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TITLE 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

[1023—Allotments—(Burley, Flue, Fire, Air, Sun-58)-1]

PART 725—BURLEY, FLUE-CURED, FIRE-CURED, DARK AIR-CURED, AND VIRGINIA SUN-CURED TOBACCO

1958 SINGLE COMBINED ALLOTMENT FOR FIRE-CURED AND VIRGINIA SUN-CURED TOBACCO

The changes involved in this amendment are based on the marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended, including Public Law 85-705, approved August 21, 1958, applicable to tobacco (7 U. S. C. 1311-15).

In conformance with the provisions of the Administrative Procedure Act (5 U. S. C. 1003), notice of the formulation of this amendment was published in the FEDERAL REGISTER (23 F. R. 6600). The views, data and recommendations of interested persons have been followed within the limits permitted by the Agricultural Adjustment Act of 1938, as amended.

Since fire-cured (type 21) and Virginia sun-cured (type 37) tobacco farmers will soon be harvesting and curing the 1958 crop, it is hereby found and determined that compliance with the 30-day effective date provisions of section 4 of the Administrative Procedure Act is impracticable and contrary to the public interest. Therefore, the amendment contained herein shall become effective upon the date of filing with the Director, Division of the Federal Register.

The regulations governing the establishment of farm marketing quotas and acreage allotments for burley, flue-cured, fire-cured, dark air-cured and Virginia sun-cured tobacco for the 1958-59 marketing year (22 F. R. 5675, 8103; 23 F. R. 135) are hereby amended by adding a new § 725.929 as follows:

§ 725.929 *Combination of 1958 fire-cured (type 21) tobacco acreage allotment and 1958 Virginia sun-cured (type 37) tobacco acreage allotment on the same farm into a 1958 single combined allotment.* (a) The 1958 fire-cured (type 21) tobacco acreage allotment and the 1958 Virginia sun-cured (type 37) tobacco acreage allotment heretofore established for the same farm pursuant to §§ 725.911 to 725.928, inclusive, shall be combined into a 1958 single combined tobacco acreage allotment for the farm for either fire-cured (type 21) tobacco, or Virginia sun-cured (type 37) tobacco, whichever the owner of the farm or his representative chooses, or if there is more than one owner of the land comprising the farm, whichever the representative of all such owners chooses, and notifies the county committee of his choice, within 15 days after the date written notification of the opportunity to make such choice is mailed to the owner or owners, or within such extended period of time thereafter as the county committee in any case may fix and notify the owner or owners of such extension. The county committee shall also notify the farm owner or owners that in case the county committee is not notified within such 15 days or such extension of time as may be granted, that a choice has been made as heretofore provided, the county committee, with approval of a representative of the State committee, shall combine such 1958 allotments for such farm into a 1958 single combined acreage allotment for either fire-cured (type 21) tobacco or Virginia sun-cured (type 37) tobacco, on the basis of (1) the prevalent kind of tobacco grown in the area in which such farm is located, (2) the curing facilities on such farm, and (3) the proximity and nature of markets. Any single combined acreage allotment established for any farm pursuant to this paragraph shall equal the sum of the acreage of the allotments of fire-cured (type 21) tobacco and Virginia sun-cured (type 37) tobacco comprising it, and shall be used for all purposes of the 1958 tobacco marketing quota program and for determining 1958 price support eligibility.

(b) If after September 12, 1958, one or more farms having a 1958 fire-cured (type 21) tobacco acreage allotment is combined with another or more farms having a 1958 Virginia sun-cured (type 37) tobacco acreage allotment, a single combined acreage allotment for the 1958-59 marketing year designated for either fire-cured (type 21) tobacco or Virginia sun-cured (type 37) tobacco shall be established for the combined

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FEDERAL REGISTER

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CODIFICATION GUIDE

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farm equal to the total acreage of and in place of the 1958 acreage allotments for fire-cured (type 21) tobacco and Virginia sun-cured (type 37) tobacco previously established for the farms comprising the combined farm. The county committee shall give written notification to the owner or owners of such combined farm that the owner or his representative may designate, or if there is more than one owner of the land comprising the farm that the representative of all such owners may designate, a single combined 1958 acreage allotment for the combined farm as either for fire-cured (type 21) tobacco or for Virginia sun-cured (type 37) tobacco by submitting his choice to the local county committee within 15 days following the date of mailing of such notification, or within such extended period of time thereafter as the county committee in any case may fix and notify the owner or owners of such extension; and that if within such time the county committee is not notified that a choice has been made as heretofore provided, the county committee, with approval of a representative of the State committee, shall designate the 1958 single combined acreage allotment for the farm as heretofore provided in this section. The occurrence on the same farm of concurrent acreage allotments for fire-cured (type 21) tobacco and Virginia sun-cured (type 37) tobacco pursuant to the provisions of § 725.920 shall be deemed to be of the same effect, for the purposes of and in applying the provisions of this paragraph, as a combination of farms described above in this paragraph.

(c) Single combined farm acreage allotments established in accordance with this section shall be determined and approved as provided in § 725.927 (a) and the State committee or its representative may review and revise or require revision of any acreage allotment so established. Written notice of such single combined farm acreage allotments and marketing quotas shall be given and mailed as provided in § 725.927 (b).

(d) For the purpose of this section the term "representative" shall mean the person named and authorized by the owner of a farm to act for him, or if there are two or more owners of the land comprising a farm, the person named and authorized by such owners to act for all of them in designating or choosing for the farm a single combined acreage allotment for either fire-cured (type 21) tobacco or Virginia sun-cured (type 37) tobacco. The county committee may require any person to furnish to it such evidence as it may require to reasonably establish such person as an owner or representative of an owner or owners.

(Sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interprets and applies sec. 313, 52 Stat. 47, as amended; sec. 315, Pub. Law 85-705, 85th Cong.; 7 U. S. C. 1313)

Done at Washington, D. C. this 15th day of September 1958. Witness my hand and the seal of the Department of Agriculture.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 58-7636; Filed, Sept. 16, 1958; 12:30 p. m.]

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

PART 909—ALMONDS GROWN IN CALIFORNIA

BUDGET OF EXPENSES OF ALMOND CONTROL BOARD AND RATE OF ASSESSMENT FOR CROP YEAR

Notice was published in the FEDERAL REGISTER of August 26, 1958 (23 F. R. 6600) that the Secretary was considering a proposed rule to establish a budget of expenses of the Almond Control Board of $33,000 and a rate of assessment of seventeen hundredths of a cent (.17¢) per pound of almond kernels received by handlers for their own accounts during the crop year beginning July 1, 1958. Said action was proposed to be taken in accordance with the applicable provisions of Marketing Agreement No. 119, as amended, and Order No. 9, as amended (7 CFR Part 909), regulating the handling of almonds grown in California. Said marketing agreement and order are effective under the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

The aforesaid notice afforded interested persons an opportunity to file data, views, or arguments concerning the proposal with the Department prior to final issuance of the rule. The prescribed time has expired and no such communications have been received.

After consideration of all relevant matters it is hereby found that expenses of the Almond Control Board in the total amount of $33,000 are reasonable and likely to be incurred by the Board during the 1958-59 crop year, and a rate of assessment of .17 cent per pound of almond kernels is necessary to provide funds to meet authorized Board expenses.

Therefore, it is ordered, That the budget of expenses of the Almond Control Board and rate of assessment for the year beginning July 1, 1958 be as follows:

§ 909.308 *Budget of expenses of the Almond Control Board and rate of assessment for the crop year beginning July 1, 1958*—(a) *Budget of expenses.* The budget of expenses for the crop year beginning July 1, 1958 shall be in the total amount of $33,000 for the maintenance and functioning of the Almond Control Board, and for such purposes as the Secretary may, pursuant to the provisions of the agreement and order (§§ 909.1 to 909.92), determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for the said crop year shall be seventeen hundredths of a cent (.17¢) per pound of almonds, kernel weight basis, received by each handler for his own account, except almonds received from other handlers on which assessments have previously been paid.

It is hereby further found that good cause exists for not postponing the effective date of this order later than the date of its publication in the FEDERAL REGISTER for the reasons that: (1) The action will apply to all almonds received by handlers for their own accounts during the crop year which began on July 1, 1958, and such receipts of 1958 crop almonds have already begun; and (2) no advance or special preparation for operations hereunder will be needed.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: September 15, 1958, to become effective upon publication in the FEDERAL REGISTER.

[SEAL] FLOYD F. HEDLUND,
Acting Director,
Fruit and Vegetable Division.

[F. R. Doc. 58-7633; Filed, Sept. 17, 1958; 8:55 a. m.]

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 16]

PART 514—TECHNICAL STANDARD ORDERS FOR AIRCRAFT MATERIALS, PARTS, PROCESSES, AND APPLIANCES

FIRE DETECTORS

Minimum performance standards for fire detectors for use in civil aircraft of the United States are defined in § 514.21.

Inasmuch as this amendment which provides for a measurement of response time characteristics with a flame temperature of 1100° C in lieu of 815° C is a relaxation of a rule and, as such, does not impose any additional burden upon interested persons, therefore compliance with the notice, procedures, and effective date provisions of the Administrative Procedure Act is unnecessary and is not required.

Section 514.21 (21 F. R. 6508) under Subpart B of this part is amended to read as follows:

§ 514.21 *Fire detectors-TSO-C11b*—(a) *Applicability*—(1) *Minimum performance standards.* Minimum performance standards are hereby established for fire detectors which are required to be approved for use on civil aircraft of the United States. New models of fire detectors manufactured for use on civil aircraft of the United States on or after October 15, 1958, shall meet the standards of SAE Aeronautical Standard AS-401A, "Fire and Heat Detectors," revised October 1, 1949,[1] with the exceptions listed in subparagraph (2) of this paragraph. Fire detectors approved by the Civil Aeronautics Administration prior to the effective date of this section may continue to be manufactured under the provisions of their original approval.

(2) *Exceptions.* (i) Section 3.3, "Identification," of AS-401A need not be met for purposes of this order.

(ii) A temperature of 1100° C shall be used in lieu of 815° C specified in AS-401A, sections 7.1, Response Time, and 7.1.1, Repeat Response Time.

(b) *Marking.* In lieu of information required in § 514.3 (c), the alarm temperature shall be shown.

(c) *Data requirements.* One copy each of the operating instructions, schematic diagrams, and installation

[1] Copies may be obtained from the Society of Automotive Engineers, 485 Lexington Ave., New York 17, New York.

procedures for the detectors shall be furnished the Chief, Aircraft Engineering Division, Civil Aeronautics Administration, Washington 25, D. C., with the statement of conformance. Such data shall include the following:

(1) Maximum allowable normal ambient temperature at the point of detector location;

(2) Maximum allowable rate of temperature rise at point of detector location as a result of normal operation;

(3) Electrical circuit arrangement;

(4) Operating voltage;

(5) Mounting or support method; and

(6) Maximum or minimum number of units or detector length which can be used in one circuit or one fire zone without adversely affecting sensitivity or causing false indications due to temperature associated with normal operation.

(d) *Effective date.* October 15, 1958.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

[SEAL] WILLIAM B. DAVIS,
Acting Administrator of Civil Aeronautics.

SEPTEMBER 10, 1958.

[F. R. Doc. 58-7585; Filed, Sept. 17, 1958; 8:45 a. m.]

TITLE 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

Subchapter A—Income Tax

[T. D. 6314]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

INSTALLMENT METHOD OF REPORTING INCOME

On January 11, 1958, notice of proposed rule making with respect to regulations for taxable years beginning after December 31, 1953, and ending after August 16, 1954, under section 453 (relating to the installment method of reporting income) of the Internal Revenue Code of 1954, was published in the FEDERAL REGISTER (23 F. R. 228). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so proposed are hereby adopted, subject to the changes as set forth below.

Consideration is being given to the issuance of separate rules dealing with the matter of whether income from so-called "revolving credit sales" may be reported under the installment method of accounting provided for under section 453.

PARAGRAPH 1. Section 1.453–1 is revised—

(A) By adding at the end of paragraph (b) the following sentence: "For rules applicable in determining 'selling price' and the use of certain other terms, see also paragraph (c) of § 1.453–4."

(B) By inserting between the fourth and fifth sentences of paragraph (d) the following: "For definition of the basis of an installment obligation, see section 453 (d) (2) and paragraph (b) (2) of § 1.453–9."

