoes, Inc., Tampa, Fla., and all other securities of Leeds Shoes, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c) (5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period May 10, 1968, through May 19, 1968, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 68-5756; Filed, May 14, 1968; 8:46 a.m.]

¹ Address is: Post Office Box 685, Iraan, Tex. 79744.

² Sale being made under Small Producer Certificate issued Aug. 15, 1966, in Docket No. CS66-100.

³ The stated effective date is the first day after expiration of the statutory notice.

⁴ Initial rate—reinstated by Commission order dated Apr. 7, 1967.

⁵ Increase from initial rate to contractually provided rate due Sept. 1, 1967.

⁶ Consistent with relief granted in Rodman and Late, et al., Docket Nos. CS66-48, et al., by order issued Feb. 6, 1967, which permitted small producers to collect rates in excess of applicable area base rate.

[File No. 7-2912]

ZAPATA OFF-SHORE CO.**Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing**

MAY 8, 1968.

In the matter of application of the Philadelphia-Baltimore-Washington Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Zapata Offshore Co., File No. 7-2912.

Upon receipt of a request, on or before May 23, 1968, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL]

ORVAL L. DuBois,
Secretary.

[F.R. Doc. 68-5757; Filed, May 14, 1968; 8:46 a.m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 662]

TEXAS**Declaration of Disaster Loan Area**

Whereas, it has been reported that during the month of May 1968, because of the effects of certain disasters, damage resulted to residences and business property located in Roberts County, in the State of Texas;

Whereas, the Small Business Administration has investigated and received other reports of investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loan under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the offices below indicated from persons or firms whose property, situated in the aforesaid County, and areas adjacent thereto, suffered damage or destruction resulting from tornado occurring on or about May 7, 1968.

OFFICE

Small Business Administration Regional Office, 1616 19th Street, Lubbock, Tex. 79401.

2. A temporary office will be established at Miami, Tex., address to be announced locally.

3. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to November 30, 1968.

Dated: May 8, 1968.

ROBERT C. MOOT,
Administrator.

[F.R. Doc. 68-5758; Filed, May 14, 1968; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION**FOURTH SECTION APPLICATION FOR RELIEF**

MAY 10, 1968.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41324—Rubber from Addis, La. Filed by Southwestern Freight Bureau, agent (No. B-9073), for interested rail carriers. Rates on rubber, artificial, neoprene or synthetic, crude, loose or in packages, in carloads, from Addis, La., to specified points in the United States.

Grounds for relief—Rate relationship and grouping.

Tariff—Supplement 10 to Southwestern Freight Bureau, agent, tariff ICC 4762.

By the Commission.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-5779; Filed, May 14, 1968; 8:47 a.m.]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

MAY 10, 1968.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant

to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. 13924, filed April 25, 1968. Applicant: OAKMAN DISTRIBUTION CENTER, INC., 1400 Oakman Boulevard, Detroit, Mich. 48238. Certificate of public convenience and necessity sought to operate a contract carrier of property as follows: Transportation of furniture and appliances, for the Oakman Distribution Center from its warehouse facilities at Detroit, Mich., to points in Wayne, Oakland, Macomb, St. Clair, Genesee, and Washtenaw Counties, Mich. Both interstate and intrastate authority is sought.

HEARING: Monday, May 20, 1968, at Court of Appeals, 900 First Federal Savings & Loan Association Building, 1001 Woodward Avenue, Detroit, Mich., at 10 a.m. Requests for procedural information, including the time for filing protests, concerning this application, should be addressed to Michigan Public Service Commission, Lewis Cass Building, Lansing, Mich. 48913, and should not be directed to the Interstate Commerce Commission.

State Docket No. 35079, filed April 15, 1968. Applicants: ALLYN BEAMER AND ROBERT BEAMER, a partnership, doing business as BEAMER BROTHERS TRUCKING COMPANY, 8188 Camargo Road, Cincinnati, Ohio 45243. Applicant's representative: Jack B. Josselson, 700 Atlas Bank Building, Cincinnati, Ohio 45202. Certificate of public convenience and necessity sought to operate a freight service as follows: Authority to operate on call of the public over irregular routes to and from Hamilton County, Ohio, restricted to the transportation of brick, dry wall, wallboard, core board, and palletized building materials in motor vehicles equipped with booms and special loading and unloading devices. Both intrastate and interstate authority sought.

HEARING: Tuesday, May 21, 1968 at 10 a.m., d.s.t., at the Public Utilities Commission of Ohio, 111 North High Street, Columbus, Ohio. Request for procedural information, including the time for filing protests concerning this application should be addressed to The Public Utilities Commission of Ohio, 111 North High Street, Columbus, Ohio 43215, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-5780; Filed, May 14, 1968; 8:47 a.m.]

[Notice 498]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

MAY 10, 1968.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission, under the Commission's deviation rules revised, 1957 (49 CFR 211.1 (c) (8)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1(d) (4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 211.1(e)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's deviation rules revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 42487 (Deviation No. 71), CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif. 94025, filed May 3, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From junction U.S. Highway 40 (Interstate Highway 70) and Interstate Highway 57 at or near Effingham, Ill., over Interstate Highway 57 to junction Illinois Highway 16, thence over Illinois Highway 16 to Paris, Ill., thence over U.S. Highway 150 to West Terre Haute, Ind., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Indianapolis, Ind., over U.S. Highway 40 to St. Louis, Mo., and (2) from Philadelphia, Pa., over U.S. Highway 13 to junction U.S. Highway 40, thence over U.S. Highway 40 to St. Louis, Mo., and return over the same routes.

No. MC 43421 (Deviation No. 22), DOHRN TRANSFER COMPANY, Post Office Box 1237, Rock Island, Ill. 61202, filed May 3, 1968. Carrier's representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, Ill. 60603. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Rockford, Ill., over U.S. Highway 20 to junction Interstate Highway 90, thence over Interstate Highway 90 to junction Interstate Highway 94, thence over Interstate Highway 94 to junction U.S. Highway 12, thence over U.S. Highway 12 to junction U.S. Highway 61 at or near St. Paul, Minn., and return over the same route, for

operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: From Dubuque, Iowa, over U.S. Highway 20 to Chicago, Ill., (2) from La Crescent, Minn., over U.S. Highway 61 to Dubuque, Iowa, and (3) from Minneapolis, Minn., over city streets to St. Paul, Minn., thence over U.S. Highway 61 to La Crosse, Wis., and return over the same routes.

No. MC 45657 (Deviation No. 9), PICWALSH FREIGHT CO., 731 Campbell Avenue, St. Louis, Mo. 63147, filed May 2, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Kansas City, Mo., over Interstate Highway 70 to junction Interstate Highway 270, west of St. Louis, Mo., thence over Interstate Highway 270 to junction Interstate Highway 70, east of the Mississippi River, thence over Interstate Highway 70 to Indianapolis, Ind., using such roads and highways as are necessary to ingress and egress to Interstate Highway 70 over the shortest practical route, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Kansas City, Mo., over U.S. Highway 71 to St. Joseph, Mo., thence over U.S. Highway 36 to Springfield, Ill., (2) from Kansas City, Mo., over U.S. Highway 69 to Cameron, Mo., (3) from Kansas City, Mo., over U.S. Highway 24 to Chenoa, Ill., and (4) from junction U.S. Highway 421 (formerly Indiana Highway 29) and U.S. Highway 36 over U.S. Highway 36 to junction U.S. Highway 66, with route No. 4 restricted to the transportation of traffic moving between Cincinnati, Ohio, and Kansas City, Mo., and return over the same routes.

No. MC 59680 (Deviation No. 62), STRICKLAND TRANSPORTATION CO., INC., Post Office Box 5689, Dallas, Tex. 75222, filed May 3, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Memphis, Tenn., over Interstate Highway 40 to Nashville, Tenn., thence over Interstate Highway 65 to Louisville, Ky., thence over Interstate Highway 71 to Cleveland, Ohio, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Memphis, Tenn., over U.S. Highway 63 via Turrell, Ark., to Jonesboro, Ark., thence over Arkansas Highway 1 to Paragould, Ark., thence over Arkansas Highway 25 to the Arkansas-Missouri State line, thence over Missouri Highway 84 to Hayti, Mo., thence over U.S. Highway 61 to Cape Girardeau, Mo., thence across the Mississippi River to junction Illinois Highway 146, thence over Illinois Highway 146 to junction Illinois Highway 3, thence

over Illinois Highway 3 to Red Bud, Ill., thence over Illinois Highway 159 to Belleville, Ill., thence over Illinois Highway 13 to East St. Louis, Ill., thence over Illinois Highway 13 to East St. Louis, Ill., thence over U.S. Highway 66 to junction Illinois Highway 48, thence over Illinois Highway 48 to junction U.S. Highway 54, thence over U.S. Highway 54 via Onarga and Gilman, Ill., to junction U.S. Highway 24, thence over U.S. Highway 24 to Napoleon, Ohio, thence over U.S. Highway 6 to Lorain, Ohio, thence over Ohio Highway 57 to junction Ohio Highway 254, thence over Ohio Highway 254 to Cleveland, Ohio, and return over the same route.

No. MC 59680 (Deviation No. 63), STRICKLAND TRANSPORTATION CO., INC., Post Office Box 5689, Dallas, Tex. 75222, filed May 3, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Exit No. 16 of the Ohio Turnpike (near Woodworth, Ohio), over Ohio Highway 7 to junction U.S. Highway 224, thence over U.S. Highway 224 to New Castle, Pa., thence over U.S. Highway 422 to Ebensburg, Pa., thence over U.S. Highway 22 to Harrisburg, Pa., thence over U.S. Highway 22 (or Interstate Highway 78 where completed) to Newark, N.J., (2) from Exit No. 16 of the Ohio Turnpike (near Woodworth, Ohio) over the route described in (1) above to Harrisburg, Pa., thence over U.S. Highway 22 (or Interstate Highway 78 where completed) to Phillipsburg, N.J., thence over New Jersey Highway 24 to Hackettstown, N.J., thence over U.S. Highway 46 to junction New Jersey Highway 17 near Teterboro, N.J., thence over New Jersey Highway 17 to junction Interstate Highway 80 (Passaic Expressway), thence over Interstate Highway 80 to junction U.S. Highway 1 near the George Washington Bridge, and (3) from Exit No. 16 of the Ohio Turnpike (near Woodworth, Ohio) over the route described in (1) above to Harrisburg, Pa., thence over U.S. Highway 22 (or Interstate Highway 78 where completed) to Phillipsburg, N.J., thence over U.S. Highway 22 (or Interstate Highway 78 where completed) via Annandale, N.J., to junction Interstate Highway 287 (or U.S. Highway 202) near Pluckemin, N.J., thence over Interstate Highway 287 (or U.S. Highway 202) to junction U.S. Highway 46 (Interstate Highway 80) near Mountain Lakes, N.J., thence over U.S. Highway 46 (Interstate Highway 80) to junction New Jersey Highway 17 near Teterboro, N.J., thence over New Jersey Highway 17 to junction Interstate Highway 80 (Passaic Expressway), thence over Interstate Highway 80 to junction U.S. Highway 1 near the George Washington Bridge, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Cleveland, Ohio, over U.S. Highway 21 to the Ohio Turnpike, thence

over the Ohio Turnpike to the Pennsylvania Turnpike, thence over the Pennsylvania Turnpike to the New Jersey Turnpike, thence over the New Jersey Turnpike to Newark, N.J., and (2) from Bridgeport, Conn., over unnumbered highway to junction U.S. Highway 1, thence over U.S. Highway 1 to Newark, N.J., and return over the same routes.

No. MC 73464 (Deviation No. 4), JACK COLE COMPANY, 1900 Vanderbilt Road, Post Office Box 274, Birmingham, Ala. 35202, filed April 30, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Cullman, Ala., over Alabama Highway 157 to junction U.S. Highway 43 and Alternate U.S. Highway 72, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Cullman, Ala., over U.S. Highway 31 to Decatur, Ala., thence over Alternate U.S. Highway 72 to junction U.S. Highway 43 and Alabama Highway 157, and return over the same route.

No. MC 111231 (Deviation No. 29), JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, Ark. 72764, filed May 1, 1968. Carrier's representative: R. J. Wiseman, same address as applicant. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Jackson, Mo., over U.S. Highway 61 to junction Missouri Highway 84 at or near Hayti, Mo., thence over Missouri Highway 84 to Kennett, Mo., and (2) and Jackson, Mo., over U.S. Highway 61 to junction Interstate Highway 55, thence over Interstate Highway 55 to Portageville, Mo., thence over U.S. Highway 61 to junction Missouri Highway 84 at or near Hayti, Mo., thence over Missouri Highway 84 to Kennett, Mo., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From St. Louis, Mo., over U.S. Highway 61 to Jackson, Mo., thence over Missouri Highway 25 to the Missouri-Arkansas State line, and return over the same route.

MOTOR CARRIERS OF PASSENGERS

No. MC 1515 (Deviation No. 448) GREYHOUND LINES, INC. (Western Division), Market and Fremont Streets, San Francisco, Calif. 94106, filed May 1, 1968. Carrier's representative: W. L. McCracken, 371 Market Street, San Francisco, Calif. 94105. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express and newspapers*, in the same vehicle with passengers, over a deviation route as follows: From Pasadena, Calif., over Los Robles Avenue to junction Atlantic Boulevard, thence over Atlantic Boulevard, to junction Interstate Highway 10 (South Alhambra Junction), and

return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service route as follows: (1) From Los Angeles, Calif., over Figueroa Street, to junction unnumbered highway (York Boulevard Junction), thence over unnumbered highway to Pasadena, thence over Foot-hill Boulevard to Monrovia, thence over U.S. Highway 66 to San Bernardino, thence over Interstate Highway 15 to junction U.S. Highway 66 (Devore Junction), thence over U.S. Highway 66 to junction Interstate Highway 15 (Cajon Summit), thence over Interstate Highway 15 to junction unnumbered highway (West Barstow Junction), thence over unnumbered highway via Barstow, Daggett, Minneola, and Newberry to junction U.S. Highway 66 (West Ludlow Junction), thence over U.S. Highway 66 to junction Interstate Highway 40 (Java), thence over Interstate Highway 40 to junction unnumbered highway (East Java Junction), thence over unnumbered highway to Needles, thence over Interstate Highway 40 to the point where it intersects the California-Arizona State line (connects with Arizona Route 1), (2) from Los Angeles over Interstate Highway 10 to West Pomona, thence over U.S. Highway 60 to junction Interstate Highway 10 (West Beaumont Junction), thence over Interstate Highway 10 to Banning, thence over U.S. Highway 60 to junction unnumbered highway (West Cabazon Interchange), thence over unnumbered highway to junction U.S. Highway 60 (East Cabazon Junction), thence over U.S. Highway 60 to the point where it intersects the California-Arizona State line (connects with Arizona Route 2), (3) from junction U.S. Highway 60 and Interstate Highway 10 west of Pomona (West Pomona), over Interstate Highway 10 to Beaumont, and (4) from Riverside over La Cadena Drive to Colton, thence over Colton Avenue to junction U.S. Highway 395 (South San Bernardino), thence over U.S. Highway 395 to San Bernardino, and return over the same routes.

No. MC 1515 (Deviation No. 449) (Cancels Deviation No. 394), GREYHOUND LINES, INC. (Eastern Division), 1400 West Third Street, Cleveland, Ohio 44113, filed May 2, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express and newspapers* in the same vehicle with passengers, over deviation routes as follows: (1) From Columbus, Ohio, over Interstate Highway 70 to junction Indiana Highway 9 approximately 2.5 miles north of Greenfield, Ind., thence over Indiana Highway 9 to junction U.S. Highway 40 at Greenfield, Ind., (2) from Springfield, Ohio, over present certificated U.S. Highway 40 to junction Interstate Highway 70 east of Harmony, Ohio, (3) from Springfield, Ohio, over Ohio Highway 4 to junction Interstate Highway 70 north of Enon, Ohio, (4) from Dayton, Ohio, over Ohio Highway 4 to junction Interstate Highway 70

southwest of Medway, Ohio, (5) from Dayton, Ohio, over Ohio Highway 49 to junction Interstate Highway 70, northwest of Taylorsburg, Ohio, (6) from Richmond, Ind., over presently certificated U.S. Highway 40 to junction Interstate Highway 70 east of Richmond, Ind., and (7) from Richmond, Ind., over U.S. Highway 35 to junction Interstate Highway 70 northwest of Richmond, Ind., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) From Springfield, Ohio, over U.S. Highway 40 via Summerford and West Jefferson to Columbus, Ohio, (2) from Washington, Pa., over U.S. Highway 40 via Springfield, Ohio, to Brandt, Ohio, (3) from Dayton, Ohio, over U.S. Highway 35 to Richmond, Ind., thence over U.S. Highway 40 via Stilesville, Ind., to Manhattan, Ind., (4) from Brandt, Ohio, over U.S. Highway 40 to junction U.S. Highway 35, (5) from Springfield, Ohio, over the Dayton-Springfield road via Enon, Ohio, to junction Ohio Highway 444 just north of Fairborn, Ohio, thence over Ohio Highway 444 via Fairborn to junction unnumbered highway approximately 1 mile north of Riverside, Ohio, thence over unnumbered highway via Riverside to Dayton, Ohio, and return over the same routes.

By the Commission.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-5781; Filed, May 14, 1968;
8:47 a.m.]

[Notice 1179]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

MAY 10, 1968.

The following publications are governed by Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER issue of April 20, 1966, which became effective May 20, 1966.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 108313 (Sub-No. 10) (Correction), filed December 10, 1967, published FEDERAL REGISTER issues of December 28, 1967, and May 1, 1968, and republished as corrected this issue. Applicant: CALEDONIA LINES, INC., Ontario, N.Y. 14519. Applicant's representative: Raymond A. Richards, 23 West Main St.,

Webster, N.Y. 14580. The purpose of this republication is to show the correct docket number assigned thereto, as shown above, in lieu of No. 108313 (Sub-No. 1), which was in error.

No. MC 117119 (Sub-No. 401) (Republication), filed June 15, 1967, published FEDERAL REGISTER issue of July 7, 1967, and republished this issue. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., Elm Springs, Ark. Applicant's representative: John H. Joyce, 26 North College, Fayetteville, Ark. 72702. By application filed June 15, 1967, as amended, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes transporting canned goods, and frozen and/or frozen prepared fruits, berries, and vegetables, between Fort Smith, Springdale, Lowell, and Johnson, Ark., and Haskell, Spiro, Westville, and Stigler, Okla.; A supplemental order of the Commission, Operating Rights Board, dated April 18, 1968, and served May 3, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of (1) *canned goods*, and (2) *frozen fruits, berries, and vegetables*, and frozen fruit, berry, and vegetable products, between Fort Smith, Springdale, Lowell, and Johnson, Ark., and Haskell, Spiro, Westville, and Stigler, Okla.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 124211 (Sub-No. 107) (Republication), filed April 25, 1967, published FEDERAL REGISTER issue of June 8, 1967, and republished this issue. Applicant: HILT TRUCK LINE, INC., 2937 North 27th Street, Post Office Box 824, Lincoln, Neb. 68501. Applicant's representative: Thomas L. Hilt (same address as applicant). By application filed April 25, 1967, as amended, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes of (1) *New, empty glass containers, covers, and disks*, and *new wooden and fiberboard boxes*, set up and knocked down, from Alton, Ill., to Council Bluffs, Iowa, restricted to traffic originating at

Alton, Ill.; and (2) *bees, beeswax, crude; beets, sugar, buttermilk, castor beans, christmas trees, containers, crates and boxes* which have been used in the movement of exempt commodities, and are being returned for reuse; *corn cobs, corn fodder, cotton, cotton lint, cotton-waste, cottonseed; whole or dehulled; cottonseed hulls, eggs, feathers, fish* (except hermetically sealed in containers as a treatment for preservation); *flax fiber, flaxseed, whole; fodder, corn and sorghum, forest products, frogs, fruits, and berries* (except canned or frozen); *grains, artificially dried, cracked, rolled, shelled, or whole*;

Grass sod, hay, and forage, dried naturally or artificially; *hay*, chopped, dehydrated or salted; *honey, hops, horticultural commodities, humus, ice*, for cooling subsequent shipments of exempt commodities; *jute, fiber, kelp, livestock, ordinary, manure, maple sap, milk and cream* (except canned, chocolate or condensed); *mohair, mushrooms, fresh, nuts* (except roasted or boiled); *poultry, fresh, frozen or live, rabbits, ramie fiber, seeds, seaweed, sorghum fodder, sorghum grains, spices, and herbs, unground; stover, straw, tobacco* (except cigars and cigarettes, homogenized and smoking); *trees, turtles, vegetables* (except candied, canned, cooked or frozen); *wool, raw* (except imported); *wool grease, and wreaths*, of holly or other natural material with less than 20 percent of foundation or decorative material; restricted to the transportation of straight or mixed shipments moving between the following points or when moving in mixed shipments with regulated commodities (presently authorized) between the following points, (a) between points in Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, North Dakota, South Dakota, and Wyoming; and (b) between points in Iowa, Kansas, Missouri, and Nebraska, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii); and (3) general commodities, (a) between points in the Omaha, Nebr., commercial zone, as defined by the Commission; and (b) between points in the Omaha, Nebr., commercial zone, as defined by the Commission, on the one hand, and, on the other, points in Cass, Douglas, Saunders (except points west of U.S. Highway 77), Sarpy, and Washington Counties, Nebr., and Harrison, Mills, and Pottawattamie Counties, Iowa.

An order of the Commission, Operating Rights Board, dated February 26, 1968, and served March 27, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of glass containers and closures for glass containers, and wooden and fiberboard boxes, from Alton, Ill., to Council Bluffs, Iowa, restricted to the transportation of traffic originating at Alton, Ill.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons,

who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 128477 (Sub-No. 1) (Republication), filed September 15, 1967, published FEDERAL REGISTER issue of September 28, 1967, and republished this issue. Applicant: FREDERICK TRANSPORT LIMITED, Merlin, Ontario, Canada. Applicant's representative: S. Harrison Kahn, Suite 733, Investment Building, Washington, D.C. 20005. By application filed September 15, 1967, applicant seeks a permit authorizing operations, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes of milking machine systems, stalls, and equipment used in the housing and maintenance of livestock; and equipment used in the maintenance, feeding and housing of poultry and hogs, and the component parts thereof, between ports of entry on the international boundary line between the United States and Canada, located in Michigan at the Detroit River, on the one hand, and, on the other, points in Ohio, Michigan, Indiana, and Illinois, under continuing contract with Jamesway Co. Ltd., Preston, Ontario, Canada; a supplemental order of the Commission, Operating Rights Board, dated April 18, 1968, and served May 3, 1968, finds that operation by applicant, in interstate or foreign commerce as a common carrier by motor vehicle, over irregular routes, of *milking machine systems, stalls, and equipment used in the housing and maintenance of livestock; and equipment used in the maintenance, feeding, and housing of poultry and hogs, and the component parts thereof*, between those ports of entry on the international boundary line between the United States and Canada located in Michigan at the Detroit River, on the one hand, and, on the other, points in Ohio, Michigan, Indiana, and Illinois; will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; because it is possible that other persons who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication,

during which period any proper party in interest may file a petition to reopen or for appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 128597 (Sub-No. 5) (Republication), filed March 14, 1967, published FEDERAL REGISTER issues of March 30, 1967, and June 2, 1967, and republished this issue. Applicant: WALTER TABER, doing business as WALT'S POULTRY AND BEEF CO., 1920 Wadsworth Boulevard, Lakewood, Colo. 80215. Applicant's representative: Bert L. Penn, 30 South Emerson Street, Denver, Colo. 80209. By application filed March 14, 1967, as corrected, applicant seeks a permit authorizing operations, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of meats, meat products and meat byproducts, as described in part A of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk in tank vehicles), (1) from Sioux City, Iowa, and Guymon, Okla., to points in Colorado, Cheyenne, and Laramie, Wyo., and Aztec, Farmington, and Raton, N. Mex., (2) from Clovis, N. Mex., to points in Colorado, and Cheyenne, and Laramie, Wyo., and (3) from Sioux City, Iowa, Guymon, Okla., and Clovis, N. Mex., to Moab, Utah, under contract with Swift & Co. A report of the Commission, Review Board Number 1, decided March 29, 1968, and served April 3, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of meats, meat products, and meat byproducts, as described in part A of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), (1) from Sioux City, Iowa, to Cheyenne and Laramie, Wyo., (2) from Guymon, Okla., to Aztec, Farmington, and Raton, N. Mex., Cheyenne and Laramie, Wyo., Moab, Utah, and points in Colorado, and (3) from Clovis, N. Mex., to Cheyenne and Laramie, Wyo., Moab, Utah, and points in Colorado; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 1.240 TO THE EXTENT APPLICABLE

No. MC 95336 (Sub-No. 7), filed April 29, 1968. Applicant: J. B. WILLIAMS EXPRESS, INC., 239 Norman Avenue, Brooklyn, N.Y. 11222. Applicant's representative: Arthur J. Piken, 160-16 Jamaica Avenue, Jamaica, N.Y. 11432. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between points in Connecticut. NOTE: This application is a matter directly related to Docket No. MC-F-10115, published FEDERAL REGISTER issue of May 8, 1968. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

APPLICATIONS UNDER SECTIONS 5 AND 210(a)(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210(a)(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240.)

MOTOR CARRIERS OF PROPERTY

No. MC-F-10095. (Amended) (BEKINS VAN LINES OF CALIFORNIA, INC.—Purchase—BEKINS VAN & STORAGE CO. (CALIFORNIA CORP.)) published in the April 24, 1968, issue of the FEDERAL REGISTER, on page 6269. This amended notice is to clarify the authority sought to be purchased under the brokerage licenses: *Household goods* as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, and *theatrical and motion picture equipment*, as a broker, at Los Angeles, San Francisco, Oakland, Fresno, Sacramento, Berkeley, San Diego, Long Beach, Glendale, Pasadena, Santa Monica, and Beverly Hills, Calif., in connection with transportation by motor vehicle in interstate or foreign commerce, between points in the United States; *household goods* as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, at Burlingame, Calif., at Arcadia, Compton, San Bernardino, Vernon, and West Hollywood, Calif., in connection with transportation by motor vehicle in interstate or foreign commerce, between all points in the United States; and *household goods*, as defined by the Commission, at San Gabriel, Inglewood, Torrance, Whittier, Baldwin Park, Pomona, Riverside, San Ana, Walnut Creek, San Rafael, Redwood City, Palo Alto, Santa Clara, La Mesa, and Costa Mesa, Calif., in connection with transportation by motor vehicle in interstate or foreign commerce, between points in the United States, including Alaska and Hawaii.

No. MC-F-10117. (Correction) (C. O. D. E., INC.—Control—NOLTE BROS. TRUCK LINE, INC., ET AL.), published in the May 8, 1968, issue of the FEDERAL REGISTER, on page 6954. This correction to show the correct address for C. O. D. E., INC., UTICA TRANSFER, INC., G & H TRUCK LINE, INC., BYRON RAZNICK and TILLIE RAZNICK is 3804 Walnut Street, Denver, Colo. 80205, in lieu of Post Office Box 16808, Stockyards Station, Denver, Colo. 80216, and 3963 Walnut, Denver, Colo. 80205, respectively. NOTE: This correction does not alter the due date for filing protest.

By the Commission.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-5782; Filed, May 14, 1968; 8:47 a.m.]

[Notice 1181]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

MAY 10, 1968.

The following publications are governed by Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER issue of April 20, 1966, which became effective May 20, 1966.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

The applications immediately following are assigned for hearing at the time and place designated in the notice of filing as here published in each proceeding. All of the proceedings are subject to the Special Rules of Procedure for Hearing outlined below:

SPECIAL RULES OF PROCEDURE FOR HEARING

(1) All of the testimony to be adduced by applicant's company witnesses shall be in the form of written statements which shall be submitted at the hearing at the time and place indicated.

(2) All of the written statements by applicant's company witnesses shall be offered in evidence at the hearing in the same manner as any other type of evidence. The witnesses submitting the written statements shall be made available at the hearing for cross-examination, if such becomes necessary.

(3) The written statements by applicant's company witnesses, if received in evidence, will be accepted as exhibits. To the extent the written statements refer to attached documents such as copies of operating authority, etc., they should

be referred to in written statement as numbered appendices thereto.

(4) The admissibility of the evidence contained in the written statements and the appendices thereto, will be at the time of offer, subject to the same rules as if the evidence were produced in the usual manner.

(5) Supplemental testimony by a witness to correct errors or to supply inadvertent omissions in his written statement is permissible.

No. MC 111545 (Sub-No. 105), filed April 30, 1968. Applicant: HOME TRANSPORTATION COMPANY, INC., Post Office Box 6426, Station A, Marietta, Ga. 30060. Applicant's representative: Robert E. Born, 1425 Franklin Road SE., Marietta, Ga. 30060. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tractors* (not including tractors with vehicle beds, bed frames, or fifth wheels), (2) *agricultural machinery and implements*, (3) *industrial and construction machinery and equipment*, (4) *equipment designed for use in connection with tractors*, (5) *trailers*, designed for the transportation of the commodities described above (other than those designed to be drawn by passenger automobiles), (6) *attachments*, for the commodities described above, (7) *internal combustion engines*, and (8) *parts and accessories* of the commodities described above, from the plant and warehouse sites of Massey-Ferguson, Inc., at or near Cuyahoga Falls, Ohio, to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee, restricted to traffic originating at the plant and warehouse sites of Massey-Ferguson, Inc.

HEARING: June 19, 1968, before Examiner Harry M. Shooman, in Room 1086A, U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Ill.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-5783; Filed, May 14, 1968;
8:47 a.m.]

[Notice 607]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MAY 10, 1968.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 340) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as

to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 18088 (Sub-No. 48 TA), filed May 8, 1968. Applicant: FLOYD & BEASLEY TRANSFER COMPANY, INC., Post Office Drawer 8, Industrial Parkway, Sycamore, Ala. 35149. Applicant's representative: Gavin W. O'Brien, 2000 L Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Yarn*, synthetic fiber tire cord, from Gonzalez, Fla., to Barnesville, Ga., and Clemson, S.C., for 180 days. NOTE: Applicant intends to tack the authority sought herein with its existing authority in MC 18088 and sub numbers thereunder. Supporting shipper: Monsanto Co., 800 North Lindbergh Boulevard, St. Louis, Mo. 63166. Send protests to: B. R. McKenzie, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 823, 2121 Building, Birmingham, Ala. 35203.

No. MC 78947 (Sub-No. 10 TA), filed May 8, 1968. Applicant: ELLIOTT BROS. TRUCKLINE, INC., Dysart, Iowa 52224. Applicant's representative: Kenneth F. Dudley, 901 South Madison Avenue, Post Office Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pallets, skids, boxes, repair boards, crating, blocking, rough and finished lumber*, between Jesup, Iowa, on the one hand, and, on the other, points in Illinois, Indiana, Minnesota, Missouri, Nebraska, and Wisconsin, for 180 days. Supporting shipper: K & P Enterprises, Jesup, Iowa 50648. Send protests to: Chas. C. Biggers, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 332 Federal Building, Davenport, Iowa 52801.

No. MC 80430 (Sub-No. 123 TA), filed May 7, 1968. Applicant: GATEWAY TRANSPORTATION CO., INC., 2130 South Avenue, La Crosse, Wis. 54601. Applicant's representative: Joseph E. Ludden (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household goods, as defined by the Commission), serving the plantsite of the Jackson County Iron Co., located near Black River Falls, Wis., as an off-route point in connection with applicant's present authority in MC No. 80430 (Route No. 11) on U.S. Highway 12, for 150 days. NOTE: Applicant does intend to tack with its existing authority. Supporting shipper: Dravo Corp., Dravo Bldg., Fifth and Liberty Avenues, Pittsburgh, Pa. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Com-

mission, Bureau of Operations, 214 North Hamilton Street, Madison, Wis. 53703.

No. MC 106278 (Sub-No. 28 TA), filed May 8, 1968. Applicant: E. B. LAW AND SON, INC., Post Office Box 1360, Las Cruces, N. Mex. 88001. Applicant's representative: Jerry R. Murphy, 708 La Veta Drive NE., Albuquerque, N. Mex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizers*, in bulk and in bags, from points in El Paso County, Tex., to points in Arizona, Colorado, New Mexico, Oklahoma, and Texas, restricted to traffic originating in Mexico and moving in foreign commerce, for 150 days. Supporting shipper: Chemical Producer's Corp., 6854 Market Street, El Paso, Tex. 79915. Send protests to: William R. Murdoch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 109 Federal Building, 421 Gold SW., Albuquerque, N. Mex. 87101.

No. MC 111045 (Sub-No. 58 TA), filed May 8, 1968. Applicant: REDWING CARRIERS, INC., Post Office Box 426, Palm River Road 7809, Tampa, Fla. 33601. Applicant's representative: J. V. McCoy (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer solution*, from Winter Garden, Fla., to Valdosta and Bainbridge, Ga., and Robertsdale, Ala., for 180 days. Supporting shipper: Na-Churs Plant Food Co., Post Office Box 1105, Winter Garden, Fla. 32787. Send protests to: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, Room 1226, 51 Southwest First Avenue, Miami, Fla. 33130.

No. MC 111045 (Sub-No. 59 TA), filed May 8, 1968. Applicant: REDWING CARRIERS, INC., Post Office Box 426, Palm River Road 7890, Tampa, Fla. 33601. Applicant's representative: J. V. McCoy (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Synthetic resin granules*, in pneumatic type vehicles having prior movement by rail, from Tampa, Fla., to Pompano Beach, Fla., for 180 days. Supporting shipper: Allied Chemical Corp., 40 Rector Street, New York, N.Y. 10006. Send protests to: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, Room 1226, 51 Southwest First Avenue, Miami, Fla. 33130.