(C) By deleting the last sentence of paragraph (d) and inserting in lieu thereof the following: "The fair market value of the property repossessed shall be reflected in the appropriate permanent records of the vendor at the time of such repossession."

PAR. 2. Paragraph (b) of § 1.453–2 is revised.

PAR. 3. Paragraph (b) (2) of § 1.453–4 is revised by inserting immediately after the term "Deferred-payment sales" the words "of real property".

PAR. 4. Paragraph (b) of § 1.453–5 is revised by inserting between the third and fourth sentences the following: "For definition of the basis of an installment obligation, see section 453 (d) (2) and paragraph (b) (2) of § 1.453–9."

PAR. 5. Paragraph (a) (1) of § 1.453–6 is revised by deleting the first sentence and inserting in lieu thereof the following: "In transactions included in paragraph (b) (2) of § 1.453–4, that is, sales of real property involving deferred payments in which the payments received during the year of sale exceed 30 percent of the selling price, the obligations of the purchaser received by the vendor are to be considered as an amount realized to the extent of their fair market value in ascertaining the profit or loss from the transaction."

PAR. 6. Paragraph (b) (2) of § 1.453–7 is revised by inserting immediately prior to the term "self-employment income" the words "tax on".

PAR. 7. The example in paragraph (b) (3) of § 1.453–7 is revised by deleting the words "Adjustment in respect to tax of Year 3" appearing in Computation of Adjustment in Year 3 and inserting in lieu thereof the words "Adjustment to tax of Year 3".

PAR. 8. Paragraph (c) of § 1.453–8 is vised by inserting immediately after the words "may not change from the installment" the word "method".

PAR. 9. Paragraph (b) of § 1.453–9 is deleted and a new paragraph (b) is inserted in lieu thereof.

[SEAL] O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved: September 12, 1958.

NELSON P. ROSE,
Acting Secretary of the Treasury.

The regulations adopted under section 453 of the Internal Revenue Code of 1954, relating to the installment method of accounting, effective for taxable years beginning after December 31, 1953, and ending after August 16, 1954, except as specifically provided otherwise, read as follows:

Sec.
1.453 Statutory provisions; installment method.
1.453–1 Installment method of reporting income.
1.453–2 Special rules applicable to dealers in personal property.
1.453–3 Special rules applicable to casual sales or casual dispositions of personal property.
1.453–4 Sale of real property involving deferred periodic payments.
1.453–5 Sale of real property treated on installment method.
1.453–6 Deferred-payment sale of real property not on installment method.
1.453–7 Change from accrual to installment method by dealers.
1.453–8 Requirements for adoption of or change to installment method.
1.453–9 Gain or loss on disposition of installment obligations.
1.453–10 Effective date.

AUTHORITY: §§ 1.453 to 1.453–10, issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805.

§ 1.453 *Statutory provisions; installment method.*

SEC. 453. *Installment Method*—(a) *Dealers in personal property.* Under regulations prescribed by the Secretary or his delegate, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit, realized or to be realized when payment is completed, bears to the total contract price.

(b) *Sales of realty and casual sales of personalty*—(1) *General rule.* Income from—

(A) A sale or other disposition of real property, or

(B) A casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year) for a price exceeding $1,000,

may (under regulations prescribed by the Secretary or his delegate) be returned on the basis and in the manner prescribed in subsection (a).

(2) *Limitation.* Paragraph (1) shall apply—

(A) In the case of a sale or other disposition during a taxable year beginning after December 31, 1953 (whether or not such taxable year ends after the date of enactment of this title), only if in the taxable year of the sale or other disposition—

(i) There are no payments, or

(ii) The payments (exclusive of evidences of indebtedness of the purchaser) do not exceed 30 percent of the selling price.

(B) In the case of a sale or other disposition during a taxable year beginning before January 1, 1954, only if the income was (by reason of section 44 (b) of the Internal Revenue Code of 1939) returnable on the basis and in the manner prescribed in section 44 (a) of such code.

(c) *Change from accrual to installment basis*—(1) *General rule.* If a taxpayer entitled to the benefits of subsection (a) elects for any taxable year to report his taxable income on the installment basis, then in computing his taxable income for such year (referred to in this subsection as "year of change") or for any subsequent year—

(A) Installment payments actually received during any such year on account of sales or other dispositions of property made in any taxable year before the year of change shall not be excluded; but

(B) The tax imposed by this chapter for any taxable year (referred to in this subsection as "adjustment year") beginning after December 31, 1953, shall be reduced by the adjustment computed under paragraph (2).

(2) *Adjustment in tax for amounts previously taxed.* In determining the adjustment referred to in paragraph (1) (B), first determine, for each taxable year before the year of change, the amount which equals the lesser of—

(A) The portion of the tax for such prior taxable year which is attributable to the gross profit which was included in gross income for such prior taxable year, and which

by reason of paragraph (1) (A) is includible in gross income for the taxable year, or

(B) The portion of the tax for the adjustment year which is attributable to the gross profit described in subparagraph (A).

The adjustment referred to in paragraph (1) (B) for the adjustment year is the sum of the amounts determined under the preceding sentence.

(3) *Rule for applying paragraph (2).* For purposes of paragraph (2), the portion of the tax for a prior taxable year, or for the adjustment year, which is attributable to the gross profit described in such paragraph is that amount which bears the same ratio to the tax imposed by this chapter (or by the corresponding provisions of prior revenue laws) for such taxable year (computed without regard to paragraph (2)) as the gross profit described in such paragraph bears to the gross income for such taxable year. For purposes of the preceding sentence, the provisions of chapter 1 (other than of subchapter D, relating to excess profits tax, and of subchapter E, relating to self-employment income) of the Internal Revenue Code of 1939 shall be treated as the corresponding provisions of the Internal Revenue Code of 1939.

(d) *Gain or loss on disposition of installment obligations*—(1) *General rule.* If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and—

(A) The amount realized, in the case of satisfaction at other than face value or a sale or exchange, or

(B) The fair market value of the obligation at the time of distribution, transmission, or disposition, in the case of the distribution, transmission, or disposition otherwise than by sale or exchange.

Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received.

(2) *Basis of obligation.* The basis of an installment obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

(3) *Special rule for transmission at death.* Except as provided in section 691 (relating to recipients of income in respect of decedents), this subsection shall not apply to the transmission of installment obligations at death.

(4) *Effect of distribution in certain liquidations*—(A) *Liquidations to which section 332 applies.* If—

(i) An installment obligation is distributed by one corporation to another corporation in the course of a liquidation, and

(ii) Under section 332 (relating to complete liquidations of subsidiaries) no gain or loss with respect to the receipt of such obligation is recognized in the case of the recipient corporation,

then no gain or loss with respect to the distribution of such obligation shall be recognized in the case of the distributing corporation.

(B) *Liquidations to which section 337 applies.* If—

(i) An installment obligation is distributed by a corporation in the course of a liquidation, and

(ii) Under section 337 (relating to gain or loss on sales or exchanges in connection with certain liquidations) no gain or loss would have been recognized to the corporation if the corporation had sold or exchanged such installment obligation on the day of such distribution,

then no gain or loss shall be recognized to such corporation by reason of such distribution.

§ 1.453–1 *Installment method of reporting income*—(a) *In general.* Section 453 permits dealers in personal property, that is, persons who regularly sell or otherwise dispose of personal property on the installment plan, to return the income from the sale or other disposition thereof on the installment method. The installment method may also be applied with certain limitations (see paragraph (c) of this section) to the sale or other disposition of real property and the casual sale or other casual disposition of certain personal property.

(b) *Income to be reported.* Persons permitted to use the installment method of accounting prescribed in section 453 may return as income from installment sales in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when the property is paid for bears to the total contract price. In the case of dealers in personal property, for this purpose, gross profit means sales less cost of goods sold. See § 1.453–2 for rules applicable to the computation of income of dealers in personal property reporting on the installment method. In the case of sales of real estate and casual sales of personal property, gross profit means the selling price less the adjusted basis as defined in section 1011 and the regulations thereunder. Gross profit, in the case of a sale of real estate by a person other than a dealer and a casual sale of personal property, is reduced by commissions and other selling expenses for purposes of determining the proportion of installment payments returnable as income. For rules applicable in determining "selling price" and the use of certain other terms, see also paragraph (c) of § 1.453–4.

(c) *Limitations on the use of the installment method.* (1) Income from the sale or other disposition of real property or from casual sales or other casual dispositions of personal property may be reported on the installment method for taxable years beginning after December 31, 1953, only if, in the taxable year of the sale or other disposition, (i) there are no payments or (ii) the payments (exclusive of evidences of indebtedness of the purchaser) do not exceed 30 percent of the selling price.

(2) The income from a casual sale or other casual disposition of personal property may be reported on the installment method only if (i) the property is not of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, and (ii) its sale price exceeds $1,000.

(d) *Treatment of gain or loss on default by the purchaser of personal property sold on the installment plan.* If for any reason the purchaser defaults in any of his installment payments, and the vendor (whether he is a dealer in personal property or a person who has made a casual sale or other casual disposition of personalty), returning income on the installment method, repossesses the property sold, whether title thereto had been retained by the vendor or transferred to the purchaser, gain or loss for the year in which the repossession occurs is to be computed upon any installment obligations of the purchaser which are satisfied or discharged upon the repossession or are applied by the vendor to the purchase or bid price of the property. Such gain or loss is to be measured by the difference between the fair market value at the date of repossession of the property repossessed and the basis in the hands of the vendor of the obligations of the purchaser which are so satisfied, discharged, or applied, with proper adjustment for any other amounts realized or costs incurred in connection with the repossession. (See also § 1.453–6.) The basis in the hands of the vendor of the obligations of the purchaser satisfied, discharged, or applied upon the repossession of the property shall be the excess of the face value of such obligations over an amount equal to the income which would be returnable were the obligations paid in full. For definition of the basis of an installment obligation, see section 453 (d) (2) and paragraph (b) (2) of § 1.453–9. No deduction for a bad debt shall in any case be taken on account of any portion of the obligations of the purchaser which are treated by the vendor as not having been satisfied, discharged, or applied upon the repossession unless it is clearly shown that after the property was repossessed the purchaser remained liable for such portion; and in no event shall the amount of the deduction exceed the basis in the hands of the vendor of the portion of the obligations with respect to which the purchaser remained liable after the repossession. (See also section 166 and the regulations thereunder.) If the property repossessed is bid in by the vendor at a lawful public auction or judicial sale, the fair market value of the property shall be presumed to be the purchase or bid price thereof in the absence of clear and convincing proof to the contrary. The fair market value of the property repossessed shall be reflected in the appropriate permanent records of the vendor at the time of such repossession.

(e) *Other accounting methods.* If the vendor chooses as a matter of consistent practice to return the income from installment sales on an accrual method or on the cash receipts and disbursements method, such a course is permissible.

(f) *Records.* In adopting the installment method of accounting the seller must maintain such records as are necessary to clearly reflect income in accordance with this section, section 446 and § 1.446–1.

§ 1.453–2 *Special rules applicable to dealers in personal property*—(a) *In general.* A person who regularly sells personal property on the installment plan may adopt (but is not required to do so), one of the following four ways of protecting his interest in case of default by the purchaser:

(1) By an agreement that title is to remain in the vendor until the purchaser has completely performed his part of the transaction;

(2) By a form of contract in which title is conveyed to the purchaser immediately, but subject to a lien for the unpaid portion of the selling price;

(3) By a present transfer of title to the purchaser, who at the same time executes a reconveyance in the form of a chattel mortgage to the vendor; or

(4) By conveyance to a trustee pending performance of the contract and subject to its provisions.

(b) *Installment income of dealers in personal property.* The income from installment sales of a dealer, that is, a person regularly engaged in the sale of personal property on the installment plan, may be ascertained by treating as income that proportion of the total payments received in the taxable year from installment sales (such payments being allocated to the year against the sales of which they apply) which the gross profit realized or to be realized on the total installment sales made during each year bears to the total contract price of all such sales made during that respective year. A dealer who desires to compute income by the installment method shall maintain accounting records in such a manner as to enable an accurate computation to be made by such method in acocrdance with the provisions of this section, section 446, and § 1.446–1.

(c) *Treatment of payments on sales made in years prior to change to installment method.* No payments received in the taxable year shall be excluded in computing the amount of income to be returned on the ground that they were received under a sale the total profit from which was returned as income during a taxable year or years prior to the change by the taxpayer to the installment method of returning income. In this regard, however, see section 453 (c) and § 1.453–7 for the computation of the adjustments for amounts previously included in income in the case of a change from an accrual method to the installment method. Deductible items are not to be allocated to the years in which the profits from the sales of a particular year are to be returned as income, but must be deducted for the taxable year in which the items are "paid or incurred" or "paid or accrued". See sections 461 and 7701 (a) (25), and the regulations thereunder.

§ 1.453–3 *Special rules applicable to casual sales or casual dispositions of personal property.* Income shall be computed and reported separately for each casual sale or other casual disposition of personal property as installment payments are received in the year of sale and subsequent years. See § 1.453–1 (c) for limitations on the use of the installment method.

§ 1.453–4 *Sale of real property involving deferred periodic payments*—(a) *In general.* Sales of real property involving deferred payments include (1) agreements of purchase and sale which contemplate that a conveyance is not to be made at the outset, but only after all or a substantial portion of the selling price has been paid, and (2) sales in which there is an immediate transfer of title, the vendor being protected by a mortgage or other lien as to deferred payments.

(b) *Classes of sales.* Such sales, under either paragraph (a) (1) or (2) of this section, fall into two classes when considered with respect to the terms of sale, as follows:

(1) Sales of real property which may be accounted for on the installment method, that is, sales of real property in which (i) there are no payments during the taxable year of the sale or (ii) the payments in such taxable year (exclusive of evidences of indebtedness of the purchaser) do not exceed 30 percent of the selling price, or

(2) Deferred-payment sales of real property in which the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable year in which the sale is made exceed 30 percent of the selling price.

(c) *Determination of "selling price".* In the sale of mortgaged property the amount of the mortgage, whether the property is merely taken subject to the mortgage or whether the mortgage is assumed by the purchaser, shall, for the purpose of determining whether a sale is on the installment plan, be included as a part of the "selling price"; and for the purpose of determining the payments and the total contract price as those terms are used in section 453, and §§ 1.453–1 through 1.453–7, the amount of such mortgage shall be included only to the extent that it exceeds the basis of the property. The term "payments" does not include amounts received by the vendor in the year of sale from the disposition to a third person of notes given by the vendee as part of the purchase price which are due and payable in subsequent years. Commissions and other selling expenses paid or incurred by the vendor shall not reduce the amount of the payments, the total contract price, or the selling price.

§ 1.453–5 *Sale of real property treated on installment method*—(a) *In general.* In any transaction described in paragraph (b) (1) of § 1.453–4, that is, sales of real property in which there are no payments during the year of sale or the payments in that year do not exceed 30 percent of the selling price, the vendor may return as income from each such transaction in any taxable year that proportion of the installment payments actually received in that year which the gross profit (as described in paragraph (b) of § 1.453–1) realized or to be realized when the property is paid for bears to the total contract price. In any case, the sale of each lot or parcel of a subdivided tract must be treated as a separate transaction and gain or loss computed accordingly. (See paragraph (a) of § 1.61–6.)

(b) *Defaults and repossessions.* If the purchaser of real property on the installment plan defaults in any of his payments, and the vendor returning income on the installment method reacquires the property sold, whether title thereto had been retained by the vendor or transferred to the purchaser, gain or loss for the year in which the reacquisition occurs is to be computed upon any installment obligations of the purchaser which are satisfied or discharged upon the reacquisition or are applied by the vendor to the purchase or bid price of the property. Such gain or loss is to be measured by the difference between the fair market value at the date of reacquisition of the property reacquired (including the fair market value of any fixed improvements placed on the property by the purchaser) and the basis in the hands of the vendor of the obligations of the purchaser which are so satisfied, discharged, or applied, with proper adjustment for any other amounts realized or costs incurred in connection with the reacquisition. The basis in the hands of the vendor of the obligations of the purchaser satisfied, discharged, or applied upon the reacquisition of the property will be the excess of the face value of such obligations over an amount equal to the income which would be returnable were the obligations paid in full. For definition of the basis of an installment obligation, see section 453 (d) (2) and paragraph (b) (2) of § 1.453–9. No deduction for a bad debt shall in any case be taken on account of any portion of the obligations of the purchaser which are treated by the vendor as not having been satisfied, discharged, or applied upon the reacquisition of the property, unless it is clearly shown that after the property was reacquired the purchaser remained liable for such portion; and in no event shall the amount of the deduction exceed the basis in the hands of the vendor of the portion of the obligations with respect to which the purchaser remained liable after the reacquisition. (See section 166 and the regulations thereunder.) If the property reacquired is bid in by the vendor at a foreclosure sale, the fair market value of the property shall be presumed to be the purchase or bid price thereof in the absence of clear and convincing proof to the contrary. If the property reacquired is subsequently sold, the basis for determining gain or loss is the fair market value of the property at the date of reacquisition (including the fair market value of any fixed improvements placed on the property by the purchaser).

§ 1.453–6 *Deferred-payment sale of real property not on installment method*—(a) *Value of obligations.* (1) In transactions included in paragraph (b) (2) of § 1.453–4, that is, sales of real property involving deferred payments in which the payments received during the year of sale exceed 30 percent of the selling price, the obligations of the purchaser received by the vendor are to be considered as an amount realized to the extent of their fair market value in ascertaining the profit or loss from the transaction. Such obligations, however, are not considered in determining whether the payments during the year of sale exceed 30 percent of the selling price.

(2) If the obligations received by the vendor have no fair market value, the payments in cash or other property having a fair market value shall be applied against and reduce the basis of the property sold and, if in excess of such basis, shall be taxable to the extent of the excess. Gain or loss is realized when the obligations are disposed of or satisfied, the amount thereof being the difference between the reduced basis as provided in the preceding sentence and the

amount realized therefor. Only in rare and extraordinary cases does property have no fair market value.

(b) *Title retained by vendor.* (1) If the vendor in sales referred to in paragraph (a) of this section has retained title to the property and the purchaser defaults in any of his payments, and the vendor repossesses the property, the difference between (i) the entire amount of the payments actually received on the contract and retained by the vendor plus the fair market value at the time of repossession of fixed improvements placed on the property by the purchaser and (ii) the sum of the profits previously returned as income in connection therewith and an amount representing what would have been a proper adjustment for exhaustion, wear and tear, obsolescence, amortization, and depletion of the property during the period the property was in the hands of the purchaser had the sale not been made, will constitute gain or loss, as the case may be, to the vendor for the year in which the property is repossessed.

(2) The basis of the property described in subparagraph (1) of this paragraph in the hands of the vendor will be the original basis at the time of the sale plus the fair market value at the time of repossession of fixed improvements placed on the property by the purchaser, except as provided in subparagraph (3) of this paragraph.

(3) With respect to repossessions occurring after the date of publication in the FEDERAL REGISTER of final regulations under section 453, the basis of property determined in accordance with subparagraph (2) of this paragraph shall be reduced by what would have been a proper adjustment for exhaustion, wear and tear, obsolescence, amortization, and depletion of the property during the period the property was in the hands of the purchaser had the sale not been made.

(c) *Title transferred to purchaser.* If the vendor in sales described in paragraph (a) of this section has previously transferred title to the purchaser, and the purchaser defaults in any of his payments, and the vendor accepts a voluntary reconveyance of the property, in partial or full satisfaction of the unpaid portion of the purchase price, the receipt of the property so reacquired, to the extent of its fair market value at that time, including the fair market value of fixed improvements placed on the property by the purchaser, shall be considered as the receipt of payment on the obligations satisfied. If the fair market value of the property is greater than the basis of the obligations of the purchaser so satisfied (generally, such basis being the fair market value of such obligations previously recognized in computing income), the excess constitutes ordinary income. If the value of such property is less than the basis of such obligations, the difference may be deducted as a bad debt if uncollectible, except that if the obligations satisfied are securities (as defined in section 165 (g) (2) (C)), any gain or loss resulting from the transaction is a capital gain or loss subject to the provisions of sections 1201 through 1241. If the property reacquired is subsequently sold, the basis for determining gain or loss is the fair market value of the property at the date of reacquisition including the fair market value of the fixed improvements placed on the property by the purchaser. See section 166 and the regulations thereunder with respect to property reacquired in a foreclosure proceeding.

§ 1.453–7 *Change from accrual to installment method by dealers.*—(a) *In general.* A taxpayer who is a dealer in personal property and who is entitled to the benefits of section 453 (a) may elect to report his taxable income on the installment method of accounting without securing consent of the Commissioner. In the event a dealer elects to change from an accrual method of accounting to the installment method, any installment payments actually received in the year of change or in subsequent taxable years on account of sales or other dispositions of property made in any taxable year before the year of change shall not be excluded from taxable income. This means that profits attributable to installment sales even though included in taxable income in their entirety in a year of sale before the year in which the change to the installment method is made are also includible in taxable income as payments are received in the year of change and in subsequent taxable years. But the tax imposed for the year of change or any subsequent taxable years (such years being referred to as "adjustment years") beginning after December 31, 1953, shall be reduced by an adjustment proportionate to the tax attributable to the gross profit which is, by reason of the change to the installment method, included in gross income a second time, determined by the method of computation described in section 453 (c) and paragraph (b) of this section.

(b) *Adjustment to tax.* (1) The adjustment to tax under section 453 (c) (2) is determined as follows:

(i) Determine separately the portion of the tax for each taxable year before the year of change which is attributable to the gross profit from installment sales which was included in gross income in that year and which is also includible in gross income for any adjustment year;

(ii) Determine separately the portion of the tax for each adjustment year which is attributable to the gross profit described in subdivision (i) of this subparagraph;

(iii) Select for each adjustment year the lesser of the amounts determined under subdivisions (i) and (ii) of this subparagraph;

(iv) The tax imposed in any adjustment year shall be reduced by the amount as determined in subdivision (iii) of this subparagraph or the sum of all such amounts if more than one prior taxable year is involved;

(v) The portion of the tax for any taxable year attributable to the gross profit described in subdivision (i) of this subparagraph shall be that proportion of the tax determined for such year without regard to the adjustments under this paragraph, which the gross profit included in gross income in the prior year and includible in gross income for the adjustment year bears to the gross income of that year.

(2) The tax determined in any of the steps provided in subparagraph (1) of this paragraph shall be the tax imposed by chapter 1, subtitle A of the Internal Revenue Code of 1954; or chapter 1, not including subchapter D, relating to excess profits tax, nor subchapter E, relating to tax on self-employment income, of the Internal Revenue Code of 1939.

(3) The computation of the adjustment provided in section 453 (c) (2) may be illustrated by the following example:

ADJUSTMENTS IN TAX ON CHANGE TO INSTALLMENT METHOD

	Taxable years (prior to change)		Adjustment years (after change)	
	Year 1	Year 2	Year 3	Year 4
Gross profit from installment sales (receivable in periodic payments over 5 years)	$100,000		$20,000 (1)	$12,000 (4)
		$50,000	10,000 (2)	8,000 (5)
			80,000 (3)	40,000 (6)
				90,000 (7)
Other income	80,000	200,000	90,000	90,000
Gross income	180,000	250,000	200,000	240,000
Deductions	60,000	50,000	50,000	60,000
Taxable income	120,000	200,000	150,000	180,000
Tax rate assumed (percent)	30	50	40	40
Tax would be	$36,000	$100,000	$60,000	$72,000

		Lesser tax portion
	COMPUTATION OF ADJUSTMENT IN YEAR 3	
	Year 1 items	
In year 3 (portion of tax)	20,000/200,000×60,000=$6,000	
In year 1 (portion of tax)	20,000/180,000×36,000=$4,000	$4,000
	Year 2 items	
In year 3 (portion of tax)	10,000/200,000×60,000=$3,000	3,000
In year 2	10,000/250,000×100,000=$4,000	
Adjustment to tax of year 3		7,000

See footnotes at end of table.

ADJUSTMENTS IN TAX ON CHANGE TO INSTALLMENT METHOD—Continued

		Lesser tax portion
	COMPUTATION OF ADJUSTMENT IN YEAR 4	
	Year 1 items	
In year 4 (portion of tax)	12,000/240,000×72,000=$3,600	
In year 1 (portion of tax)	12,000/180,000×36,000=$2,400	$2,400
	Year 2 items	
In year 4 (portion of tax)	8,000/240,000×72,000=$2,400	2,400
In year 2 (portion of tax)	8,000/250,000×100,000=$3,200	
Adjustment to tax of year 4		4,800

(1) and (4) from year 1 sales.
(2) and (5) from year 2 sales.
(3) and (6) from year 3 sales.
(7) from year 4 sales.