No. MC 113106 (Sub-No. 28 TA), filed May 7, 1968. Applicant: THE BLUE DIAMOND COMPANY, 4401 East Fairmount Avenue, Baltimore, Md. 21224. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, from Baltimore, Md., to points in Erie and Crawford Counties, Pa., for 150 days. Supporting shipper: Harry A. Bloom, Traffic Supervisor, Agrico Chemical Co., 2272 South Clinton Street, Baltimore, Md. 21224. Send protests to:

William L. Hughes, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1125 Federal Building, Baltimore, Md. 21201.

No. MC 115766 (Sub-No. 4 TA), filed May 8, 1968. Applicant: EDWARD S. MILLER, doing business as E. S. MILLER TRUCKING, 110 Buttonwood Street, Jessup, Pa. 18434. Applicant's representative: Kenneth R. Davis, 1106 Dartmouth Street, Scranton, Pa. 18504. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Caskets and casket shells, and hardware used in the manufacture of each*, from Archbald Boro, Pa., to Bellows Falls, Vt., for 180 days. Supporting shipper: Casket Shells, Inc., First Station, Eynon, Pa. 18403. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 309 U.S. Post Office Building, Scranton, Pa. 18503.

No. MC 118159 (Sub-No. 51 TA), filed May 8, 1968. Applicant: EVERETT LOWRANCE, Post Office Box 10261, 4916 Jefferson Highway, New Orleans, La. 70121. Applicant's representative: Clyde N. Christy, 641 Harrison Street, Topeka, Kans. 66603. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat by-products and articles distributed by meat packinghouses*, as described in sections A and C, appendix 1, *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles and hides), from the plant-site of Missouri Beef Packers located at or near Friona, Tex., to points in Indiana, Kentucky, Louisiana, North Carolina, Ohio, South Carolina, Tennessee, and Oklahoma, for 180 days. Supporting shipper: Missouri Beef Packers, Inc., Friona, Tex. Send protests to: W. R. Atkins, District Supervisor, Bureau of Operations, Interstate Commerce Commission, T-4009 Federal Building, 701 Loyola Avenue, New Orleans, La. 70113.

No. MC 118816 (Sub-No. 2 TA), filed May 8, 1968. Applicant: MATERIALS TRANSPORT SERVICE, INC., Box 98, Whitehall, Pa. 18052. Applicant's representative: E. E. Taylor (same address as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Dry cement*, from Coplay, Pa., to points in Fairfield County, Conn., for 180 days. Supporting shipper: Coplay Cement Manufacturing Co., 521 Fifth Avenue, New York, N.Y. 10017. Send protests to: Francis W. Doyle, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 900 U.S. Customhouse, Second and Chestnut Streets, Philadelphia, Pa. 19106.

No. MC 119778 (Sub-No. 113 TA), filed May 8, 1968. Applicant: REDWING CARRIERS, INC., Post Office Box 34, Powderly Station, Birmingham, Ala. 35221. Applicant's representative: J. V. McCoy (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Fly ash*, from Wilsonville, Ala., to points in Georgia, for

180 days. Supporting shipper: Southern Fly Ash Co., Inc., Post Office Box 74, Wilsonville, Ala. 35186. Send protests to: B. R. McKenzie, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 823, 2121 Building, Birmingham, Ala. 35203.

No. MC 125123 (Sub-No. 2 TA), filed May 8, 1968. Applicant: MARY DICK AND HOLLIS A. DICK, doing business as H. O. DICK TRANSFER, Bethany, Ill. 61914. Applicant's representative: Robert T. Lawley, 306-308 Reich Building, Springfield, Ill. 62701. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Equipment used for storing, handling, and applying fertilizer, and parts and components thereof*, from Decatur and St. Charles, Ill., to points in Alabama, Arkansas, Georgia, Louisiana, Mississippi, and Tennessee, for 150 days. Supporting shipper: Tryco Manufacturing Co., Inc., South Side Drive, Post Office Box 1277, Decatur, Ill. 62525. Send protests to: Harold C. Joliff, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 476, 325 West Adams Street, Springfield, Ill. 62704.

No. MC 125952 (Sub-No. 6 TA), filed May 8, 1968. Applicant: INTERSTATE DISTRIBUTOR CO., 8311 Durango SW., Tacoma, Wash. 98499. Applicant's representative: George R. LaBissoniere, 920 Logan Building, Seattle, Wash. 98101. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by wholesale grocery establishments*, from points in California to Chehalis, Aberdeen; and Tacoma, Wash., under contract with West Coast Grocery Co., for 180 days. Supporting shipper: West Coast Grocery Co., 1525 East D Street, Tacoma, Wash. 98401. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 128849 (Sub-No. 1 TA), filed May 7, 1968. Applicant: N. E. SMITH, Post Office Box 403, Oneida, Tenn. 37841. Applicant's representative: Clifton Sexton, Oneida, Tenn. 37841. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Ale, beer, beer tonic, porter, stout and nonintoxicating cereal beverages* in containers, from Louisville, Ky., to Elgin, Tenn., for 150 days. Supporting shipper: Bruce R. Stewart, Elgin, Tenn. Send protests to: J. E. Gamble, District Supervisor, Interstate Commerce Commission, Room 803, 1808 West End Building, Nashville, Tenn. 37203.

MOTOR CARRIER OF PASSENGERS

No. MC 1515 (Sub-No. 123 TA), filed May 8, 1968. Applicant: GREYHOUND LINES, INC. (Southern Greyhound Lines Division), 10 South Riverside Plaza, Chicago, Ill. 60606. Applicant's representative: John E. Adkins, Box 297, Lexington, Ky. Authority sought to operate as a common carrier, by motor vehicle, over regular routes, transporting: *Passengers and their baggage and express and newspapers* in the same ve-

hicle with passengers, from Junction U.S. Highway 25 and Kentucky Highway 236 at Erlanger, Ky., to Greater Cincinnati Airport, and return over same route, serving all intermediate points, from Junction U.S. Highway 25 and Kentucky Highway 236, at Erlanger, Ky., over Kentucky Highway 236 to the Greater Cincinnati Airport, with ingress and egress at Interstate Highway 75. (Restriction: no passenger will be handled whose entire ride is between Cincinnati, Ohio, and the Greater Cincinnati Airport.) NOTE: Applicant intends to tack at Erlanger, Ky., with present authority under MC 1515 Sub 8 (formerly MC 1501 Sub 60), for 180 days. Supporting shippers: C. A. Webb, Manager, All-American Tours, Inc., Phoenix Hotel Building, Lexington, Ky.; William K. Embry, Manager, Embry's, 141 East Main Street, Lexington, Ky.; Bueford E. Stanley, Owner, Elliston-Stanley Funeral Home, Williamstown, Ky.; George R. Powers, North Main Street, Williamstown, Ky.; Hubert Caldwell, Mayor, and partner, Caldwell's Electric, Williamstown, Ky.; John Eckler, Eckler Funeral Home, Dry Ridge, Ky. Send protests to: R. W. Schneider, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 203 Featherston Building, 177 North Upper Street, Lexington, Ky.

By the Commission.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-5784; Filed, May 14, 1968;
8:47 a.m.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ASSISTANT SECRETARY AND DEPUTY ASSISTANT SECRETARY FOR RE- NEWAL AND HOUSING ASSIST- ANCE

Delegation of Authority To Execute Requisition Agreements Securing Preliminary Loan Notes

SECTION A. Authority delegated with respect to Slum Clearance and Urban Renewal Program. The Assistant Secretary for Renewal and Housing Assistance and the Deputy Assistant Secretary for Renewal and Housing Assistance each is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on preliminary loan notes each of which provides that it shall not be valid until the paying agent has executed an agreement appearing on the note to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the aforesaid payment and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph 2 of this section A shall be construed separate and apart from the pertinent loan contract and

shall be incontestable in the hands of a bearer; and

2. Agrees to evidence its promise to pay or cause to be paid each such note by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular notes, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the Maturity Date of the within Preliminary Loan Note it will pay or cause to be paid to the bearer thereof the principal of and interest thereon, upon the presentation and surrender of such Note to the Paying Agent designated therein, and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract referred to in the within Note and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the Date of Issue of the within Note.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and
Urban Development.

SEC. B. Additional authority delegated. The Assistant Secretary for Renewal and Housing Assistance and the Deputy Assistant Secretary for Renewal and Housing Assistance each is further authorized to:

1. Redesignate to each Regional Administrator and Deputy Regional Administrator the authority delegated under section A.

2. Authorize further redelegations by each Regional Administrator and Deputy Regional Administrator of the authority redelegated under paragraph 1 of this section B to one or more employees under his jurisdiction.

SEC. C. Revocations. The Housing and Home Finance Administrator's delegation of authority to the Urban Renewal Commissioner, HHFA Regional Administrators, and Regional Directors of Urban Renewal to execute requisition agreements securing preliminary loan notes effective October 10, 1961 (26 F.R. 9568, Oct. 10, 1961), is hereby revoked. (Sec. 7(d) of Department of HUD Act, 42 U.S.C. 3535(d))

Effective date: This document shall be effective as of May 15, 1968.

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

[F.R. Doc. 68-5764; Filed, May 14, 1968; 9:25 a.m.]

ASSISTANT SECRETARY AND DEPUTY ASSISTANT SECRETARY FOR RENEWAL AND HOUSING ASSISTANCE

Delegation of Authority To Execute Requisition Agreements Securing Bonds

SECTION A. Authority delegated with respect to Slum Clearance and Urban Renewal Program. The Assistant Secretary for Renewal and Housing Assistance and the Deputy Assistant Secretary for Renewal and Housing Assistance each is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on bonds evidencing a definitive loan under section 102(a) of said Act, and, as an incident to the security and marketability of such bonds, securing the payment of premiums and the cost of the redemption of bonds and the fees and charges of paying agents, each of which bonds provides that it shall not be valid until the paying agent has executed an agreement appearing on the bond to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the payment of the principal of and interest on such bonds, and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph 2 of this section A shall be construed separate and apart from the pertinent loan contract, including the specific loan payment contract under such requisition agreement, and shall be incontestable in the hands of a bearer; and

2. Agrees, as an incident to the security and marketability of such bonds, to pay or cause to be paid the premiums and cost of the redemption of the bonds and the fees and charges of paying agents, and also agrees to evidence its promise to pay or cause to be paid each such bond, including the interest thereon, by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular bonds, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the maturity of the within Bond, and on the respective dates established for the payment of the interest thereon, it will pay or cause to be paid to the bearer or registered owner of either or both said Bond or interest thereon, as the case may be, the principal of and interest on such Bond, upon the presentation and surrender of such Bond or the uncanceled interest coupons appertaining thereto, if any, as the case may be, to the Paying Agent or the alternate

Paying Agent identified therein; and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract and the specific loan payment contract evidenced by the Requisition Agreement referred to in the within Bond, and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the date of the within Bond.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and
Urban Development.

SEC. B. Additional authority delegated. The Assistant Secretary for Renewal and Housing Assistance and the Deputy Assistant Secretary for Renewal and Housing Assistance each is further authorized to:

1. Redesignate to each Regional Administrator and Deputy Regional Administrator the authority delegated under section A.

2. Authorize further redelegations by each Regional Administrator and Deputy Regional Administrator of the authority redelegated under paragraph 1 of this section B to one or more employees under his jurisdiction.

SEC. C. Revocations. The Housing and Home Finance Administrator's delegation of authority to the Urban Renewal Commissioner, HHFA Regional Administrators, and Regional Directors of Urban Renewal to execute requisition agreements securing bonds effective October 31, 1963 (28 F.R. 11655, Oct. 31, 1963), is hereby revoked.

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

Effective date: This document shall be effective as of May 15, 1968.

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

[F.R. Doc. 68-5765; Filed, May 14, 1968; 9:25 a.m.]

REGIONAL ADMINISTRATORS AND DEPUTY REGIONAL ADMINISTRATORS

Redelegation of Authority To Execute Requisition Agreements Securing Preliminary Loan Notes

SECTION A. Authority redelegated with respect to Slum Clearance and Urban Renewal Program. Each Regional Administrator and each Deputy Regional Administrator of the Department of Housing and Urban Development is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on preliminary loan notes each of which provides that it shall not be valid until the

paying agent has executed an agreement appearing on the note to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the aforesaid payment and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph 2 of this section A shall be construed separate and apart from the pertinent loan contract and shall be incontestable in the hands of a bearer; and

2. Agrees to evidence its promise to pay or cause to be paid each such note by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular notes, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the Maturity Date of the within Preliminary Loan Note it will pay or cause to be paid to the bearer thereof the principal of and interest thereon, upon the presentation and surrender of such Note to the Paying Agent designated therein, and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract referred to in the within Note and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the Date of Issue of the within Note.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and
Urban Development.

SEC. B. Additional authority redelegated. Each Regional Administrator and each Deputy Regional Administrator is further authorized to redelegate to one or more employees under his jurisdiction the authority redelegated under section A.

(Secretary's delegation effective May 15, 1968, 33 F.R. 7174, May 15, 1968)

Effective date: This redelegation of authority shall be effective as of May 15, 1968.

DON HUMMEL,
Assistant Secretary for
Renewal and Housing Assistance.

[F.R. Doc. 68-5766; Filed, May 14, 1968; 9:25 a.m.]

REGIONAL ADMINISTRATORS AND DEPUTY REGIONAL ADMINISTRATORS

Redelegation of Authority To Execute Requisition Agreements Securing Bonds

SECTION A. Authority redelegated with respect to Slum Clearance and Urban

Renewal Program. Each Regional Administrator and each Deputy Regional Administrator of the Department of Housing and Urban Development is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on bonds evidencing a definitive loan under section 102(a) of said Act, and, as an incident to the security and marketability of such bonds, securing the payment of premiums and the cost of the redemption of bonds and the fees and charges of paying agents, each of which bonds provides that it shall not be valid until the paying agent has executed an agreement appearing on the bond to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the payment of the principal of and interest on such bonds, and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph 2 of this section A shall be construed separate and apart from the pertinent loan contract, including the specific loan payment contract under such requisition agreement, and shall be incontestable in the hands of a bearer; and

2. Agrees, as an incident to the security and marketability of such bonds, to pay or cause to be paid the premiums and cost of the redemption of the bonds and the fees and charges of paying agents, and also agrees to evidence its promise to pay or cause to be paid each such bond, including the interest thereon, by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular bonds, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the maturity of the within Bond, and on the respective dates established for the payment of the interest thereon, it will pay or cause to be paid to the bearer or registered owner of either or both said Bond or interest thereon, as the case may be, the principal of and interest on such Bond, upon the presentation and surrender of such Bond or the uncanceled interest coupons appertaining thereto, if any, as the case may be, to the Paying Agent or the alternate Paying Agent identified therein; and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract and the specific loan payment contract evidenced by the Requisition Agreement referred to in the within Bond, and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the date of the within Bond.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and
Urban Development.

SEC. B. Additional authority redelegated. Each Regional Administrator and each Deputy Regional Administrator is further authorized to redelegate to one or more employees under his jurisdiction the authority redelegated under section A.

(Secretary's delegation effective May 15, 1968, 33 F.R. 7175, May 15, 1968)

Effective date: This redelegation of authority shall be effective as of May 15, 1968.

DON HUMMEL,
Assistant Secretary for
Renewal and Housing Assistance.

[F.R. Doc. 68-5767; Filed, May 14, 1968; 9:25 a.m.]

REGIONAL COUNSEL, DEPUTY REGIONAL COUNSEL, AND ASSOCIATE REGIONAL COUNSEL FOR GENERAL PROGRAM SERVICES, REGION I (NEW YORK)

Redelegation of Authority To Execute Requisition Agreements Securing Preliminary Loan Notes

SECTION A. Authority redelegated with respect to Slum Clearance and Urban Renewal Program. The Regional Counsel, Deputy Regional Counsel, and the Associate Regional Counsel for General Program Services, Region I (New York), each is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on preliminary loan notes each of which provides that it shall not be valid until the paying agent has executed an agreement appearing on the note to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the aforesaid payment and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph 2 of this section A shall be construed separate and apart from the pertinent loan contract and shall be incontestable in the hands of a bearer; and

2. Agrees to evidence its promise to pay or cause to be paid each such note by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular notes, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the Maturity Date of the within Preliminary Loan Note it will pay or cause to be paid to the bearer thereof the principal of and interest thereon, upon the presentation and surrender of such Note to the Paying Agent designated therein, and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract referred to in the within Note and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the Date of Issue of the within Note.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and
Urban Development.

(Redelegation of authority by Assistant Secretary for Renewal and Housing Assistance effective May 15, 1968, 33 F.R. 7175, May 15, 1968)

Effective date. This redelegation of authority shall be effective as of May 15, 1968.

JUDAH GRIBETZ,
Regional Administrator, Region I.

[F.R. Doc. 68-5768; Filed, May 14, 1968;
9:25 a.m.]

REGIONAL COUNSEL, DEPUTY REGIONAL COUNSEL, AND ASSOCIATE REGIONAL COUNSEL FOR GENERAL PROGRAM SERVICES, REGION I (NEW YORK)

Redelegation of Authority To Execute Requisition Agreements Securing Bonds

SECTION A. Authority redelegated with respect to Slum Clearance and Urban Renewal Program. The Regional Counsel, Deputy Regional Counsel, and the Associate Regional Counsel for General Program Services, Region I (New York), each is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on bonds evidencing a definitive loan under section 102(a) of said Act, and, as an incident to the security and marketability of such bonds, securing the payment of premiums and the cost of the redemption of bonds and the fees and charges of paying agents, each of which bonds provides that it shall not be valid until the paying agent has executed an agreement appearing on the bond to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the payment of the principal of and interest on such bonds, and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph 2 of this section

A shall be construed separate and apart from the pertinent loan contract, including the specific loan payment contract under such requisition agreement, and shall be incontestable in the hands of a bearer; and

2. Agrees, as an incident to the security and marketability of such bonds, to pay or cause to be paid the premiums and cost of the redemption of the bonds and the fees and charges of paying agents, and also agrees to evidence its promise to pay or cause to be paid each such bond, including the interest thereon, by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular bonds, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the Maturity Date of the within Bond, and on the respective dates established for the payment of the interest thereon, it will pay or cause to be paid to the bearer or registered owner of either or both said Bond or interest thereon, as the case may be, the principal of and interest on such Bond, upon the presentation and surrender of such Bond or the uncanceled interest coupons appertaining thereto, if any, as the case may be, to the Paying Agent or the alternate Paying Agent identified therein; and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract and the specific loan payment contract evidenced by the Requisition Agreement referred to in the within Bond, and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the date of the within Bond.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and
Urban Development.

(Redelegation of authority by Assistant Secretary for Renewal and Housing Assistance effective May 15, 1968, 33 F.R. 7176, May 15, 1968)

Effective date: This redelegation of authority shall be effective as of May 15, 1968.

JUDAH GRIBETZ,
Regional Administrator, Region I.

[F.R. Doc. 68-5769; Filed, May 14, 1968;
9:25 a.m.]

ASSISTANT REGIONAL ADMINISTRATOR AND DEPUTY ASSISTANT REGIONAL ADMINISTRATOR FOR RENEWAL ASSISTANCE, REGION II (PHILADELPHIA, PA.)

Redelegation of Authority To Execute Requisition Agreements Securing Preliminary Loan Notes

SECTION A. Authority redelegated with respect to Slum Clearance and Urban

Renewal Program. The Assistant Regional Administrator for Renewal Assistance and the Deputy Assistant Regional Administrator for Renewal Assistance, Region II (Philadelphia, Pa.), each is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on preliminary loan notes each of which provides that it shall not be valid until the paying agent has executed an agreement appearing on the note to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the aforesaid payment and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph 2 of this section A shall be construed separate and apart from the pertinent loan contract and shall be incontestable in the hands of a bearer; and

2. Agrees to evidence its promise to pay or cause to be paid each such note by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular notes, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the Maturity Date of the within Preliminary Loan Note it will pay or cause to be paid to the bearer thereof the principal of and interest thereon, upon the presentation and surrender of such Note to the Paying Agent designated therein, and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract referred to in the within Note and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the Date of Issue of the within Note.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and
Urban Development.

(Redelegation of authority by Assistant Secretary for Renewal and Housing Assistance effective May 15, 1968, 33 F.R. 7175, May 15, 1968)

Effective date: This redelegation of authority shall be effective as of May 15, 1968.

WARREN P. PHELAN,
Regional Administrator, Region II.

[F.R. Doc. 68-5770; Filed, May 14, 1968;
9:26 a.m.]

ASSISTANT REGIONAL ADMINISTRATOR AND DEPUTY ASSISTANT REGIONAL ADMINISTRATOR FOR RENEWAL ASSISTANCE, REGION II (PHILADELPHIA, PA.)

Redelegation of Authority To Execute Requisition Agreements Securing Bonds

SECTION A. Authority redelegated with respect to Slum Clearance and Urban Renewal Program. The Assistant Regional Administrator for Renewal Assistance and the Deputy Assistant Regional Administrator for Renewal Assistance, Region II (Philadelphia, Pa.), each is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on bonds evidencing a definitive loan under section 102(a) of said Act, and, as an incident to the security and marketability of such bonds, securing the payment of premiums and the cost of the redemption of bonds and the fees and charges of paying agents, each of which bonds provides that it shall not be valid until the paying agent has executed an agreement appearing on the bond to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the payment of the principal of and interest on such bonds, and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph 2 of this section A shall be construed separate and apart from the pertinent loan contract, including the specific loan payment contract under such requisition agreement, and shall be incontestable in the hands of a bearer;

2. Agrees, as an incident to the security and marketability of such bonds, to pay or cause to be paid the premiums and cost of the redemption of the bonds and the fees and charges of paying agents, and also agrees to evidence its promise to pay or cause to be paid each such bond, including the interest thereon, by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular bonds, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the maturity of the within Bond, and on the respective dates established for the payment of the interest thereon, it will pay or cause to be paid to the bearer or registered owner of either or both said Bond or interest thereon, as the case may be, the principal of and interest on such Bond upon the presentation and surrender of such Bond or the uncanceled interest coupons appertaining thereto if any, as the case may be, to the Paying Agent or the

alternate Paying Agent identified therein; and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract and the specific loan payment contract evidenced by the Requisition Agreement referred to in the within Bond, and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the date of the within Bond.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and
Urban Development.

(Redelegation of authority by Assistant Secretary for Renewal and Housing Assistance effective May 15, 1968, 33 F.R. 7176, May 15, 1968)

Effective date: This redelegation of authority shall be effective as of May 15, 1968.

WARREN P. PHELAN,
Regional Administrator, Region II.

[F.R. Doc. 68-5771; Filed, May 14, 1968; 9:26 a.m.]

ASSISTANT REGIONAL ADMINISTRATOR FOR RENEWAL ASSISTANCE AND DEPUTY ASSISTANT REGIONAL ADMINISTRATOR FOR RENEWAL ASSISTANCE, REGION III (ATLANTA)

Redelegation of Authority To Execute Requisition Agreements Securing Preliminary Loan Notes

SECTION A. Authority redelegated with respect to Slum Clearance and Urban Renewal Program. The Assistant Regional Administrator for Renewal Assistance and the Deputy Assistant Regional Administrator for Renewal Assistance, Region III (Atlanta), each is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on preliminary loan notes each of which provides that it shall not be valid until the paying agent has executed an agreement appearing on the note to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the aforesaid payment and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph 2 of this section A shall be construed separate and apart from the pertinent loan contract and shall be incontestable in the hands of a bearer; and

2. Agrees to evidence its promise to pay or cause to be paid each such note by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular notes, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the Maturity Date of the within Preliminary Loan Note it will pay or cause to be paid to the bearer thereof the principal of and interest thereon, upon the presentation and surrender of such Note to the Paying Agent designated therein, and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract referred to in the within Note and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the Date of Issue of the within Note.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and
Urban Development.

(Redelegation of authority by Assistant Secretary for Renewal and Housing Assistance effective May 15, 1968, 33 F.R. 7175, May 15, 1968)

Effective date: This redelegation of authority shall be effective as of May 15, 1968.

EDWARD H. BAXTER,
Regional Administrator, Region III.

[F.R. Doc. 68-5772; Filed, May 14, 1968; 9:26 a.m.]

ASSISTANT REGIONAL ADMINISTRATOR FOR RENEWAL ASSISTANCE AND DEPUTY ASSISTANT REGIONAL ADMINISTRATOR FOR RENEWAL ASSISTANCE, REGION III (ATLANTA)

Redelegation of Authority To Execute Requisition Agreements Securing Bonds

SECTION A. Authority redelegated with respect to Slum Clearance and Urban Renewal Program. The Assistant Regional Administrator for Renewal Assistance and the Deputy Assistant Regional Administrator for Renewal Assistance, Region III (Atlanta), each is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on bonds evidencing a definitive loan under section 102(a) of said Act, and, as an incident to the security and marketability of such bonds, securing the payment of premiums and the cost of the redemption of bonds and the fees and charges of paying agents, each of which bonds provides that it shall not be valid until the paying agent has executed an agreement appearing on the bond to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the payment of the principal of and interest on such bonds, and agrees under section 102(c) of the Act that the payment agreement set

forth under paragraph 2 of this section A shall be construed separate and apart from the pertinent loan contract, including the specific loan payment contract under such requisition agreement, and shall be incontestable in the hands of a bearer; and

2. Agrees, as an incident to the security and marketability of such bonds, to pay or cause to be paid the premiums and cost of the redemption of the bonds and the fees and charges of paying agents, and also agrees to evidence its promise to pay or cause to be paid each such bond, including the interest thereon, by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular bonds, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the maturity of the within Bond, and on the respective dates established for the payment of the interest thereon, it will pay or cause to be paid to the bearer or registered owner of either or both said Bond or interest thereon, as the case may be, the principal of and interest on such Bond, upon the presentation and surrender of such Bond or the uncanceled interest coupons appertaining thereto, if any, as the case may be, to the Paying Agent or the alternate Paying Agent identified therein; and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract and the specific loan payment contract evidenced by the Requisition Agreement referred to in the within Bond, and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the date of the within Bond.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and
Urban Development.

(Redelegation of authority by Assistant Secretary for Renewal and Housing Assistance effective May 15, 1968, 33 F.R. 7176, May 15, 1968)

Effective date: This redelegation of authority shall be effective as of May 15, 1968.

EDWARD H. BAXTER,
Regional Administrator, Region III.
[F.R. Doc. 68-5773; Filed, May 14, 1968;
9:26 a.m.]

ASSISTANT REGIONAL ADMINISTRATOR AND DEPUTY ASSISTANT REGIONAL ADMINISTRATOR FOR RENEWAL ASSISTANCE, REGION IV (CHICAGO, ILL.)

Redelegation of Authority To Execute Requisition Agreements Securing Preliminary Loan Notes

SECTION A. Authority redelegated with respect to Slum Clearance and Urban

Renewal Program. The Assistant Regional Administrator and the Deputy Assistant Regional Administrator for Renewal Assistance, Region IV (Chicago, Ill.), each is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on preliminary loan notes each of which provides that it shall not be valid until the paying agent has executed an agreement appearing on the note to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the aforesaid payment and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph 2 of this section A shall be construed separate and apart from the pertinent loan contract and shall be incontestable in the hands of a bearer; and

2. Agrees to evidence its promise to pay or cause to be paid each such note by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular notes, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the Maturity Date of the within Preliminary Loan Note it will pay or cause to be paid to the bearer thereof the principal of and interest thereon, upon the presentation and surrender of such Note to the Paying Agent designated therein, and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract referred to in the within Note and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the Date of Issue of the within Note.

UNITED STATES OF AMERICA
By (Facsimile Signature)
Secretary of Housing and
Urban Development.

(Redelegation of authority by Assistant Secretary for Renewal and Housing Assistance effective May 15, 1968, 33 F.R. 7175, May 15, 1968)

Effective date. This redelegation of authority shall be effective as of May 15, 1968.

DON MORROW,
Deputy Regional Administrator,
Region IV.

[F.R. Doc. 68-5774; Filed, May 14, 1968;
9:26 a.m.]

ASSISTANT REGIONAL ADMINISTRATOR AND DEPUTY ASSISTANT REGIONAL ADMINISTRATOR FOR RENEWAL ASSISTANCE, REGION IV (CHICAGO, ILL.)

Redelegation of Authority To Execute Requisition Agreements Securing Bonds

SECTION A. Authority redelegated with respect to Slum Clearance and Urban Renewal Program. The Assistant Regional Administrator and the Deputy Assistant Regional Administrator for Renewal Assistance, Region IV (Chicago, Ill.), each is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on bonds evidencing a definitive loan under section 102(a) of said Act, and, as an incident to the security and marketability of such bonds, securing the payment of premiums and the cost of the redemption of bonds and the fees and charges of paying agents, each of which bonds provides that it shall not be valid until the paying agent has executed an agreement appearing on the bond to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the payment of the principal of and interest on such bonds, and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph 2 of this section A shall be construed separate and apart from the pertinent loan contract, including the specific loan payment contract under such requisition agreement, and shall be incontestable in the hands of a bearer; and

2. Agrees, as an incident to the security and marketability of such bonds, to pay or cause to be paid the premiums and cost of the redemption of the bonds and the fees and charges of paying agents, and also agrees to evidence its promise to pay or cause to be paid each such bond, including the interest thereon, by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular bonds, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the maturity of the within Bond, and on the respective dates established for the payment of the interest thereon, it will pay or cause to be paid to the bearer or registered owner of either or both said Bond or interest thereon, as the case may be, the principal of and interest on such Bond, upon the presentation and surrender of such Bond or the uncanceled interest coupons appertaining thereto, if any, as the case may be, to the Paying Agent or the alternate Paying Agent identified therein; and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the

Act, this Agreement shall be construed separate and apart from the loan contract and the specific loan payment contract evidenced by the Requisition Agreement referred to in the within Bond, and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the date of the within Bond.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and
Urban Development.

(Redelegation of authority by Assistant Secretary for Renewal and Housing Assistance effective May 15, 1968, 33 F.R. 7176, May 15, 1968)

Effective date: This redelegation of authority shall be effective as of May 15, 1968.

DON MORROW,
Deputy Regional Administrator,
Region IV.

[F.R. Doc. 68-5775; Filed, May 14, 1968;
9:26 a.m.]

ASSISTANT REGIONAL ADMINISTRATOR FOR RENEWAL ASSISTANCE, REGION V (FORT WORTH, TEX.)

Redelegation of Authority To Execute Requisition Agreements Securing Preliminary Loan Notes

SECTION A. Authority redelegated with respect to Slum Clearance and Urban Renewal Program. The Assistant Regional Administrator for Renewal Assistance, Region V (Fort Worth, Tex.), is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on preliminary loan notes each of which provides that it shall not be valid until the paying agent has executed an agreement appearing on the note to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the aforesaid payment and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph 2 of this section A shall be construed separate and apart from the pertinent loan contract and shall be incontestable in the hands of a bearer; and

2. Agrees to evidence its promise to pay or cause to be paid each such note by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular notes, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the Maturity Date of the within Preliminary Loan Note it will pay or cause to be paid to the bearer thereof the principal of and interest thereon, upon the presentation and surrender of such Note to the Paying Agent designated therein, and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract referred to in the within Note and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the Date of Issue of the within Note.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and
Urban Development.

(Redelegation of authority by Assistant Secretary for Renewal and Housing Assistance effective May 15, 1968, 33 F.R. 7175, May 15, 1968)

Effective date. This redelegation of authority shall be effective as of May 15, 1968.

VERNON C. MAYFIELD,
Acting Regional Administrator,
Region V.

[F.R. Doc. 68-5776; Filed, May 14, 1968;
9:26 a.m.]

ASSISTANT REGIONAL ADMINISTRATOR FOR RENEWAL ASSISTANCE, REGION V (FORT WORTH, TEX.)

Redelegation of Authority To Execute Requisition Agreements Securing Bonds

SECTION A. Authority redelegated with respect to Slum Clearance and Urban Renewal Program.

The Assistant Regional Administrator for Renewal Assistance, Region V (Fort Worth, Tex.), is hereby authorized to execute requisition agreements under section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), securing the payment of the principal of and interest on bonds evidencing a definitive loan under section 102(a) of said Act, and, as an incident to the security and marketability of such bonds, securing the payment of premiums and the cost of the redemption of bonds and the fees and charges of paying agents, each of which bonds provides that it shall not be valid until the paying agent has executed an agreement appearing on the bond to act as paying agent, and under which requisition agreement the United States, among other things:

1. Pledges the full faith and credit of the United States to the payment of the principal of and interest on such bonds, and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph 2 of this section A shall be construed separate and apart from the pertinent loan contract, including the specific loan payment contract under such requisition agreement, and shall be incontestable in the hands of a bearer; and

2. Agrees, as an incident to the security and marketability of such bonds, to pay or cause to be paid the premiums and cost of the redemption of the bonds and the fees and charges of paying agents, and also agrees to evidence its promise to pay or cause to be paid each such bond, including the interest thereon, by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular bonds, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the maturity of the within Bond, and on the respective dates established for the payment of the interest thereon, it will pay or cause to be paid to the bearer or registered owner of either or both said Bond or interest thereon, as the case may be, the principal of and interest on such Bond, upon the presentation and surrender of such Bond or the uncanceled interest coupons appertaining thereto, if any, as the case may be, to the Paying Agent or the alternate Paying Agent identified therein; and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract and the specific loan payment contract evidenced by the Requisition Agreement referred to in the within Bond, and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the date of the within Bond.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and
Urban Development.

(Redelegation of authority by Assistant Secretary for Renewal and Housing Assistance effective May 15, 1968, 33 F.R. 7176, May 15, 1968)

Effective date. This redelegation of authority shall be effective as of May 15, 1968.

VERNON C. MAYFIELD,
Acting Regional Administrator,
Region V.

[F.R. Doc. 68-5777; Filed, May 14, 1968;
9:26 a.m.]

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PART II

Department of Agriculture
Consumer and Marketing Service

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Milk in Massachusetts-Rhode Island-
New Hampshire and Certain Other
Marketing Areas; Decision
on Proposed Amendments



DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1001, 1002, 1003, 1004, 1015, 1016]

[Docket No. AO-14-A38-R03 etc.]

MILK IN MASSACHUSETTS-RHODE ISLAND-NEW HAMPSHIRE AND CERTAIN OTHER MARKETING AREAS

Decision on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing area	Docket No.
1001	Massachusetts-Rhode Island-New Hampshire	AO 14-A38-R03.
1002	New York-New Jersey	AO 71-A53.
1003	Washington, D.C.	AO 293-A17.
1004	Delaware Valley	AO 160-A35.
1015	Connecticut	AO 305-A18.
1016	Upper Chesapeake Bay	AO 312-A13.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at New York City, on June 19-23, and July 31-August 4, 1967, pursuant to notice thereof issued on June 2, 1967 (32 F.R. 8175), and supplemental notices issued June 15, 1967 (32 F.R. 8720), and June 22, 1967 (32 F.R. 9025).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator on February 21, 1968 (33 F.R. 3432; F.R. Doc. 68-2408), filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision (33 F.R. 3432; F.R. Doc. 68-2408) are hereby approved and adopted and are set forth in full herein.

The material issues on the record of the hearing relate to the appropriate level and basis of pricing reserve milk under the six northeastern Federal milk marketing orders.

Ten proposals were submitted by interested parties for consideration at the hearing. Such proposals were variously sponsored by proprietary handlers and cooperative associations in the New York-New Jersey and Delaware Valley markets and a group of producers under the Washington, D.C., order. Proposals submitted would (1) add a butter-powder "snubber" to the present surplus pricing provisions of the six orders; (2) change to the use of the Minnesota-Wisconsin manufacturing milk price with a butter-powder "snubber" and a 10-cent lower price on milk used in butter and Cheddar cheese during March-June; (3) set the Washington, D.C., Class II price

\$1.00 under the Class I price; (4) change the Delaware Valley Class II price level, the seasonal adjustments and the location adjustments; (5) limit any amendments to the period through June 30, 1968; and (6) provide temporary emergency price relief for handlers.

Producer and handler interests in all six markets were represented by persons who testified at the hearing. In general, witnesses for proprietary handlers and operating cooperatives in the New York-New Jersey market took the position that the Class III price was too high, particularly during 1966. The principal bargaining cooperative in the New York-New Jersey market and the major cooperatives in the other five markets generally urged that no change be made in the present formula. However, these cooperatives generally conceded that if, notwithstanding their position, any changes were made in the New York-New Jersey order identical changes should also be made in the other orders. One cooperative urged that if any action is taken it should only be temporary.

New York-New Jersey proprietary handlers and operating cooperatives contended that the Class III price level established by the July 1962 amendments, which provided identical pricing (the U.S. average manufacturing milk price with specified seasonal adjustments) in all the northeastern orders, has continuously been too high in relation to market values of butter and cream. Accordingly, operating margins available to them have been unrealistically low, particularly during the months when the seasonal adjustments raise the price above the U.S. manufacturing milk price. They further contended that the large increase in the volume of imports of butter-sugar mixtures in 1966 and the first half of 1967 for use in ice cream seriously impeded the orderly disposition of the market's excess butterfat through traditional channels and depressed cream prices in the Northeast in relation to reserve milk prices under the order.

The situation, proprietary handlers further contended, has been aggravated by the continuing conversion from can to bulk tank handling in the New York-New Jersey market while handlers have been unable to recover hauling costs in the movement of bulk tank milk from farm to plant because of the cooperatives' position of "free" hauling. As a result, previously inadequate operating margins have been further depressed.

Proponents took the position that immediate and substantial relief was essential to continuing maintenance of necessary manufacturing facilities in the market. The position of New York handlers in this regard was supported by certain handlers in the Delaware Valley and Upper Chesapeake Bay markets.

The testimony of witnesses opposing any change in pricing stressed that the difficulties expressed by New York handlers were temporary in nature. They pointed out that the present formula has provided prices which have been competitive with other segments of the manufactured dairy products industry, and contended that, notwithstanding propo-

nents' position, the seasonal adjustments are an important adjunct to the pricing formula to insure that milk is readily available for fluid use in the short production months and to accommodate the orderly disposal of surplus in the heavy production months.

Pending completion of the prescribed procedures based on the hearing record, interim emergency suspension action (32 F.R. 13804) was taken by the Acting Secretary on September 29, 1967, to "eliminate the seasonal variation in the amounts by which the average price for milk for manufacturing purposes, i.e., plants, United States, is adjusted in determining the minimum prices to be paid for reserve milk supplies in the northeastern markets."

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

The reserve milk pricing provisions of the respective orders should be changed from the use of the U.S. average price for manufacturing milk to the use of the average of prices paid for manufacturing grade milk in Wisconsin and Minnesota, limited by a price computed on the basis of butter and nonfat dry milk prices in the Chicago area. The seasonal adjustment factors should each be reduced by 5 cents.

This change will generally continue the same annual level of surplus pricing which the present formula has provided and at the same time will insure that the annual price level for reserve milk in the Northeast will not rise above a fixed margin under the market value of butter and nonfat dry milk. It will also insure continuing alignment of reserve milk prices under the northeastern orders and the neighboring orders to the west which employ a similar formula.

While proponents contended that the surplus pricing level under the northeastern orders has been excessive since July 1962, the record evidence simply does not support this position. Federal orders generally, except those in the Northeast, employ the Minnesota-Wisconsin manufacturing milk price series as a basis for pricing surplus milk. Many of such orders employ that series without adjustment while others use the series in conjunction with a butter-powder snubber which has the effect of guaranteeing that handlers will have no less than a 48-cent operating margin in processing butter and nonfat dry milk. While the surplus milk prices in the northeastern orders are established on the basis of U.S. manufacturing milk price series, seasonally adjusted, the resulting price on an annual basis has closely approximated that under orders employing the Minnesota-Wisconsin price series with a butter-powder snubber. There is no basis on the record for changing the basic level of surplus pricing in northeastern markets. Nevertheless, appropriate revisions in the pricing formula can be made which will protect handlers against unreasonably depressed operating margins such as existed in the first 3 months of 1966.

Prior to July 1962 the New York-New Jersey Class III price was based upon the market prices of butter and nonfat dry milk. Since that time the price has been based on prices paid for manufacturing grade milk. This latter method was adopted primarily as a means of avoiding the difficulties experienced in fixing an appropriate margin to reflect costs incurred by handlers in processing milk into marketable products. Such costs tend to vary among handlers and are influenced over time by changes in technology.

During the first three years the present formula was in effect (1963-65) the level of butter-powder margins (the difference between the Class III price and the market value of the butterfat and skim milk in a hundredweight of milk based on New York butter and nonfat dry milk quotations) varied within a range of 26 cents. The variation from 12 cents below to 14 cents above the average was largely due to the specified seasonal adjustments in the Class III price formula which range from a minus 7 cents in May to a plus 15 cents in August, a variation of 22 cents.

In 1966 the level of butter-powder margins varied as much as 44 cents. The variation was, of course, in part due to the seasonal adjustments but in larger measure was a result of the erratic relationship between butter prices and prices paid for manufacturing grade milk which prevailed when open market manufactured dairy product prices were moving above price support levels.

From the effective date of the present formula (July 1962) until April 1965 the wholesale prices of butter at New York stayed virtually at the price support level of 58.75 cents per pound except for brief periods in the fall of each year. In April 1965 the price support was increased to 59.75 cents. By June 1965 the open market price of butter began to rise above the support price and remained above it through December 1966. The peak level of 74.72 cents was reached in September and the price then declined until January 1967 when it was essentially at the support level of 67.25 made effective in July 1966. During this period when butter prices were above support levels the average of prices paid for manufacturing milk as reflected in the U.S. manufacturing milk price series also increased but such prices were much less erratic than butter prices, particularly during the period of December 1965 through June 1966 when the respective prices were as follows:

	New York-New Jersey 92-score butter (cents per lb.)	U.S. average manufacturing price (dollars per cwt.)
December 1965.....	64.79	\$3.37
January 1966.....	62.01	3.36
February.....	60.67	3.51
March.....	65.67	3.62
April.....	62.65	3.56
May.....	63.40	3.53
June.....	65.50	3.64

During the latter part of 1965 and the beginning of 1966 cheese prices increased relative to butter prices. In the first

three months of 1966 cheese plants out-paid butter plants by more than 20 cents per hundredweight. The higher prices paid by cheese plants caused the manufacturing milk price to increase relative to butter values and resulted in narrowing the margins available to butter manufacturers during this period.

Gross butter-powder margins in December 1965 and the first 3 months of 1966 were the lowest of record for these months in the New York-New Jersey market. They averaged 12 cents under margins for the same period 12 months earlier. However, the average margin for the 12 months of 1966 was identical to that for 1965 and the average margin for 1967 was more than 5 cents greater, approximating the average for the years 1963 and 1964.¹

During the past three years the annual volume of reserve milk supplies priced under the Northeast orders has ranged from seven to 8 billion pounds. The monthly volume of reserve milk has ranged from a low of about 450-500 million pounds in the fall months to a high of 750-970 million pounds in the spring months. Such reserve supplies have represented about 40 percent of the total volume of milk priced under all of the Northeast orders on an annual basis and have ranged between 30 and 50 percent of total receipts in any month.

About 70 percent of all of the reserve supplies in the six Northeast markets is priced under the New York-New Jersey order. Each month nearly two-thirds of the butterfat in this reserve supply is marketed in the form of butter, ice cream, and cream. Since butter readily can be substituted for cream in making ice cream, the market value of the butterfat in cream generally maintains a close relationship with the butter price.

During 1966 cream-powder margins maintained their traditional close relationship with butter-powder margins. However, during the first 7 months of 1967 cream-powder margins were generally unfavorable, averaging almost 15 cents below butter-powder margins. In recent months this situation appears to have been alleviated. Cream-powder margins since August have been closely aligned with butter-powder margins.

During the period of substantially increased prices of manufactured dairy products in the United States, the use of imported butterfat-sugar mixtures became widespread among many of the ice cream manufacturers in the Northeast as well as other areas of the country. The volume of butter-sugar mixture imports amounted to 106 million pounds in 1966 and 92 million pounds in the first half of 1967. Effective July 1, 1967, import

¹ This decision makes use of certain prices of butter, nonfat dry milk, cream, manufacturing grade milk, and Federal order class prices for periods which extend beyond the dates for which the particular prices were made available on the record. For this purpose official notice is taken of the August through December 1967 summaries of "Federal Milk Order Market Statistics", USDA, C&MS, Dairy Division, which contains the prices referred to herein.

quotas were made effective on such products to reduce them to an annual level of 2.58 million pounds which is approximately the same as the 1961-65 average before the import surge began. The substitution of an alternative supply of butterfat in such substantial quantity obviously has made it necessary for domestic handlers who were supplying the ice cream trade to find other outlets for much of their cream, at least for a temporary period.

The record does not provide a basis to accurately determine the volume of such butter-sugar mixtures actually used in the New York-New Jersey market. However, official notice is taken of "Statistics Relative to the Dairy Industry in New York State" (November 1967, New York Crop Reporting Service, Table 62) which shows the percentage of total butterfat from each ingredient source in ice cream mix made in wholesale frozen dessert plants in New York City as follows:

Ingredient source	Percent	
	1965	1966
Whole milk.....	0.4	0.8
Cream.....	49.0	30.7
Condensed milk.....	40.3	38.2
Dry milk & buttermilk.....	0.6	0.5
Butter.....	9.7	5.2
Butter-sugar.....		24.6
Total.....	100.0	100.0

The substantial reduction in the proportion of cream used in ice cream obviously disrupted traditional cream trade channels in 1966. This situation was further aggravated, beginning in November 1966 because of additional cream volumes resulting from permissive standardization of whole milk in New York State. Prior to November 1966 the standardization of milk was not permitted under New York State laws.

The volume of butterfat in cream made available because of standardization cannot be accurately determined. However, on the basis of the increased volume of skim milk subject to the fluid skim differential beginning in November 1966 under the New York-New Jersey order it appears that the aggregate butterfat content of whole milk marketed under the order has been reduced due to standardization by several million pounds in the period since November 1966.

New York-New Jersey handlers alluded to this disruption of the cream marketing situation and the associated depressed cream-powder margins in support of their request for a lower Class III price. Although such market circumstances did adversely affect handlers, they are not an appropriate basis for providing a basic reduction in the surplus price level.

The impact of additional butterfat volumes from imported butter-sugar mixtures and standardization was largely offset by a decline in milk production in the northeastern markets of over 500 million pounds from the 1965 level. Consequently, there has been little net

change in the aggregate volume of butterfat in the region. Since there are very substantial butter processing facilities in the market for handling the excess cream supplies of the market, it is not readily apparent why handlers have not been able to adjust their marketing channels and dispose of their excess cream to butter processors during periods of depressed cream prices. However, handlers with excess cream contend that butter processing facilities generally are not conveniently located to their operations relative to alternative outlets in the cream trade.

Comparisons of butter-powder and cream-powder margins substantiate handlers' arguments that the combined impact of butter-sugar imports and standardization seriously depressed the cream market. It is equally apparent that cream-powder operators did not readily adjust their marketing channels to improve their position. For this reason cream-powder margins were unduly depressed in the first 7 months of 1967. However, the situation appears to have now been corrected since cream-powder margins have returned to their traditional relationship with butter-powder margins.

The scheme of surplus pricing provided under Federal orders gives handlers freedom of choice as to outlet for surplus milk. While it is recognized that some outlets are at times more remunerative than others it is up to the handlers to adjust their operations as the market situation changes. Depressed spot market cream prices are not of themselves an appropriate basis for changing the price formula since the surplus cream can be churned into butter and marketed under the price support program. Producers should not be expected to accept less for their excess supplies of butterfat than marketings under the price support program would yield.

New York-New Jersey handlers also supported a reduction in the Class III price level on the premise that bulk tank milk is priced at the farm and consequently they incur expenses not incurred in other markets in hauling such milk from farm to plant. About 60 percent of the milk priced under the New York-New Jersey order is produced on farms with bulk cooling tanks. The remainder of the milk is handled in 40-quart cans. Typically, hauling charges on can milk are deducted from payments to producers in the New York-New Jersey market.

Under the New York-New Jersey order the uniform price to producers with bulk tanks is fixed at the freight zone within which the farm is located while prices for can milk are fixed at the location of the plant where the milk is delivered. In addition, the order provides that any deduction for tank truck service provided by the handler shall not exceed 10 cents per hundredweight. However, handlers say that because the major cooperatives in the market have supported "free hauling" for farm tank milk the handlers have been unable to make hauling deductions. In any case it is customary for handlers not to charge producers for bulk hauling.

Handlers stated that the average cost of hauling bulk milk from the farm to the plant is about 16 cents per hundredweight. Since three-fifths of the milk in the market is handled in bulk tanks, it is likely that proprietary handlers' costs of surplus milk have been above that in neighboring markets where authorized hauling deductions are customarily made.

Under existing circumstances, differences in handlers' costs for milk as between markets do not provide an appropriate basis for reducing the level of the surplus price in the New York-New Jersey market. The general practice of handlers of not making use of the hauling deduction now authorized under the order, even during the recent temporary period when their operating margins were particularly low, indicates that it is competitive conditions in the market which tend to maintain handlers' costs of milk above the level provided under the order. As long as it is a common practice in the market not to deduct the permissive 10-cent hauling charge from payments to producers, it must be presumed that the Class III price level is not too high. To the extent that differences exist in the cost of surplus milk among the markets, such differences are obviously due to circumstances not controlled by the order and hence are not an appropriate basis for changing the New York-New Jersey order price.

The use of a butter-powder "snubber" will afford handlers protection against undue reductions in their operating margins when butter values are abnormally low relative to prevailing prices for manufacturing grade milk. Under the Northeastern Ohio order, which employs the Minnesota-Wisconsin series with a butter-powder snubber, the snubber set the effective price throughout 1966. If such snubber had been applied to the New York-New Jersey Class III pricing formula, the price would have averaged 11 cents less in 1966. During the months of January, February, and March, 1966, when butter-powder margins were at an all time low under the order such a snubber would have maintained the margins 23, 26, and 22 cents higher in each month, respectively. Thus, in these months handlers were faced with margins which were only about one-half the amount which they would have had if a butter-powder snubber had been provided under the order.

However, the addition of a butter-powder snubber to the present U.S. manufacturing price series would tend to provide lower average prices than those which prevail in markets employing a butter-powder snubber with the Minnesota-Wisconsin price. For example, if a butter-powder snubber had been applied to the New York-New Jersey Class III prices in 1966 it would have resulted in prices averaging 3 cents less than the surplus class prices provided under the Northeastern Ohio order. In 1967 the average annual price would have been 4 cents less than the Northeastern Ohio order price.

In the period since 1962 when the present formula was adopted, the New York-New Jersey Class III price (excluding the year 1966) has averaged \$3.35, precisely the same as the price in Ohio markets employing the Minnesota-Wisconsin price series with a butter-powder snubber. It is apparent therefore that the existing pricing formula has generally provided prices which have been appropriately aligned with prices in other Federal order markets. The situation in 1966 was unique and possibly need never recur. Nevertheless, because it did result in severe financial strains on handlers of Class III milk, it is understandable that they wish to be assured that it cannot recur.

In recognition of the fact that the average U.S. manufacturing milk price averages below the Minnesota-Wisconsin manufacturing milk price, on which surplus prices are generally based in Federal order markets outside the Northeast, the seasonal adjustments to the basic price provided in the northeastern orders were constructed to increase such price on an annual basis by 5.4 cents. This, as previously indicated resulted in prices which, except for 1966, have been almost identical with those in markets using the Minnesota-Wisconsin price with a butter-powder snubber.

It is essential that such alignment of surplus prices as between markets be continued. Under such circumstances the use of the U.S. manufacturing milk price cannot appropriately be continued in conjunction with a butter-powder snubber. It is concluded, therefore, that the objectives here sought can best be achieved by substituting the Minnesota-Wisconsin price series in lieu of the presently provided U.S. manufacturing milk price.

The Minnesota-Wisconsin price series for manufacturing grade milk reflects the prices paid in these two States, where about half the total manufacturing grade milk sold off farms in the United States is produced. In Minnesota about two-thirds of the milk sold off farms is manufacturing grade, and in Wisconsin about 60 percent is manufacturing grade. Competition for this milk is strong in both States. Consequently, no individual purchaser has a significant influence upon the level of prices paid.

The two-State average price reflects a weight of about 57 percent for Wisconsin prices and 43 percent for Minnesota prices. These weights represent the proportions of the total volume of manufacturing grade milk purchased from farmers in the respective States.

The average reflects prices paid for milk in the different products which are made at plants buying such milk. In 1965, butter and byproduct plants accounted for 86 percent of all manufacturing grade milk in Minnesota. Cheese factories accounted for 11 percent and plants manufacturing varied products accounted for the remaining three percent.

In Wisconsin, plants used the following proportions of manufacturing grade milk in 1965 according to type of plant:

Cheese, 59 percent; butter and byproducts, 11 percent; condensers, 1 percent; and varied product plants, 29 percent.

The Minnesota-Wisconsin price is employed in Federal milk orders generally outside the Northeast for determining the level of surplus class prices and as a basic formula price in fixing Class I price levels. This price for manufacturing grade milk in the two-State area of Minnesota and Wisconsin is issued by the State-Federal Crop Reporting Service on about the fifth day of each month for milk received at manufacturing plants in these States in the previous month. Plant operators report that total pounds of manufacturing grade milk received from farmers, the butterfat content, and total money paid to farmers for the milk.

The manufacturing milk price for the two-State area is reported by the Department per hundredweight at actual butterfat test. The announced price is adjusted to the 3.5 percent butterfat test used in the orders by means of a butterfat differential equal to 0.12 times the average wholesale price for 92-score butter at Chicago.

Processing margins available on butter-powder in the Minnesota-Wisconsin region are currently about 48 cents and the recent trend has been downward. Margins (derived from the Minnesota-Wisconsin price and the Chicago 92-score butter price times 4.2 plus the Chicago area nonfat dry milk solids, spray process price times 8.2) dropped from 56 cents in 1962 to 46 cents in 1964. During the recent period when prices were above support levels the margins were substantially lower, averaging 42 cents in 1965 and 32 cents in 1966, but increased to 45 cents by August 1967 after butter prices were back at support levels for 6 months. Since the butter-powder snubber generally employed in other orders insures a processing allowance of 48 cents based on Chicago price quotations, it is desirable that the same formula be included in the New York-New Jersey order to insure continuing interorder price alignment.

A butter-powder snubber with a 48-cent processing margin applied to the Minnesota-Wisconsin price series as a basic price, would have provided prices which averaged 2 cents higher than the New York-New Jersey Class III price in 1963; the same in 1964; 2 cents lower in 1965; 8 cents lower in 1966; and the same average level in 1967 if the effect of the suspension action of September 29, 1967, is discounted. This formula would protect handlers from any recurrence of the severely depressed margins which they experienced in 1966 when open market prices were above support levels.

In addition, producers would have assurance that the existing average price level would be retained. Under these circumstances it is concluded that it is appropriate to replace the present basic Class III price formula with the formula employed in the neighboring orders to the west of the New York-New Jersey milkshed.

The New York-New Jersey market is by far the largest single milk market

under Federal regulation. As previously indicated about 70 percent of all of the reserve supplies in the six northeastern markets is priced under the New York-New Jersey order. In the past, seasonality of pricing has been considered necessary to deter the association of milk supplies for manufacturing uses during the short production months and to implement the orderly disposition of the regular market reserve in other months. In addition, proponents for continuing seasonal pricing contend that such pricing is essential to insure full availability of all milk, as needed, for Class I use in the fall and winter months.

It is not readily apparent that seasonal pricing of surplus milk is essential to insure the availability of milk in the short production months. Both the New York-New Jersey and Massachusetts-Rhode Island-New Hampshire orders have other provisions intended to implement this result. In the other four markets the bulk of the milk supplies are associated directly with city plants and such supplies are generally fully available for Class I use as needed.

The basic problems giving rise to the hearing were in large measure confined to the New York-New Jersey market. As previously indicated that market is still in transition from can to bulk tank handling. Because of the size of the market and the institutional factors associated with it, handlers and producers are apparently experiencing considerable difficulty in making desirable adjustments to take full advantage of the greater efficiencies associated with bulk tank handling. The removal of the seasonal scheme of surplus pricing may have serious consequences in deterring the orderly marketing of the reserve milk supply, particularly at this time when proprietary handlers appear to be under considerable financial strain. It is concluded therefore that the concept of seasonal pricing of reserve milk should be continued.

Notwithstanding the above conclusion some adjustment of the seasonal factors is necessary since, as previously stated, part of the function of the existing seasonal factors was to maintain an appropriate surplus price level in recognition of the fact that the U.S. manufacturing milk price series was below the Minnesota-Wisconsin price series. With the use of the Minnesota-Wisconsin price series it is appropriate to reduce the stated monthly differentials so that their use neither increases nor decreases the basic price on an annual basis. This is accomplished by decreasing each differential by 5 cents.

The net effect of the change to the Minnesota-Wisconsin price series with a butter-powder snubber and the revised seasonal factors is to leave the annual price level unchanged except under circumstances such as existed in the first part of 1966 when the manufacturing milk price increased much more rapidly than butter values. In such circumstance the New York-New Jersey price would be held in alignment with other markets using a butter-powder snubber as would

also have been the case in other years when the present formula resulted in prices well aligned with such other market prices. The effect of the change would generally lower the price during December through June and generally raise the price in other months of the year. In the last 5 years, the monthly adjustment from prices actually in effect would have been as follows:

Month	Difference from actual prices				
	1963	1964	1965	1966	1967
	Cents	Cents	Cents	Cents	Cents
January	+3	-3	-8	-20	-11
February	+3	-3	-7	-24	-4
March	+4	-2	-7	-27	0
April	+1	+1	-6	-13	0
May	0	+3	-3	-2	+1
June	+1	+1	-3	-2	+4
July	+10	+2	-1	+11	+3
August	+10	+1	+4	+8	+3
September	+3	+6	+5	+11	+7
October	+5	+3	+6	-13	+6
November	-2	+3	+3	-4	+5
December	-2	-6	-6	-12	+5

The proposals to provide for identical amendments to all of the Northeast orders should be adopted. Virtually all of the witnesses urged that if any change were made in the New York-New Jersey Class III price formula, such change should also be made in each of the other orders to maintain appropriate price alignment among the markets. The need for alignment of surplus milk prices under the orders was set forth in the April 25, 1962, decision of the Under Secretary (27 F.R. 4115), pursuant to which the present common surplus pricing formula in the orders was established. The findings and determinations in that decision relative to providing identical surplus price formulas in the orders continue to be valid and are hereby reaffirmed.

A cooperative association in the Delaware Valley market proposed that the Class II price seasonal adjustments and location adjustments in the Delaware Valley order be amended. The proposals would provide for seasonal adjustments identical to those under the Washington, D.C., and Upper Chesapeake Bay orders, and apply Class II location adjustments only beyond the 140-mile zone. The net effect of the adoption of the proposal would be a 6-cent reduction in the Delaware Valley Class II price within the 45-mile zone and 1-cent reduction within the 45-70-mile zone. This change would result in Class II prices within the 140-mile zone which are identical to the Class II prices provided under the Washington, D.C., and Upper Chesapeake Bay orders. Currently the 70-140-mile zone price is aligned with the Class II prices under the Washington, D.C., and Upper Chesapeake Bay orders which have no location adjustments on Class II prices, and is aligned with the 151-170-mile zone price under the New York-New Jersey order.

The proponent witness supported the proposal primarily as a means of insuring outlets for reserve supplies from city bottling plants at country manufacturing plants which also handle reserve supplies for the Washington, D.C., and Upper

Chesapeake Bay markets. Because the Class II price at Delaware Valley city plants is 6 cents higher than the Class II price under the other two orders, operators of country manufacturing plants are reluctant to pay the higher price for supplies diverted from Delaware Valley city plants. The proposed amendment, to fix the same price at most of the locations where reserve supplies are handled under all three orders, would tend to eliminate the influence of location adjustments on handlers' ability to find an outlet for reserve milk supplies diverted from city bottling plants. However, it would also reduce the price on Class II milk processed at city plants as well as change the traditional relationship of Class II prices between country manufacturing plants and city manufacturing plants. Because of this impact of the proposed amendments, several witnesses opposed it. Witnesses for Delaware Valley country plant operators opposed any change in Class II price location adjustments between their plants and city plants. A witness for a New York-New Jersey operating cooperative opposed any change in the relationship of surplus prices between the Delaware Valley and New York-New Jersey orders.

The Delaware Valley order was amended on September 1, 1967, on the basis of a hearing held in Philadelphia on June 12-13. One of the amendments changed the application of location adjustments on milk diverted from plants in nearby zones to plants in more distant zones. The principal testimony of the proponent witness in this record relates to the influence of location adjustments on reserve milk supplies moved to country manufacturing plants. Under the circumstances it is difficult to ascertain whether the problems related by the witness continue to exist.

The impact of the proposed amendments obviously would be much broader than related on the record. Under such circumstances it is concluded that no change should be made in the Delaware Valley Class II price location adjustments on the basis of this record.

The proposal to fix the Washington, D.C., order Class II price \$1 under the Class I price should not be adopted. The Class I price under the order is currently about \$2.60 above the Class II price. Thus the proposal would set the Class II price about \$1.60 above the prevailing value of milk for manufactured uses. Handlers could not be expected to handle surplus milk at such a price. It is clear that proponent's purpose was enhancement of producer returns and that no consideration was given to the economic consequences which would obviously result if such a price level were adopted. The Class II price level cannot be fixed above a level which will insure the orderly disposition of the necessary market reserve. Otherwise the order could not be effective in implementing the purposes of the Act. As previously indicated, the present surplus price level in Northeast markets is concluded to be appropriate and is continued under the amendments herein

adopted. Accordingly, the proposal for a higher price level in the Washington, D.C., market 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.

Certain parties in their briefs renewed their requests made on the hearing record that no testimony be taken on an alternative proposal included in a supplemental hearing notice issued after the hearing began. They contended that the issuance of the supplemental hearing notice was contrary to prescribed procedures and it delayed consideration of initial proposals.

The issuance of the supplemental hearing notice containing an alternative proposal was necessary to fully explore the matters at issue and to insure a complete record of the facts and views of interested parties on the matter. The hearing officer's rulings in this matter is affirmed and the testimony, to the extent that it is relevant to the issues under consideration, has been considered in reaching the conclusions hereinbefore set forth.

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, marketing agreements upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in Certain Specified Marketing Areas", and "Order Amending the Orders Regulating the Handling of Milk in Certain Specified Marketing Areas", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions with respect to Parts 1001, 1003, 1004, 1015, and 1016. The appropriate amendatory language to carry out the conclusions reached with respect to Part 1002 is incorporated in the order attached to the decision on proposed amendments to the order regulating the handling of milk in the New York-New Jersey milk marketing area issued concurrently herewith upon the basis of a hearing conducted at New York City on January 16-25, 1967, pursuant to notice thereof issued on December 15, 1966 (31 F.R. 16273), and supplemental notice issued December 27, 1966 (31 F.R. 16716).

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which will be published with this decision.

Determination of representative period. The month of January 1968 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order, as it hereby proposes to amend the orders, as amended, regulating the handling of milk in the certain specified marketing areas, is approved or favored by producers, as defined under the terms of each of the orders, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing areas.

Signed at Washington, D.C., on May 9, 1968.

GEORGE L. MEHREN,
Assistant Secretary.

Order¹ Amending the Orders Regulating the Handling of Milk in Certain Specified Marketing Areas

7 CFR Part	Marketing area
1001	Massachusetts-Rhode Island-New Hampshire
1003	Washington, D.C.
1004	Delaware Valley
1015	Connecticut
1016	Upper Chesapeake Bay

§ 0 Findings and determinations.

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

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the above-designated marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held.

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the respective designated marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the orders contained in the recommended decision issued by the Deputy Administrator on February 21, 1968, and published in the FEDERAL REGISTER on February 28, 1968 (33 F.R. 3432; F.R. Doc. 68-2408), shall be and are the terms and provisions of this order, and are set forth in full herein subject to the following revisions:

1. The phrase "for the month" is added after "bulk creamery butter per pound at Chicago, as reported by the Department" in the amendments to each of the orders.

2. The amendment for the New York-New Jersey order is not included herein but is incorporated with the provisions of the proposed marketing agreement and order amending that order which is issued concurrently herewith.

AMENDMENT TO THE MASSACHUSETTS-RHODE ISLAND-NEW HAMPSHIRE ORDER

Section 1001.61 is revised to read as follows:

§ 1001.61 Class II price.

The Class II price per hundredweight of milk containing 3.5 percent butterfat, at plants located in zone 21, shall be computed for each month as specified in this section.

(a) Adjust 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 for the month, 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 Department for the month. Such price shall be rounded to the nearest cent but shall not exceed a price computed as follows:

(1) Multiply by 4.2 the Chicago butter price specified in this paragraph;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

(b) Adjust the result obtained in paragraph (a) of this section by the amount shown below for the applicable month:

Month	Amount
January	+\$0.03
February	+.02
March	-.05
April	-.09
May	-.12
June	-.11
July	+.03
August	+.10
September	+.06
October	+.06
November	+.06
December	+.06

AMENDMENT TO THE WASHINGTON, D.C., ORDER

In § 1003.50 paragraph (b) is revised to read as follows:

§ 1003.50 Class prices.

(b) *Class II price.* The price for Class II milk shall be determined for each month as follows:

(1) Adjust 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 for the month, 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 Department for the month. Such price shall be rounded to the nearest cent but shall not exceed a price computed as follows:

(i) Multiply by 4.2 the Chicago butter price specified in this subparagraph;

(ii) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(iii) From the sum of the results arrived at under subdivisions (i) and (ii) of this subparagraph subtract 48 cents, and round to the nearest cent.

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month	Amount
January	+\$0.05
February	+.04
March	-.03
April	-.07
May	-.10
June	-.09
July	+.05
August	+.12
September	+.08
October	+.08
November	+.08
December	+.08

AMENDMENT TO THE DELAWARE VALLEY ORDER

In § 1004.50 paragraph (b) is revised to read as follows:

§ 1004.50 Class prices.

(b) *Class II milk.* The price per hundredweight of Class II milk shall be determined for each month as follows:

(1) Adjust 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 for the month, 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 Department for the month. Such price shall be rounded to the nearest cent but shall not exceed a price computed as follows:

(i) Multiply by 4.2 the Chicago butter price specified in this subparagraph;

(ii) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(iii) From the sum of the results arrived at under subdivision (i) and (ii) of this subparagraph subtract 48 cents, and round to the nearest cent.

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month	Amount
January	+\$0.11
February	+ .10
March	+ .03
April	- .01
May	- .04
June	- .03
July	+ .11
August	+ .18
September	+ .14
October	+ .14
November	+ .14
December	+ .14

AMENDMENT TO THE CONNECTICUT ORDER

Section 1015.61 is revised to read as follows:

§ 1015.61 Class II price.

The Class II price per hundredweight of milk containing 3.5 percent butterfat at plants located in the nearby plant zone shall be computed for each month as specified in this section.

(a) Adjust 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 for the month, 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 Department for the month. Such price shall be rounded to the nearest cent but

shall not exceed a price computed as follows:

(1) Multiply by 4.2 the Chicago butter price specified in this paragraph;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

(b) Adjust the result obtained in paragraph (a) of this section by the amount shown below for the applicable month:

Month	Amount
January	+\$0.088
February	+ .078
March	+ .008
April	- .032
May	- .062
June	- .052
July	+ .088
August	+ .158
September	+ .118
October	+ .118
November	+ .118
December	+ .118

AMENDMENT TO THE UPPER CHESAPEAKE BAY ORDER

In § 1016.50 paragraph (b) is revised to read as follows:

§ 1016.50 Class prices.

(b) *Class II price.* The price for Class II milk shall be determined for each month as follows:

(1) Adjust 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 for the month, 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 a Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the Department for the month. Such price shall be rounded to the nearest cent but shall not exceed a price computed as follows:

(i) Multiply by 4.2 the Chicago butter price specified in this subparagraph;

(ii) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(iii) From the sum of the results arrived at under subdivisions (i) and (ii) of this subparagraph subtract 48 cents, and round to the nearest cent.