(c) *Special rules for partnerships.* In the case of a change from an accrual method of accounting to the installment method of accounting by a partnership which is a dealer in personal property, payments attributable to installment sales under such accrual method shall be included in the gross income of the partnership in their entirety as payments are received in the year of change and in subsequent taxable years, even though included in gross income of the partnership for a year before the year in which the change to the installment method is made. Each partner's distributive share of the profits attributable to installment sales included in partnership taxable income for the year of sale and for each "adjustment year" shall be taken into account separately in accordance with section 702 (a) (8) and § 1.702–1 (a) (8). The income tax of each partner for adjustment years shall be computed with the adjustment provided by section 453 (c) (2) for amounts previously taxed. However, it is not necessary for a partner to have been a member of the partnership for the year of sale and each subsequent taxable year, including adjustment years, in order to apply the adjustment to tax provided by section 453 (c) (2).

§ 1.453–8 *Requirements for adoption of or change to installment method.* (a) *Dealers in personal property.* (1) *Adoption of installment method.* A taxpayer who adopts the installment method of accounting in the first taxable year in which he makes installment sales must indicate in his income tax return for that taxable year that the installment method of accounting is being adopted.

(2) *Change to installment method.* A taxpayer who changes to the installment method in accordance with § 1.453–7 shall attach a statement to his income tax return for the taxable year with respect to which the change is made. This statement must show—

(i) The method of accounting used in computing taxable income before the change;

(ii) The span of taxable years over which it will be necessary to compute adjustments; and

(iii) A schedule similar to the schedule shown in the example in paragraph (b) (3) of § 1.453–7, showing the computation of the required adjustments under section 453 (c) (2).

Similar statements must be attached to and filed with income tax returns for subsequent taxable years in which adjustments are required because of the inclusion of installment payments in gross income a second time.

(b) *Sales of real property and casual sales of personal property.* (1) A taxpayer who sells or otherwise disposes of real property, or who makes a casual sale or other casual disposition of personal property, and who elects to report the income therefrom on the installment method must set forth in his income tax return (or in a statement attached thereto) for the year of the sale or other disposition the computation of the gross profit on the sale or other disposition under the installment method. In any taxable year in which the taxpayer receives payments attributable to such sale or other disposition, he must also show in his income tax return the computation of the amount of income which is being reported in that year on such sale or other disposition.

(2) The information required by subparagraph (1) of this paragraph must be submitted for each separate sale or other disposition but, in the case of multiple sales or other dispositions, separate computations may be shown in a single statement.

(c) *Installment method and other accounting methods.* Notwithstanding the fact that a dealer in personal property may change to the installment method of accounting without permission, a dealer may not change from the installment method of accounting for sales on the installment plan to an accrual method of accounting or to any other method of accounting without the permission of the Commissioner.

§ 1.453–9 *Gain or loss on disposition of installment obligations.* (a) *In general.* Subject to the exceptions contained in section 453 (d) (4) and paragraph (c) of this section, the entire amount of gain or loss resulting from any disposition or satisfaction of installment obligations, computed in accordance with section 453 (d), is recognized in the taxable year of such disposition or satisfaction and shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received by the taxpayer.

(b) *Computation of gain or loss.* (1) The amount of gain or loss resulting under paragraph (a) of this section is the difference between the basis of the obligation and (i) the amount realized, in the case of satisfaction at other than face value or in the case of a sale or exchange, or (ii) the fair market value of the obligation at the time of disposition, if such disposition is other than by sale or exchange.

(2) The basis of an installment obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

(3) The application of subparagraph (1) and (2) of this paragraph may be illustrated by the following examples:

Example (1). In 1960 the M Corporation sold a piece of unimproved real estate to B for $20,000. The company acquired the property in 1948 at a cost of $10,000. During 1960 the company received $5,000 cash and vendee's notes for the remainder of the selling price, or $15,000, payable in subsequent years. In 1962, before the vendee made any further payments, the company sold the notes for $13,000 in cash. The corporation makes its returns on the calendar year basis. The income to be reported for 1962 is $5,500, computed as follows:

Proceeds of sale of notes		$13,000
Selling price of property	$20,000	
Cost of property	10,000	
Total profit	10,000	
Total contract price	20,000	
Percent of profit, or proportion of each payment returnable as income, $10,000 divided by $20,000, 50 percent.		
Face value of notes	15,000	
Amount of income returnable were the notes satisfied in full, 50 percent of $15,000	7,500	
Basis of obligation—excess of face value of notes over amount of income returnable were the notes satisfied in full		7,500
Taxable income to be reported for 1962		5,500

Example (2). Suppose in example (1) the M Corporation, instead of selling the notes, distributed them in 1962 to its shareholders as a dividend, and at the time of such distribution, the fair market value of the notes was $14,000. The income to be reported for 1962 is $6,500, computed as follows:

Fair market value of notes	$14,000
Basis of obligation—excess of face value of notes over amount of income returnable were the notes satisfied in full (computed as in example (1))	7,500
Taxable income to be reported for 1962	6,500

(c) *Disposition from which no gain or loss is recognized.* (1) Under section 453 (d) (4), no gain or loss shall be recognized to a distributing corporation with respect to the distribution of installment obligations in certain corporate liquidations, under the following conditions:

(i) If the distribution is made, pursuant to a plan for the complete liquidation of a subsidiary meeting the requirements of section 332, to a corporation in the hands of which no gain or loss is recognized with respect to such distribution, or

(ii) If the distribution is made, pursuant to a plan for the complete liquidation of a corporation which meets the requirements of section 337, under conditions whereby no gain or loss would have been recognized to the corporation had such installment obligations been sold or exchanged on the day of distribution.

(2) Where the Internal Revenue Code provides for exceptions to the recognition of gain or loss in the case of certain dispositions, no gain or loss shall result under section 453 (d) in the case of a disposition of an installment obligation. Such exceptions include: Certain transfers to corporations under sections 351 and 361; contributions of property to a partnership by a partner under section 721; and distributions by a partnership to a partner under section 731 (except as provided by section 736 and section 751).

(3) Any amount received by a person in payment or settlement of an installment obligation acquired in a transaction described in subparagraphs (1) or (2) of this paragraph (other than an amount received by a stockholder with respect to an installment obligation distributed to him pursuant to section 337) shall be considered to have the character it would have had in the hands of the person from whom such installment obligation was acquired.

(d) *Carryover of installment method.* For the treatment of income derived from installment obligations received in transactions to which section 381 (a) is applicable, see section 381 (c) (8) and the regulations thereunder.

(e) *Installment obligations transmitted at death.* Where installment obligations are transmitted at death, see section 691 (a) (4) and the regulations thereunder for the treatment of amounts considered income in respect of a decedent.

(f) *Losses.* See sections 1201–1241, as to the limitation on capital losses sustained by corporations and the limitation as to both capital gains and capital losses of individuals.

§ 1.453–10 *Effective date.* (a) Except as provided in this section, the provisions of section 453 and §§ 1.453–1 through 1.453–7, and § 1.453–9 shall apply to any taxable year beginning after December 31, 1953, and ending after August 16, 1954.

(b) The provisions of § 1.453–8 shall apply to taxable years ending more than 90 days after the publication of final regulations under section 453 in the FEDERAL REGISTER.

(c) Under the provisions of sections 453 (b) and 7851 (a) (1) (C), section 453 (b) (1) and the regulations with respect thereto shall also apply—

(1) To a sale or other disposition during a taxable year beginning before January 1, 1954, only if the income was returnable (by reason of section 44 (b) of the Internal Revenue Code of 1939) on the basis and in the manner prescribed in section 44 (a) of such code.

(2) To a sale or other disposition during a taxable year beginning after December 31, 1953, and ending before August 17, 1954, though such taxable year is subject to the provisions of the Internal Revenue Code of 1939.

(d) Under the provisions of sections 453 (c) (1) (B) and 7851 (a) (1) (C), section 453 (c) and the regulations with respect thereto shall also apply to taxable years beginning after December 31, 1953, and ending before August 17, 1954, though such taxable years are subject to the provisions of the Internal Revenue Code of 1939.

(e) The provisions of § 1.453–6 (b) (3) shall apply to repossessions occurring after the date of publication in the FEDERAL REGISTER of regulations under section 453.

[F. R. Doc. 58-7614; Filed, Sept. 17, 1958; 8:52 a. m.]

Subchapter E—Alcohol, Tobacco, and Other Excise Taxes

[T. D. 631]

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

LOSSES OF ALCOHOLIC LIQUORS CAUSED BY DISASTER

The purpose of this Treasury decision is to provide regulations implementing sections 208 and 210 (a) (3) of the Excise Tax Technical Changes Act of 1958 (H. R. 7125—85th Congress).

PARAGRAPH 1. Section 208 of the Excise Tax Technical Changes Act of 1958 (H. R. 7125—85th Congress) reads as follows:

SEC. 208. *Losses of alcoholic liquors caused by disaster*—(a) *Authorization.* Where the President has determined under the Act of September 30, 1950 (42 U. S. C., sec. 1855), that a "major disaster" defined in such Act has occurred in any part of the United States, the Secretary of the Treasury or his delegate shall pay (without interest) to the person specified in subsection (b) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of such disaster occurring in such part of the United States after December 31, 1954, and not later than the date of enactment of this Act, if such spirits, wines, rectified products, or beer were at the time of such disaster in the possession of—

(1) The person paying such tax, or such tax and duty, or obligated to pay a determined tax, on such spirits, wines, rectified products, or beer,

(2) A bottler of distilled spirits, wines or rectified products, or a rectifier, or

(3) A wholesale or retail dealer in distilled spirits, wines, or beer,

all referred to in this section as the possessor or possessors.

(b) *To whom made.* Any payment authorized by this section may be made—

(1) To the possessor, or

(2) To any distiller, winemaker, brewer, rectifier, importer, wholesale liquor dealer, or wholesale beer dealer who replaced (or to any distiller, winemaker, brewer, rectifier, importer, or wholesale dealer who has given credit or made replacement to a wholesale dealer who replaced) for the possessor the full equivalent of distilled spirits, wines, rectified products, or beer so lost or rendered unmarketable or condemned, without compensation, remuneration, or credit of any kind in respect of the tax, or tax and duty, on such spirits, wines, rectified products, or beer.

(c) *Claims.* No claim shall be allowed under this section unless—

(1) Filed within 6 months after the date of enactment of this act, and

(2) The claimant furnishes proof to the satisfaction of the Secretary of the Treasury or his delegate that—

(A) Neither the claimant nor any possessor was indemnified by any valid claim of insurance or otherwise in respect of the tax or tax and duty on the distilled spirits, wines, rectified products, or beer covered by the claim, and

(B) The claimant is entitled to payment under this section.

Claims under this section shall be filed under such regulations as the Secretary of the Treasury or his delegate shall prescribe.

(d) *Destruction of distilled spirits, wines, rectified products, or beer.* When the Secretary of the Treasury or his delegate has made payment under this section in respect of the tax, or tax and duty, on the distilled spirits, wines, rectified products, or beer condemned by a duly authorized official or rendered unmarketable, such distilled spirits, wines, rectified products, or beer shall be destroyed under such supervision as the Secretary of the Treasury or his delegate may prescribe, unless such distilled spirits, wines, rectified products, or beer were previously destroyed under supervision satisfactory to the Secretary of the Treasury or his delegate.

(e) *Products of Puerto Rico.* The provisions of this section shall not be applicable in respect of distilled spirits, wines, rectified products, and beer of Puerto Rican manufacture brought into the United States and so lost or rendered unmarketable or condemned.

(f) *Other laws applicable.* All provisions of law, including penalties, applicable in respect of internal revenue taxes on distilled spirits, wines, rectified products, and beer shall, insofar as applicable and not inconsistent with this section, be applied in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of such taxes.

Pursuant to the above provisions of law, the following new subpart, Subpart F, is added to Part 170:

SUBPART F—LOSSES OF ALCOHOLIC LIQUORS CAUSED BY A DISASTER OCCURRING AFTER DECEMBER 31, 1954, AND BEFORE THE DAY FOLLOWING THE DATE OF ENACTMENT OF THE EXCISE TAX TECHNICAL CHANGES ACT OF 1958

Sec.