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month	Amount
January	+\$0.05
February	+ .04
March	- .03
April	- .07
May	- .10
June	- .09
July	+ .05
August	+ .12
September	+ .08
October	+ .08
November	+ .08
December	+ .08

[F.R. Doc. 68-5762; Filed, May 14, 1968; 8:47 a.m.]

[7 CFR Part 1002]

[Docket No. AO-71-A50]

MILK IN NEW YORK-NEW JERSEY MARKETING AREA

Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at New York, N.Y., on January 16-25, 1967, pursuant to notice thereof issued on December 15, 1966 (31 F.R. 16273), and supplemental notice issued December 27, 1966 (31 F.R. 16716).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator on December 29, 1967 (33 F.R. 188; F.R. Doc. 68-166) filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision (33 F.R. 188; F.R. Doc. 68-166) are hereby approved and adopted and are set forth in full herein subject to the following modifications:

1. In the paragraph preceding the heading "Findings and Conclusions" the first FEDERAL REGISTER page citation therein is corrected.

2. Under Issue No. 2, part A:
(i) The first paragraph is revised.
(ii) Three paragraphs are added at the end of subpart a. *Cream*.

3. Under Issue No. 4:
(i) The second paragraph is revised.
(ii) Seven paragraphs are added at the end of part A. *Transfers*.

(iii) Under part B. *Allocation*:
(1) The last sentence in paragraph 8 is revised.

(2) In paragraph 15 "Milk" is inserted before "Commissions".

(3) Paragraphs 27 and 28 are revised.

(4) Between paragraphs 29 and 30, five new paragraphs are added.

(5) Paragraph 30 is revised.

4. Under Issue No. 5, paragraphs 3 and 4 are deleted and three new paragraphs substituted therefor.

5. Under Issue No. 7, revisions are made in each of the paragraphs of Subpart A and five new paragraphs are added.

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

1. Providing for skim milk and butterfat accounting in lieu of the present butterfat equivalent accounting procedure.
2. Changing the classification scheme from three classes of milk utilization (and the use of a fluid skim milk differential) to two classes of utilization.
3. Modification of provisions on loss or shrinkage of milk in handling and processing.
4. Accounting procedure to be followed in assignment of receipts of skim milk and butterfat to classes of utilization.
5. Modification of the Class I price provisions to neutralize the effect on price level of amendments adopted to accommodate standardization.
6. Establishing a single butterfat differential applicable to class prices and the uniform price.
7. Incidental and corollary changes.
8. Temporary modification of the Class I pricing provisions to offset artificially induced losses in Class I utilization reflected under the existing accounting procedure when skim milk is used in standardization.
9. Whether there is need for emergency action with respect to temporary modification of the Class I pricing provisions.

Issues 8 and 9 have been dealt with in a decision (32 F.R. 3360) and an amending order (32 F.R. 3384). This recommended decision deals with each of the remaining issues.

FINDINGS AND CONCLUSION

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

1. Providing a skim milk and butterfat accounting procedure.

The accounting procedure under the order should be revised to provide for separate skim milk and butterfat accounting.

The accounting procedure prescribed by the present order is essentially one of butterfat equivalent accounting. The butterfat utilized in each class is divided by the average test of milk received from producers to determine the hundred-weight of milk disposed of in such class.

The prescribed application of the fluid skim differential has been used in conjunction with this procedure and recognizes the fact that when butterfat is disposed of as cream (which is classified as other than Class I) the skim milk portion of the milk can be, and often is, disposed of by handlers to consumers as fluid skim milk, in half and half, in certain cultured milk drinks, or may be shipped to other order plants and assigned to Class I under such other order. In such cases the pricing of the milk received from producers in the class to which the butterfat is assigned would not return to producers a realistic use value for their milk.

Under the existing accounting scheme the addition of the fluid skim differential to the Class II or Class III price, as the case may be, is intended to provide a price for skim milk approximately equivalent to the Class I value of skim milk disposed of in specified fluid uses. However, the resulting price is merely an approximation and its reasonableness as an appropriate price is fundamentally dependent on whether the butterfat portion of the milk is disposed of and priced as Class II or as Class III.

The butterfat accounting procedure was adopted in recognition of the fact that the States of New Jersey and New York, within which the marketing area lies, did not permit the standardization of milk for fluid uses. Under such circumstances, a butterfat accounting procedure was considered to be appropriate. However, standardization has been permitted in New Jersey since mid-1964 and in New York since November 1, 1966. Permissive standardization allows handlers to change the average butterfat content of fluid milk by the addition or removal of either skim milk or butterfat. In most instances standardization is done to lower the butterfat content of the finished product. Accordingly, the butterfat equivalent accounting procedure employed under the order does not insure a full accounting in Class I of the total volume of milk and skim milk actually utilized for fluid purposes.

Accounting for milk and milk products on a skim milk and butterfat accounting basis and pricing in accordance with the form in which, or the purpose for which such skim milk and butterfat are used or disposed of is the most appropriate means of securing complete accounting on all milk involved in market transactions. Milk is disposed of in the market in a wide variety of forms representing different proportions of butterfat and skim milk components of milk, which may be greatly changed from the proportions of such butterfat and skim milk in milk as it is first received. Measured in terms of volume the products disposed of in the market may represent one quantity of milk, and measured in terms of milk equivalent of the butterfat content they may represent quite a different quantity.

Moreover, the present accounting method, coupled with the practice of standardization, does not achieve uniformity of product cost among handlers. Lack of uniformity in cost of the same product results from differences in the butterfat content of milk received from producers and from differences in the extent to which standardization is practiced.

There are obvious difficulties in reconciling the quantities of product to be priced, particularly when consideration is given to the increasing intermarket transfers of milk, where accounting in one area is in terms of product weight and in another area is in terms of milk equivalent of butterfat. Uniformity of price between markets depends upon a complete measure of the milk quantities involved and this must be accomplished

in terms of both butterfat and the skim milk equivalent of nonfat milk solids.

The skim milk and butterfat accounting system herein adopted is the procedure universally used in all other Federal milk markets for verification of the receipts and utilization of milk and milk products. It will therefore implement the uniform application of milk accounting to all handlers and among all markets. In addition, it is the only practical means, in view of standardization, of assuring that producers will receive the full utilization value for their milk.

2. *Classes of utilization.* The classification provisions of the order should be modified to provide for two use classes. Milk used in fluid milk products which are required by the applicable health authorities in the marketing area to be made from approved milk supply sources or milk used to produce other fluid milk products for which handlers generally and regularly rely on local producers for milk supplies, which products compete directly with those fluid products for which an approved supply source is required, should be classified as Class I milk. Class I milk should continue to be subdivided into Class I-A and Class I-B. However, the Class I-A definition should be expanded to include not only Class I disposition in the marketing area but also all Class I disposition directly to consumers in other order markets or to other plants for Class I disposition in other order markets. Class I-B should include only that Class I disposition outside of any Federal order marketing area. Milk in excess of the fluid needs of the market and which is disposed of in manufactured products should be Class II milk.

A. *Class I.* To implement the drafting of the revised order a fluid milk product definition is provided. The products included in such definition are only those products intended to be classified in Class I. This includes all skim milk (including any used to produce concentrated milk or reconstituted milk) and butterfat disposed of (other than as sterilized products in hermetically sealed containers) in fluid form as milk, skim milk, cultured or flavored milk drinks (except eggnog and yogurt), concentrated fluid milk disposed of in consumer packages, cream (except storage, plastic or sour), half and half (except sour) and any other fluid mixture of cream, milk or skim milk containing less than 18 percent butterfat (other than frozen desserts, frozen dessert mixes, whipped topping mixtures, evaporated milk, plain or sweetened condensed milk, or skim milk). When any product specified in the fluid milk product definition (and hence to be classified as Class I) is fortified with nonfat milk solids it is provided that the amount of skim milk to be included in the definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

With the adoption of skim milk and butterfat accounting it is now possible to include in Class I all of the fluid products for which a continuing, dependable

supply of locally approved milk is required or demanded and which generally compete for a common consumer market. In so doing, equality of pricing is more nearly achieved for products of the same general form or butterfat content.

a. *Cream.* White fluid cream, half and half and other fluid cream products have in the past been classified as either Class II or Class III dependent on whether disposed of inside or outside the metropolitan district of the marketing area such classification as other than Class I has been necessary to provide a competitive pricing of butterfat in such products with butterfat disposed of for other than fluid uses. Because handlers were not permitted to standardize milk, and therefore necessarily bottled Class I products at the incoming test of milk received from producers, high test producer milk had little added value to the handler if disposed of for Class I uses. Therefore, in order to insure a market for producers' milk, regardless of test, it was necessary to provide a nominal Class I butterfat differential which was unrelated to the true value of butterfat in alternative manufacturing uses. Under such a low butterfat differential, cream and cream products would have been under priced if they had been included as Class I products.

The present rules and regulations provide that "cream" shall have more than 15 percent butterfat content. However, under the health regulations applicable in the marketing area "cream" must have a butterfat content of not less than 18 percent. In view of the applicable health standards, the amended order provides that fluid milk products which have a butterfat content of not less than 18 percent will be treated as "cream." For cream disposed of in the metropolitan district, handlers' costs will be reduced. On the other hand, for cream disposed of outside such district, including that disposed of in other marketing areas, the cost will be slightly increased for the high butterfat forms of cream. Since the lower butterfat content products contain more fluid skim, which would have a higher value, the cost for these products will be somewhat greater.

Cream for fluid uses has in recent years been an item of diminishing importance. By far the greater proportion of cream is disposed of for ultimate use in manufactured dairy products. The pricing of such cream will remain unchanged under the amendments herein adopted.

A number of exceptions were filed to the Deputy Administrator's conclusions that cream for fluid uses should be classified as Class I. Exceptors' principle objections were directed to the competitive position of cream as a Class I product with imitation and synthetic cream products and with cream in the nearby Federal order markets which is classified and priced in Class II. They argued that pool handlers would be in an untenable competitive position in marketing fluid cream and hence would be encouraged to make otherwise uneconomic cream movements as between orders solely for the purpose of avoiding a Class I classification and pricing.

Certain exceptors, nevertheless supported the recommended Class I classification but argued that it was essential that appropriate safeguards be provided in order to deter handlers from circumventing the intent of the classification and pricing provisions.

The record clearly establishes that the applicable health regulations in the marketing area governing the production and distribution of cream for fluid uses are the same as those for fluid milk. Notwithstanding inferences on the part of certain exceptors that the application of such regulations with respect to cream in parts of the marketing area is nominal the record simply does not support such a position. The Deputy Administrator's conclusions with respect to fluid cream are reaffirmed. However, as hereinafter discussed some modification in the treatment of cream from certain other order plants is necessary to insure appropriate classification and pricing of interorder movements.

b. *Drinks.* For the same reasons as previously discussed for cream, cultured and flavored milk drinks containing in excess of 5 percent butterfat were also classified as other than Class I. Such products containing less than 3 percent butterfat were similarly classified to provide appropriate pricing of such products under the existing market situation. However, the application of the fluid skim differential with respect to skim milk disposed of in the form of milk, skim milk, half and half, and cultured milk drinks containing more than 3 percent but no more than 5 percent butterfat and derived from other than producer milk classified as Class I-A or I-B or from other order milk, was intended to provide a price with respect to milk so disposed of as either Class II or Class III milk equivalent to the Class I-A price.

While milk drinks testing less than 3 percent or more than 5 percent and disposed of inside the metropolitan district have been classified in a different class and priced higher than such products disposed of outside of such district, the record of the hearing provides no basis for such continuing distinction. The applicable health regulations both inside and outside the metropolitan district are similar and generally provide that milk drinks containing more than 3 percent butterfat content must be made from approved ingredients. Accordingly, it is appropriate that all of such products be classified as Class I and contribute their proportionate share to the Class I proceeds necessary to reflect, through the blended price, returns to producers sufficient to encourage the production of those quantities of milk needed to insure an adequate fluid milk supply.

Under the applicable health regulations, cultured and flavored milk drinks containing less than 3 percent butterfat, to the extent that they are derived from fluid skim milk, must be made from approved milk supplies. While it is possible to use reconstituted nonfat dry milk, in part, in making such products, handlers, nevertheless, generally rely on local producers for necessary milk supplies for such products.

If the skim milk and butterfat in such products were classified as Class II, such products would enjoy a substantial price advantage over competing fluid milk products which would obviously encourage their substitution for those fluid milk products classified as Class I. Producers thus would be in the position of producing, at the Class II price, skim milk for such products to compete with skim milk for which they receive the Class I price. Under such circumstances a higher Class I price than would otherwise be necessary, would be required to support the needed production to adequately supply the total fluid market. This would require that consumers of those products classified in Class I subsidize consumption of the competing products classified in Class II.

It is concluded that skim milk and butterfat disposed of in low-fat, cultured, and flavored milk drinks should be classified as Class I regardless of the source of such skim milk and butterfat. To classify otherwise would defeat the purpose of the classified pricing plan of providing uniform prices to all handlers and insuring continuing market stability.

c. *Fortification and reconstitution.* When any product specified in the fluid milk product definition (and hence to be classified as Class I) is fortified with nonfat milk solids it is provided that the amount of skim milk to be included in Class I shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Fortification of fluid milk products customarily is accomplished by the addition of concentrated nonfat milk solids to fluid milk or skim milk to yield a finished product of higher nonfat milk solids content than that of an equivalent volume of unmodified product. Reconstitution, on the other hand, involves the process of suspending concentrated milk solids in water to yield a weight of product approximately equal to the weight of milk from which the concentrated product was first made by the removal of water.

Nonfat dry milk and condensed skim milk are generally 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 unregulated milk. Unless safeguards are provided, an economic incentive exists for handlers to substitute, where possible, reconstituted fluid milk products processed from receipts of producer milk priced as surplus or unregulated milk. Since such substitution would displace an equivalent amount of producer milk in Class I milk, the application of skim milk equivalent accounting in this circumstance is economically sound and necessary to insure continuing orderly marketing.

The same economic incentive does not exist with respect to the use of nonfat dry milk or condensed skim milk to fortify fluid milk products. If nonfat milk solids are to be derived from producer milk, the skim milk must first be processed into usable form; i.e., nonfat dry

milk or condensed skim milk. Such products processed from producer milk have no greater value for fortification purposes than similar products purchased in the open market. Such products are used in fortification to increase the palatability of, and hence the salability of, the finished product, and the added solids displace producer milk in Class I milk only by a minor increase in volume which results.

If the skim milk equivalent of all non-fat solids used to fortify Class I products were classified in Class I it would inflate significantly the utilization and disposition of Class I milk. It is neither necessary nor appropriate that handlers be required to account and pay for such inflated volume as Class I milk. However, in the interest of a complete accounting system the entire skim milk equivalent should be entered into the system. This can best be achieved by providing that fortified fluid milk products shall be Class I only to the extent of the weight of a similar volume of an unmodified fluid milk product of the same nature and butterfat content, excluding the dry weight of any nonmilk additive such as flavoring, etc. The skim milk equivalent of the nonfat milk solids not classified as Class I milk should be classified as Class II milk.

B. Class I-A. The Class I-A definition should include fluid milk products disposed of in both this and other Federal order markets. Under the terms of the existing order a pool plant may receive nonpool (unpriced) milk and dispose of such milk for fluid use outside the marketing area with no monetary obligation to the pool, regardless of the price at which such milk might have been procured. This results from the fact that the order prices only pool (producer) milk. Such milk is given priority of assignment of Class I-A disposition (milk disposed of for Class I use in the marketing area). Receipts of pool milk in excess of such Class I-A disposition are assigned first to Class II and then pro rata to available Class I-B (milk disposed of for Class I use outside the marketing area) and Class III use. Under this procedure a handler, by controlling the volume of his pool receipts, can acquire unpriced milk for fluid disposition outside the marketing area, including disposition to other order plants or direct distribution into other order marketing areas.

To protect the integrity of regulation in adjacent Federal order markets it has been necessary to incorporate provisions in the orders regulating such markets which insure the pricing of any (otherwise unpriced) Class I milk received at pool plants from regulated sources under the New York-New Jersey order or disposed of directly from such sources into such other markets. This has placed on the market administrators of adjacent orders considerable added administrative responsibility which, except for the unique structure of Order 2, would not be necessary. Notwithstanding, there is always reasonable doubt that the pricing provided is, in fact, ap-

propriate either in terms of the order Class I price in the originating market or in the receiving market. This is true because the amount of payment required under such other order must be computed on the basis of a price assumed to have been paid dairy farmers supplying such milk since there is no practical means of determining the actual pay price. Under any circumstances, the differential value assessed on such milk accrues to producers in the market where disposed of rather than to the dairy farmers actually supplying the milk.

Under Federal orders generally, plants doing business in more than one regulated market are regulated under the order covering the market in which the greater volume of Class I sales are made. In this way producers are assured returns reflecting the full utilization value of their milk at not less than the prescribed order prices regardless of where the milk is ultimately sold.

To more fully integrate the entire Federal order system it is desirable that the Class I-A definition under the order be extended to include milk disposed of from regulated plants for Class I use in other Federal order markets. Clearly, any incentive for New York-New Jersey handlers to use nonpool milk for sale to or in other Federal order markets was greatest when the adjacent Delaware Valley market employed an individual-handler pooling arrangement. Official notice is taken of the fact that effective June 1, 1967, the Delaware Valley Federal order was modified to provide marketwide pooling.

It is not apparent that any incentive now exists for Order 2 handlers to make sales of unpriced milk from pool plants to other Federal orders for Class I use. To the contrary, it would appear that their interests as well as the interests of Order 2 producers would best be served by using pool milk for such purposes. Notwithstanding, the order should be revised to provide assurance to dairy farmers associated with the Order 2 market that they will receive the full utilization value of any of their milk disposed of into other Federal order markets. Except for special treatment of Connecticut order milk disposed of to New York-New Jersey pool plants (in recognition of the Connecticut market's limited facilities for handling reserve milk), producers in other Federal order markets have had assurance that their returns will reflect the use value, under the terms of their order, of any of their milk disposed of in the New York-New Jersey market. It is equally appropriate that Order 2 producers have similar assurance with respect to sales of their milk into other order markets.

C. Class II. Milk which is excess to the Class I needs of the market must be disposed of for use in manufactured products which compete on the national market with similar products made from manufacturing grade milk. Milk so used must be classified as Class II milk and priced according to its value in such outlets.

Most of the products now classified as Class III will continue to be classified in

the lowest use class (Class II) under the revised order. The classification of certain products, not previously discussed and herein proposed to be classified as Class II, was an issue at the hearing. The rationale with respect to their classification as Class II is set forth below.

a. Storage and plastic cream. The preponderance of the locally produced cream placed in licensed cold storage warehouses or processed into plastic cream is intended for other than fluid uses. To price such disposition as other than Class II would place an undue financial burden on handlers and require extensive and unnecessary records to insure appropriate reclassification when ultimately disposed of. Such cream should be treated as a final disposition and classified as Class II. In the event that any is ultimately used as Class I the cream involved should be treated as an other source receipt in the month in which it is so used and subject to a charge of the difference between the current Class I and Class II price. This procedure is necessary to insure equal pricing among handlers.

b. Eggnog and yogurt. Eggnog is a specialty item with an extreme seasonal demand. It is not required to be made from milk from approved supply sources. Its classification as other than Class II could substantially extend the application of regulation and create serious administrative problems without perceptible enhancement of returns to producers. Yogurt similarly is not required to be made from milk from approved supply sources. It is also a specialty item with a relatively small demand and is in fact more properly a food item than a drink and appropriately should be classified in Class II along with other manufactured milk products.

c. Sour cream. Sour cream and sour half and half are basically different from other cream products in characteristics and usage and do not compete with such other creams as fluid milk products. They do, however, compete in the marketing area with similar products produced outside the market and which are not required to be made from locally approved supplies. To classify such products as other than Class II would deny a market outlet for such products made from local producer milk.

d. Sterile milk. While it was proposed that sterile milk be classified in Class I there was no showing on the record that such a product is a competitive factor in the market. Under existing circumstances there is no basis for changing the classification of this product. However, should such product become a competitive factor in the market the matter of its classification as other than Class II appropriately could be considered at a hearing called for that purpose.

D. Inventories. The classification provisions of the order should be further revised to provide that inventories of fluid milk products in packaged form on hand at the end of the month shall be classified as Class I. Inventories in bulk should be classified as Class II.

Under the existing order handlers have had until 30 days after the end of the month to elect a classification on closing

inventories (either packaged or bulk). This election permits a handler to take full advantage of price changes from one month to the next in classifying ending inventories. To this end such election deters full achievement of the purposes of the Act; i.e., equality of pricing of milk to all handlers.

The treatment of inventories herein provided will tend to minimize any possible difference in classification between a handler's internal accounting and his reports to the market administrator. Handlers may consider products loaded on trucks parked on or adjacent to the premises as being in inventory. Some also may consider products on hand in distribution depots or in transit as being in inventory. The market administrator, however, may consider as inventory only those items which are physically on hand in the plant. The classification procedure herein provided should eliminate any difficulties in this respect. In addition it should minimize month-to-month fluctuations in the pool obligations of high utilization handlers and will be effective in insuring equity of pricing as among handlers in the cost of milk under the order.

In the first month of operation under the amended order inventories of fluid milk products (both packaged and bulk) on hand at the beginning of the month should be assigned insofar as possible to the class in which classified in the preceding month. This procedure will minimize the incidence of reclassification of inventory and thus eliminate the necessity for the market administrator to issue reclassification charges as a result of the reclassification of inventories in the first month of operation under the amended order.

Since seasonality of Class I pricing to handlers was removed from the order with adoption of the "Louisville plan" for payment of producers effective April 1, 1967, it will be unnecessary to provide for adjustment of each handler's obligation with respect to inventory of packaged fluid milk products classified as Class I in the preceding month and assigned to Class I disposition in the current month. While the Class I price will unquestionably vary from month to month, such variation will not be sufficient to influence handlers in the handling of inventories or to justify the administrative problems which would necessarily be encountered in this large market in adjusting each handler's obligation with respect to opening Class I inventory to insure that the current month's Class I price was always applicable to any disposition of Class I inventory in the current month.

3. Shrinkage. The shrinkage provisions of the order should be modified to provide that shrinkage shall be prorated between classes of use in the same proportion that the skim milk and butterfat, respectively, actually accounted for is classified. However, skim milk and butterfat assigned to Class II should not exceed 2 percent of the skim milk and butterfat, respectively, accounted for in such class and any remainder shall be classified as Class I-A.

The order presently provides that allowances for plant loss (shrinkage), not to exceed 5 percent of the butterfat in the product resulting from any specific plant operation or unit operation, may be classified in the same class as the butterfat in such product is classified. It further provides that specific allowances shall be determined by the market administrator under his authority to promulgate rules and regulations to effectuate the terms and provisions of the order. Such allowances, as determined by the market administrator are set forth in the rules and regulations and range from 1 percent for original plant receiving to 5 percent for cream cheese.

In application, shrinkage is handled much in the manner of a make allowance in that the volume of butterfat specifically accounted for in each plant operation or product is inflated by the specified plant loss allowance for such operation or product. The amount of shrinkage allowed is directly related to the number of movements or processings involved in reaching the ultimate product. Thus, there is theoretically no limit to the shrinkage which might be allowed on any particular volume of butterfat. However, since allowable shrinkage is classified in the same class as the milk equivalent of the butterfat in the product and shrinkage in excess thereof is classified as Class I-A there is no basis for concluding that the present procedure has not appropriately accommodated the existing accounting procedure.

Witnesses at the hearing generally supported continuation of the presently prescribed procedure with respect to shrinkage. Notwithstanding the position taken by interested parties at the hearing, the skim milk and butterfat accounting procedure herein adopted requires some modification of the shrinkage provisions. In the future, handlers must account separately for all skim milk and butterfat received in accordance with its classification either as Class I disposition or as used to produce products other than Class I. Once a Class II product is made it is treated as a final disposition unless reprocessed into another product in the same plant and in the same month. With this exception, whenever a Class II product is reprocessed in a plant, and thereby involved in a handler's accounting, it is treated as a receipt of other source milk. This is consistent with the accounting procedure employed under Federal orders generally.

Under this procedure it is not necessary to account for shrinkage on a product by product basis. Shrinkage in reality represents plant receipts for which a handler cannot establish a disposition. Hence, it cannot specifically be associated with any particular product or plant operation except under circumstances where a plant is engaged in a single operation.

In the case of a fluid operation the skim milk and butterfat content of the milk and milk products received and disposed of by a handler can be determined through recognized testing procedures. However, in manufacturing op-

erations the accounting problem is more difficult in that some of the water present in the milk as received from producers is removed in processing. Here the problem is to establish the respective volumes of skim milk and butterfat used to produce such products. This can be ascertained through the use of appropriate accounting procedures.

It is reasonable to conclude, therefore, that shrinkage losses under the revised accounting procedure will not be as great as under the present procedure where the butterfat accounting starts with the product of ultimate disposition.

Experience in other Federal orders using a similar accounting procedure has clearly established that shrinkage losses of skim milk and butterfat, respectively, should not exceed 2 percent in any reasonably efficient operation.

Equitable administration of the order is dependent on a uniform, precise and complete accounting procedure. There is no evident reason on the hearing record why shrinkage experience in the market should not be similar to that in other Federal order markets. It is concluded, therefore, that allowable shrinkage of skim milk and butterfat, respectively, should be limited to not more than 2 percent and the amended order so provides. Shrinkage in excess of allowable limits, as under the present order, should be classified as Class I-A.

The procedure followed under the existing order of assigning shrinkage, within the allowable limits, to the same classes of use as the butterfat accounted for is substantially different from that provided in other Federal orders. Nevertheless, such procedure appears to have precipitated no basic problems in the market and is generally supported by the industry. Accordingly, this procedure is continued for skim milk and butterfat, respectively, under the amended order.

4. Accounting procedure—Transfers and allocation. The present order sets forth the basic principles of allocation and classification of pool milk which are applicable at any plant to which any pool milk moves. A specific allocation procedure to implement those principles is set forth in the rules and regulations. With the adoption of a skim milk and butterfat accounting system, the application and administration of the order will be better implemented by the inclusion in the order of complete transfer and allocation provisions which are to be followed in the classification of milk.

The system of allocation of receipts to classes of utilization must be similar to the system of allocation set forth in the decisions of the Assistant Secretary issued June 19, 1964 (29 F.R. 9109) with respect to 75 Federal orders. While this matter with respect to New York-New Jersey and New England markets was considered at separate hearings and the present procedure with respect to New York-New Jersey was adopted in the decision of the Assistant Secretary issued October 31, 1963 (28 F.R. 11956), it must be recognized that the accounting procedure and pooling provisions of the New York-New Jersey order have

been basically different from those of Federal orders generally.

With the adoption of a new accounting procedure similar to that generally employed in Federal orders, the system of allocation employed in other Federal orders may now be adopted with necessary modifications to accommodate the basic structure of the New York-New Jersey order. This system was designed to integrate into the regulatory plan of each of the orders milk which is not subject to classified pricing under any order, and to apply the regulatory plan of each of the Federal orders to milk regulated under another order which is disposed of from other order plants on routes in the marketing area, or is received at a fully regulated plant. Inasmuch as those decisions set forth the standards for dealing with unregulated milk under Federal orders generally, it is desirable that the system of allocation under this order be similar. Further, the treatment of other order milk should conform with the plan stated in those decisions so as to more fully coordinate the applicable regulations on all movements of milk between Federal order markets.

The principles of allocation prescribed in the present order generally provide that pool milk shall have priority of assignment to Class I-A (Class I disposition in the marketing area), Class II and skim milk subject to the fluid skim milk differential and pool receipts in excess thereof shall be assigned pro rata to Class I-B (Class I disposition outside the marketing area) and Class III. Other Federal order receipts are generally assigned first to Class I-B and then to Class I-A. The broadening of the Class I-A milk definition to include Class I sales in other order markets necessarily requires modification of this procedure. Except in situations where interorder movements are classified as Class II (surplus disposition) by agreement, pool milk and other order milk will generally share pro rata in assignment to classes. With this exception the principle of assignment of regulated milk is generally preserved. However, the order of assignment is reversed in that assignment of regulated milk is made after the appropriate assignment of other source unregulated receipts rather than as the first step in the allocation procedure.

A. Transfers. As has been previously indicated, skim milk and butterfat disposed of in any product, other than a fluid milk product, will be treated under the amended order as a final disposition for classification purposes when the product is made unless such product is reprocessed into another product in the same plant in the same month. In the latter case, classification will be in accordance with its ultimate disposition in such month. In all other cases when any nonfluid milk product is involved in the accounting procedure the butterfat and skim milk equivalent of the nonfat milk solids contained therein are treated as an other source receipt. Accordingly, the transfer provision need cover only inter-

handler or interplant movements of fluid milk products.

Classification of any fluid milk product which is moved from a pool unit or a pool plant to another plant should, under usual circumstances, be determined on the basis of its utilization in the plant to which transferred.

When the transfer is to a pool plant classification should be on the basis of assignment at such pool plant. However, sufficient utilization must be available at the transferee plant for such assignment after prior allocation of receipts of unregulated milk, other order milk, and inventory. Moreover, if other source milk of the type to which surplus value inherently applies (such as nonfat dry milk) has been received at the transferor plant during the month, the skim milk and butterfat in fluid milk products involved in such transfer should be classified so as to allocate the least possible Class I utilization to such other source milk. In the event the transferor handler received other source milk from a nonpool unit or an unregulated plant, the transferred quantity, up to the total of such receipts, should not be assigned to Class I to a greater extent than would be applicable to a like quantity of such other source milk received directly at the transferee plant.

Fluid milk products transferred to a nonpool plant, which is not an other order plant nor a producer-handler plant, should be classified as Class I unless certain conditions are met. The transferring handler must claim classification as other than Class I-A in filing his report for the month pursuant to § 1002.30 and the operator of the nonpool plant, if requested, must make his books and records available to the market administrator for the purpose of verifying the receipts and utilization of milk in such nonpool plant. Provision for verification by the market administrator is reasonable and necessary to insure proper application of the classification procedure prescribed in the order.

If the above conditions are met, the skim milk and butterfat so transferred should be assigned at the transferee plant as follows:

Packaged receipts of fluid milk products from all Federal order sources should first be assigned to route disposition in Federal order marketing areas (assigning receipts to sales in the same market to the extent possible) and any residual should then be assigned to Class I-B route sales. Thereafter bulk transfers received from each Federal order should be assigned to any remaining route disposition in the market where the transferor plant is regulated and any remainder of such receipts should then be assigned pro rata with other Federal order receipts to remaining route disposition in all Federal order marketing areas. Any remaining Class I-A route disposition from the transferee plant in the marketing area should then be assigned to receipts at such plant from dairy farmers. Under the terms of the order such nonpool plant would become

a partial pool plant with respect to such sales.

Remaining receipts from dairy farmers and other unregulated other source receipts (excluding opening inventory) in the form of fluid milk products should then be assigned pro rata to Class I-B (Class I disposition in unregulated areas) and Class II utilization at such plant and any remainder of such receipts should be assigned pro rata to Class I-A bulk sales to plants regulated under the order and Class I bulk sales to plants regulated under other Federal orders. Finally, any remaining transfers from pool plants and pool units should be assigned pro rata with remaining receipts from other order plants, first to remaining Class I-A utilization, then Class I-B utilization and lastly to Class II utilization to the extent of such available utilization. However, if on inspection of the books and records of such nonpool plant the market administrator finds that there is insufficient utilization to cover such remainder, the excess thereof shall be classified as Class I-A.

In the case of fluid milk products transferred from pool plants to fully regulated plants under another order, specific rules should apply to coordinate the classification under both orders. Specifically, fluid milk products transferred to an other order plant in excess of receipts from such plant in the same category (packaged, bulk designated for surplus disposal, or bulk milk not so designated) should be classified in the classes to which allocated under the other order. If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form should be classified Class II to the extent that utilization in manufacturing (Class II use) is available for such assignment pursuant to the allocation provisions of the transferee order.

If the transfer is in packaged form classification should be in the class in which assigned as a fluid milk product under the other order. If the product is not defined as a fluid milk product under such other order, classification should be in accordance with the form in which it leaves the transferor plant. When the classification of a product differs in the shipping and receiving market, identical classification is not possible. Notwithstanding, the order provisions must be designed to accommodate the difference in classification which might exist in this order compared to any other market to which such product is transferred. Under such circumstances, classification appropriately should be the same as would be the case if the product were disposed of in the transferor market. Allocation to classes under the other order would be in accordance with the provisions of such other order.

Any transfer of fluid milk product to a producer-handler under this or any other Federal order should be classified as Class I-A. Producer-handlers do not equalize their Class I sales with other producers and accordingly, to the extent

that they rely on pool purchases for balancing supplies producers should be compensated through a Class I return.

The Deputy Administrator concluded that the change in the classification provisions, providing for two rather than three classes of utilization and including in the Class I definition (and hence the fluid milk product definition) several additional fluid products previously classified as either Class II or Class III, required that the several references to "milk, fluid skim milk and cream" contained in the producer-handler provisions of the order be changed to read "fluid milk products." Specific exception was taken to this change on the grounds that it could result in loss of producer-handler exemption in the event of the purchase of certain products such as half and half which under the revised order are included as Class I products and which were previously not a consideration in the determination of producer-handler status. Exception was further taken on the grounds that such modification was beyond the scope of the hearing notice.

The present producer-handler provisions were drafted to provide full exemption from regulation for handlers who depend entirely on their own production as a source of supply for Class I milk. A limited tolerance was provided to permit purchases not in excess of an average of 150 product pounds per day each or in aggregate of whole milk, fluid skim milk or cream in 2 months of any 6-month period to supplement his own production in recognition of the fact that emergency or other unusual conditions could arise disrupting normal production and distribution plans. In addition, an average of 10 pounds per day purchase of packaged fluid skim milk or cream each or in aggregate, was exempted.

With the revision in classification provisions, a number of additional products have been added to Class I. Hence, as a necessary conforming change to insure continuing implementation of the intent of the existing producer-handler provisions it was essential that the words "fluid milk products" be substituted for the words "milk, fluid skim milk and cream" wherever they appeared in such provisions.

If such a change were not made, producer-handlers would be able to obtain unlimited quantities of products such as half and half, buttermilk, and fluid milk drinks from unregulated sources while pool handlers would have to account to the pool for their sales of such products at the Class I-A price and make an equalization payment on any such products obtained from unregulated sources. This would change the competitive relationship which exists between pool handlers and producer-handlers. In addition, to the extent that producer-handlers obtained such products from unregulated sources, it would tend to defeat the classified pricing provisions of the order.

On the other hand, if producer-handlers purchased such fluid milk products

from pool sources there would be assurance that such products are accounted for at the Class I-A price. Also, since half and half, buttermilk, and fluid milk drinks constitute only about 3 percent of the volume of fluid milk products disposed of in the market, it would not be expected that purchases of such "specialty" items from pool sources could result in any unwarranted advantage to producer-handlers. In fact, because such products are low volume items, producer-handlers may be relying on pool handlers for supplies of such items. However, the order now limits sustained supplemental purchases of other than surplus class products to packaged fluid skim milk or cream. Accordingly, an additional appropriate conforming change is made in the producer-handler provision to allow the purchase of such additional packaged fluid milk products, but from pool plants only.

It is conceded that this could require changes in operating procedures on the part of producer-handlers to maintain their exempt status. However, in this respect they are fundamentally in no different position than other pool handlers who in the past under certain circumstances have been in a position to use other than pool milk for such items without obligation to the pool. This will no longer be the situation since skim milk and butterfat disposed of in such products now must be accounted for to the pool at the Class I-A price. As previously indicated, it is clearly the intent of the existing regulation that a producer-handler shall be self sufficient in meeting his Class I needs and carrying his own necessary reserve supply. It would be inappropriate and inequitable to modify the order on the basis of this record without making the necessary corollary changes to continue this concept.

While exceptor argues lack of notice, it must be concluded that interested parties were notified since a modification of the classification provisions in the manner set forth in the hearing call and as herein adopted would reasonably require corollary changes in other parts of the order, including the producer-handler provisions, to continue the intent of the existing provisions. The matter was thoroughly explored in the hearing record and accordingly the exception must be and is hereby denied.

B. Allocation. The pooling provisions of the order were not an issue at the hearing. Nevertheless, the change to skim milk and butterfat accounting necessarily requires some modification of the pooling provisions to include consideration of both skim milk and butterfat.

Under the terms of the order plants either hold regular pool plant status (by designation) or acquire temporary pool plant status by meeting specified performance standards with respect to the shipment or disposition of milk classified in Class I-A (Class I disposition in the marketing area). Plants which are not designated pool plants and which do not meet the performance requirements for temporary pool plant status but which have receipts from dairy farmers or units classified as Class I-A may become par-

tial pool plants. Similarly, units may be pool units (on the basis of designation or performance) or partial pool units. Plants and units which have neither pool or partial pool status are nonpool plants or units.

With the change to skim milk and butterfat accounting it is possible that the status of some plants may change. For example, total producer receipts of a plant previously meeting the requirements for temporary pooling status on the basis of butterfat accounting may no longer qualify the plant since the skim milk portion of such receipts could be classified as Class II while the butterfat is classified in Class I. On the other hand, a plant which previously did not meet the pooling requirements but which held partial pool plant status may qualify for pooling on the basis of the classification of combined receipts of skim milk and butterfat from dairy farmers or units. In addition, the conclusion hereinbefore set forth with respect to the classification of milk disposed of to other order markets provides a broader base for pooling and could result in pool status for some plants or units which previously held either partial or nonpool status.

Because pooling status (except in the case of designated plant or units) is dependent on I-A classification of prescribed minimum percentages of receipts from dairy farmers and units, the allocation provisions are fundamental in determination of pool status of plants and units which do not have designated pool status. Insofar as possible the allocation provisions have been drafted to minimize the possibility of any change in status of plants and units, either as pool or nonpool by virtue of the application of the amended order.

For obvious reasons it is desirable to know a plant's status, either as pool or nonpool, as promptly as possible. The present order provides that any plant which is not a pool plant but which has Class I-A route disposition in the marketing area may, at the election of the operator, assign receipts at such plant directly from dairy farmers or units to such disposition up to an amount sufficient to qualify such plant as a pool plant. This procedure appropriately should be continued as the initial step in the allocation procedure.

The existing order provides special treatment for packaged-milk received from a producer-handler and marketed as certified milk in recognition of a particular specialized operation in the market. No change was proposed in this procedure. To accommodate this operation it is provided that prior to the allocation of other receipts, packaged receipts from a producer-handler for marketing as certified milk products shall be deducted from Class I-A and Class I-B milk, respectively, in accordance with their proportionate disposition in such classes.

Under the amended order route sales of fluid milk products into other order markets will be classified and priced as Class I-A and the full Class I price will be returned to New York-New Jersey producers who both furnish the milk and carry the reserve supplies associated with

such sales. This procedure treats the milk, for classification and minimum (order) pricing purposes, in the same manner as it would be treated if sold by the handler on routes in the New York-New Jersey market. This treatment is universally prescribed in all other Federal order markets and is equally appropriate for this order.

The essential marketing and economic characteristics of packaged fluid milk products are the same when moved between regulated markets, irrespective of whether such products are distributed directly to retail and consumer outlets or whether in the marketing process they come to rest momentarily at a regulated plant in the receiving market for convenience in further distribution of the products. The treatment of packaged receipts from other order markets should be similar to the treatment of route disposition from other order markets. Accordingly, the allocation procedure provides that receipts of packaged fluid milk products, except cream under certain circumstances, from other order plants should be assigned to Class I-A disposition from the transferee plant.

Under the amended order packaged fluid milk products on hand at the end of the month will be classified as Class I-A. Since such milk has thus been classified and priced as Class I-A in the previous month the application of the order will be accommodated by assignment of opening inventory of packaged fluid milk products to Class I-A disposition in the current month. However, because the current order provides that a handler may choose the disposition to which he will assign his closing inventory it is possible that opening inventory in the first month of operation under the amended order may have been assigned as closing inventory to Class III in the preceding month. In such case the allocation procedure provides for assignment of opening inventory to Class II disposition in the first month of operation.

Certain milk by its very nature must be treated as surplus when received at a pool plant and therefore must be assigned a surplus value. One source is milk received, in either bulk or packaged form, from a producer-handler under this or any other Federal order. Another source is milk produced by the reconstitution to fluid form from manufactured dairy products, such as fluid skim milk made by the addition of water to nonfat dry milk. Still other sources are milk received from a pool handler who receives milk from dairy farmers in specified nearby locations which milk is not pooled under the order and milk received from pool handlers with own farm milk which is exempted from pooling.

Milk produced by producer-handlers under the New York-New Jersey order is exempted from the pooling and pricing provisions. This exemption is based on the principle that the producer-handler assumes the burden of disposing of his milk supplies in excess of his Class I

milk needs. Being exempt from certain provisions of the order makes it possible for the producer-handler to retain the full returns from his Class I sales of milk on routes even though such sales are in competition with regulated handlers.

Producer-handlers are primarily engaged in the distribution of Class I milk. Normally they do not maintain facilities for processing and manufacturing milk in excess of their Class I needs. Because of seasonality of milk production and for other reasons, producer-handlers may produce some milk in excess of their Class I needs. The best available outlets for this surplus milk usually are pool plants in the market. In view of a producer-handler's limited capacity for utilizing excess supplies of milk, it is often economically advantageous for him to dispose of such excesses at surplus prices to regulated handlers. Such milk, therefore, would be available to regulated handlers at surplus prices. Under these circumstances it would not be appropriate to allow the regulated handler credit from the producer-settlement fund for any such purchase. It is necessary, therefore, in the furtherance of orderly marketing that such receipts be allocated first to Class II. If any of such milk, notwithstanding, is necessarily assigned to Class I-A disposition, the regulated handler should be obligated to the producer-settlement fund on such milk at the difference between the Class I-A price and Class II price.

Surplus milk purchased from a producer-handler operating under an other order has the same potential for creating disorderly marketing as surplus from producer-handlers operating under this order. Therefore, no distinction in treatment for such milk should be provided.

A rate of payment at the difference between the Class I price and the surplus price on any receipt by a federally-regulated handler of milk from producer-handlers which is assigned to Class I was ratified by Congress at the time provisions of the Agricultural Adjustment Act of 1933, as amended in 1935, authorizing the issuance of milk orders, were re-enacted by the passage of the Agricultural Marketing Agreement Act of 1937. During the period between August 24, 1935, and June 3, 1937, the effective date of the latter act, six Federal milk orders were issued under such Agricultural Adjustment Act. Two of such milk orders (Greater Kansas City, Mo., and Fall River, Mass.) placed in effect during the period, contained provisions requiring handlers who use milk received from producer-handlers in other than the lowest-fluid classification to pay the difference between the class use price and the lowest Class (surplus) price for such milk as part of the handler's total obligation for milk. Such payment was distributed, together with the classified value of producer milk of the handler

through the market pool.¹ This procedure is now provided in Federal orders generally.

Notwithstanding the above conclusions the order presently provides that milk received from a producer-handler who produces milk in accordance with methods and standards of the American Association of Medical Milk Commissions for the production of certified milk and which is not received for marketing as certified milk shall be treated as milk received from a dairy farmer. Such milk received at the pool plant of another handler is treated as pool milk. This treatment was adopted to accommodate a specialized operation in the market and there was no proposal for a change in the procedure. Accordingly, this continues to be an exception to the treatment of milk from producer-handlers.

A surplus value likewise is properly assigned to reconstituted fluid milk products (for instance, the result of combining nonfat dry milk or condensed milk with water). The products used in such reconstitution process are made from milk which always carries a manufacturing or surplus value. Producer milk used to produce such products is priced as surplus under all Federal orders. Since the milk used to produce these products is originally priced as surplus milk, payment at the difference between the Class I-A price and the surplus price is necessary to insure competitive equity with producer milk when such products are used to produce fluid milk products. No recognition should be given to processing costs involved in the manufacture of the products derived from unregulated milk and used in reconstitution, since similar costs are involved in processing producer milk into such products.

Nonfat dry milk and condensed milk also may be added to fluid milk products to increase the nonfat solids content thus making so-called "fortified" fluid milk products. The incentive for handlers to use nonfat milk solids to fortify fluid milk products arises from the specific demands of consumers. The increased emphasis on low-fat diets and the high nutritional value of nonfat solids in relation to their weight have contributed to the increased demand for added nonfat solids in fluid milk products. Such products are distinguished from reconstituted products, however, in that the resulting volume of fluid product is not

¹ U.S.C. sec. 672, which contains the codified language of sec. 4 of the Agricultural Marketing Agreement Act of 1937, as amended, states in paragraph (a) "Nothing in this Act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to or any provision of, or any act of the Secretary of Agriculture in connection with any such agreement, license, or order which has been executed, issued, approved, or done under secs. 601-608, 608a, 608b, 608c, 608d-612, 613, 614-619, 620, 623, 624 of this title, but such marketing agreements, licenses, orders, regulations, provisions, and acts are expressly ratified, legalized, and confirmed."

increased appreciably since no water is added.

In the case of fortified products, the volume by which Class I-A sales are increased unquestionably relates to the nonfluid products used for fortification. Such products could be assigned first to this Class I volume and then to the surplus class of use. The same result can be obtained by limiting the charge on fortified fluid milk products disposed of as Class I-A to that which would be made for an equal volume of unfortified products. Nonfluid products will then be uniformly assigned first to the surplus class, with a payment into the producer-settlement fund at the difference between the Class I-A and surplus prices on any amount thereof assigned to Class I-A. Limitation of the Class I volume as described above avoids any payment with respect to nonfat solids used in fortification.

Milk which is received at a pool plant from a handler's plant at which milk is excepted as pool milk by virtue of being received from farms in Nassau and Suffolk Counties in New York (which farms are not approved for sale of milk in New York City) or from farms in New York City and milk received from a handler with own farm milk which is excepted from the pool milk definition, also should be assigned first to Class II milk. Since such milk is not equalized through the pool but is deducted pro rata from the receiving handler's classes of use in the same manner as pool milk, it would be inappropriate to permit such handler to enhance the classification value of such milk by transfer to other pool plants for Class I-A use and thereby displacing pool milk and reducing the value of the pool. The treatment provided such milk at the original plant of receipt is an accommodation in recognition of particular circumstances and there was no proposal for a change in this procedure. However, it would be inappropriate to permit transfers to other plants to be classified in a manner which would disadvantage regular producers.

The order should accommodate the movement of fluid milk products from an unregulated plant or unit to a pool plant under a Class II classification. Milk may be purchased by a pool plant operator from unregulated sources for use in manufacturing operations. When the purchase is for manufacturing, such milk should be allocated to Class II on request of the receiving handler. This procedure will accommodate unregulated plants and units which have surplus milk but do not have available manufacturing facilities since it will make available as an outlet the manufacturing facilities of pool plants without involving the unregulated plant or unit in the regulation. This assignment should follow the assignment of other receipts to which the assignment of a surplus value is essential when received at a pool plant. The assignment at this step, however, must be limited to the available Class II utilization remaining at the transferee plant.

Following the assignment of unregulated receipts for which the handler re-

quests Class II utilization, bulk opening inventories of fluid milk products should be assigned. Such assignment should first be to available Class II use and any remainder should be assigned to Class I-A. Under the revised classification scheme closing inventories of bulk fluid milk products will be classified as Class II. To minimize the incidence of reclassification and accompanying reclassification charges, such inventory should be assigned to Class II in the current month. However, if insufficient Class II utilization is available for such assignment the remainder should be assigned to Class I-A and the handler should be obligated for a payment to the pool at the difference between the Class I-A and Class II price so that his obligation under the order for such milk will reflect its Class I-A use value. As in the case of packaged inventories, it is desirable that this procedure be modified for the first month of operation under the amended order to permit the assignment of opening inventory to the similar classes of use to which assigned as closing inventory in the preceding month.

When milk is received at a pool plant from unregulated plants and/or units, the pooling status of which is not established, and a Class II classification is not requested by the handler such receipts should be assigned pro rata to Class I-B and II. If the available utilization in such classes is less than the volume of such receipts to be assigned, such assignment to sources should be made in the order of priority designated by the handler and any remainder of such receipts should be assigned to Class I-A utilization at the plant. The supply sources of any receipts so assigned to Class I-A will thus acquire pool or partial pool status, dependent on whether the Class I-A utilization so assigned would qualify such supply source for pooling.

There is always an incentive for milk associated with plants which have a relatively low Class I utilization to seek to be included under a marketwide pool in order to share in the marketwide blended price. The order provides means by which milk (either through plants or units) may establish association with the market and achieve pooling status. Any plant or unit shipping milk to the market which has not acquired pool status has obviously not undertaken to supply its share of milk for the Class I-A market.

Milk which does not have pool status and which is associated with manufacturing outlets clearly should not share in the market pool fund. To pool such milk would simply dilute returns to the producers whose milk constitutes the regular supply for the market. Appropriately, therefore, milk from unregulated sources should first be assigned to classes other than Class I-A to the extent available before any assignment is made to Class I-A. The option of the receiving handler to designate the priority of assignment to sources, in the event that there is insufficient utilization available for assignment of all otherwise unregulated milk to classes other than I-A, is presently provided by the order.

Notwithstanding the above conclusions, milk received from an otherwise unregulated plant in the 401 miles and over freight zone at a plant from which 50 percent or more of the gross receipts of skim milk and butterfat leaves the plant in the form of a fluid milk products in consumer packages or dispenser inserts and is classified as Class I-A should be assigned in a separate and subsequent step in the allocation procedure following the assignment of bulk other order milk. Under the present order such receipts are assigned pro rata to classes of utilization in the receiving regulated plant and are pooled; i.e., the milk is accounted for at the respective class prices and is credited at the blended price. This procedure was adopted by the Assistant Secretary in his decision of October 31, 1963 (28 F.R. 11955), official notice of which is taken. There is no basis on this record for changing this procedure.

Through complementary provisions of the New York-New Jersey and Connecticut orders transfers or diversions of fluid milk products from a Connecticut order plant to a New York-New Jersey order plant are classified and priced as Class II under the Connecticut order and assigned pro rata to classes of use other than Class I-B under the New York-New Jersey order. Any such milk thus assigned to Class I-A or Class II is subject to a payment to the Order 2 pool at the difference between the Connecticut Class II price and the applicable class price under the Order 2, adjusted for appropriate differentials including the direct delivery differential. This payment is known as the "Connecticut order differential."

As previously concluded, packaged fluid milk products except cream under specified circumstances moving from one Federal order market to another appropriately should be priced under the originating order and the proceeds therefrom should accrue to producers under that order. The allocation and transfer provisions of the amended order will insure this result.

The special treatment provided for Connecticut order milk was adapted in recognition of particular interorder problems and to insure the economic and orderly disposition of Connecticut pool milk in excess of that market's fluid requirements. With respect to bulk movements and movements of cream in packaged form the treatment presently provided should be continued in substantially the same manner under the amended order.

It is not apparent that any useful purpose is served by the pro rata assignment of such milk to classes of use. The procedure can be simplified by providing, following the allocation of unregulated milk, for the allocation of such milk to Class II to the extent of available utilization in such class. Receipts in excess of available Class II use should then be assigned to Class I-A and any milk so assigned should be subject to the "Connecticut order differential" in the same manner as in the past.

Following the assignment of Connecticut order milk the handler's receipts of packaged and bulk cream from other order plants, which has not been classified and priced as a fluid milk product should be assigned first to Class II and any remainder thereof to Class I.

Any such receipts assigned to Class I-A should be subject to an equalization payment of the difference between the Class II and the Class I-A price. While this procedure is a departure from the usual procedure for assigning receipts of other order milk it is necessary in recognition of the unique situation by which the New York-New Jersey market, a closed cream market, is virtually surrounded by the markets of Boston, Connecticut, and Philadelphia in which cream is Class II. Certain supply sources in those markets may well be approved sources of supply for cream for the New York-New Jersey market. Unless appropriate safeguards are taken it is likely that handlers would be encouraged to seek out such supply sources because of the pricing advantage which would result by virtue of a Class II classification and pricing.

In addition, it must be recognized that certain plants with substantial route disposition in the New York-New Jersey market, and hence plants which are approved by the appropriate health authorities in the market, have until recently been fully regulated under Order 2 but are now fully regulated under the adjacent Delaware Valley order. The incompatibility of classification of cream as between the two orders obviously could encourage otherwise uneconomic movements of cream between orders for the sole purpose of defeating the intent of the classification and pricing provisions of the order with respect to cream for fluid uses. To insure the integrity of the classification and pricing plan it is essential that cream receipts from other order plants where such product is classified and priced as other than a fluid milk product and which are assigned to Class I-A under this order shall be subject to an equalization payment of the difference between the Class II and Class I-A price both applicable at the location of the transferor plant.

While this procedure will eliminate any problem with respect to plant receipts of cream from adjacent order markets it is recognized that handlers in adjacent Federal order markets may have a pricing advantage on route sales in the New York-New Jersey market. This situation cannot be corrected on the basis of this record, however. If this should be a problem it can be handled most appropriately only by amendment of the other orders.

Receipts of bulk fluid milk products from other order plants for which a Class II classification is requested by both the transferor and transferee handler in filing reports of receipts and utilization for the month with their respective market administrators should next be assigned to Class II to the extent of available utilization remaining in such class. This procedure under agreement of parties

will accommodate the orderly disposition of reserve milk supplies from adjacent Federal order markets by making available as an outlet the manufacturing facilities of pool plants without adversely affecting the classification of producer milk.

Following the assignment of bulk other order receipts to Class II by agreement the handler's receipts of milk from dairy farmers and own production which are excepted from the pool milk definition and from market equalization should be assigned pro rata to remaining utilization in each class. This procedure is followed under the present order and there is no basis on this record for changing the procedure.

At this stage in the allocation procedure only receipts from regulated sources remain. To the extent that any other order receipts remain they should be assigned pro rata to remaining use in each class. Following this assignment receipts from other pool plants and pool units should be subtracted from the remaining utilization in each class in accordance with the classification assigned by the transferee handler. Such requested assignment to use classes may not however exceed the remaining utilization in such classes in the transferee plant. In addition, a handler who receives unregulated milk must be precluded from transferring such milk to a regulated plant at a utilization higher than would have resulted from a direct receipt of such milk at the second plant. Unless the order so provides, it would be possible to use a plant with a high Class I utilization as a conduit for receiving unregulated milk and avoid the allocation provisions of the order which apply to such milk received from unregulated sources.

If the remaining pounds of utilization in all classes exceed receipts from producers the excess should be subtracted from each class in series beginning with Class II. Any amount so subtracted is termed "overage" and the plant operator should be obligated to the pool at the use value of such overage without equalization. Such overage necessarily reflects undisclosed receipts and must be concluded to represent errors in weights and tests of milk from dairy farmers for which the handler must be held responsible.

5. Modification of the Class I price provisions. No further changes should be made in the Class I pricing provisions on the basis of this record. Following the hearing emergency action was taken to modify the computation of the utilization percentages in the pricing formula to offset the downward price adjustment reflected through a reduction in the Class I utilization percentages resulting from standardization of fluid milk.

Official notice is taken of the suspension order issued by the Deputy Assistant Secretary on August 25, 1967 (32 F.R. 12596) suspending the utilization percentage (supply-demand provisions) of the New York-New Jersey order and establishing a Class I price level of not less than \$6.11 through April 1968. Official notice is also taken of the hearing notice issued by the Acting Deputy Administra-

tor on October 20, 1967, calling a hearing to be convened on December 5, 1967, to consider proposals for revision of the Class I pricing formulas in the Massachusetts-Rhode Island, New York-New Jersey, and Connecticut marketing orders.

Action calling for a fixed Class I price level of \$6.39 through April 1969 has been taken on the basis of a hearing conducted at Memphis, Tenn., on February 23, 1968.

Proponents' concern was for appropriate adjustment of the utilization percentage provisions in the Class I formula to neutralize the effect on the Class I price level of the order changes herein adopted.

Since actions subsequent to the hearing have rendered the Class I price formula provisions inoperative through April 1969 and the revision of the entire formula is now being considered pursuant to the hearing convened on December 5, 1967, it is not necessary nor appropriate to consider further modification of the Class I price provisions on the basis of this record.

6. Butterfat differential. Under the existing order it was necessary to provide a different butterfat differential for each class of use for reasons previously set forth in the discussion of the classification provisions. With the adoption of skim milk and butterfat accounting and in recognition of the fact that handlers under the standardization law may now adjust the butterfat content of milk disposed of for fluid uses, it is appropriate to establish a butterfat differential for Class I which more realistically reflects true butterfat values. It was proposed and generally supported at the hearing that a single butterfat differential be applicable to both Class I and Class II milk and that such differential be that now provided for the surplus milk class (Class III).

Appropriately, producers should not be expected to receive a lesser value for their butterfat disposed of for fluid uses than they would otherwise receive for butterfat disposed of for manufacturing purposes. The Class III butterfat differential presently provided reflects the value of butterfat disposed of in 92-score bulk creamery butter in the New York City market and hence the value of butterfat for manufacturing uses. It is concluded therefore to be an appropriate differential for both Class I and Class II milk.

Since handlers in the future will be charged the same value for differential butterfat above or below the basic test at which milk is priced whether used in Class I or Class II, it is unnecessary to clear the differential butterfat through the equalization pool. In order that returns to each producer will reflect the value of his milk at the butterfat test at which such milk is received it is provided that each handler in making payments to each producer, shall adjust the uniform price by the application of the butterfat differential.

7. Miscellaneous and administrative provisions.

A. Pool plant definition. The pool plant definition has been extended to include a plant which receives no milk from dairy farmers or units and from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products is disposed of in consumer packages or dispenser inserts in the marketing area, by direct distribution or is moved either in packaged form or bulk to other plants in the marketing area.

Under the terms of the existing order the operator of a plant receiving no milk from dairy farmers or units generally has had no financial obligation to the pool. He is, however, a handler and is required to file his report of receipts and utilization by the 20th day after the end of each month. Any obligation with respect to milk handled at such a plant accrues to the operator of the plant(s), either pool or partial pool, supplying such milk except that, if such supply source is a partial pool plant in the 401 miles and over freight zone, the handler operating the transferee plant is held responsible for the debit or credit arising on milk so received and for payment of the administrative assessment thereon.

Under the revised accounting procedure and in recognition of permissive standardization, it is possible that a bottling plant receiving no milk from dairy farmers or units may use nonfluid products in reconstitution or fortification may have overages or may use some receipts from producer-handlers or Connecticut order plants on which there is a pool obligation. Since such a plant is subject to the same allocation procedure applicable to other pool plants and its pool obligation will be computed in the identical manner as other pool plants the drafting and application of the order will be simplified by providing it pool plant status. As the operator of a pool plant such handler will now be required to file his reports to the market administrator by the eighth day of the month in the same manner as other pool handlers rather than on the 20th day as presently provided.

Exception was taken to the Deputy Administrator's conclusion extending the pool plant definition in this manner. Exceptor argued that revision of the pooling provisions was not noticed in the hearing call and therefore was not an appropriate matter of consideration. He further argued that the operations of his clients would be adversely affected. He pointed out that a distributing plant receiving no milk from dairy farmers or units, which has the preponderance of its business in the New York-New Jersey market but which also has distribution in the Delaware Valley market, has nonpool status under each of the respective orders regulating these markets but in part functions as the means for pooling a supply plant under the Delaware Valley order. This he points out would no longer be possible if the plant is fully regulated under Order 2.

While the plant's status as a partially regulated plant under the Delaware Val-

ley order fully protects the integrity of that order it does not serve the same end with respect to Order 2 for reasons indicated above.

The plant's current status under each of the respective orders is the result of the incompatibility of the accounting procedures which have existed between these orders.

This plant which is preponderantly in the fluid milk business and has the greater proportion of its sales in Federal order markets must be subject to full regulation and appropriately should be regulated under that order for the market in which it has the greater sales.

The acquiring of pool plant status by the plant in question will not, as exceptor suggests, impede the status of supply plants under the Delaware Valley order except under circumstances when the greater qualifying shipments of such plants are to other order plants. Under such circumstances, it is clearly the intent of the Delaware Valley order that the plant(s) shall not hold pooling status under that order.

B. Announcement of Class I and Class II skim milk and butterfat values. One of the principle concerns of both producers and handlers at the hearing was with respect to an appropriate basis for ascertaining the actual cost to the handler of skim milk and butterfat, respectively, under the amended order. It was proposed that the market administrator be required to announce these values concurrently with his announcement of the minimum class prices and butterfat differential each month. In this connection it was proposed that the value of a hundredweight of butterfat in each class should be computed by adjusting the basic price for such class for 100 pounds of 3.5 percent milk by the addition of the result obtained by multiplying the butterfat differential by 965. It was also proposed that the value of a hundredweight of skim milk in each class be computed by subtracting from the basic price for such class for 100 pounds of 3.5 percent milk the result obtained by multiplying the butterfat differential by 35.

The market administrator is authorized by the order to prepare and disseminate for the benefit of producers, consumers and handlers such statistics and information concerning the operation of the order as do not reveal confidential information. Therefore, the market administrator may determine the butterfat and skim milk values in the manner desired and announce these values to the industry. In view of this authorization and since the use of these values is not necessary in meeting the requirements of the order, there is no necessity for the order to direct the market administrator to compute and announce these values. Therefore, this proposal is denied.

C. Computation of net pool obligation of handlers. The provision prescribing the computation of each handler's net pool obligation has been revised to conform with the steps in the allocation procedure through which the volume of milk on which a pool obligation is due is

ascertained. In addition, with the use of a single butterfat differential no adjustment for butterfat content in the various categories will be required except in the case of overages. The redrafting of the provision removes previous references to butterfat differential adjustments except in the case of the computation of the value of overages.

As has been previously stated, the present order provides that with respect to milk received from a partial pool plant in the 401 miles or over freight zone, the debits or credits arising on milk so received and the required administrative assessment on such milk are the responsibility of the handler receiving such milk. To simplify the application and administration of the amended order this obligation and responsibility has been extended to each handler operating a pool plant with respect to milk received from any partial pool plant or partial pool unit. There is no reason to expect that this modification will in any way change a handler's costs of such milk since in the past any such handler presumably paid the partial pool handler the classified use value of milk plus administrative assessment and any agreed upon handling charges. The partial pool handler in turn received debits or credits from the pool and paid the administrative assessment.

Under the revised procedure the pool handler will presumably pay the partial pool handler the blended price plus any agreed upon handling charges and will himself receive debits or credits from the pool and pay the administrative assessment.

Some nonsubstantive reorganization of the order has been made to achieve a format similar to that of Federal orders generally. Other changes not specifically discussed are conforming changes necessary to implement the new accounting procedure, to correct section references, or to remove obsolete order language.

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.

Certain parties in their briefs renewed their requests made on the hearing record that the testimony of Paul E. Hand be stricken from the record. The hearing officer, after argument, denied the motions to strike. The hearing officer's ruling in this matter is affirmed and the testimony, to the extent that it is relevant to the issues under consideration, has been considered in reaching the conclusions hereinbefore set forth.

GENERAL FINDINGS

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

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

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

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

RULINGS ON EXCEPTIONS

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the New York-New Jersey Marketing Area" and "Order Amending the Order Regulating the Handling of Milk in the New York-New Jersey Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. Also to facilitate the necessary coordination of the foregoing conclusions and the conclusions relative to concurrent amendatory proceedings, the attached order includes the appropriate amendatory provisions to effectuate the conclusions reached with respect to Part 1002 in the decision issued concurrently herewith on proposed amendments to Parts 1001, 1002,

1003, 1004, 1015, and 1016 on the basis of a hearing conducted at New York City, on June 19-23, and July 31-August 4, 1967, pursuant to notice thereof issued on June 2, 1967 (32 F.R. 8175), and supplemental notices issued June 15, 1967 (32 F.R. 8720), and June 22, 1967 (32 F.R. 9025).

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

DETERMINATION OF REPRESENTATIVE PERIOD

The month of January 1968 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order, as amended and as hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey marketing area, is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on May 9, 1968.

GEORGE L. MEHREN,
Assistant Secretary.

Order Amending the Order Regulating the Handling of Milk in the New York-New Jersey Marketing Area

DEFINITIONS

Sec.	Act.
1002.1	Secretary.
1002.2	Marketing area.
1002.3	Person.
1002.4	Dairy farmer.
1002.5	Producer.
1002.6	Handler.
1002.7	Plant.
1002.8	Unit.
1002.9	Farm.
1002.10	Own farm milk.
1002.11	Producer-handler.
1002.12	An other order.
1002.13	Pool milk.
1002.14	Fluid milk product.
1002.15	Other source milk.

MARKET ADMINISTRATOR

1002.20	Designation.
1002.21	Powers.
1002.22	Duties.

POOL PLANTS AND BULK TANK UNITS

1002.24	Regular pool plants.
1002.25	Bulk tank units.
1002.26	Operating requirements.
1002.27	Suspension and cancellation of designation.
1002.28	Temporary pool plants.
1002.29	Partial pool plants.

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

REPORTS, RECORDS AND FACILITIES

Sec.	
1002.30	Reports of receipts and utilization.
1002.31	Producer payroll reports.
1002.32	Other reports.
1002.33	Records and facilities.
1002.34	Retention of records.

CLASSIFICATION

1002.40	Skim milk and butterfat to be classified.
1002.41	Classes of utilization.
1002.42	Shrinkage.
1002.43	Responsibility of handlers and the reclassification of milk.
1002.44	Transfers.
1002.45	Allocation of skim milk and butterfat classified.
1002.46	Rules and regulations.

MINIMUM PRICES

1002.50	Class prices.
1002.51	Transportation differentials.
1002.52	Connecticut order differential.
1002.53	Producer-handler price differential.
1002.54	Use of equivalent price or index.

DETERMINATION OF UNIFORM PRICE

1002.70	Net pool obligation of handlers.
1002.71	Computation of uniform price.

PAYMENT BY HANDLERS DIRECTLY TO PRODUCERS

1002.80	Time and rate of payment.
1002.81	Butterfat differential.
1002.82	Location differentials.

PRODUCER SETTLEMENT FUND AND ITS OPERATION

1002.83	Producer settlement fund.
1002.84	Handler's accounts.
1002.85	Payment to the producer settlement fund.
1002.86	Payments out of the producer settlement fund.
1002.87	Handler's pool debit or credit.
1002.88	Adjustments of errors in payments.
1002.89	Cooperative payments for market-wide services.

EXPENSE OF ADMINISTRATION

1002.90	Payment by handlers.
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MISCELLANEOUS

1002.91	Termination of obligations.
1002.92	Continuing obligation of handlers.
1002.93	Continuing power and duty of market administrator.
1002.94	Liquidation.
1002.95	Agents.

AUTHORITY: The provisions of this Part 1002 issued under secs. 1-19, 48 Stat. 31 as amended, 7 U.S.C. 601-674.

§ 1002.0 Findings and determinations.

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

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon

certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New York-New Jersey marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(3) The said order as hereby amended, regulated the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the New York-New Jersey marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, on December 29, 1967, and published in the FEDERAL REGISTER on January 5, 1968 (33 F.R. 188; F.R. Doc. 68-166), shall be and are the terms and provisions of this order, and are set forth in full herein subject to the following revisions:

1. Section 1002.3 is revised as to format.

2. In §§ 1002.8, 1002.12, 1002.14, and 1002.15 various typographical and clarifying changes are made.

3. In § 1002.22(m) subdivisions (i) and (v) of subparagraph (2) are revised and two new subdivisions (vi) and (vii) are added; and subparagraph (3) is revised.

4. In §§ 1002.25(b) (1), 1002.26, 1002.27 various clerical omissions are added and typographical changes are made.

5. In the introductory text of § 1002.28 the cross references are corrected and the first proviso is deleted as it is superfluous.

6. In § 1002.41 a cross reference is corrected in paragraph (b) (1) and paragraph (c) (3) is revised for clarification purposes.