170.101 Scope of subpart.

DEFINITIONS

170.102 Meaning of terms.

PAYMENTS

170.103 Circumstances under which payment may be made.
170.104 Persons to whom payment may be made.

CLAIMS PROCEDURE

170.105 Execution and filing of claims.
170.106 Return of claim for completion.
170.107 Separation of imported, domestic, and Puerto Rican liquors; separate claims for taxes and duties.
170.108 Claimant to furnish satisfactory proof.
170.109 Supporting evidence.
170.110 Supporting statement.
170.111 Replacement or credit.
170.112 Action by assistant regional commissioner.

DESTRUCTION OF LIQUORS

170.113 Supervision.

PENALTIES

Sec.
170.114 Penalties.

AUTHORITY: §§ 170.101 to 170.114 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805. Interpret or apply sec. 208, Pub. Law 85-859.

§ 170.101 *Scope of subpart.* This subpart prescribes the requirements necessary to implement section 208 of the act, concerning payments which may be made by the United States in respect to the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a disaster occurring in the United States after December 31, 1954, and not later than the date of enactment of the act. The provisions of this subpart shall not be applicable in respect of distilled spirits, wines, rectified products, and beer of Puerto Rican manufacture brought into the United States.

DEFINITIONS

§ 170.102 *Meaning of terms.* When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section. Words in the plural shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine as well. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

Act. The Excise Tax Technical Changes Act of 1958 (H. R. 7125—85th Congress).

Alcoholic liquors, or "liquors". Distilled spirits, wines, rectified products, and beer lost, rendered unmarketable, or condemned, as provided in this subpart.

Assistant regional commissioner. An assistant regional commissioner (alcohol and tobacco tax) who is responsible to, and functions under the direction and supervision of, a regional commissioner of internal revenue.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including saké or other similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume on which the internal revenue tax has been paid or determined, and, if imported, on which duties have been paid at the rate applicable thereto.

Claimant. The person to whom payment may be made as provided in § 170.104.

Commissioner. The Commissioner of Internal Revenue.

Commissioner of Customs. The Commissioner of Customs, Bureau of Customs, Treasury Department, Washington, D. C.

Disaster. A flood, fire, hurricane, earthquake, storm, or other catastrophe which has occurred in any part of the United States, after December 31, 1954, and not later than the date of enactment of the act, and which the President of the United States has determined, under the Act of September 30, 1950 (64 Stat. 1109; 42 U. S. C. 1855), was a "major disaster" as defined in such act.

Distilled spirits, or spirits. Ethyl alcohol and other distillates, such as whisky, brandy, rum, gin, and vodka, on which the internal revenue tax has been paid or determined and, if imported, on which duties have been paid at the rate applicable thereto.

Duly authorized official. Any Federal, State, or local government official in whom has been vested authority to condemn liquors made the subject of a claim under this subpart.

Duty or duties. Any duty or duties paid under the customs laws of the United States.

Full equivalent. A quantity of distilled spirits or of rectified products, in tax gallons; a quantity of wine, in wine gallons; or a quantity of beer, in barrels of 31 gallons, equal to the quantity lost, rendered unmarketable, or condemned.

Person paying tax or tax and duty. The person, such as a distiller, rectifier, winemaker, brewer, or importer who originally paid the internal revenue tax on the liquors or the person who paid such tax and customs duties on imported liquors.

Possessor. The person, bottler, or dealer in whose possession liquors subject to claim were held at the time of a disaster.

Rectified products. Liquors manufactured by rectifying, purifying, refining, mixing, or blending distilled spirits or wines and on which tax has been paid or determined, and, if imported, on which duty has been paid.

Tax. With respect to: (a) Unrectified distilled spirits, the internal revenue distilled spirits tax paid or determined thereon; (b) wines, the internal revenue wine tax paid or determined thereon; (c) rectified products, the distilled spirits tax, the rectification tax (if any), the cordial tax (if any), and the wine tax (if any), paid or determined thereon, and (d) beer, the internal revenue beer tax paid or determined thereon.

United States. When used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

Wines. All still wines, effervescent wines, and flavored wines, on which internal revenue wine tax has been paid or determined, and, if imported, on which duty has been paid.

PAYMENTS

§ 170.103 *Circumstances under which payment may be made.* Assistant regional commissioners shall allow payment (without interest) of an amount equal to the amount of tax paid or determined, and the Commissioner of Customs shall allow payment (without interest) of an amount equal to the amount of customs duties paid, on distilled spirits, wines, rectified products, and beer previously withdrawn, which are lost, rendered unmarketable, or condemned by a duly authorized official by reason of a disaster occurring in the United States after December 31, 1954, and not later than the date of enactment of the act. Such payments may be made only if, at the time of such disaster, such liquors were in the possession of (a) the person paying such tax, or such tax and duty, or obligated to pay a determined tax on such alcoholic liquors, (b) a bottler of such liquors, or (c) a wholesale or retail dealer in such liquors.

§ 170.104 *Persons to whom payment may be made.* Claims may be filed by and payment made to any of the possessors referred to in § 170.103. Claims may also be filed by and payment made to any distiller, winemaker, brewer, rectifier, importer, wholesale liquor dealer, or wholesale beer dealer who replaced (or to any distiller, winemaker, brewer, rectifier, importer, or wholesale dealer who has given credit or made replacement to a wholesale dealer who replaced) for the possessor the full equivalent of the liquors so lost, rendered unmarketable, or condemned, without compensation, remuneration, or credit of any kind in respect of the tax, or tax and duty, on such liquors.

CLAIMS PROCEDURE

§ 170.105 *Execution and filing of claims.* Claims shall be executed on Form 843 (Internal Revenue) in accordance with such instructions thereon as are applicable, and must be filed with the assistant regional commissioner of the internal revenue region in which the liquors were lost, rendered unmarketable, or condemned, within 6 months after the date of enactment of the act. In any instance where the liquors were replaced or where credit therefor was given, the person replacing or giving credit therefor and the recipient thereof shall join in the claim. Any claim under this subpart filed after the specified 6-month period will be rejected in full.

§ 170.106 *Return of claim for completion.* The regulations in this subpart contemplate that claims will be filed (a) where the possessor has received the full equivalent of the liquors before the filing of the claim, and (b) where the completion of the claim is to await determination as provided in § 170.111, of the quantity of liquors lost, rendered unmarketable, or condemned, and the quantity which may be replaced or for which credit may be given. In the event of paragraph (b) of this section, the claim will be returned to the claimant, on completion of such determination, for insertion of the necessary data.

§ 170.107 *Separation of imported and domestic liquors: separate claims for taxes and duties.* If a claim involves taxes on domestic liquors and imported liquors, the quantities of each must be shown separately in the claim. A separate claim must be filed in respect of customs duties.

§ 170.108 *Claimant to furnish satisfactory proof.* The claimant shall furnish proof to the satisfaction of the assistant regional commissioner regarding the following:

(a) That the tax or tax and duty on the liquors has been paid (or determined in the case of a person obligated to pay a determined tax);

(b) That such liquors were lost, rendered unmarketable, or condemned by a duly authorized official, by reason of damage sustained as the result of a disaster;

(c) The type and date of occurrence of the disaster and the location of the liquors at that time;

(d) That neither the claimant nor the possessor was indemnified by any valid claim of insurance or otherwise in respect of the tax or tax and duty on the liquors covered by the claim; and

(e) That the claimant is entitled to payment under this subpart.

§ 170.109 *Supporting evidence.* The claimant shall support his claim with any evidence (such as inventories, statements, invoices, bills, records, stamps, labels, and formulas) that he is able to submit, relating to the liquors on hand at the time of the disaster and averred to have been lost, rendered unmarketable, or condemned as a result thereof.

§ 170.110 *Supporting statement.* In an instance of replacement of liquors for a possessor, or of credit or replacement of liquors to a wholesale dealer who replaced liquors for a possessor, the claimant shall attest in his claim that he, as a distiller, winemaker, brewer, rectifier, importer, or dealer, as the case may be, replaced for the possessor, either directly or indirectly, the full equivalent of the liquors which were lost, rendered unmarketable, or condemned, as a result of a disaster, without compensation, remuneration, or credit of any kind in respect of the tax, or tax and duty, on such liquors.

§ 170.111 *Replacement or credit.* The replacement of liquors for a possessor, either direct or by the giving of credit or the making of replacement to a wholesale dealer who is to replace, and the completion of the claim by the claimant, may be delayed until a determination has been made by the assistant regional commissioner as to the quantities of liquors lost, rendered unmarketable, or condemned, as provided in § 170.112. The findings of the assistant regional commissioner in this respect may be made available to the persons involved in the transaction. The claim shall be fully completed with respect to evidence of the various aspects of the replacement before being further processed by the assistant regional commissioner as provided in § 170.112. Nothing in this section is to be construed as extending the 6-month period provided in § 170.105 for the filing of claims.

§ 170.112 *Action by assistant regional commissioner.* The assistant regional commissioner will date stamp and examine each claim filed under this subpart and will determine the validity of the claim in respect of the quantities of liquors covered thereby, and of any replacement claimed. The claim will then be processed by him in accordance with existing procedures. Claims involving customs duties will be forwarded to the Commissioner of Customs with a summary statement by the assistant regional commissioner concerning his findings.

DESTRUCTION OF LIQUORS

§ 170.113 *Supervision.* When allowance has been made under this subpart in respect of the tax, or tax and duty, on liquors condemned by a duly authorized official or rendered unmarketable, such liquors shall be destroyed by suitable means under the supervision of an internal revenue officer who will be assigned for that purpose by the assistant regional commissioner, unless such liquors were previously destroyed under supervision satisfactory to the assistant regional commissioner. The Commissioner of Customs will notify the assistant regional commissioner as to allowance under this subpart of claims for duty in respect of unmarketable or condemned liquors.

PENALTIES

§ 170.114 *Penalties.* Penalties are provided in sections 7206 and 7207 of the Internal Revenue Code for execution under the penalties of perjury of any false or fraudulent statement in support of any claim and for the filing of any false or fraudulent document under this subpart. All provisions of law, including penalties, applicable in respect of internal revenue taxes on distilled spirits, wines, rectified products, and beer, shall, insofar as applicable and not inconsistent with this subpart, be applied in respect of the payments provided for in this subpart to the same extent as if such payments constituted refunds of such taxes.

PAR. 2. Section 210 (a) (3) of the Excise Tax Technical Changes Act of 1958 (H. R. 7125—85th Congress), reads as follows:

SEC. 210 (a) (3). *Losses caused by disaster.* Provisions having the effect of section 5064 of the Internal Revenue Code of 1954 (as such section is included in chapter 51 of such Code as amended by section 201 of this Act) shall be deemed to be included in the Internal Revenue Code of 1954, effective on the day following the date of the enactment of this Act, and shall apply with respect to disasters occurring after such date of enactment, and not later than June 30, 1959.

Section 5064 of the Internal Revenue Code of 1954 (as such section is included in chapter 51 of such Code as amended by section 201 of the Excise Tax Technical Changes Act of 1958 (H. R. 7125—85th Congress)), reads as follows:

SEC. 5064. *Losses caused by disaster*—(a) *Authorization.* Where the President has determined under the Act of September 30, 1950 (42 U. S. C., sec. 1855), that a "major disaster" as defined in such Act has occurred in any part of the United States, the Secretary or his delegate shall pay (without interest) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of such disaster occurring in such part of the United States after June 30, 1959, if such distilled spirits, wines, rectified products, or beer were held and intended for sale at the time of such disaster. The payments authorized by this section shall be made to the person holding such distilled spirits, wines, rectified products, or beer for sale at the time of such disaster.

(b) *Claims.* No claim shall be allowed under this section unless—

(1) Filed within 6 months after the date on which the President makes the determination that the disaster referred to in subsection (a) has occurred; and

(2) The claimant furnishes proof to the satisfaction of the Secretary or his delegate that—

(A) He was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the distilled spirits, wines, rectified products, or beer covered by the claim; and

(B) He is entitled to payment under this section.

Claims under this section shall be filed under such regulations as the Secretary or his delegate shall prescribe.

(c) *Destruction of distilled spirits, wines, rectified products, or beer.* When the Secretary or his delegate has made payment under this section in respect of the tax, or tax and duty, on the distilled spirits, wines, rectified products, or beer condemned by a duly authorized official or rendered unmarketable, such distilled spirits, wines, rectified products, or beer shall be destroyed under such supervision as the Secretary or his delegate may prescribe, unless such distilled spirits, wines, rectified products, or beer were previously destroyed under supervision satisfactory to the Secretary or his delegate.