7. In § 1002.43(a) a clerical omission is inserted.

8. In § 1002.44 the introductory text is revised; a cross reference is corrected in paragraph (c); a proviso is added to the introductory text of paragraph (e);

and clarifying change is made in paragraph (e) (3) (iv).
Otsego.

9. In § 1002.45(a) subparagraphs (2), (9), (10), and (12) are revised.

10. In § 1002.46 a clerical omission is inserted in paragraph (c) and a typographical error in paragraph (d) is corrected.

11. In § 1002.50 paragraph (a) is revised to comport with an interim amendment thereto and paragraph (d) is revised to effectuate a proposed amendatory order issued concurrently herewith.

12. In the introductory text of § 1002.51 a cross reference is corrected.

13. Section 1002.52 is revised.

14. In § 1002.70(d) a cross reference in the introductory text is changed; a clarifying change is made in subparagraph (4); subparagraph (5) is revised; and a new subparagraph (6) is added.

15. In §§ 1002.81 and 1002.82 superfluous provisions are deleted.

16. In § 1002.89(i) a clerical omission is inserted.

DEFINITIONS

§ 1002.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

§ 1002.2 Secretary.

"Secretary" means the Secretary of Agriculture or any officer or employee of the United States who is, or who may hereafter be, authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 1002.3 Marketing area.

"New York-New Jersey milk marketing area" (hereinafter called the "marketing area") means all of the territory within the boundaries of the city of New York, and the counties and parts of counties set forth below together with all piers, docks, and wharves connected therewith, and all craft moored thereat, and including territory within such boundaries which is occupied by Government (municipal, State, Federal, or international) reservations, installations, institutions, or other establishments.

NEW YORK COUNTIES

Albany.
Broome.
Cayuga (except the townships of Sterling, Victory, Conquest, and Montezuma).
Chemung.
Chenango.
Columbia.
Cortland.
Delaware.
Dutchess.
Essex (Schroon, Ticonderoga, Crown Point, and Moriah townships only).
Fulton (except the township of Stratford).
Greene.
Herkimer (except the townships of Webb, Ohio, and Salisbury).
Madison.
Montgomery.
Nassau.
Oneida (except the townships of Ava, Boonville, Forestport, and Florence).
Onondaga.
Orange.

Oswego (except the townships of Redfield and Boylston).

Putnam.

Rensselaer.

Rockland.

Saratoga (except the townships of Day, Edinburg, and Providence).

Schenectady.

Schoharie.

Schuyler.

Steuben (Addison, Corning, and Erwin townships only).

Suffolk (except Fisher's Island).

Sullivan.

Tioga.

Tompkins.

Ulster.

Warren (except the townships of Johnsburg, Thurman, and Stony Creek).

Washington.

Westchester.

Yates (except the townships of Italy, Middlesex, and Potter).

NEW JERSEY COUNTIES

Bergen.

Essex.

Hudson.

Hunterdon.

Middlesex.

Monmouth.

Morris.

Ocean (except the boroughs of Barnegat Light, Beach Haven, Harvey Cedars, Ship Bottom, Surf City, Tuckerton, and the townships of Eagleswood, Lacey, Little Egg Harbor, Long Beach, Ocean, Stafford, and Union).

Passaic.

Somerset.

Sussex.

Union.

Warren.

§ 1002.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 1002.5 Dairy farmer.

"Dairy farmer" means any person who produces milk.

§ 1002.6 Producer.

"Producer" means any dairy farmer who delivers pool milk as specified in § 1002.14 to a pool plant, a pool unit, a plant specified in § 1002.28(f) (2) which is a partial pool plant, or a partial pool unit whose pool designation was canceled for failure to meet the requirements specified in § 1002.26(a), except that it shall not include any such dairy farmer delivering to such partial pool plant or partial pool unit unless at least 50 percent of his milk delivered to such plant or unit is pool milk pursuant to § 1002.14. Each dairy farmer delivering milk to a partial pool plant or a partial pool unit shall be considered to have delivered pool milk for his proportionate share of total milk delivered by dairy farmers to such plant or unit.

§ 1002.7 Handler.

"Handler" means:

(a) Any person who engages in the handling of skim milk or butterfat, which was received at a pool plant, a partial pool plant, a pool unit or a partial pool unit or at a plant approved by any health authority as a source of skim milk or butterfat for disposition as fluid milk products in the marketing area;

(b) Any person who engages in the handling of fluid milk products, all or a portion of which is shipped to, or received in, the marketing area; or

(c) Any cooperative association with respect to milk which it causes to be delivered from producers to any other handler for the account of such association and for which such association receives payment.

§ 1002.8 Plant.

(a) "Plant" means the land, buildings, surroundings, facilities, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, handling, or processing of milk or milk products as determined by the market administrator.

(b) "Pool plant" means any plant which is designated as a pool plant pursuant to § 1002.24 to § 1002.28 and any plant, except an other order plant, which receives no milk from dairy farmers or units and from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products is disposed of in consumer packages or dispenser inserts in the marketing area by direct distribution or is moved either in packaged form or bulk to other plants in the marketing area.

(c) "Partial pool plant" means a plant which is so designated pursuant to § 1002.29.

(d) "Other order plant" means a plant which is fully subject to the pricing and payment provisions of an other order.

§ 1002.9 Unit.

(a) "Pool unit" means a bulk tank unit established pursuant to § 1002.25 and which meets the requirements of a pool unit pursuant to such section.

(b) "Partial pool unit" means a bulk tank unit so designated pursuant to § 1002.25(k).

§ 1002.10 Farm.

"Farm" means the production facilities and resources supplying milk to a milk house of a dairy farmer. The location of the farm shall be deemed to be the same as the location of the milk house, and in the event of a change in the location of the dairy farmer's milk house, any question as to whether milk received from the new milk house is from the same or a different farm shall be determined by the market administrator.

§ 1002.11 Own farm milk.

(a) "Own farm milk" means milk received at a plant from a farm operated by the person who is the operator of such plant.

(b) The market administrator shall publicly announce the name of any handler operating a pool plant receiving own farm milk and the location of the plant operated by such handler. This public announcement shall not include the name of:

(1) Any person meeting the definition of producer-handler as set forth in § 1002.12;

(2) Any person receiving no milk from other dairy farmers and selling no more than 100 quarts per day of Class I-A milk to persons in the marketing area other than to other plants; or

(3) A charitable, religious, educational, or governmental institution which is not engaged in the practice of receiving bulk milk from other sources for processing or packaging and is not engaged in the practice of selling packaged milk to persons not associated with such institution.

§ 1002.12 Producer-handler.

"Producer-handler" means a handler who, following the filing of an application pursuant to paragraph (a) of this section, has been so designated by the market administrator upon determination that the requirements of paragraph (b) of this section have been met. Such designation shall be effective on the first of the month after receipt by the market administrator of an application containing complete information on the basis of which the market administrator determines that the requirements of paragraph (b) are being met. The effective date of designation shall be governed by the date of filing new applications in instances where applications previously filed have been denied. All designations shall remain in effect until cancelled pursuant to paragraph (c) of this section.

(a) Application. Any handler claiming to meet the requirements of paragraph (b) of this section may file with the market administrator, on forms prescribed by the market administrator, an application for designation as a producer-handler. The application shall contain the following information:

(1) A listing and description of all resources and facilities used for the production of milk which are owned or directly or indirectly operated or controlled by the applicant.

(2) A listing and description of all resources and facilities used for the processing or distribution of milk or milk products which are owned, or directly or indirectly operated or controlled by the applicant.

(3) A description of any other resources and facilities used in the production, handling, or processing of milk or milk products in which the applicant in any way has an interest, including any contractual arrangement, and the names of any other persons having or exercising any degree of ownership, management, or control in, or with whom there exists any contractual arrangement with respect to, the applicant's operation either in his capacity as a handler or in his capacity as a dairy farmer.

(4) A listing and description of the resources and facilities used in the production, processing, and distribution of milk or milk products which the applicant desires to be determined as his milk production, processing, and distribution unit in connection with his designation as a producer-handler: *Provided*, That all milk production resources and facilities owned, operated, or controlled by the applicant either directly or indirectly shall be considered as constituting

a part of the applicant's milk production unit in the absence of proof satisfactory to the market administrator that some portion of such facilities or resources do not constitute an actual or potential source of milk supply for the applicant's operation as a producer-handler.

(5) Such other information as may be required by the market administrator.

(b) Requirements. (1) The handler has and exercises (in his capacity as a handler) complete and exclusive control over the operation and management of a plant at which he handles milk received from production facilities and resources (milking herd, buildings housing such herd, and the land on which such buildings are located) the operation and management of which also are under the complete and exclusive control of the handler (in his capacity as a dairy farmer), all of which facilities and resources for the production, processing, and distribution of milk and milk products constitute an integrated operation over which the handler (in his capacity as a producer-handler) has and exercises complete and exclusive control.

(2) The handler, in his capacity as a handler, handles no fluid milk products other than those derived from the milk production facilities and resources designated as constituting the applicant's operation as a producer-handler.

(3) The handler is not, either directly or indirectly, associated with control or management of the operation of another plant or another handler, nor is another handler so associated with his operation.

(4) The handler sells more than an average of 100 quarts per day of Class I-A milk to persons in the marketing area other than to other plants.

(5) In case the plant of the applicant was operated by a handler whose designation as a producer-handler previously had been cancelled pursuant to paragraph (c) of this section, the quantity of fluid milk products handled during the 12 months preceding the application which was derived from sources other than the designated milk production facilities and resources constituting the applicant's operation as a producer-handler is less than the volume set forth for cancellation pursuant to subparagraphs (3) or (4) of paragraph (c) of this section.

(c) Cancellation. The designation as a producer-handler shall be cancelled under conditions set forth in subparagraphs (1) and (2) of this paragraph or, except as specified in subparagraphs (3) and (4) of this paragraph, upon determination by the market administrator that any of the requirements of paragraph (b) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met.

(1) Milk from the designated production facilities and resources of the producer-handler is delivered in the name of another person as pool milk to another handler or except in the months of June through November with prior notice to the market administrator, a dairy herd,

cattle barn, or milking parlor is transferred to another person who uses such facilities or resources for producing milk which is delivered as pool milk to another handler. This provision, however, shall not be deemed to preclude the occasional sale of individual cows from the herd.

(2) A dairy herd, cattle barn, or milking parlor, previously used for the production of milk delivered as pool milk to another handler, is added to the designated milk production facilities and resources of the producer-handler, except in the months of December through May, with prior notice to the market administrator, or if such facilities and resources were a part of the designated production facilities and resources during any of the preceding 12 months. This provision, however, shall not be deemed to preclude the occasional purchase of individual cows for the herd.

(3) If the producer-handler handles an average of more than 150 product pounds per day of fluid milk products which are derived from sources other than the designated milk production facilities and resources, the cancellation of designation shall be effective the first of the month in which he handled such fluid milk products.

(4) If the producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources in a volume less than specified in subparagraph (3) of this paragraph, the designation shall be cancelled effective on the first of the month following the third month in any six-month period in which the producer-handler handled such fluid milk products: *Provided*, That the receipt of up to an average of ten pounds per day of packaged fluid milk products in the form of fluid skim milk or cream, or of any volume of other packaged fluid milk products (except milk) from pool plants, shall not be counted for purposes of this subparagraph.

(d) *Public announcement.* The market administrator shall publicly announce the name, plant, and farm location of persons designated as producer-handlers, and those whose designations have been canceled. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from such producer-handler on and after the first of the month following the date of such announcement.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler (and upon the applicant for such designation) to establish through records required pursuant to § 1002.33 that the requirements set forth in paragraph (b) of this section have been and are continuing to be met and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1002.13 Other order.

"Other order" means an order issued by the Secretary pursuant to the Act, which order regulates the handling of

milk in a marketing area other than that defined in this part.

§ 1002.14 Pool milk.

"Pool milk" means all skim milk and butterfat contained in milk except as set forth in paragraphs (a) through (k) of this section which is pumped at the farm into a tank mounted on a truck or trailer for a handler who has included such milk in a pool unit, or a partial pool unit or which is delivered direct from a farm to a pool plant or a partial pool plant but is not put into a tank truck prior to such delivery. This definition shall include any milk so delivered by a person defined in § 1002.11(b)(2), by an institution defined in § 1002.11(b)(3), or by a producer-handler designated pursuant to § 1002.12 which milk is produced in accordance with methods and standards of the American Association of Medical Milk Commissions for the production of certified milk and which is delivered in bulk to another handler but for marketing as other than certified milk.

(a) Milk first received at a pool plant which otherwise would be considered producer milk under an other order if all of such milk is assigned to Class II pursuant to § 1002.45(a)(10) and the corresponding step of § 1002.45(b).

(b) Milk received at a pool plant as diverted producer milk under Part 1015 of this chapter.

(c) Milk delivered by a pool unit direct to a plant other than a pool plant or a partial pool plant if such milk is pooled as producer milk under an other order.

(d) Milk which is pumped into a tank truck at the farm for delivery to a handler during any of the months of December through June if any milk from such farm was delivered to such handler as producer milk under an other order during any of the preceding months of July through November unless such farm becomes part of a partial pool unit.

(e) Milk delivered to a partial pool plant set forth in § 1002.29(a) and milk of a partial pool unit pursuant to § 1002.25(k)(1) in excess of the quantity of such milk classified as Class I-A and Class I-B.

(f) Milk delivered to a partial pool plant set forth in § 1002.29(b) and milk of a partial pool unit pursuant to § 1002.25(k)(2) in excess of the quantity of such milk classified as Class I-A in the marketing area or at a pool plant, except that if milk is shipped from a partial pool plant in the 401 miles and over freight zone to a plant from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products is disposed of in consumer packages and dispenser inserts in the marketing area either by direct distribution or to other plants, all of the milk so shipped shall be considered to be pool milk except as set forth in paragraph (g) of this section.

(g) Milk delivered to a partial pool plant or a partial pool unit if in either case there is a monetary obligation on such milk under an other order.

(h) Milk received from farms in Nassau and Suffolk Counties in New York, which farms are not approved for sale of

milk in New York City, and milk received from farms in New York City.

(i) Own farm milk of a handler listed pursuant to § 1002.11(b) not in excess of an average of 800 pounds per day if the handler is not a producer-handler designated pursuant to § 1002.12, and if the volume of skim milk and butterfat in milk handled, other than that derived from own farm milk, does not exceed an average of 1,600 pounds per day.

(j) Own farm milk of an institution as defined pursuant to § 1002.11(b)(3) if such milk is not delivered to a pool plant, a partial pool plant, a pool unit or a partial pool unit.

(k) All skim milk and butterfat handled by:

(1) A producer-handler designated pursuant to § 1002.12 which is derived from such producer-handler's production resources and facilities except as provided in the preamble of this section; or

(2) A producer-handler pursuant to an other order.

§ 1002.15 Fluid milk product.

"Fluid milk product" means all skim milk and butterfat in the form of milk, fluid skim milk, cultured or flavored milk drinks (except eggnog, and yogurt), concentrated fluid milk disposed of in consumer packages, cream (except storage, plastic or sour), half and half (except sour) and any other mixture of cream, milk or skim milk containing less than 18 percent butterfat (other than frozen desserts, frozen dessert mixes, whipped topping mixtures, evaporated milk, plain or sweetened condensed milk or skim milk and sterilized milk or milk products in hermetically sealed containers): *Provided*, That when any fluid milk product is fortified with nonfat milk solids the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1002.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts in the form of fluid milk products from any source other than receipts of pool milk from dairy farmers, receipts from other pool plants and pool units, and receipts of pool milk from partial pool plants and partial pool units;

(b) Receipts in a form other than as a fluid milk product (including those produced at the plant during a prior month) which are reprocessed, converted or combined with another product during the month; and

(c) Receipts in a form other than a fluid milk product for which the handler fails to establish a disposition.

MARKET ADMINISTRATOR

§ 1002.20 Designation.

The agency for the administration of this part shall be a market administrator who shall be a person selected and subject to removal by the Secretary and

who shall be entitled to such reasonable compensation as shall be determined by the Secretary.

§ 1002.21 Powers.

The market administrator shall have the following powers with respect to this part:

- (a) To administer its terms and provisions;
- (b) To receive, investigate, and report to the Secretary complaints of violations;
- (c) To make rules and regulations to effectuate its terms and provisions; and
- (d) To recommend amendments to the Secretary.

§ 1002.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond, effective as of the day on which he enters upon his duties and conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds received pursuant to § 1002.90:

(1) The cost of his bond and the bonds of his employees;

(2) His own compensation, and

(3) All other expenses necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly disclose, after reasonable notice, the name of any person who has not made reports pursuant to §§ 1002.30, 1002.31, and 1002.32 or made payments required pursuant to §§ 1002.80, 1002.81, 1002.82, 1002.85, 1002.88, and 1002.90;

(g) Submit his books and records to examination by the Secretary and furnish such information and such verified reports as the Secretary may request;

(h) Verify all reports and payments of each handler by audit, if necessary, of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends;

(i) Maintain a main office and such branch offices as may be necessary;

(j) Promptly notify a handler, upon receipt of the handler's written request therefor, of his determination; as to whether one or more plants exist at a specified location, as to whether any specified item constitutes a part of the

handler's plant, or as to which plant a specified item is a part in the event that the particular premises in question constitutes more than one plant: *Provided*, That if the request of the handler is for revision or affirmation of a previous determination, there is set forth in the request a statement of what the handler believes to be the changed conditions which made a new determination necessary. If a handler has been notified in writing of a determination with respect to an establishment operated by him, any revision of such determination shall not be effective prior to the date on which such handler is notified of the revised determination;

(k) Prepare and disseminate for the benefit of producers, consumers, and handlers such statistics and information concerning the operation of this part as do not reveal confidential information;

(l) Place the sums deducted under § 1002.71(c) and retained pursuant to § 1002.83 in an interest-bearing account or accounts in a bank or banks duly approved as a Federal depository for such sums, or invest them in short-term U.S. Government securities.

(m) On or before the date specified, or the next succeeding work day in any month in which such date is a Sunday or holiday, publicly announce the following:

(1) The 25th day of each month:

(i) The monthly wholesale price index for all commodities in the preceding month as reported by the Bureau of Labor Statistics, U.S. Department of Labor, and the resulting index determined pursuant to § 1002.50(a) (1) multiplied by 100;

(ii) The utilization adjustment percentage computed pursuant to § 1002.50 (a) for the following month;

(iii) The preliminary Class I-A price computed pursuant to § 1002.50(a) for the following month;

(iv) The index of the cost of production computed by the New York State College of Agriculture at Cornell University (1910-14 base) converted to a 1955 base;

(v) The index computed by dividing the Class I-A formula price for the following month by \$5.20;

(vi) The utilization percentage for the month 1 year earlier than the succeeding month;

(vii) Other statistics relating to economic conditions affecting the market supply and demand for milk.

(2) The fifth day of each month:

(i) The minimum Class prices for the preceding month applicable both at the 201-210-mile zone and at the 1-10-mile zone pursuant to §§ 1002.50 and 1002.51.

(ii) The butterfat differential pursuant to § 1002.81;

(iii) The simple average of the daily wholesale selling price per pound (using the midpoint of any price range as one price) reported by the U.S. Department of Agriculture for Grade A or 92-score bulk creamery butter in New York City for the period between the 16th day of the second preceding month and the 15th day, inclusive of the preceding month;

(iv) The average of prices paid in the preceding month by midwestern condenseries as reported by the U.S. Department of Agriculture;

(v) The average price per hundred-weight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the U.S. Department of Agriculture for the preceding month.

(vi) 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 U.S. Department of Agriculture for the preceding month.

(vii) The weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published by the U.S. Department of Agriculture for the period from the 26th day of the second preceding month through the 25th day of the preceding month.

(3) The 15th day of each month, the uniform price for the preceding month pursuant to § 1002.71 applicable at the 201-210-mile zone and at the 1-10-mile zone pursuant to § 1002.82.

POOL PLANTS AND BULK TANK UNITS

§ 1002.24 Regular pool plants.

A plant may be designated a regular pool plant pursuant to either paragraph (a) or paragraph (b) of this section. Designation shall be applicable to the plant as such and subject to cancellation only pursuant to § 1002.27, regardless of change in the person owning or operating the plant. The market administrator shall be notified by the handlers involved of any transfer from one person to another of ownership or operation of a pool plant.

(a) Any plant shall be designated a pool plant upon determination by the Secretary that the provisions of subparagraphs (1) through (4) of this paragraph have been met. Not later than the end of the month following the month in which an application is received by the Secretary pursuant to subparagraph (1) of this section, the Secretary shall either determine that the provisions of subparagraphs (1) through (4) of this paragraph either have been met or have not been met, or notify the applicant that additional information is needed prior to making a determination. Such designation shall be effective the first of the month following the date of designation and shall continue until such designation is canceled pursuant to § 1002.27: *Provided*, That notwithstanding the provisions of subparagraphs (1) through (4) of this paragraph, any plant which for the month immediately preceding the effective date of this section, had a designation pursuant to § 1002.24 as then in effect, is hereby designated a regular pool plant from the effective date of this section until such designation is canceled pursuant to § 1002.27.

(1) An application by the operator of the plant for such determination has been addressed to the Secretary and filed at the office of the market administrator:

Provided, That if 50 percent or more of the dairy farmers delivering milk at such plant deliver such milk for the account of a cooperative association which does not operate the plant but for which milk such association receives payment, an application must be filed by such cooperative association as well as the person operating the plant.

(2) The plant is located in New York, New Jersey, or Pennsylvania.

(3) The plant was a pool plant pursuant to paragraphs (a) or (b) of § 1002.28 for each of the 12 months immediately preceding the month during which an application is filed.

(4) The operating requirements of § 1002.26 are being met.

(b) A plant may be designated at any time as a regular pool plant upon application made by the person operating the plant to the Secretary showing that the plant is a replacement for one or more pool plants, designated pursuant to this section, which are operated by him and that substantially all of the dairy farmers delivering milk at the plant previously delivered milk to the pool plant or plants replaced.

§ 1002.25 Bulk tank units.

Any handler receiving milk from farms in a tank truck shall establish such farms in one or more bulk tank units (hereinafter called "units") each consisting of one or more farms, in accordance with provisions of this section. The milk of any farm included in a unit shall be considered for pricing purposes as having been received by the handler in the unit at the nearest point of the township (as determined pursuant to § 1002.51(b)) in which such farm is located. Any handler who receives milk at a pool plant or a plant distributing Class I-A milk in the marketing area which is delivered from a farm to such plant in a tank truck shall be deemed to have received such milk from a unit, pool, partial pool, or nonpool, and any handler who receives bulk milk from a farm in a tank truck containing pool milk shall be deemed to have received such milk from a farm of a unit either pool, partial pool, or nonpool.

(a) Handlers who may establish, maintain, and be responsible for pool units are as follows:

(1) A handler who operates a pool plant or a handler who operates a plant from which Class I-A milk is distributed in the marketing area other than to another plant: *Provided*, That a handler who is affiliated with or is a subsidiary of a handler operating a pool plant may also operate pool units if both handlers notify the market administrator in writing of such relationship: *Provided further*, That such handler who operates a distributing plant but not a pool plant, to be eligible to maintain a pool unit for any month, must have combined receipts of skim milk and butterfat from such unit for such month classified as Class I-A and I-B in a percentage at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month of the preceding year.

(2) A cooperative handler who does not operate a plant but who receives milk from farms in a tank truck and delivers such milk to plants of other handlers if such cooperative for 12 months has been qualified as a basis for payments pursuant to § 1002.89 or if such cooperative has operated a pool unit for 12 consecutive months: *Provided*, That such cooperative must meet the definition of a cooperative set forth in § 1002.89(a)(1).

(3) Any other cooperative handler who does not operate a plant if such cooperative meets the definition of a cooperative set forth in § 1002.89(a)(1) subject to the conditions of this section.

(4) For the months specified in subdivision (i) or (ii) of this subparagraph, any other handler operating a unit in any of the months of April, May, or June which unit had for such month any skim milk or butterfat classified as Class I-A milk in the marketing area (on some basis other than failure to account for such milk) and had a total Class I-A and Class I-B classification in a percentage at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month in the preceding year.

(i) Such month.

(ii) Each of the months through March following such month except for any month when the Class I-B or combined Class I-A and Class I-B of such unit is less than 60 percent.

(b) The handler may establish the units in any manner chosen by him, subject to the following limitations:

(1) Each unit shall have a headquarters where the basic record of receipts and butterfat tests of milk from each farm are maintained and where there is maintained the basic record of each receipt and each delivery of milk by each tank truck receiving milk from farms of the unit and related details with respect to the movement of such milk.

(2) Each unit shall be given a name indicating the general geographic area in which farms comprising such unit are located.

(3) The handler shall declare whether each unit is to be operated as a pool unit. Farms from which the milk is to be pooled shall be established in a separate unit from those which are not to be pooled.

(4) Farms in the area specified in paragraph (e) of this section shall be in units separate from farms in the area specified in paragraph (f) of this section.

(c) Except as set forth in subparagraphs (1) through (5) of this paragraph, a handler may declare that a unit is to be operated as a pool unit and at any time may add a farm to a pool unit: *Provided*, That the milk of such unit or farm is delivered to a pool plant or a plant from which Class I-A milk is distributed in the marketing area on one day of the first month in which it is to be pooled and is under full approval for fluid use by the health authority or authorities approving such plant: *Provided further*, That a handler pursuant to paragraph (a) (4) of this section may not add farms

to a pool unit during the months of July through March unless his Class I-A skim milk or butterfat utilization exceeds the total receipts of skim milk or butterfat, respectively, in milk from the pool unit, and in the latter case he may add only the smallest number of farms necessary to provide sufficient milk to cover such Class I-A utilization.

(1) If the unit is a declared nonpool unit or if the farm is a part of a declared nonpool unit of such handler, the unit or farm may be changed to a pool status only beginning the first day of a month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month except as specified in subparagraph (5) of this paragraph.

(2) In the period of December through June, no new pool unit may be established, no nonpool or partial pool unit may be declared to be a pool unit, and no farm may be added to a pool unit if the handler caused, as specified in paragraph (d) of this section, any pool unit or any farm of a pool unit to become nonpool in the period of July through November immediately preceding: *Provided*, That this limitation shall not prevent the handler from including in a pool unit a farm which for the first time has converted from can delivery to bulk tank delivery and from which the handler received as pool milk all milk delivered by such farm in cans for a period of 30 days immediately preceding: *Provided further*, That, except in the case set forth in paragraph (d) (3) of this section, this subparagraph shall not be applicable if the farm which is caused to become nonpool thereby becomes a producer farm under another order with a provision for marketwide equalization.

(3) No farm which was caused to become nonpool may be made a part of a pool unit by a handler set forth in subdivisions (i) through (iv) of this subparagraph until after the passage of a complete April-May-June period following the time such farm was caused to become nonpool:

(i) The handler who caused the farm to become nonpool.

(ii) The handler or other person who received the milk as nonpool milk.

(iii) A handler who is substantially under the same management control, or ownership as the handler or other person set forth in subdivisions (i) or (ii) of this subparagraph.

(iv) A handler who receives the milk through arrangement with the handler or other person set forth in subdivisions (i), (ii), or (iii) of this subparagraph.

(4) A handler may transfer a farm from one pool unit to another of his pool units on the first day of any month upon notice to the market administrator by not later than the 10th day of such month.

(5) A farm shall automatically be added to a pool unit or a nonpool unit shall automatically become a pool unit effective the first day of any month in which any of the skim milk or butterfat

in milk of such farm or unit is assigned pursuant to § 1002.45 to Class I-A milk unless the handler is precluded from doing so pursuant to subparagraphs (2) or (3) of this paragraph or unless such milk is considered producer milk under an other order with a provision for market-wide equalization. If some but not all skim milk or butterfat in milk received from such farms previously a part of a nonpool unit is assigned to Class I-A milk the handler operating such unit has until the time of filing the report required pursuant to § 1002.30 to specify which farms are to be added to a pool unit and if upon verification by audit the market administrator finds that other skim milk or butterfat in milk of a declared nonpool unit is assigned to Class I-A milk, the handler operating such unit has until ten days after notification by the market administrator to specify which farms are to be added to a pool unit. In absence of such specification, all eligible farms shall be added to the pool unit.

(d) A handler may cause a pool unit or a farm which is a part of a pool unit to become nonpool by the methods set forth in subparagraphs (1) through (4) of this paragraph: *Provided*, That the failure of a unit to meet the pool requirements set forth in paragraph (f) of this section shall not be considered for purposes of this paragraph to be a change of pool status caused by the handler: *Provided further*, That a handler pursuant to paragraph (a) (4) of this section must continue in a pool unit any farm which was a part of such handler's pool unit in any of the months of April, May, or June preceding from which he receives milk or from which any other handler receives milk through arrangement with him: *Provided further*, That if a unit operated by a handler is reported by another handler which is a cooperative, the actions specified in subparagraphs (1), (2), and (4) of this paragraph must be concurred in by such cooperative handler.

(1) The handler may change the status of a declared pool unit to a declared nonpool unit effective the first day of any month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month.

(2) The handler may transfer a farm from a pool unit to a nonpool unit effective the first day of any month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month.

(3) The handler may so operate a unit located in the area specified in paragraph (e) of this section that its pool status is cancelled pursuant to § 1002.27.

(4) The handler may arrange for the milk of a farm in his pool unit to be delivered to another person as nonpool milk. Any delivery of milk by a farm in a handler's pool unit to another per-

son as nonpool milk shall be considered to have been arranged by such handler unless such handler can establish that such other person is not substantially under the same management, control, or ownership as such handler and that such handler was in no way a party to such nonpool delivery.

(e) A declared pool unit must be operated to meet the requirements set forth in § 1002.26 if the farms of such unit are located in the following area: New York, New Jersey, the counties of Addison, Rutland, and Bennington in Vermont, the county of Berkshire in Massachusetts, or in Pennsylvania. Failure to meet such requirements shall make such declared pool unit subject to suspension and cancellation pursuant to the procedure set forth in § 1002.27. This paragraph shall not be applicable to a cooperative handler specified in paragraph (a) (3) of this section.

(f) A declared pool unit made up of farms located outside the area specified in paragraph (e) of this section or a declared pool unit made up of farms specified in paragraph (e) of this section and operated by a cooperative handler specified in paragraph (a) (3) of this section shall be a pool unit in the months of July through March if at least 25 percent of the milk in such unit is delivered in such month to pool plants, and shall be a pool unit in the months of April through June only if 60 percent of the milk of such unit was received at pool plants during the period of October through December immediately preceding or if such handler received no milk of such unit or from farms of such unit in the preceding October through December.

(g) Any unit declared to be a pool unit shall be designated a pool unit in any month (1) if the handler is qualified in such month pursuant to paragraph (a) of this section, (2) if such unit meets all the requirements of this section applicable to it to be a pool unit, or (3) if the designation of such unit has not been cancelled pursuant to § 1002.27.

(h) Each handler shall report to the market administrator, not later than the 20th day of the month in which this paragraph becomes effective, the name and headquarters of each unit established by him, the identification of the farms included in each unit, and his declared status (pool or nonpool) of each unit. Thereafter, each handler shall report by not later than the 10th day of the month any changes in units during the preceding month and as of the first day of such month.

(i) Whenever the market administrator finds that a handler has received bulk tank milk from a farm required to be included in an established unit but which has not been so included, he shall tentatively assign such farm to a unit and promptly notify the handler of such action. Unless otherwise requested by the handler within 10 days of such notice, the tentative assignment by the market administrator will become final.

(j) Whenever the market administrator finds that a handler has caused milk

to become nonpool pursuant to paragraph (d) (4) of this section he shall promptly notify the handler of such finding. Within 10 days of such notice the handler may, except as to any such milk pooled under an other order, (1) make a written claim that the failure to include the milk involved as pool milk was an error and, in such event, the market administrator shall pool such milk and rescind his finding, or (2) make a written offer to submit proof that he had not caused such milk to become nonpool. In the latter event, the market administrator shall examine such proof and shall either rescind his original finding or confirm it. Failure to respond to the market administrator's notice shall be deemed to confirm the finding.

(k) Units other than those which are pool units pursuant to paragraph (g) of this section shall be designated partial pool units if they meet the provisions set forth in subparagraphs (1) and (2) of this paragraph.

(1) Any nonpool unit which would have been automatically made a pool unit pursuant to paragraph (c) (5) of this section except that the handler is precluded from adding farms thereof to a pool unit pursuant to paragraphs (c) (2) or (c) (3) of this section. If a unit of a handler becomes a partial pool unit pursuant to this subparagraph, all of the handler's pool units and partial pool units shall be combined and the skim milk and butterfat in milk of the partial pool units assigned to Class II of such combined total prior to any skim milk and butterfat in the partial pool unit milk being assigned to Class I-A.

(2) Any unit the milk of which fails to meet the pooling requirements of paragraph (f) of this section, or any unit operated by a handler not specified in paragraph (a) of this section, as being eligible to establish and maintain pool units, or any unit made up of farms located in the 401 miles and over freight zone unless the handlers operating such unit is eligible to establish a pool unit and has specifically requested such unit to be so designated.

(1) The market administrator shall publicly announce the names of handlers establishing pool units and the names and headquarters of such units. He shall also publicly announce any change in the pool status of such units, and the names of handlers who are ineligible to add farms to a pool unit under the terms set forth in paragraph (c) (3) of this section.

§ 1002.26 Operating requirements.

The person operating a pool plant designated pursuant to § 1002.24 or a declared pool unit consisting of farms in the area specified in § 1002.25(e) shall stipulate to each of the following requirements:

(a) Be willing to dispose of as Class I-A milk in the marketing area milk received at the plant or on the unit from dairy farmers and agree that if a plant designation is canceled for failure to meet this requirement, the Class I-A and Class I-B milk of such plant

through the partial pool plant provision shall be priced and equalized from the effective date of cancellation through the following June 30.

(b) Keep such control over the sanitary conditions under which milk received at the plant or on the unit is produced and handled that the milk can meet the requirements of a source of milk for the marketing area: *Provided*, That approval by a health authority of the plant as a source of milk for the marketing area shall constitute sufficient evidence that this requirement is being met even though such approval is restricted to prohibit shipment to the marketing area of milk for specified periods during which permission is given by such health authority for receiving unapproved milk or skim milk at the plant or for shipment of approved skim milk from such plant; and

(c) Have no commitments for disposition of milk that prevent him from utilizing milk as set forth in §1002.27(g).

§ 1002.27 Suspension and cancellation of designation.

The designation of a pool plant pursuant to § 1002.24 or of a declared pool unit consisting of farms in the area specified in § 1002.25(e) may be suspended or canceled under any of the following provisions:

(a) The designation shall be canceled effective on the first of the month following the filing with the market administrator, and on a form prescribed by him, of an application by the handler operating the plant: *Provided*, That a plant whose designation is so canceled on the first of any of the months of August through November shall be a pool plant if it meets the provisions of paragraph (e) of § 1002.28, and shall not be a pool plant pursuant to any other provision of this order prior to December 1 following such cancellation: *Provided further*, That such application for cancellation shall be accompanied by proof that the handler, if not a cooperative association qualified pursuant to § 1002.89 has notified any qualified cooperative association which has any members who deliver milk to such plant, and has notified individually all producers delivering to such plant who are not members of such qualified cooperative association, of his intention to make such application: *Provided further*, That if 50 percent or more of the producers delivering milk at such plant deliver such milk for the account of a cooperative association which does not operate the plant but for which milk such association receives payment, an application must be made by such cooperative association as well as by the handler operating the plant: *Provided further*, That if a handler applies for a replacement designation pursuant to § 1002.24(b), the designation of the plant or plants replaced shall be canceled automatically at the time the replacement designation becomes effective.

(b) The designation of any plant which on June 15 of any year is not approved by a health authority as a

source of milk for the marketing area shall be automatically suspended effective on August 1 of such year unless the absence of such approval is a temporary condition covering a period of not more than 15 days: *Provided*, That the designation of a plant approved by a health authority as a source of milk for the marketing area, even though such approval is restricted to prohibit shipment to the marketing area of milk for specified periods during which permission is given by such health authority for receiving unapproved milk or skim milk at the plant or for shipment of approved skim milk from such plant, shall not be suspended pursuant to this provision.

(c) The designation of any plant or unit shall be suspended, effective no sooner than 10 days nor later than 20 days after the date of mailing of notice, by registered letter, to the handler, whenever the market administrator, subject to the limitations set forth in paragraphs (g) and (i) of this section, finds on the basis of available information that the handler operating the plant or unit is not meeting the requirements set forth in § 1002.26: *Provided*, That, if the handler operating the plant or unit is not a cooperative association qualified pursuant to § 1002.89, the market administrator shall notify any qualified cooperative association which has any members who deliver milk to such plant or unit, and shall also notify individually all producers delivering to such plant or unit who are not members of such qualified cooperative association, of such suspension of designation.

(d) In the case of suspension pursuant to this section of the designation of one or more plants or units for failure to meet the requirements of § 1002.26 (a) or (c) the handler operating such plant or unit may select, prior to the effective date of such suspension, one or more other pool plants or pool units consisting of farms in the area specified in § 1002.25(e) for suspension in lieu thereof if, during the preceding month, the quantity of pool milk received from producers at such substituted plants or units was not less than the quantity of pool milk received from producers at the plants or units named for suspension. The handler may also select the order in which plant or unit designations are to be canceled in the event of a later determination by the Secretary canceling the designation of some but not all of the plants or units suspended.

(e) Not later than 10 days after the effective date of suspension of designation pursuant to this section, the handler operating the plant or unit may apply to the Secretary for a review. If the handler fails to so apply for such review, the designation shall be canceled as of the effective date of the suspension. If the handler does so apply, the Secretary shall, after review, either determine that the requirements set forth in § 1002.26 have been met and order the suspension revoked, or determine that such requirements have not been met and order the designation canceled as of the effective date of the suspension: *Provided*, That,

if the Secretary has made no determination within two months after the end of the month in which the suspension was made effective, but later orders the designation canceled, such cancellation shall be effective as of the first of the month following the date of such determination.

(f) Beginning with the effective date of a suspension pursuant to this section, and until the Secretary has either ordered the designation canceled or ordered the suspension revoked, the plant or unit shall be treated as a pool plant or pool unit: *Provided*, That all payments into or out of the producer settlement fund (except such payments on the basis of operations during a month in which the plant meets the requirements of § 1002.28 or the unit meets the requirements of § 1002.25(g)) shall be held in reserve by the market administrator until an order is issued by the Secretary, but not longer than 2 months after the end of the month in which the suspension was made effective.

(g) No pool plant or pool unit designation shall be suspended for failure to meet the requirements of § 1002.26(a) except under the following conditions:

(1) A meeting has been held no sooner than three days after notice by the market administrator to all handlers operating pool plants designated pursuant to § 1002.24 or pool units consisting of farms in the area specified in § 1002.25(e) for consideration of the desirable utilization of milk received from producers during a period ending not later than the end of the second month after the month during which such meeting is held.

(2) There has been issued by the market administrator, following such meeting, and mailed to all handlers operating pool plants designated pursuant to § 1002.24 or pool units consisting of farms in the area specified in § 1002.25(e) the market administrator's determination of the desirable utilization of milk received from producers each month during all or a part of the period set forth in subparagraph (1) of this paragraph. Such determination shall include a schedule setting forth, by months, the desired minimum percentage of pool milk received from producers to be utilized in specified classes. Such specified classes shall include Class I-A in the marketing area, and may include all or a part of other Class I-A and Class I-B.

(3) The market administrator finds on the basis of available information that the handler operating a plant or unit or the cooperative reporting a plant or unit is not utilizing milk received from producers in accordance with the minimum percentage set forth in the determination of the market administrator previously announced pursuant to subparagraph (2) of this paragraph: *Provided*, That the suspension of the designation of a plant or unit may be made effective during the months of November and December if the market administrator finds that the handler is utilizing any milk received from producers in classes other than those set forth in the

determination of the market administrator announced pursuant to subparagraph (2) of this paragraph.

(h) The cancellation of pool plant or pool unit designation for failure to meet the requirements of § 1002.26(a) shall be subject to the following conditions:

(1) No pool plant or pool unit designation shall be canceled if the handler operating the plant or unit utilized the milk received by him from producers during the month in which the suspension is made effective in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (g) (2) of this section.

(2) No pool plant or pool unit designation shall be canceled if the handler operating the plant or unit utilized in the specified classes set forth in the determination of the market administrator announced pursuant to paragraph (g) (2) of this section a percentage of the total milk received by him from producers during the month in which the suspension is made effective which is not less than the percentage of the total pool milk reported by all handlers for such month to have been used in the specified classes.

(3) In the event that all milk received from producers at a plant or unit is reported to the market administrator by a cooperative association qualified pursuant to § 1002.89 and such association pays the producer for such milk, the pool plant or pool unit designation shall not be canceled if a percentage of all milk reported by such cooperative association is utilized in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (g) (2) of this section, or in accordance with the percentage set forth in subparagraph (2) of this paragraph.

(4) Cancellation of designations shall be limited to those plants or units necessary to result in a utilization of milk received at the remaining pool plants and pool units operated by the handler, or reported by the cooperative, as the case may be, in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (g) (2) of this section.

(i) Loss of approval by health authorities of a plant as a source of milk for the marketing area may in itself constitute adequate reason for the market administrator to suspend the designation of the plant for failure to meet the requirements of § 1002.26(b) only if the absence of such approval continues for more than 15 days.

(j) The designation shall be canceled effective on the first of the month following three consecutive months if in the absence of this designation milk received from dairy farmers and units at the plant would have been classified and priced under an other order with a provision for marketwide equalization and if in each of such months the percentage of milk received from dairy farmers and units at the plant which is classified as

Class I-A and disposed of in the marketing area defined in such other order is greater than the percentage of such milk so classified and disposed of in this marketing area.

§ 1002.28 Temporary pool plants.

Except for plants which, pursuant to paragraph (f) of this section, are not eligible for designation, any plant not designated pursuant to § 1002.24 shall automatically be designated a pool plant in accordance with provisions of paragraphs (a) through (e) of this section: *Provided*, That no plant shall be a pool plant pursuant to this section if, in the absence of this provision, milk received from dairy farmers and units at the plant would be classified and priced under an other order with a provision for marketwide equalization, and if the percentage of the milk received from dairy farmers and units at the plant which is classified in Class I-A and disposed of in the marketing area defined in such other order is greater than the percentage of such milk so classified and disposed of in this marketing area.

(a) For any of the months of January through March and July through December, any plant at which 25 percent or more of the combined receipts of skim milk and butterfat in milk from dairy farmers and units is classified as Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant on some basis other than the failure to account for such milk shall automatically be designated a pool plant for such month: *Provided*, That at the option of the handler the plant shall not be a pool plant if less than 25 percent of such combined receipts of skim milk and butterfat in milk from other than pool units is classified in such Class I-A.

(b) For any of the months of April, May, or June, any plant at which during the preceding period of October, November, and December either (1) no milk was received from dairy farmers or units, or (2) 60 percent or more of the combined receipts of skim milk and butterfat in milk received from dairy farmers and units was classified in Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, on some basis other than the failure to account for such milk, shall automatically be designated a pool plant for any of such months of April, May, or June in which 10 percent or more of the combined receipts of skim milk and butterfat in milk received from dairy farmers and units is classified in Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, on some basis other than the failure to account for such milk: *Provided*, That at the option of the handler the plant shall not be a pool plant if less than 10 percent of combined receipts of skim milk and butterfat in such milk from other than pool units is classified in such Class I-A.

(c) Any plant which is a pool plant in any of the months of April, May, or June on the basis of paragraph (b) of this section or on the basis of paragraph (d) of this section and in the latter case,

the percentage of combined receipts of skim milk and butterfat in milk from dairy farmers and units classified in Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, is at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month of the previous year, shall be a pool plant in any of the months of July through March following in which 60 percent or more of the combined receipts of skim milk and butterfat in milk received at the plant from dairy farmers and units is classified in Class I-A, Class I-B, or Classes I-A and I-B combined.

(d) Any plant which for any month is not a pool plant because of failure to meet the requirements of paragraph (a), (b), or (c) of this section shall be a pool plant in any month in which a daily average of at least 800 pounds of combined receipts of skim milk and butterfat in milk received from dairy farmers and units is classified as Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, on some basis other than failure to account for such milk and if the percentage of combined receipts of skim milk and butterfat in milk classified as Class I-A and Class I-B is at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month in the preceding year: *Provided*, That at the option of the handler, the plant shall not be a pool plant if none of the skim milk or butterfat in such milk from other than pool units is classified in such Class I-A: *Provided further*, That such plant shall not be a pool plant on the basis of this paragraph if it is located in the 401 miles and over freight zone.

(e) A plant whose regular pool plant designation has been canceled at the request of the handler on the first of any of the months of August through November shall be a pool plant in any month through November 30 following such cancellation if the percentage of the combined receipts of skim milk and butterfat in milk received from dairy farmers and units classified in Class I-A, Class I-B or Classes I-A and I-B combined is at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month in the preceding year unless such plant qualifies as a pool plant under an other order with a provision for marketwide equalization.

(f) A plant shall not be a pool plant on the basis of this section for the periods and under the conditions set forth in subparagraphs (1), (2), and (3) of this paragraph:

(1) If the pool plant designation was canceled on the first of August, September, October, or November pursuant to § 1002.27(a) for the period through November 30 except as specified in paragraph (e) of this section.

(2) If the pool plant designation was canceled pursuant to § 1002.27 for failure to meet the requirements of § 1002.26(a), for the period from the date the cancellation was effective through the following June 30.

(3) If the plant was a pool plant pursuant to provisions of Part 1015 of this chapter in each of the months of July through November of any year, for the months of December through June following.

(g) At the time of announcing the uniform price for each month, the market administrator shall make public the location and name of the operator of any plant for which a report of receipts from dairy farmers was used in the computation of that uniform price.

§ 1002.29 Partial pool plants.

The following plants not designated pool plants pursuant to §§ 1002.24 and 1002.28, which plants distribute fluid milk products in the marketing area or transfer fluid milk products to a pool plant shall be designated partial pool plants:

(a) Plants set forth in § 1002.28(f): *Provided*, That a plant specified in subparagraph (3) of such paragraph shall be a partial pool plant only if such plant classified skim milk or butterfat in milk received from dairy farmers or nonpool units in Class I-A on some basis other than failure to account for such milk and if such plant is not a pool plant under an other order with a provision for marketwide equalization.

(b) Plants other than those set forth in paragraph (a) of this section which have some skim milk or butterfat in milk received from dairy farmers or nonpool units classified in Class I-A on some basis other than failure to account for such milk, except a plant which would otherwise qualify as a pool plant pursuant to § 1002.28(d) but which has less than a daily average of 800 pounds of skim milk or butterfat in milk received from dairy farmers or units classified in Class I-A in the marketing area on some basis other than failure to account for such milk.

REPORTS RECORDS AND FACILITIES

§ 1002.30 Reports of receipts and utilization.

Each handler, except a handler receiving own farm milk and not required to be listed pursuant either to § 1002.11 or § 1002.12, shall report each month to the market administrator for the preceding month in the manner and on the forms prescribed by the market administrator with respect to each of his pool plants or partial pool plants and each of his pool units or partial pool units, the information set forth in paragraphs (a) through (d) of this section. Such report, if transmitted by mail, shall bear a postmark no later than the eighth day of the month and if not so mailed, shall be delivered physically to the office of the market administrator no later than the close of business on the 10th day of the month.

(a) The quantity of skim milk and butterfat contained in:

(1) Receipts of milk from producers;

(2) Receipts of fluid milk products from other pool plants or partial pool plants and from pool units or partial pool units; and

(3) Receipts of other source milk.

(b) Inventories of fluid milk products on hand at the beginning and the end of the month;

(c) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including the destination of any fluid milk product, the classification of which wholly or partially depends upon its destination; and

(d) The computation pursuant to § 1002.70 of such handler's net pool obligation.

§ 1002.31 Producer payroll reports.

Each handler shall report with respect to producers as set forth in paragraphs (a) and (b) of this section:

(a) On or before the 10th day after the end of each month, the information required by the market administrator with respect to producer additions, producer withdrawals, and changes in names of farm operators; and

(b) On or before the last day of each month such handler's producer payroll for the preceding month, which shall show for each producer:

(1) The total pounds of milk from such producer;

(2) The average butterfat content of such milk: *Provided*, That if no butterfat tests are made on any of the milk received from producers, and if such milk is received by the handler from no more than 10 producers, 3.5 percent shall be reported as the average butterfat test of milk received from producers;

(3) The amount of payment due each producer;

(4) The nature and amount of any deductions and charges made by the handler;

(5) The net amount of payment to such producer; and

(6) Such other information with respect thereto as the market administrator shall require.

§ 1002.32 Other reports.

At such time as the market administrator may request, each handler shall report to the market administrator in the manner and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat in milk and each milk product received at his nonpool plants, from dairy farmers, from other plants or nonpool units, from such handler's own farm, from other handlers, and from other sources;

(b) The quantities of skim milk and butterfat in milk and each milk product moved out of, or on hand at, his nonpool plants and the destination of such skim milk and butterfat;

(c) Information concerning land, buildings, surroundings, facilities and equipment at any of his plants;

(d) The current receipts and utilization of skim milk and butterfat at each of his pool plants and pool units; and

(e) Such other information as may be necessary for the administration of the provisions of this part.

§ 1002.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or his representative during the usual hours of business such records and facilities, of his own or other persons, as are necessary for the market administrator to:

(a) Verify and in the case of errors or omissions, ascertain the correct figures.

(1) The receipts and utilization of all skim milk and butterfat handled in any form;

(2) The weights and tests for butterfat and other content of all milk and milk products handled;

(3) The pounds of skim milk and butterfat contained in or represented by all items in inventory at the beginning and end of each month;

(4) Payments to producers and cooperative associations;

(5) Other information required to be reported; and

(6) All claims for payments pursuant to § 1002.89.

(b) Make inspection of buildings and their surroundings, facilities, and equipment for verification purposes and to ascertain what constitutes a plant and the production, processing, and distribution resources and facilities of a producer-handler's operation; and

(c) Verify that the requirements for designation as a producer-handler have been and are being met.

§ 1002.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(a) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1002.40 Skim milk and butterfat to be classified.

All skim milk and butterfat required to be reported by each handler pursuant to §§ 1002.30 and 1002.32 shall be classified each month pursuant to the provisions of §§ 1002.41 through 1002.46. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained

in such products plus all the water originally associated with such solids.

§ 1002.41 Classes of utilization.

Subject to the conditions set forth in §§ 1002.42 through 1002.46 the classes of utilization shall be as follows:

(a) Class I-A milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product:

(i) Inside the marketing area;

(ii) As route disposition in an other order marketing area;

(iii) To an other order plant and assigned under such other order to Class I;

(iv) In packaged form to an other order plant if such product is not defined as a fluid milk product under such other order;

(v) To a partially regulated plant under an other order and there applied as as offset to Class I sales in any other order market.

(2) Contained in inventory of packaged fluid milk products on hand at the end of the month except as provided in subparagraph (c) (4) of this section; and

(3) Not specifically accounted for as Class I-B or Class II milk.

(b) Class I-B milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product outside the marketing area, except as provided in subdivision (ii) through (v) of paragraph (a) (1) and (c) (4), (5), and (6) of this section; and

(2) In shrinkage allocated to Class I-B pursuant to § 1002.42.

(c) Class II milk shall be all skim milk and butterfat:

(1) Disposed of in any product other than a fluid milk product;

(2) Disposed of as a fluid milk product in bulk to any establishment (other than a plant defined in § 1002.8) at which food products are processed and packed in hermetically sealed containers and at which establishment there is no disposition of fluid milk products other than those received in consumer packages for consumption on the premises;

(3) Disposed of as cream which is moved to a licensed cold storage warehouse and established to have been held therein;

(4) Contained in inventory of fluid milk products in bulk which are on hand at the end of the month and also with respect to any plant not defined in § 1002.8 (b) or (d), in inventory of fluid milk products in packaged form;

(5) Disposed of as a packaged fluid milk product to an other order plant and assigned under such other order as a fluid milk product to Class II;

(6) Disposed of in bulk as a fluid milk product to an other order plant and assigned to Class II under such other order;

(7) In shrinkage allocated to Class II pursuant to § 1002.42; and

(8) In skim milk represented by the nonfat solids added to a fluid milk product for fortification which is in excess of the volume included within the fluid

milk product definition pursuant to § 1002.15.

§ 1002.42 Shrinkage.

Shrinkage shall be classified at each plant or unit as follows:

(a) Compute the total shrinkage of skim milk and butterfat respectively at each plant or unit.

(b) Such shrinkage shall be assigned pro rata to classes of use in accordance with the respective volumes of skim milk and butterfat actually accounted for in each class: *Provided*, That shrinkage assigned to Class II shall not exceed 2 percent of the skim milk and butterfat, respectively, in such class actually accounted for and any excess thereof shall be classified as Class I-A.

§ 1002.43 Responsibility of handlers and the reclassification of milk.

(a) All skim milk and butterfat shall be Class I-A milk unless the handler who first receives such skim milk and butterfat proves to the market administrator that such skim milk and butterfat should be classified otherwise.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 1002.44 Transfers.

Skim milk and butterfat transferred in the form of a fluid milk product from a pool unit or a pool plant to any other plant shall be classified pursuant to the provisions of paragraphs (a) through (e) of this section. The assignment procedure set forth in paragraph (e) shall also be applicable for the purpose of assignment of receipts at any plant which is not a plant defined pursuant to § 1002.8 (b) or (d) and which receives no milk from dairy farmers or units but from which fluid milk products are disposed of in consumer packages or dispenser inserts in the marketing area either by direct distribution or to other plants.

(a) As Class I-A milk if transferred to the plant of a handler listed pursuant to § 1002.12 or to a producer-handler under an other order;

(b) In accordance with its assignment at the transferee plant pursuant to § 1002.45 (a) (15) and the corresponding step of § 1002.45 (b) if transferred from a pool unit, a pool plant as defined in § 1002.8 (b) (except a pool plant pursuant to § 1002.28 other than a pool plant pursuant to the proviso of the preamble of § 1002.45), to a pool plant as defined in § 1002.8 (b);

(c) In accordance with its assignment at the transferee plant pursuant to § 1002.45 (a) (13) and (14) and the corresponding step of § 1002.45 (b) if transferred from any plant for which pool status is conditioned on assignment pursuant to § 1002.45 (a) (8), (13), and (14) and the corresponding step of § 1002.45 (b) to a pool plant as defined in § 1002.8 (b);

(d) As follows, if transferred to an other order plant:

(1) If transferred in packaged form classification shall be in the classes

(either I-A or II) to which allocated as a fluid milk product under the other order: *Provided*, That if such product is not a fluid milk product under such other order classification shall be as Class I-A;

(2) If transferred in bulk and the operators of both the transferor and transferee plants so request in their reports of receipts and utilization filed with their respective market administrators, classification shall be as Class II milk to the extent of the Class II utilization available for such assignment at the applicable step in the allocation provisions of the transferee order;

(3) Except as provided in subparagraph (2) of this paragraph if transferred in bulk classification shall be in the classes (either Class I-A or II) to which allocated under such other order.

(e) As Class I-A if transferred in packaged or bulk to a plant which is not a plant as defined in § 1002.8 (b) or (d), nor a producer-handler plant under an other order, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph: *Provided*, That if the classification of any skim milk and butterfat so transferred is dependent on the classification of bulk fluid milk products moved from the transferee plant to a second nonpool plant, the same assignment procedure shall be followed with respect to receipts and utilization at such second nonpool plant.

(1) The transferring handler claims classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1002.30 for the month within which such transaction occurred;

(2) The operator of such transferee plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification;

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such transferee plant:

(i) Packaged receipts of fluid milk products from Federal order sources shall first be assigned to route disposition in Federal order marketing areas (assigning receipts to sales in the same market to the extent possible) and any residual shall be assigned to I-B route sales.

(ii) Such bulk transfers and other bulk receipts at such transferee plant from other order plants shall next be assigned to any remaining route disposition in any Federal order marketing area. For this purpose receipts from each Federal order market shall first be assigned to remaining route sales in such marketing area and any remainder of such receipts shall be prorated with all Federal order receipts to remaining route disposition in all Federal order marketing areas.

(iii) Receipts from dairy farmers shall then be assigned to any remaining route sales in the marketing area.

(iv) Remaining receipts from dairy farmers and other unregulated other source receipts (excluding opening inventory) in the form of fluid milk products shall be assigned pro rata to Class I-B and Class II utilization at such plant to the extent of such utilization available at such plant and any remainder of such receipts shall be assigned pro rata to Class I-A bulk sales to plants regulated under this order and Class I bulk sales to plants regulated under other orders.

(v) Any remaining receipts being assigned pursuant to this subparagraph shall be assigned pro rata with remaining receipts from other order plants, first to remaining Class I-A utilization, then Class I-B utilization and finally to Class II utilization at such plant: *Provided*, That if on inspection of the books and records of such plant the market administrator finds that there is insufficient utilization to cover such receipts, the remainder shall be classified as Class I-A.

§ 1002.45 Allocation of skim milk and butterfat classified.

The classification of milk received from producers at each pool plant or pool unit for each handler shall be determined each month pursuant to paragraph (a), (b), and (c) of this section: *Provided*, That for the purpose of establishing the pool status of any plant with Class I-A route disposition in the marketing area which is not a pool plant pursuant to § 1002.24, skim milk and butterfat in milk received at such plant directly from dairy farmers or units up to an amount sufficient to qualify such plant as a pool plant pursuant to § 1002.28 (a) or (b) shall be considered the source of such I-A route disposition of such plant and be subtracted from Class I-A prior to the application of the allocation sequence set forth in paragraphs (a) and (b) of this section, unless at the time of filing his report pursuant to § 1002.30 the handler elects not to have it so allocated.

(a) Skim milk shall be allocated in the following manner:

(1) Subtract the pounds of skim milk received in packaged form from a producer-handler for marketing as certified fluid milk products from the total pounds of skim milk in Class I-A and Class I-B milk, respectively, in accordance with its proportionate disposition in such classes;

(2) Subtract from the remaining pounds of skim milk in Class I-A milk the pounds of skim milk in packaged fluid milk products received from other order plants, except cream which has been classified and priced as other than a fluid milk product under the other order;

(3) Subtract from the remaining pounds of skim milk in Class I-A milk the pounds of skim milk in inventory of packaged fluid milk products on hand at the beginning of the month: *Provided*, That for the first month of operation under this amended order such pounds of skim milk shall be subtracted from Class I-A, if classified as I-A, I-B, or Class II in the preceding month and from Class II

if classified as Class III in the preceding month;

(4) Subtract from the pounds of skim milk remaining in each class in series beginning with Class II milk the pounds of skim milk in receipts of other source milk in a form other than that of a fluid milk product;

(5) Subtract in the order specified below from the pounds of skim milk remaining in Class I-A and Class II milk, in series beginning with Class II milk, the pounds of skim milk in:

(i) Receipts of fluid milk products from a producer-handler pursuant to an other order or a producer-handler defined pursuant to § 1002.12 (except pool milk designated in the preamble of § 1002.14).

(ii) Receipts of fluid milk products from a handler's plant at which milk is excepted from the pool milk definition pursuant to § 1002.14(h).

(iii) Receipts of fluid milk products from a handler with own farm milk which milk is excepted from the pool milk definition pursuant to § 1002.14(i).

(6) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in receipts of other source milk in the form of fluid milk products from plants other than those defined in § 1002.8 (b) or (d) and units other than pool units for which the handler requests a Class II classification, but not in any case to exceed the pounds of skim milk remaining in such class;

(7) Subtract from the remaining pounds of skim milk in Class I-A and Class II milk, in series beginning with Class II milk, the pounds of skim milk in inventory of fluid milk products in bulk on hand at the beginning of the month: *Provided*, That for the first month of operation under this amended order such pounds of skim milk shall be subtracted from Class I-A if classified as Class I-A, I-B, or II in the preceding month and from Class II if classified as Class III in the preceding month;

(8)(i) Subtract pro rata from the pounds of skim milk remaining in Class I-B and Class II milk the remaining pounds of skim milk in receipts of other source milk in the form of fluid milk products from plants not defined pursuant to § 1002.8 (b) or (d) and from units other than pool units: *Provided*, That if the pounds of skim milk to be assigned pursuant to this subparagraph exceed the available pounds of skim milk in Class I-B and Class II, the handler shall designate the priority of sources to be assigned to such classes.

(ii) No assignment shall be made pursuant to this subparagraph with respect to milk received from a plant not defined pursuant to § 1002.8 (b) or (d) in the 401 miles and over freight zone at a plant from which 50 percent or more of the gross receipts of skim milk and butterfat leaves the plant in the form of fluid milk products in consumer packages or dispenser inserts and is classified as Class I-A;

(9) Subtract from the remaining pounds of skim milk in Class II milk the pounds of skim milk specified in sub-

divisions (i) and (ii) of this subparagraph, but not in any case to exceed the pounds of skim milk remaining in such class;

(1) In receipts of packaged cream and bulk fluid milk products pooled and priced under Part 1015 of this chapter, and

(ii) In receipts of packaged or bulk cream from other order plants if such cream was classified and priced as other than a fluid milk product under the other order.

(10) Subtract from the remaining pounds of skim milk in Class II milk the pounds of skim milk in bulk receipts of fluid milk products from other order plants not previously assigned and for which a Class II classification is requested by both the transferor and transferee handler in filing reports of receipts and utilization for the month with their respective market administrators, but not in any case to exceed the pounds of skim milk remaining in such class;

(11) Subtract pro rata from the remaining pounds of skim milk in each class the pounds of skim milk in receipts from dairy farmers and from the handler's own farm which are excepted from the pool milk definition pursuant to § 1002.14 (h) and (i);

(12) Subtract pro rata from the remaining pounds of skim milk in each class the pounds of skim milk in receipts of fluid milk products from other order plants not previously assigned pursuant to subparagraphs (2), (9), and (10) of this paragraph;

(13) If the plant at which assignment is being made is a plant from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products left the plant in the form of fluid milk products in consumer packages or dispenser inserts and was classified as I-A, subtract pro rata from the remaining pounds of skim milk in each class the pounds of skim milk in receipts of fluid milk products from plants in the 401 miles or over freight zone, not defined pursuant to § 1002.8 (b) or (d);

(14) Subtract from the remaining pounds of skim milk in Class I-A milk the pounds of skim milk in remaining receipts from plants (except other order plants) or units the pool status of which has not yet been established and which receipts have not previously been assigned pursuant to subparagraphs (8) and (13) of this paragraph;

(15) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received in the form of fluid milk products from other pool plants and from pool units (not previously assigned pursuant to the preamble of this section), in accordance with the classification assigned by the transferee handler subject to the conditions of subdivisions (i) through (iii) of this subparagraph;

(i) The skim milk so assigned to any class of utilization shall be limited to the amount thereof remaining in such class in the transferee plant;

(ii) If the transferor plant received during the month other source milk to be allocated pursuant to subparagraph (4) of this paragraph the skim milk so transferred shall be classified so as to allocate the least possible Class I-A or I-B utilization to such other source milk; and

(iii) If the transferor handler received during the month other source milk to be allocated pursuant to subparagraph (8) of this paragraph, the skim milk so transferred shall not be classified as Class I-A or I-B to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(16) Add to the remaining pounds of skim milk in Class I-A the pounds of skim milk received directly from dairy farmers which was deducted pursuant to the proviso in the preamble of this section;

(17) If the pounds of skim milk remaining in all classes exceeds the pounds of skim milk in receipts from producers subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class.

§ 1002.46 Rules and regulations.

Accounting rules and regulations to effectuate the provisions of §§ 1002.40 through 1002.45 shall be issued by the market administrator and shall include (but not be limited to) conversion factors to be used in the absence of specific weights and tests, specific definitions of products, specific shrinkage allowances and procedures for determining the quantities of skim milk and butterfat disposed of in specified products. Such rules and regulations shall be made, and may from time to time be amended, by the market administrator in accordance with the procedure set forth in this section: *Provided*, That at any time upon a determination by the Secretary that an emergency exists which requires the immediate adoption of rules and regulations, the market administrator may issue, with the approval of the Secretary, temporary rules and regulations without regard to the following procedure: *Provided further*, That, if any interested person makes written request for the issuance, amendment, or repeal of any rule, the market administrator shall within 30 days either issue notice of meeting pursuant to paragraph (a) of this section or deny such request and except in affirming a prior denial, or where the denial is self-explanatory, shall state the grounds for such denial: *Provided further*, That if the market administrator finds it necessary to promulgate formal rules with respect to units, he shall follow the procedure set forth in this section.

(a) All proposed rules and regulations and amendments thereto shall be the subject of a meeting called by the market administrator at which time all interested persons shall have opportunity to be heard. Notice of such meeting shall be given by the market administrator, and a copy of the proposed rules and regulations shall be sent at least 5 days prior to the date of the meeting to all handlers operating pool plants. A stenographic record shall be made at all such meetings and such record shall be public information available for inspection at the office of the market administrator.

(b) A period of at least 5 days after the meeting held pursuant to paragraph (a) of this section shall be allowed for the filing of briefs. Such briefs shall be public information available for inspection at the office of the market administrator.

(c) Not later than 30 days after a meeting held pursuant to paragraph (a) of this section, the market administrator shall issue and send to all handlers operating pool plants and pool units the tentative rules and regulations or amendments thereto relating to the issues considered at such meeting, or a tentative notice that no rules or regulations or amendments thereto are to be issued prior to further consideration at another meeting. The tentative rules and regulations, or tentative notice, together with copies of the stenographic record and briefs, shall also at the same time be forwarded by the market administrator to the Secretary.

(d) Not later than 30 days after issuance by the market administrator, the Secretary shall either approve the tentative rules and regulations or tentative notice as issued, or direct the market administrator to reconsider. In which latter event, the market administrator shall within 30 days either issue revised tentative rules and regulations or tentative notice, or call another meeting pursuant to paragraph (a) of this section.

(e) The tentative rules and regulations and amendments thereto or tentative notice issued pursuant to paragraph (c) of this section shall be effective as of the first of the month following approval by the Secretary, but not sooner than 10 days after issuance by the market administrator.

MINIMUM PRICES

§ 1002.50 Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section, subject to the differentials and adjustments in §§ 1002.51 and 1002.81. Any handler who purchases or receives during any month milk from a cooperative association of producers which is also a handler but which does not operate the plant or the unit receiving the milk from producers shall on or before the 15th day of the following month pay such class prices pursuant to this section subject to the differentials and adjustments set forth in §§ 1002.51, 1002.81, and 1002.82 (b) applicable at the location where the

milk is received from producers. Any handler who purchases or receives during any month milk from a cooperative association of producers which is also a handler and which operates the plant or the unit receiving the milk from producers shall on or before the 15th day of the following month pay such cooperative association in full for such milk at not less than the minimum class prices pursuant to this section subject to the differentials and adjustments set forth in §§ 1002.51, 1002.52, 1002.81, and 1002.82(b) applicable at the plant at which the milk is first received.

(a) For Class I-A milk the price during each month shall be a price computed pursuant to subparagraphs (1) through (10) of this paragraph, except that from the effective date hereof the Class I-A price each month shall be \$6.39 through April 1969.

(1) Divide (with the result expressed to three decimal places) the monthly wholesale price index for all commodities in the second preceding month as reported by the Bureau of Labor Statistics, U.S. Department of Labor, by the average of the monthly indexes reported on the same base for the year 1955.

(2) Multiply the base price of \$5.20 by the result determined pursuant to subparagraph (1) of this paragraph. Express the result to the nearest cent.