(d) *Products of Puerto Rico.* The provisions of this section shall not be applicable in respect of distilled spirits, wines, rectified products, and beer of Puerto Rican manufacture brought into the United States and so lost or rendered unmarketable or condemned.

(e) *Other laws applicable.* All provisions of law, including penalties, applicable in respect of internal revenue taxes on distilled spirits, wines, rectified products, and beer shall, insofar as applicable and not inconsistent with this section, be applied in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of such taxes.

Pursuant to the above provisions of section 210(a) (3) of the Excise Tax Technical Changes Act of 1958 (H. R. 7125—85th Congress), the following new subpart, Subpart G, is added to Part 170:

SUBPART G—LOSSES CAUSED BY DISASTER

Sec.

170.121 Scope of subpart.

DEFINITIONS

170.122 Meaning of terms.

PAYMENTS

170.123 Circumstances under which payment may be made.

CLAIMS PROCEDURE

170.124 Execution and filing of claim.
170.125 Separation of imported, domestic, and Virgin Island liquors; separate claims for taxes and duties.
170.126 Claimant to furnish proof.
170.127 Supporting evidence.
170.128 Action on claims.

DESTRUCTION OF LIQUORS

170.129 Supervision.

PENALTIES

170.130 Penalties.

AUTHORITY: §§ 170.121 to 170.130 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805. Interpret or apply sec. 210 (a) (3), Pub. Law 85-859.

§ 170.121 *Scope of subpart.* The regulations in this subpart prescribe the requirements necessary to implement section 210 (a) (3) of the act, concerning payments which may be made by the United States of amounts equal to the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which

were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" occurring in the United States on and after the day following the date of enactment of the act, and not later than June 30, 1959. The provisions of this subpart shall not be applicable in respect of distilled spirits, wines, rectified products, and beer of Puerto Rican manufacture brought into the United States.

DEFINITIONS

§ 170.122 *Meaning of terms.* When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section. Words in the plural shall include the singular, and vice versa, and words importing the masculine shall include the feminine as well. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

Act. The Excise Tax Technical Changes Act of 1958 (H. R. 7125—85th Congress).

Alcoholic liquors, or "liquors". Distilled spirits, wines, rectified products, and beer, lost, rendered unmarketable, or condemned, as provided in this subpart.

Assistant regional commissioner. An assistant regional commissioner (alcohol and tobacco tax) who is responsible to, and functions under the direction and supervision of, a regional commissioner of internal revenue.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including saké or other similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume on which the internal revenue tax has been paid or determined, and, if imported, on which duties have been paid at the rate applicable thereto.

Claimant. The person who held the liquors for sale at the time of the disaster and who files claim under this subpart.

Commissioner. The Commissioner of Internal Revenue.

Commissioner of Customs. The Commissioner of Customs, Bureau of Customs, Treasury Department, Washington, D. C.

Disaster. A flood, fire, hurricane, earthquake, storm, or other catastrophe which has occurred in any part of the United States on and after the day following the date of enactment of the act, and not later than June 30, 1959, and which the President of the United States has determined, under the act of September 30, 1950 (64 Stat. 1109; 42 U. S. C. 1855), was a "major disaster" as defined in such act.

Distilled spirits, or spirits. Ethyl alcohol and other distillates, such as whisky, brandy, rum, gin, and vodka, on which the internal revenue tax has been paid or determined, and, if imported, on which duties have been paid at the rate applicable thereto.

Duly authorized official. Any Federal, State, or local government official in whom has been vested authority to condemn liquors made the subject of a claim under this subpart.

Duty or duties. Any duty or duties paid under the customs laws of the United States.

Rectified products. Liquors manufactured by rectifying, purifying, refining, mixing, or blending distilled spirits or wines and on which tax has been paid or determined, and, if imported, on which duty has been paid.

Tax. With respect to: (a) Unrectified distilled spirits, the internal revenue distilled spirits tax paid or determined thereon; (b) wines, the internal revenue wine tax paid or determined thereon; (c) rectified products, the internal revenue distilled spirits tax, the rectification tax (if any), the cordial tax (if any), and the wine tax (if any), paid or determined thereon; and (d) beer, the internal revenue beer tax paid or determined thereon.

United States. When used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

Wines. All still wines, effervescent wines, and flavored wines, on which internal revenue wine tax has been paid or determined, and, if imported, on which duty has been paid.

PAYMENTS

§ 170.123 *Circumstances under which payment may be made.* Assistant regional commissioners shall allow payment (without interest) of an amount equal to the amount of tax paid or determined, and the Commissioner of Customs shall allow payment (without interest) of an amount equal to the amount of customs duty paid, on distilled spirits, wines, rectified products, and beer previously withdrawn, which are lost, rendered unmarketable, or condemned by a duly authorized official by reason of a disaster occurring in the United States on and after the day following the date of enactment of the act, and not later than June 30, 1959. Payments may be made only if, at the time of the disaster, such liquors were being held for sale by the claimant.

CLAIMS PROCEDURE

§ 170.124 *Execution and filing of claim.* Claims under this subpart shall be executed on Form 843 (Internal Revenue) in accordance with such instructions thereon as are applicable, and filed (original only) with the assistant regional commissioner of the internal revenue region in which the liquors were lost, rendered unmarketable, or condemned, within 6 months after the date on which the President makes the determination that the disaster has occurred. The claim shall state all the facts on which the claim is based, and shall set forth, in detail as to each class of liquor, the quantity (tax gallons, wine gallons, barrels, etc.), the kind of tax and rate or rates applicable to each item, and the amount claimed.

§ 170.125 *Separation of imported, domestic, and Virgin Island liquors; separate claims for taxes and duties.* If a claim involves taxes on domestic liquors, imported liquors, and/or liquors of Virgin Island manufacture, the quantities of each must be shown separately in the claim. A separate claim must be filed in respect of customs duties.

§ 170.126 *Claimant to furnish proof.* The claimant shall furnish proof to the satisfaction of the assistant regional commissioner regarding the following:

(a) That the tax on such liquors, or the tax and duty if imported, was fully paid, or the tax, if not paid, was fully determined;

(b) That such liquors were lost, rendered unmarketable, or condemned by a duly authorized official, by reason of damage sustained as a result of a disaster;

(c) The type and date of occurrence of the disaster and the location of the liquors at that time;

(d) That the claimant was not indemnified by a valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the liquors covered by the claim; and

(e) That the claimant is entitled to payment under this subpart.

§ 170.127 *Supporting evidence.* The claimant shall support his claim with any evidence (such as inventories, statements, invoices, bills, records, labels, formulas, stamps) that he is able to submit, relating to the quantities and identities of liquors, on which duty has been paid or tax has been paid or determined, on hand at the time of the disaster and averred to have been lost, rendered unmarketable, or condemned as a result thereof.

§ 170.128 *Action on claims.* The assistant regional commissioner shall date stamp and examine each claim filed under this subpart and will determine the validity of the claim. The claim will then be processed by him in accordance with existing instructions. Claims and supporting data involving customs duties will be forwarded to the Commissioner of Customs with a summary statement by the assistant regional commissioner regarding his findings.

DESTRUCTION OF LIQUORS

§ 170.129 *Supervision.* When allowance has been made under this subpart in respect of the tax, or tax and duty, on liquors condemned by a duly authorized official or rendered unmarketable, such liquors shall be destroyed by suitable means under the supervision of an internal revenue officer assigned for that purpose by the assistant regional commissioner, unless such liquors were previously destroyed under supervision satisfactory to the assistant regional commissioner. The Commissioner of Customs will notify the assistant regional commissioner as to allowance under this subpart of claims for duty in respect of unmarketable or condemned liquors.

PENALTIES

§ 170.130 *Penalties.* Penalties are provided in sections 7206 and 7207 of the Internal Revenue Code for the execution under the penalties of perjury of any false or fraudulent statement in support of any claim and for the filing of any false or fraudulent document under this

subpart. All provisions of law, including penalties, applicable in respect of internal revenue taxes on distilled spirits, wines, rectified products, and beer, shall, insofar as applicable and not inconsistent with this subpart, be applied in respect of the payments provided for in this subpart to the same extent as if such payments constituted refunds of such taxes.

Because the time limitation for filing claims under these regulations is limited, it is found that it is impracticable and contrary to the public interest to issue this Treasury decision with notice and public procedure thereon under section 4 (a) of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C. 1003), or subject to the effective date limitation of section 4 (c) of such act. Accordingly, this Treasury decision shall be effective on the day following the date of enactment of the Excise Tax Technical Changes Act of 1958 (H. R. 7125—85th Congress).

[SEAL] LEO SPEER,
Acting Commissioner of Internal Revenue.

D. B. STRUBINGER,
Acting Commissioner of Customs.

Approved: September 12, 1958.

NELSON P. ROSE,
Acting Secretary of the Treasury.

[F. R. Doc. 58-7631; Filed, Sept. 17, 1958; 8:55 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

Subchapter A—Aid of Civil Authorities and Public Relations

PART 805—SAFEGUARDING MILITARY INFORMATION

MISCELLANEOUS AMENDMENTS

1. In Part 805, § 805.8 (a) is revised as follows:

§ 805.8 *Loss or other subjection to compromise*—(a) *Reporting.* If a person knows of the loss, unauthorized disclosure, or other possible subjection to compromise of classified information, he will report it without delay to his immediate superior or commander.

2. In Part 805, § 805.10 is deleted and the following substituted therefor:

§ 805.10 *Atomic energy restricted data*—(a) *Markings and notations required*—(1) *Material containing restricted data.* (i) In addition to other required classification markings and notations, all documents or other material containing restricted data and all inner covers in which restricted data is transmitted will be conspicuously marked at least once, with capital letters not less than one-quarter inch in height, as follows:

RESTRICTED DATA

ATOMIC ENERGY ACT 1954

(ii) When material is extracted from a document, or pages, sections, chapters, or other parts are so separated, each extract or part will be marked as prescribed in subdivision (i) of this subparagraph if it contains restricted data.

(b) *Dissemination*—(1) *Within Department of Defense and to contractors.* Restricted data may be disclosed only to Department of Defense personnel and to contractors of the Department of Defense and their employees who have been granted a personnel security clearance equivalent to the security classification of the information involved.

NOTE: Foreign nationals will not be permitted to have access to restricted data or classified former restricted data regardless of grade, position, employment, or nationality except for certain releases that are made in strict compliance with the Atomic Energy Act of 1954 after specific approval of the Chief of staff, USAF (Assistant Chief of Staff, Intelligence).

(2) *To other individuals.* Except as provided in subparagraph (1) of this paragraph, the disclosure or release of restricted data to any individual may be made only if the individual possesses a current Atomic Energy Commission clearance equivalent to the security classification of the information involved, and the dissemination has been approved according to § 805.11.

NOTE: Atomic Energy Commission "L" and "Q" clearances are equivalent to Department of Defense personnel security clearances for access to Confidential and Secret information respectively; a "Q" clearance with a notation showing specific Atomic Energy Commission authorization for access to Top Secret is the equivalent of a Department of Defense clearance for access to Top Secret.

(3) *Oral discussions.* When an individual discloses Restricted Data or classified former Restricted Data to other persons during discussions, he will inform them of the designation of such information.

3. Section 805.11 (f) is deleted and the following substituted therefor:

§ 805.11 *Disclosure of classified information outside the Department of Defense.* * * *

(f) *To other civilian activities.* Generally, all requests for classified information from persons or agencies outside the Department of Defense, and all proposals originating in the Air Force to release classified information to such persons or agencies will be forwarded for necessary action to the Chief of Staff, USAF.

(1) *Activities involving industrial mobilization.* Frequently the Air Force obtains information and records from civilian firms and industries regarding the mobilization of materiel and industrial organizations in case of war. If any civilian activity applies for such information or records, the application will be referred for necessary action to the Under Secretary of the Air Force. If any person is served with any process or subpoena, demanding him to produce such records, he will immediately report it to the United States Attorney for the district in which the subpoena is served; at the same time he will report it directly to the Under Secretary of the Air Force. Pending instructions from the Under Secretary of the Air Force, he will not furnish the requested information.

(2) *Litigation.* Requests or subpoenas for the appearance of witnesses before civil tribunals or for classified information or material to be used in connection with litigation will be processed in accordance with §§ 804.401 to 804.410.