(3) For each month during the 3-year period ending with the second preceding month, calculate to one decimal place the percentage that the total volume of milk in Class I-A and Class I-B was of the total volume of reported receipts of pool milk (these percentages to be referred to as utilization percentages): *Provided*, That for the purpose of computing such utilization percentage each month there shall be added to the volume of milk in Class I-A and Class I-B the pounds of skim milk subject to the fluid skim differential which is in excess of that volume subject to the differential for the corresponding month of the period November 1965 through October 1966. For this purpose the utilization percentages for the months of November 1966 to the effective date of this order shall be recomputed on this same basis.

(4) Calculate the average of the 36 monthly utilization percentages for the 3-year period ending with the second preceding month.

(5) Calculate the average of the six utilization percentages for the second and third preceding months and for the same months of the 2 preceding years.

(6) Divide the result determined pursuant to subparagraph (5) of this paragraph by the result determined pursuant to subparagraph (4) of this paragraph expressing the result to three decimal places.

(7) Calculate the average of the two utilization percentages in the second and third preceding months.

(8) Divide the result determined pursuant to subparagraph (7) of this paragraph by the result determined pursuant to subparagraph (6) of this paragraph. Express the result of one decimal place and add 100.

(9) Calculate a utilization adjustment percentage by subtracting the base utilization percentage of 56.2 from the result determined pursuant to subparagraph (8) of this paragraph.

(10) Multiply the result determined pursuant to subparagraph (2) of this paragraph by the utilization adjustment percentage determined pursuant to subparagraph (9) of this paragraph.

(b) Whenever any of the following conditions exist for 3 consecutive months, the Secretary shall call a public hearing promptly to consider those and other economic conditions, or promptly announce his determination that such a hearing should not be held, together with reasons for such determination:

(1) There is a difference of more than six points for each of 3 consecutive months between the index of the cost of production announced pursuant to § 1002.22(m)(1)(iv) and the index of wholesale prices (1955 base) announced pursuant to § 1002.22(m)(1)(i).

(2) There is a difference of more than 15 points for each of 3 consecutive months between the index of the cost of production announced pursuant to § 1002.22(m)(1)(iv) and the index of the Class I-A price announced pursuant to § 1002.22(m)(1)(v).

(3) The Class I-A price for each of 3 consecutive months is less than \$1 higher than the condensery price announced pursuant to § 1002.22(m)(2)(iv) for such months or more than \$2.50 higher than such condensery price.

(c) For Class I-B milk the price shall be the price for Class I-A milk.

(d) For Class II milk, the price shall be the net amount determined pursuant to this paragraph:

(1) Adjust 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 for the month, 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 Department for the month. Such price shall be rounded to the nearest cent but shall not exceed a price computed as follows:

(i) Multiply by 4.2 the Chicago butter price specified in this subparagraph;

(ii) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(iii) From the sum of the results arrived at under subdivisions (i) and (ii) of this subparagraph, subtract 48 cents, and round to the nearest cent.

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month	Amount (dollars per cwt)
January	+0.03
February	+0.02
March	-0.05
April	-0.09
May	-0.12
June	-0.11
July	+0.03
August	+0.10
September	+0.06
October	+0.06
November	+0.06
December	+0.06

§ 1002.51 Transportation differentials.

The class prices set forth in § 1002.50 shall be subject to a transportation differential determined in accordance with paragraphs (a) through (e) of this section.

(a) The market administrator shall determine a freight zone for each pool plant and each partial pool plant. Such freight zone shall be the shortest highway mileage from the plant to the nearest of the following points as computed by the market administrator from data contained in Mileage Guide No. 5, without supplements, issued on July 20, 1949, effective August 21, 1949, by the Household Goods Carriers' Bureau, Agent, Washington, D.C.: Mount Vernon or Yonkers in the State of New York; Tenaflly, Glen Ridge, East Orange, Elizabeth, Hackensack, Hillside, Irvington, or Passaic in the State of New Jersey. The freight zone for plants located in New York City, Nassau, and Suffolk Counties in the State of New York, or in Essex, Hudson, and Union Counties in the State of New Jersey shall be in the 1- to 10-mile zone. The market administrator shall publicly announce the freight zones for pool plants.

(b) The market administrator shall determine and publicly announce a freight zone for each minor civil division (township, borough, incorporated village, or city) within which farms included in a pool or partial pool unit are located by computing the shortest highway mileage distance from the nearest point in the minor civil division to the nearest point specified in paragraph (a) of this section, using the mileage guide specified in such paragraph supplemented by U.S. Geological Survey maps. In States where the smallest governmental unit except for incorporated cities or villages is the county, a zone for the county shall be determined in the same manner as for minor civil divisions. The zone for each farm shall be the zone of the minor civil division or county in which the farm is located.

(c) The differential rates applicable at plants shall be as set forth in the following schedule:

A Freight zone (miles)	B Classes I-A and I-B (cents per cwt.)	C Class II (cents per cwt.)
1-10	+24.0	+8
11-20	+22.8	+8
21-25	+21.6	+8
26-30	+21.6	+7
31-40	+20.4	+7
41-50	+19.2	+7
51-60	+18.0	+6
61-70	+16.8	+6
71-75	+15.6	+6
76-80	+15.6	+5
81-90	+14.4	+5
91-100	+13.2	+5
101-110	+12.0	+4
111-120	+10.8	+4
121-125	+9.6	+4
126-130	+8.4	+3
131-140	+7.2	+3
141-150	+6.0	+2
151-160	+4.8	+2
161-170	+3.6	+2
171-175	+3.6	+1
176-180	+2.4	+1
181-190	+1.2	+1
191-200	0.0	0
201-210	-1.2	0
211-220	-2.4	0
221-225	-3.6	-1
226-230	-4.8	-1
231-240	-6.0	-1
241-250	-7.2	-2
251-260	-8.4	-2
261-270	-9.6	-3
271-275	-10.8	-3
276-280	-12.0	-4
281-290	-13.2	-4
291-300	-14.4	-5
301-310	-15.6	-5
311-320	-16.8	-6
321-325	-18.0	-6
326-330	-19.2	-6
331-340	-20.4	-7
341-350	-21.6	-7
351-360	-22.8	-7
361-370	-24.0	-8
371-375	-24.0	-8
376-380	-24.0	-8
381-390	-24.0	-8
391-400	-24.0	-8
401 and over	-24.0	-8

(d) The differential rate applicable to each pool unit or partial pool unit shall be computed each month as follows: Multiply the volume of pool milk received from farms in each zone by the rate for that zone as set forth in the schedule in paragraph (c) of this section, add the resulting values for all zones of the unit, divide such sum by the total volume of milk received by the unit and round to the nearest 0.1 cent. Rates shall be computed separately for columns B and C of such schedule.

(e) In the event that a plant in the 401 miles and over freight zone becomes a pool plant, a 10-mile zone shall be determined for such plant and for each farm in any pool unit delivering to such plant. The column B differentials in paragraph (c) of this section shall be extended at the same rate as provided in such column for such plant or unit: *Provided*, That in no case shall such differential cause the class price or the uniform price for such plant or unit to be less than the Class II price for such plant or unit: *Provided further*, That farms or units delivering to such plant shall be deemed to be in the same zone as the plant.

§ 1002.52 Connecticut order differential.

For skim milk and butterfat which is classified in Class II under Part 1015 of this chapter and is received in the form

of packaged cream or a bulk fluid milk product at a pool plant and is classified as Class I-A or I-B, the handler shall pay a differential equal to the difference between the Class II price under Part 1015 of this chapter and the Class I-A price appropriately adjusted for differentials pursuant to §§ 1002.51, 1002.81, and 1002.82(b).

§ 1002.53 Producer-handler price differential.

For skim milk and butterfat received from a handler who is a producer-handler under this or any other order and is assigned to Class I-A pursuant to § 1002.45(a)(5)(i), the transferee handler shall pay a differential equal to the difference between the Class I-A price and the Class II price both appropriately adjusted for differentials pursuant to §§ 1002.51 and 1002.82(b).

§ 1002.54 Use of equivalent price or index.

If for any reason a price or index specified by this part for use in computing class prices or other purposes is not reported or published in the manner therein described, the market administrator shall use a price or index determined by the Secretary to be equivalent to or comparable with the price or index specified.

DETERMINATION OF UNIFORM PRICE

§ 1002.70 Net pool obligation of handlers.

Each handler's net pool obligation for milk received at each plant and unit shall be computed separately pursuant to paragraphs (a) through (d) of this section and then combined into one total to determine the handler's total net pool obligation.

(a) Multiply the quantity of milk in each class remaining after the computation pursuant to § 1002.45(a)(17) and the corresponding step of § 1002.45(b) by the applicable class price adjusted by the applicable differential pursuant to § 1002.51;

(b) For each partial pool plant or partial pool unit multiply the quantity of pool milk in each class by the applicable class price adjusted by the applicable differential pursuant to § 1002.51;

(c) Deduct, in the case of each plant or unit nearer than the 201-to-210-mile zone and add, in the case of each plant or unit farther than the 201-to-210-mile zone, the sum obtained by multiplying the quantity of pool milk received from dairy farmers by the differential in column B of § 1002.51(c) applicable at the plant and the weighted average column B differential computed pursuant to § 1002.51(d) applicable to the unit.

(d) Add the amounts computed in subparagraphs (1) through (6) of this paragraph:

(1) Multiply the pounds of overage deducted from each class pursuant to § 1002.45(a)(17) and the corresponding step of § 1002.45(b) by the applicable class price adjusted by the differentials pursuant to §§ 1002.51 and 1002.81;

(2) Multiply the difference between the applicable Class I-A and Class II prices, both adjusted by the applicable differential pursuant to § 1002.51, by the pounds of skim milk and butterfat in other source milk subtracted from Class I-A pursuant to § 1002.45(a)(4) and the corresponding step of § 1002.45(b);

(3) Multiply the producer-handler price differential by the pounds of skim milk and butterfat subtracted from Class I-A pursuant to § 1002.45(a)(5)(i) and the corresponding step of § 1002.45(b);

(4) Multiply the difference between the Class II price for the preceding month and the Class I-A price for the current month, both applicable at the location of the nearest plant or unit from which an equivalent quantity of Class II milk was received in the preceding month, by the pounds of skim milk and butterfat subtracted from Class I-A pursuant to § 1002.45(a)(7) and the corresponding step of § 1002.45(b);

(5) Multiply the Connecticut order price differential by the pounds of skim milk and butterfat in bulk receipts of fluid milk products and packaged receipts of cream which have been priced and pooled under Part 1015 of this chapter and subtracted from Class I-A milk pursuant to § 1002.45(a)(12) and the corresponding step of § 1002.45(b); and

(6) Multiply the difference between the Class II price and the Class I-A price for the current month both applicable at the location of the transferor plant, by the pounds of skim milk and butterfat from other order plants (except Connecticut) in receipts of fluid cream classified and priced as other than a fluid milk product under the originating order and subtracted from Class I-A pursuant to § 1002.45(a)(12) and the corresponding step of § 1002.45(b).

§ 1002.71 Computation of the uniform price.

The market administrator shall, on or before the 14th day of each month, audit for mathematical correctness and obvious errors the report submitted for the preceding month by each handler. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of pool milk on all reports, the report of any handler who has not made payment of the last monthly pool debt account rendered pursuant to § 1002.84 shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly pool debts. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

(a) Combine into one total the net pool obligations of all handlers computed pursuant to § 1002.70;

(b) Subtract the total of payments required to be made pursuant to § 1002.89;

(c) Subtract for each of the months of March, April, May, and June an

amount computed by multiplying the total hundredweight of pool milk for the month by 10 cents in March, 20 cents in April, and 30 cents in May and June;

(d) Add for the months of August, September, and October, respectively, an amount representing 25 percent, 30 percent, and 30 percent of the aggregate amount subtracted pursuant to paragraph (c) of this section for the prior period of March-June, and for November add the remainder of the amount subtracted pursuant to paragraph (c) of this section and the interest earned on the aggregate fund;

(e) Add the amount of unreserved cash in the producer settlement fund;

(f) Subtract an amount equal to not less than 8 cents nor more than 9 cents per hundredweight of pool milk to provide against the contingency of errors in reports and payments or of delinquencies in payments by handlers; and

(g) Divide the result obtained in paragraph (f) of this section by the total pounds of pool milk delivered by dairy farmers. The result shall be known as the uniform price.

PAYMENT BY HANDLERS DIRECTLY TO PRODUCERS

§ 1002.80 Time and rate of payments.

On or before the 25th day of each month each handler shall make payment, subject to paragraphs (a), (b), (c), and (d) of this section, to each producer for all pool milk delivered by such producer during the preceding month at not less than the uniform price, subject to appropriate differentials set forth in §§ 1002.81 and 1002.82. For milk received in a bulk tank unit there may be deducted, as proper and as authorized in writing by the producer, or by a co-operative association authorized to act on behalf of such producer, a tank truck service charge, not to exceed 10 cents per hundredweight, when such tank truck service is provided by the handler or at his expense. Any such deduction with respect to bulk tank milk must be made by the handler not later than the date on which the producer is required to be paid for the milk involved, and the same rate of deduction shall apply until canceled by the producer or by the co-operative by notifying the handler in writing, in which case the cancellation shall be effective on the first day of the month following its receipt by the handler.

(a) Each handler which is also a co-operative marketing association, determined by the Secretary to be qualified under the Capper-Volstead Act with respect to producers who are members of and under contract with such association, may make distribution in accordance with the contract between the association and such members of the net proceeds of all its sales in all markets in all use classifications.

(b) Whenever verification by the market administrator of the payment to any producer or co-operative association of producers for milk delivered to any handler discloses payment of less than is required by this part, the handler shall

make up such payment to the producer or cooperative association of producers not later than the time of making payment next following such disclosure.

(c) If a handler claims that he cannot make the required payment because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, such payment shall be made to the producer settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make such payment from the producer settlement fund to the handler or to the lawful claimant as the case may be.

(d) If not later than the date when such payment is required to be made, legal proceedings have been instituted by the handler for the purpose of administrative or judicial review of the market administrator's findings upon verification as provided above such payment shall be made to the producer settlement fund and shall be held in reserve until such time as the above-mentioned proceedings have been completed or until the handler submits proof to the market administrator that the required payment has been made to the producer or association of producers in which latter event the payment shall be refunded to the handler.

§ 1002.81 Butterfat differential.

The butterfat differential for the adjustment of prices as specified in this part shall be plus or minus for each one-tenth of 1 percent of butterfat therein above or below 3.5 percent an amount computed as follows:

Multiply by 0.120 and round to the nearest even one-tenth cent the simple average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) reported during the period between the 16th day of the preceding month and the 15th day inclusive of the current month by the United States Department of Agriculture for Grade A (92-score) bulk creamery butter in the New York City market.

§ 1002.82 Location differentials.

(a) *Transportation differential.* The transportation differential shall be plus or minus the appropriate differential shown in column B of the schedule in § 1002.51(c) for the zone of the plant to which the milk is delivered or in the case of farms included in units the zone of the township in which the milk is received.

(b) *Direct delivery differential.* For pool milk received at a plant or pool unit milk received from farms in the 1- to 10-mile zone through the 61- to 70-mile zone as determined pursuant to § 1002.51, the handler shall pay five cents per hundredweight in addition to any amounts required by other provisions of this section.

PRODUCER SETTLEMENT FUND AND ITS OPERATION

§ 1002.83 Producer settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer settlement fund" into which he shall deposit all payments and out of which he shall make all payments pursuant to §§ 1002.85 through 1002.89. All amounts subtracted under § 1002.71 (c), inclusive of interest earned thereon, shall remain therein as an obligated balance until it is withdrawn for the purpose of effectuating § 1002.71 (d).

§ 1002.84 Handler's accounts.

The market administrator shall establish an account for each handler who is required to make payments to the producer settlement fund or who received payments from the producer settlement fund. After computing the uniform price and each handler's pool debit or credit each month, and at such times as he deems appropriate, the market administrator shall render each handler a statement of his account showing the debit or credit balance, together with all debits or credits entered on such handler's account since the previous statement was rendered: *Provided*, That the handler operating a pool plant receiving milk from a partial pool plant or partial pool unit without producers as defined in § 1002.6, or from a partial pool plant in the 401 miles or over freight zone, shall be responsible for the debit or credit arising on milk so received and for the payment of the administration assessment pursuant to § 1002.90 on such milk.

§ 1002.85 Payment to the producer settlement fund.

On or before the 18th day of each month each handler shall make full payment of the debit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 1002.84.

§ 1002.86 Payments out of producer settlement fund.

On or before the 20th day of each month the market administrator shall make payment to each handler of the credit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 1002.84. If, at any such time, the balance in the producer settlement fund is insufficient to make full payment due to each handler, the market administrator shall reduce uniformly the payments to each handler and shall complete such payments as soon as the necessary funds are available. No handler who, on the 25th day of the month, has not received such payments in full from the market administrator shall be deemed to be in violation of §§ 1002.80 through 1002.82 if he reduces his total payments to producers for milk delivered by such producers during the preceding month by not more than the amount of the reduction in payment from the producer settlement fund.

§ 1002.87 Handler's pool debit or credit.

After computing the uniform price for each month, the market administrator shall compute each handler's pool debit or credit as follows:

(a) Multiply the quantity of pool milk received by each handler from dairy farmers by the uniform price.

(b) If the result obtained in paragraph (a) of this section is less than the handler's net pool obligation, the difference shall be entered on the handler's producer settlement fund account as such handler's pool debit.

(c) If the result obtained in paragraph (a) of this section is greater than the handler's net pool obligation, the difference shall be entered on the handler's producer settlement fund account as such handler's pool credit.

§ 1002.88 Adjustments of errors in payments.

Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to or from the producer settlement fund, the market administrator shall debit the handler's producer settlement fund account for any unpaid amount. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall credit the handler's producer settlement fund account for any such amount.

§ 1002.89 Cooperative payments for marketwide services.

Payments shall be made to qualified cooperatives or to federations under the conditions, in the manner, and at the rates set forth in this section.

(a) *Definitions.* As used in this section the following terms shall have the following meanings:

(1) "Cooperative" means a cooperative association of producers which is duly incorporated under the cooperative corporation laws of a state; is qualified under the Capper-Volstead Act (7 U.S.C. 291 et seq.); has all its activities under the control of its members; and has full authority in the sale of its members' milk.

(2) "Federation" means a federation of cooperatives.

(3) "Federated cooperative" means a cooperative which is a member of a federation and on whose membership the federation is an applicant for or receives payments under subparagraph (2) of paragraph (f) of this section.

(4) "Member" means, when used with respect to a member of a cooperative or of a federated cooperative, only a member who is also a producer, as defined in § 1002.6.

(b) *Qualified cooperatives and federations.* A cooperative or federation may submit an application to the market administrator for payments under the provisions of this section. In accordance with the requirements of the rules and regulations issued by the market administrator, any such application shall include a written description of the applicant's

program for the performance of market-wide services, including evidence that adequate facilities and personnel will be maintained by it so as to enable it to perform the marketwide services; and the application shall contain a statement by the applicant that it will perform the required marketwide services for which it is applying for payments. The application shall set forth all necessary data so as to enable the market administrator to determine whether it meets the qualification requirements with respect to the payments for which the application is submitted. An application shall be approved by the market administrator only if he determines that:

(1) In the case of a cooperative:

(i) It has not less than 4,000 members and receives from its members not less than one cent per hundredweight of milk delivered by them: *Provided*, That no person shall be counted in this respect as a member if he is a member of another cooperative which is an applicant for or which receives cooperative payments, or if he is a member of a federated cooperative.

(ii) If the application is also for an additional payment under subparagraph (3) of paragraph (f) of this section, it has not less than 6,000 members and receives from its members not less than one cent per hundredweight of milk delivered by them, subject to the proviso in subdivision (i) of this subparagraph.

(iii) If the application is also for an additional payment under subparagraph (4) of paragraph (f) of this section, the cooperative is an operating cooperative which operates marketing facilities, i.e., pool plant(s), at which it receives at least 25 per centum, by weight, of the pool milk marketed by its members: *Provided*, That in determining whether the 25 per centum minimum requirement is complied with, there shall be excluded the milk delivered by a member of the cooperative who is a member of another cooperative which is an applicant for or which receives cooperative payments on the same milk or which is a federated cooperative in a federation which is an applicant for or receiving cooperative payments on the same milk.

(2) In the case of a federation:

(i) It is duly incorporated under the laws of a State.

(ii) It has contracts with each of its federated cooperatives under which the cooperatives agree to remain in the federation for at least 1 year, and such contracts cover or will be renewed for a yearly period for every subsequent year for which the federated cooperatives are to be included within the membership of the federation for cooperative payment purposes.

(iii) Its federated cooperatives have an aggregate of not less than 4,000 members and the federated cooperatives receive from their members not less than one cent per hundredweight of milk delivered by them; and its federated cooperatives will pay to the federation, when required by rules and regulations issued by the market administrator, the minimum monthly payment specified in the rules and regulations to finance the activities

of the federation that are not marketwide in character: *Provided*, That no person shall be counted in this respect as a member if he is a member of a cooperative which is an applicant for or which receives cooperative payments, or if he is a member of another federated cooperative.

(iv) If the application is also for an additional payment under subparagraph (3) of paragraph (f) of this section, the aggregate membership of the federated cooperatives is not less than 6,000 members and the federated cooperatives received from their members not less than 1 cent per hundredweight of milk delivered by their members, subject to the proviso in subdivision (iii) of this subparagraph.

(v) If the application is also for an additional payment under subparagraph (5) of paragraph (f) of this section, the federation operates marketing facilities; i.e., pool plant(s), or the federated cooperatives operate marketing facilities, at which is received at least 25 per centum, by weight, of the pool milk marketed by the members of the federated cooperatives: *Provided*, That in determining whether the 25 per centum minimum requirement is complied with, there shall be excluded the milk delivered by members of a cooperative which is an applicant for or which receives cooperative payments on the same milk, or which is a federated cooperative in another federation which is an applicant for or receiving cooperative payments on the same milk, or which is not meeting the requirements of this section applicable to it.

(3) The applicant cooperative or federation demonstrates that it has the ability to perform the marketwide services for which application is made, and that such services will be performed.

(4) The applicant cooperative or the federated cooperatives of an applicant federation are in no way precluded from arranging for the utilization of milk under their respective control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification.

(c) *Notice of qualification or denial: Effective date.* Upon determination by the market administrator that a cooperative or a federation is qualified to receive payment for performance of the marketwide services, he shall transmit such determination to the applicant, cooperative or federation and publicly announce the issuance of the determination. The determination shall be effective with respect to milk delivered on and after the first day of the month following issuance of the determination. If, after consideration of an application for payments for marketwide services, the market administrator determines that the cooperative or federation is not qualified to receive such payments he shall promptly notify the applicant and specifically set forth in such notice his reasons for denial of the application.

(d) *Requirements for continued qualification.* From time to time and in ac-

cordance with rules and regulations which may be issued by the market administrator, each qualified cooperative or federation must demonstrate to the market administrator that it continues to meet the qualification requirements for the payments and is fully performing the marketwide services for which it is being paid.

(e) *Marketwide services.* Each cooperative or federation shall perform the marketwide services enumerated in this paragraph. Such services are: (1) Analyzing milk marketing problems and their solutions, conducting market research and maintaining current information as to all market developments, preparing and assembling statistical data relative to prices and marketing conditions, and making an economic analysis of all such data; (2) determining the need for the formulation of amendments to the order and proposing such amendments or requesting other appropriate action by the Secretary or the market administrator in the light of changing conditions; (3) participating in proceedings with respect to amendments to the order, including the preparation and presentation of evidence at public hearings, the submission of appropriate briefs and exceptions, and also participating, by voting or otherwise, in the referendum relative to amendments; (4) participating in the meetings called by the market administrator, such as meetings with respect to rules and regulations issued under the order, including activities such as the preparation and presentation of data at such meetings and briefs for submission thereafter; (5) conducting a comprehensive education program among producers—i.e., members and nonmembers of cooperatives—and keeping such producers well informed for participation in the activities under the regulatory order and, as a part of such program, issuing publications that contain relevant data and information about the order and its operation, and the distribution of such publications to members and, on the same subscription basis, to nonmembers who request it, and holding meetings at which members and nonmembers may attend; and (6) in the case of a cooperative or federation which receives an additional payment under subparagraph (4) or (5) of paragraph (f) of this section, operating marketing facilities, or having within its membership federated cooperatives operating marketing facilities; i.e., pool plant(s), at which is received at least 25 per centum, by weight, of the milk marketed by all the members of the cooperative or by all the members of the federated cooperatives' members.

(f) *Rate, computation, time, and method of payment.* (1) Subject to the provisions of paragraph (g) of this section, the market administrator, on or before the 25th day of each month, shall make payment out of the producer settlement fund, or issue equivalent credit therefor to each cooperative or federation which is qualified for such payments for marketwide services. The payment to a cooperative shall be based

upon the pool milk reported by cooperative or proprietary handlers to have been received during the preceding month from its members, and the payment to a federation shall be based upon the pool milk reported by cooperative or proprietary handlers to have been received during the preceding month from the members of its federated cooperatives, subject in both instances to adjustment upon verification by the market administrator.

(2) Such payment or credit shall be at the rate of two cents per hundredweight of milk in accordance with subparagraph (1) of this paragraph: *Provided*, That in computing payment to a cooperative there shall be excluded all of the milk of its members who belong to another cooperative which is an applicant for or which receives cooperative payments on the same milk or which is a federated cooperative in a federation which is an applicant for or receiving cooperative payments on the same milk: *Provided further*, That in computing payment to a federation there shall be excluded all of the milk of members of a cooperative which is an applicant for or which receives cooperative payments on the same milk, or which is a federated cooperative in another federation which is an applicant for or receiving cooperative payments on the same milk, or which is not meeting the requirements of this section applicable to it.

(3) Any cooperative that has at least 6,000 members and any federation which has an aggregate membership of its federated cooperatives of at least 6,000 members shall receive a payment, in addition to the payment provided for in subparagraph (2) of this paragraph, of 1 cent per hundredweight of milk in accordance with subparagraph (1) of this paragraph and subject to the provisos contained in subparagraph (2) of this paragraph.

(4) Any cooperative that operates marketing facilities, i.e., pool plant(s), at which is received at least 25 per centum, by weight, of the milk marketed by its members shall receive a payment, in addition to the payment provided for in subparagraph (2) or subparagraph (3) of this paragraph of 1 cent per hundredweight of all milk marketed by its members in accordance with subparagraph (1) of this paragraph: *Provided*, That in computing the payment under this subparagraph there shall be excluded the milk delivered by a member of the cooperative who is a member of another cooperative which is an applicant for or which receives cooperative payments on the same milk or which is a federated cooperative in a federation which is an applicant for or receiving cooperative payments on the same milk.

(5) Any federation that operates marketing facilities, i.e., pool plant(s), or whose members include one or more federated cooperatives that operate marketing facilities, at which is received at least 25 per centum, by weight, of the milk marketed by the members of its federated cooperatives shall receive a payment, in addition to the payment provided for in subparagraph (2) or

subparagraph (3) of this paragraph, of 1 cent per hundredweight of all milk marketed by such members in accordance with subparagraph (1) of this paragraph: *Provided*, That in computing the payment under this subparagraph there shall be excluded the milk delivered by members of a cooperative which is an applicant for or which receives cooperative payments on the same milk, or which is a federated cooperative in another federation which is an applicant for or receiving cooperative payments on the same milk, or which is not meeting the requirements of this section applicable to it.

(6) If an individually qualified cooperative is affiliated with a federation, the cooperative payment shall be made to such cooperative unless its contract with the federation specifies in writing that the federation is to receive the payments. Any such contract must authorize the federation to receive the payments for at least 1 year, and such agreement must cover or be renewed for a yearly period for every subsequent year for which the federation is to receive the payments.

(g) *Disqualification.* (1) The market administrator shall issue an order wholly or partly disqualifying a previously qualified cooperative or federation for payments authorized pursuant to this section and such payments shall not thereafter be made to it if he determines that:

(i) The cooperative or federation no longer complies with the requirements of this section: *Provided*, That in the case of the federation, if one of its federated cooperatives has failed to comply with the requirements of this section applicable to it or has failed, promptly after demand by the market administrator, to arrange for the utilization of milk under its control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification, the federation shall be disqualified only to the extent that its qualification for payments or the amount of its payments are based upon the membership, milk, or operations of such noncomplying federated cooperatives;

(ii) The cooperative or federation has failed to make reports or furnish records pursuant to this section or pursuant to rules and regulations issued by the market administrator; or

(iii) In the case of the cooperative, it has failed, promptly after demand by the market administrator, to arrange for the utilization of milk under its control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification.

(2) An order of the market administrator wholly or partly disqualifying a cooperative or federation shall not be issued until after the cooperative or federation has had opportunity for hearing thereon following not less than 15 days' notice to it specifying the reasons for the proposed disqualifications. If the cooperative or federation fails to file a

written request for hearing with the market administrator within such period of 15 days, the market administrator may issue an order of disqualification without further notice; but if within such a period a request for hearing is filed, the market administrator shall promptly proceed to hold such hearing pursuant to rules and regulations issued by him under paragraph (1) of this section.

(3) A disqualification order issued by the market administrator shall set forth the findings and conclusions on the basis of which it is issued.

(h) *Appeals.*—(1) *From denials of application.* Any cooperative or federation whose application for qualification has been denied by the market administrator may, within 30 days after notice of such denial, file with the Secretary a written petition for review. But the failure to file such petition shall not bar the cooperative or federation from again applying to the market administrator for qualification.

(2) *From disqualification orders.* A disqualification order by the market administrator shall become final 30 days after its service on the cooperative or federation unless within such 30-day period the cooperative or federation files a written petition with the Secretary for review thereof. If such petition for review is filed, payments for which the cooperative or federation has been disqualified by the order shall be held in reserve by the market administrator pending ruling of the Secretary, after which the sums so held in reserve shall either be returned to the producer settlement fund or paid over to the cooperative or federation depending on the Secretary's ruling on the petition. If such petition for review is not filed, any payments which otherwise would be made within the 30-day period following issuance of the disqualification order shall be held in reserve until such order becomes final and shall then be returned to the producer settlement fund.

(3) *Record on appeal.* If an appeal is taken under subparagraph (1) or subparagraph (2) of this paragraph, the market administrator shall promptly certify to the Secretary the ruling or order appealed from and the evidence upon which it was issued: *Provided*, That if a hearing was held the complete record thereof, including the applications, petitions, and all exhibits or other documentary material submitted in evidence shall be the record so certified. Such certified material shall constitute the sole record upon which the appeal shall be decided by the Secretary.

(i) *Regulations.* The market administrator is authorized to issue regulations and amendments thereto to effectuate the provisions of this section and to facilitate and implement the administration of its provisions. Such regulations shall be issued in accordance with the following procedure:

(1) All proposed rules and regulations and amendments thereto shall be the subject of a meeting called by the market administrator at which all interested persons shall have opportunity to be

heard. Not less than 5 days prior to the meeting, notice thereof and of the proposed regulations or amendments shall be published in the *FEDERAL REGISTER* and mailed to qualified cooperatives and federations. A stenographic record shall be made at such meetings which shall be public information and be available for inspection at the office of the market administrator.

(2) A period of at least 5 days after the meeting shall be allowed for the filing of briefs.

(3) All regulations and amendments thereto issued by the market administrator pursuant to this section must be submitted in tentative form to the Secretary for approval, shall not be effective without such approval, and shall be published in the *FEDERAL REGISTER* following such approval. The regulations or amendments in tentative form shall be forwarded also to cooperatives and federations qualified under this section and to other persons upon request in writing. The Secretary shall either approve the regulations or amendments thereto submitted by the market administrator or direct the market administrator to reconsider the tentative rules or amendments. In the event the market administrator is directed to give reconsideration to the matter, the market administrator shall either issue revised tentative regulations or amendments or call another meeting pursuant to this section for additional consideration of the rules or amendments.

(j) *Reports and records.* A qualified cooperative or federation and any federated cooperative in a qualified federation shall make such reports to the market administrator as may be requested by him for the administration of the provisions of this section, and shall maintain and make available to the market administrator or his representative such records as will enable the market administrator to verify such reports.

(k) *Notices, demands, orders, etc.* All notices, demands, orders, or other papers required by this section to be given or served upon a cooperative or federation shall be deemed to have been given or served as of the time when mailed to the last known secretary of the cooperative or federation at his last known address.

EXPENSE OF ADMINISTRATION

§ 1002.90 Payment by handlers.

As his pro rata share of the expense of administration of this part, each handler shall, on or before the 18th day of each month, pay to the market administrator a sum not exceeding 2 cents per hundredweight on the total quantity of pool milk received from dairy farmers at plants or from farms in a unit operated by such handler, directly or at the instance of a cooperative association of producers, the exact amount to be determined by the market administrator subject to review by the Secretary. This section shall not be deemed to duplicate any similar payment by any handler under an order issued by the Commissioner of Agriculture and Markets of

the State of New York, or the Director of the New Jersey Office of Milk Industry, with respect to the marketing area. Whenever verification by the market administrator discloses an error in the payment made by any handler, such error shall be adjusted not later than the date next following such disclosure on which payments are due pursuant to this section.

MISCELLANEOUS

§ 1002.91 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money irrespective of when such obligation arose, except an obligation involved in an action instituted before August 1, 1949, under section 8c(15) (A) of the Act or before a court.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the 2-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this

part shall terminate 2 years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable periods of time, files pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

§ 1002.92 Continuing obligation of handlers.

Unless otherwise provided by the Secretary in any notice of amendment, termination, or suspension of any or all of the provisions of this part, such amendment, termination, or suspension shall not affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any provision of this part; release or waive any violation of this part occurring prior to the effective date of such amendment, termination, or suspension; or affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 1002.93 Continuing power and duty of market administrator.

The market administrator shall (a) continue in such capacity until discharged by the Secretary; (b) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the market administrator, to such person as the Secretary shall direct; and (c) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator pursuant to this part.

§ 1002.94 Liquidation.

Upon the termination or suspension of this part, the market administrator shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such termination or suspension. Any funds collected for expenses pursuant to the provisions of this part over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator in liquidating the business of the market administrator's office shall be distributed to handlers in an equitable manner.

§ 1002.95 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

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