(3) *Highly sensitive information.* Occasionally agencies or activities outside the Department of Defense may request highly sensitive defense information other than that being made available to them for their use in the usual conduct of Government business. No authority in the Air Force may approve such a request before referring it to the Chief of Staff, USAF, or the Secretary of the Air Force. Highly sensitive information within the meaning of this subparagraph is that which pertains to such things as: U. S. military capabilities, state of military preparedness, strategic and tactical plans, location of mobilization stocks of materiel, extremely critical munitions of war, and locations and vulnerability of target areas within the United States (especially such details as industrial complexes and communications system layouts).

(4) *Authority of chiefs of major staff offices, Headquarters USAF.* Within the limits of this section, chiefs of Headquarters USAF offices on the directorate and higher levels having primary interest in Confidential and Secret Air Force information may release it or approve its release to persons and agencies outside the Department of Defense. Also, each Deputy Chief of Staff, The Inspector General, the Assistant Chief of Staff for Guided Missiles, and the Assistant Chief of Staff, Installations, may release or approve the release of Top Secret Air Force information under the same conditions. In addition, so far as Air Force authority applies, the Director of Intelligence, Headquarters USAF, may release any classified intelligence information to agencies of the Executive branch of the Federal Government, contractors, or private individuals who participate legitimately in national intelligence activities.

(5) *Authority of commanders, major air commands.* Section 805.11 (d) and (e) authorize commanders of major air commands to release certain classified information to representatives of the General Accounting Office and to contractors and prospective contractors. Within the limits of this section, such commanders may also release or authorize the release of Confidential or Secret information to other persons or agencies outside the Department of Defense: *Provided,* That:

(i) The information originated in (and is of primary interest to) the major air command.

(ii) The release is necessary to accomplish the mission of the major air command.

(iii) The following categories and types of information are not released: war plans, proposed policies under consideration by the Air Force, intelligence, Atomic Energy Restricted Data, and cryptographic information.

(iv) Documents originated by higher authority are not released without approval of the higher authority.

[AFR 205-1, Jan. 3, 1956; AFR 205-1E, Aug. 12, 1957; AFR 205-1F, Jan. 22, 1958] (Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012)

[SEAL] CHARLES M. MCDERMOTT,
Colonel, U. S. Air Force, Deputy Director of Administrative Services.

[F. R. Doc. 58-7615; Filed, Sept. 17, 1958; 8:52 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 31]

COLUMBIA NATIONAL WILDLIFE REFUGE, WASHINGTON

HUNTING

Notice is hereby given that pursuant to the authority contained in section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224; 16 U. S. C. 715i), and under authority delegated by Commissioner's Order 4 (22 F. R. 8126), it is proposed to add to Chapter I, Title 50, Code of Federal Regulations, a new subpart entitled Columbia National Wildlife Refuge, Washington, and §§ 31.55 and 31.56 as set forth in tentative form below. The purpose of the proposed regulation is to permit the hunting of migratory waterfowl, coots, and deer on certain lands of the Columbia National Wildlife Refuge under certain limitations and subject to compliance with the laws and regulations of the State of Washington.

Interested persons may submit in duplicate written comments, suggestions, or objections with respect to the proposed regulation to the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D. C., within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

LANSING A. PARKER,
Acting Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 12, 1958.

SUBPART—COLUMBIA NATIONAL WILDLIFE REFUGE, WASHINGTON

HUNTING

§ 31.55 *Hunting of migratory waterfowl and coots permitted.* Subject to compliance with the provisions of Parts 6, 18, and 21 of this chapter, the hunting of migratory waterfowl and coots is permitted on the hereinafter described lands of the Columbia National Wildlife Refuge, Washington, subject to the following conditions, restrictions, and requirements.

(a) *Hunting area.* The following described area is open to hunting:

T. 17 N., R. 28 E., Willamette Meridian,
Sec. 10, S½SW¼ and SE¼;
Sec. 11, S½;
Sec. 12, W½SW¼NW¼, SE¼SW¼NW¼, SW¼, S½NW¼SE¼, and SW¼SE¼;
Secs. 13, 14 and 15, all;
Sec. 22, NE¼, N½NW¼, and SE¼NW¼;
Sec. 23, N½;
Sec. 24, all;
Sec. 25, E½.
T. 17 N., R. 29 E.,
Sec. 18, lots 1-4, incl., SE¼SW¼, and NE¼SE¼, and S½SE¼;
Sec. 19, lots 1-4 incl., W½NE¼NE¼, NW¼NE¼, and E½W½;
Sec. 29, S½NW¼ and S½;
Sec. 30, lots 1 and 2, N½NE¼, SE¼NE¼, E½NW¼, and NW¼NE¼SW¼;
Sec. 32, all;
Sec. 33, NE¼NE¼, SE¼NW¼NE¼, NE¼SW¼NE¼, S½SW¼NE¼, SE¼NE¼, and SW¼NW¼;
Sec. 34, W½ and SW¼SW¼SE¼.

(b) *State laws.* Strict compliance with all applicable State laws and regulations is required.

(c) *Dogs.* Hunting dogs, not to exceed two per hunter, may be used for the purpose of retrieving dead or wounded birds, but such dogs shall not be permitted to run at large on the public shooting grounds or elsewhere on the refuge.

(d) *Boats.* Subject to the requirements of Part 6 of this chapter, the use of boats without motors is permitted for the purpose of hunting.

(e) *Blinds.* Temporary blinds for the purpose of hunting may be erected, but such blinds shall be considered public property and available for general use and must be removed from the public hunting area at the end of the hunting season. The digging of pits for use as hunting blinds or for any other purpose is prohibited.

(f) *Checking stations.* Hunters, upon entering or leaving the hunting area, shall report at such checking stations as may be established for the purpose of regulating the hunting.

§ 31.56 *Hunting of deer permitted.* Subject to compliance with the provisions of Parts 18 and 21 of this chapter, the hunting of deer is permitted during the period October 26 to November 30, 1958, inclusive, on all of the lands of the Columbia National Wildlife Refuge, subject to the following conditions, restrictions, and requirements:

(a) *State laws.* Strict compliance with all applicable State laws and regulations is required.

(b) *Dogs prohibited.* Dogs are not permitted on the Refuge for use in the hunting of deer.

(c) *State cooperation.* State cooperation may be enlisted in the regulation, management, and operation of the public hunting areas, and the State may promulgate such special regulations as may be necessary for these purposes. In the event such State regulations are issued, compliance therewith shall be a requisite to lawful entry for the purpose of hunting.

[F. R. Doc. 58-7588; Filed, Sept. 17, 1958; 8:46 a. m.]

[50 CFR Part 31]

DEER FLAT NATIONAL WILDLIFE REFUGE, IDAHO

HUNTING

Notice is hereby given that pursuant to the authority contained in section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224; 16 U. S. C. 715i), and under authority delegated by Commissioner's Order 4 (22 F. R. 8126), it is proposed to add § 31.101 to Subpart—Deer Flat National Wildlife Refuge, Idaho, Chapter I, Title 50, Code of Federal Regulations, as set forth in tentative form below. The purpose of the proposed regulation is to permit the hunting of upland game birds on certain lands of the Deer Flat National Wildlife Refuge, Idaho, under certain limitations and subject to compliance with the laws and regulations of the State of Idaho.

Interested persons may submit in duplicate written comments, suggestions, or objections with respect to the proposed regulation to the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D. C., within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

LANSING A. PARKER,
Acting Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 12, 1958.

§ 31.101 *Upland game bird hunting permitted.* Subject to the provisions of Parts 18 and 21 of this chapter and to the conditions and restrictions of §§ 31.94 to 31.100, inclusive, of this subpart, the hunting of resident upland game birds is permitted during the period October 25 to November 23, 1958, inclusive, on the lands of the Deer Flat National Wildlife Refuge, Idaho, described in § 31.94.

[F. R. Doc. 58-7586; Filed, Sept. 17, 1958; 8:45 a. m.]

[50 CFR Part 31]

WILLAPA NATIONAL WILDLIFE REFUGE, WASHINGTON

HUNTING

Notice is hereby given that pursuant to the authority contained in section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224; 16 U. S. C. 715i), and under authority delegated by Commissioner's Order 4 (22 F. R. 8126), it is proposed to add § 31.362 to Subpart—Willapa National Wildlife Refuge, Washington, Chapter I, Title 50, Code of Federal Regulations, as set forth in tentative form below. The purpose of the proposed regulation is to permit the hunting of deer, bear, bobcats, and raccoons during a part of the 1958 State season on certain lands of the Willapa National Wildlife Refuge, Washington, under certain limitations and subject to compliance with the laws and regulations of the State of Washington.

Interested persons may submit in duplicate written comments, suggestions, or objections with respect to the proposed amendment to the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D. C., within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

LANSING A. PARKER,
Acting Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 12, 1958.

§ 31.362 *Bow and arrow hunting permitted.* Subject to the provisions of Parts 18 and 21 of this chapter, the hunting of deer, bear, bobcats, and raccoons solely by means of bow (except crossbow) and arrow is permitted from October 12 to November 5, 1958, inclusive, only on that portion of the Willapa National Wildlife Refuge, Washington, designated as Long Island, subject to the following conditions, restrictions, and requirements:

(a) *State laws.* Strict compliance with all applicable State laws and regulations is required.

(b) *Firearms prohibited.* The possession or use of firearms on the Refuge is prohibited.

(c) *Dogs prohibited.* Dogs are not permitted on the Refuge for the purpose of hunting.

(d) *Checking stations.* Hunters, upon entering or leaving the hunting area, shall report at such checking stations as may be established for the purpose of regulating the hunting.

[F. R. Doc. 58-7587; Filed, Sept. 17, 1958; 8:46 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 982, 986]

[Docket Nos. AO-238-A8, AO-298]

MILK IN CENTRAL WEST TEXAS AND RED RIVER VALLEY MARKETING AREAS

DECISION WITH RESPECT TO PROPOSED 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), a public hearing was held at Wichita Falls, Texas, on August 6-9, 1957, pursuant to notice thereof issued on July 10, 1957 (22 F. R. 5705), upon a proposed marketing agreement and order regulating the handling of milk in the Central West Texas and Red River Valley marketing areas.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Deputy Administrator, Agricultural Marketing Service, on May 19, 1958 (23 F. R. 3530), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision, containing notice of opportunity to file written exceptions. On the basis of filed exceptions certain changes were made, particularly relating to the pooling provisions. In view of these changes, the Deputy Administrator, Agricultural Marketing Service, filed with the Hearing Clerk, United States Department of Agriculture, a revised recommended decision on August 12, 1958 (23 F. R. 6284). Further opportunity was provided for filing written exceptions thereto.

The material issues of record related to:

(1) Whether the handling of milk produced for sale in the Red River Valley marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and its products;

(2) Whether marketing conditions justify regulation of the handling of such milk and, if so, whether by the issuance of a separate order to regulate the handling of milk in the Red River Valley marketing area, or by the expansion of the Central West Texas marketing area to include portions of such area;

(3) If a separate order is issued, what its provisions should be with respect to:

(a) The scope of regulation,

(b) The classification and allocation of milk,

(c) The determination of and the level of class prices,

(d) The distribution of proceeds to producers, and

(e) The necessary administrative provisions; and

(4) Whether Palo Pinto County, Texas, should be added to the Central West Texas marketing area, and whether certain other proposed amendments to the Central West Texas marketing area should be adopted.

Findings and conclusions. Issue No. 4, relating to the Central West Texas marketing order, required separate consideration from the remaining issues before the hearing, and it was disposed of through amendment of the Central West Texas order (No. 82) effective February 1, 1958 (23 F. R. 638).

With respect to the remaining issues, it is hereby found and concluded upon the evidence adduced at the hearing and the record thereof that:

(1) *Character of commerce.* All milk produced for sale in the Red River Valley marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and its products.

Handlers located in the Texas portion of the proposed area regularly dispose of milk to wholesale and retail accounts in the Oklahoma portion of the area. Likewise, milk from Oklahoma plants is distributed to wholesale and retail customers in Texas. In the distribution of this milk, handlers in the Red River Valley marketing area are in direct competition with handlers who are regulated under the Oklahoma Metropolitan, Texas Panhandle, North Texas, and Central West Texas marketing orders. It has been determined by the Secretary that the handling of milk in the marketing areas regulated by the aforesaid orders is in the current of interstate commerce.

Milk from producers whose farms are in Oklahoma is regularly received in plants in the Texas portion of the proposed area for processing where it is intermingled with milk of Texas producers and is distributed in both Oklahoma and Texas. In addition to the milk which moves across state lines from farm to plant, there is a considerable degree of competition with interstate markets in the procurement of supplies. The production area of the Red River Valley marketing area is overlapped to a considerable extent in both Oklahoma and Texas by the milksheds of the Oklahoma Metropolitan, North Texas, and Texas Panhandle marketing areas and to a lesser extent by that of the Central West Texas marketing area.

The Red River Valley marketing area has been relatively short of milk and it has been necessary for handlers to secure supplemental supplies to meet their Class I requirements. In addition to milk which is brought in from other markets in Oklahoma and Texas, milk has been imported in substantial quantities within the past year from several points in Iowa, as well as from Kansas, Missouri, Minnesota, and Wisconsin.

(2) *Need for regulation.* The marketing and pricing conditions in the Red River Valley marketing area are such that regulation is necessary to establish and maintain orderly marketing and to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended. This can best be accomplished by the issuance of a separate marketing agreement and order program for the area. There is no basis for annexing any of the proposed area to the Central West Texas marketing area.

The problems encountered by producers in the Red River Valley marketing area are typical of those occurring in unregulated fluid milk markets where producers' cooperative associations have been unsuccessful in establishing effective bargaining relationships with handlers.

The Federal milk marketing program proposed for the Red River Valley will implement the declared congressional policy of establishing and maintaining orderly marketing conditions by:

(a) Providing a regular and dependable method for determining minimum prices to producers at level comparable to those contemplated under the Act;

(b) Establishing uniform prices to handlers for milk received from producers according to a classification plan based on the use made of such milk by the handler;

(c) Providing an impartial audit of handlers' records of receipts and utilization to further insure uniform prices for milk purchased;

(d) Providing all producers with a means whereby the weighing and testing of their milk can be checked to insure accuracy;

(e) Establishing uniform returns to producers, supplying milk to the area, and insuring that the lower returns from the sale of reserve supplies will be equitably shared by all producers;

(f) Establishing uniform rules for the operation of a market-wide base and excess plan that will (i) acquaint producers with the rules for establishing bases and determining base and excess prices, and (ii) encourage producers to deliver their milk on a more even pattern; and

(g) Providing market-wide information on receipts, sales, and other factors relating to milk marketing supplies in the area.

The lack of uniformity in prices paid producers for their milk, the wide variety of classification and pricing plans used by the several handlers in the area, and the ineffectiveness of producers in protecting themselves against sharp declines in prices brought on by price cutting

among handlers, have created unstable marketing conditions.

At the present time, no two handlers pay producers on exactly the same basis. Prices paid producers vary greatly among handlers. These factors of lack of uniformity, and the uncertainty of prices paid to producers, foster market instability and permit inequities to occur among handlers in the prices paid for producers' milk. The classification and pricing plan of the attached order is a means of establishing uniform prices for milk received from producers according to its use by each handler. The use-classification plan is equitable and will apply similarly to all handlers. To insure its effectiveness it must be supplemented by an impartial audit of handlers' records of receipts and utilization. The pooling provisions of the proposed order will provide a means of insuring uniform returns to all producers supplying each handler and an equal sharing of the lower returns associated with seasonal and other excesses of producer milk.

Many producers supplying handlers in the Red River Valley marketing area have had no effective means of insuring the accuracy of the weights and tests of their regular deliveries of milk. They have not been permitted to audit the records of the handlers to establish the accuracy of the percentage of milk paid for as base and as excess under the several base and excess plans operated by the handlers.

These plans are operated by the individual handlers and there has been no uniformity in the methods of determining the proportion of excess milk. There are some indications that the plans have operated to the benefit of a few producers and to the disadvantage of others. There is need for a Federal order to correct these inequities.

Producers have had no method for participating in the price determining decisions that govern the sales of their milk. Handlers and their representatives have discouraged producers from joining the proponent producers' cooperative associations. In at least some instances, they have refused to make deductions for association dues, even though the producer members have authorized such deductions. These actions have kept producers from exercising an effective part in determining the prices they receive for their milk or the percentage of their deliveries which will be paid for as base milk and excess milk. An order will give producers a voice in the deliberations as to what prices they should receive for their milk and will provide a means whereby the producers' associations can carry out an effective marketing service program applicable to all handlers who receive milk from their members. The classified price plan of the attached order, together with the pricing formulas contained therein, will insure sufficient quantities of pure and wholesome milk for the marketing area and will protect the interests of producers, handlers, consumers, and the general public.

(3) *Order provisions*—(a) *The scope of regulation.* A Federal milk order achieves marketing and pricing stability by requiring that regulated handlers pay at least specified minimum prices to producers in accordance with a classified-use plan established in the order, and that these payments be distributed to each producer on a uniform basis through either an individual-handler pool or a market-wide pool. It is necessary therefore, to establish clearly which plants and which milk will be subject to all or a part of the pricing provisions of an order, and which producers will participate in the distribution of returns through the type of pool specified. To identify such persons in referring to them throughout this decision and in the proposed order, such terms as "marketing area", "producer", "pool plant", "handler", "producer milk", and "other source milk" are defined and used herein.

Marketing area. The Red River Valley marketing area should be defined to include all the territory within Caddo, Carter, Comanche, Grady, Jackson, Kiowa, Stephens, and Tillman counties in Oklahoma, and Hardeman, Wichita, and Wilbarger counties in Texas, including all Federal, state, and municipal institutions or bases located therein.

Fluid milk products sold for consumption in the principal communities in the area must be approved by health authorities who administer health ordinances, practices, and procedures generally patterned after the U. S. Public Health Service Milk Ordinance and Code. Within this area, the health standards are substantially identical and are under the jurisdiction of operating health authorities.

Marketing areas as defined in the Federal milk orders are designed to cover, as nearly as is practicable, areas in which milk is sold to consumers rather than the area in which the milk is produced. The proposed order would regulate distributing plants that are in substantial competition with one another, within the defined marketing area.

The proposed marketing area as defined herein includes much less territory than was proposed by the handlers who would be subject to regulation, or than was proposed by one of the producer cooperative associations which requested the hearing. Some of the territory originally proposed in the notice of hearing was abandoned by the proponents at the hearing, and no evidence was presented in support of its inclusion in the proposed marketing area. In addition, a considerable area concerning which evidence was submitted has been eliminated in the proposed order. In defining the marketing area there has been eliminated that portion of the proposed area in which insignificant volumes of milk are disposed of by regulated handlers. At the present time, it is not feasible in defining the marketing area to include all the area in which any handler, who would be regulated by the proposed order, disposes of any milk. To do so would expand the limits of the marketing area almost indefinitely.

The recommended area encompasses all the territory within which any regulated handler sells a significant volume of milk. Further expansion of the marketing area would not enhance the effectiveness of the regulation; it might have a contrary effect by bringing under regulation plants which have only minor connection with the area proposed to be regulated.

The handlers who would be regulated sell by far the greater volume of their milk in the area which has been defined and only a very small proportion of their milk outside these counties. Individual handlers will not be disadvantaged significantly in making sales outside the proposed marketing area because:

(1) The principal competitors for out of area markets will be either handlers also regulated under the Red River Valley marketing order, or handlers regulated under the other Federal order markets; and

(2) The economies inherent in the large-scale processing and distribution of milk will tend to offset any advantage that might accrue to the occasional unregulated handler with whom they might be in competition;

Accordingly, the marketing area which is defined herein includes the territory necessary to minimize problems of competition with unregulated distributors and, at the same time, restore marketing stability to the Red River Valley marketing area.

A cooperative association with producer members supplying Wichita Falls, Texas, handlers in its filed exceptions contended that the Texas portion of the marketing area should be regulated under a separate order. As shown above, the marketing area recommended herein is an integrated area which should include the designated counties in both Texas and Oklahoma.

Plants and milk to be regulated. Most of the plants which will be regulated under the proposed order are primarily fluid milk plants; they are engaged in manufacturing operations only to a limited degree. These plants are required to dispose of milk products in conformity with similar Grade A ordinances, either municipal or state. Any plant which is under the supervision of a municipal or state health authority and which disposes of any appreciable volume of Grade A milk as fluid milk products to wholesale or retail accounts in the marketing area, should be defined as a pool plant, and should be subject to full regulation under the proposed order.

At the hearing, it was proposed to exempt from full regulation plants disposing of only a small quantity of milk in the marketing area. The proposed exemptions ranged from an average of 100 to 300 pounds of milk per day. It has been concluded that plants which dispose of less than an average of 600 pounds per day as Class I milk to wholesale and retail outlets in the marketing area should not be considered pool plants and should be subject to only partial regulation. The limit of 600 pounds per day approximates an average-sized retail route or a small to medium-sized combination wholesale and retail route. Such volume of milk would not constitute a significant factor in the market, and it is, therefore, not necessary that such a plant be subject to full regulation under the order. Such a plant, however, should be required to furnish such reports as the

market administrator may deem necessary and should be required to fulfill certain obligations under the order, including the payment of administrative assessment on the volume of milk actually disposed of as Class I in the marketing area.

The order should also provide standards for plants from which pool plants making sales to wholesale and retail outlets in the marketing area may draw their supplies. Plants shipping supplemental milk to a market ("supply plants") generally fall into two categories. One category includes plants which regularly supply milk to distributing plants, and must be considered to be closely associated with the market. At the present time, there are no plants in this category which regularly serve the plants distributing fluid milk products in the marketing area. Some provision, however, should be made to regulate plants of this type, in the event that one or more might become associated with the market. Plants of this type are a normal part of the milk procurement facilities in any market, and there is nothing in this order which would preclude any plant, wherever located, from serving the market in the future, should a need for its milk arise. This objective can be best accomplished by including in the definition of pool plant a supply plant that ships to pool distributing plants, at least 50 percent of its producer receipts during the current month. Because of the seasonal fluctuation in milk production, supply plants which may be a necessary part of the market during the season of short supply, may not be required to ship a large volume of milk during the months of flush production. Nevertheless, these plants are closely associated with the market and should be subject to regulation. Accordingly, any supply plant which qualifies as a pool plant by shipping to distributing plants at least 50 percent of its receipts during each of the months of September through December should be permitted to continue as a pool plant until September 1 of the year following, even though its shipments to the market during the January through August period are less than 50 percent of its receipts. Supply plants which fail to ship 50 percent of their receipts, during the months of September through December, cannot be considered as closely associated with the market, and should not be considered pool plants except during those months in which they actually ship 50 percent of their receipts to distributing plants.

A handler should be defined as any person who operates a pool plant or any other plant from which milk is disposed of as Class I milk on wholesale or retail routes in the area. The term, "handler", should also include a cooperative association with respect to the milk of member producers, which may be diverted for the account of such cooperative association from a pool plant to a nonpool plant. This provision is necessary to assure that producers whose milk is needed on the market may have all of their deliveries included in the computation of bases even though their milk may be temporarily diverted to a manufacturing plant during the base-forming period.

The term, "handler", is not intended to include the operation of a nonpool plant by persons who may operate both pool plants and nonpool plants. The definition should also include producer-handlers, in order that they may be required to report to the market administrator whenever the market administrator deems it necessary to determine their continued status as producer-handlers.

The term, "producer", should be defined to include any person who produces milk that meets the requirements of the Grade A ordinances of any state or municipal health authority, and which is received at a pool plant or which is caused to be diverted to a nonpool plant by a cooperative association in its capacity as a handler. The definition should be broad enough to include any person producing milk which meets the standards fixed by the several agencies of the Federal Government for milk for fluid consumption on its bases and installations, when the milk produced by such a person is received at a plant supplying milk to such Federal establishment, even though his milk may not be under inspection of a state or municipal authority.

There are within the proposed marketing area several Federal establishments. At the present time, all are purchasing milk which is approved by local health authorities. It is possible, however, that in the future milk may be disposed of to one of these establishments from a source which has been approved by the health officer of the Federal base, but which is not under inspection of any local municipal, or state, health authority. Should this happen, the persons who produce such milk should be considered producers the same as other producers who furnish milk to the marketing area.

Only a few pool plants have manufacturing facilities, and in order to facilitate the movement of milk of producers among the various pool plants, provision should be made so that milk of a producer may be diverted by a handler, other than a cooperative association, from his pool plant to the pool plant of another handler. Such diversion should be permitted for any period during the months of February through July, in the season of flush production, and for not more than 10 days' production of a producer during any month, August through January. Such diverted milk should be considered received by the diverting handler at the pool plant from which such milk was diverted; but for purposes of determining shrinkage, such diverted milk should be considered as producer milk at the pool plant to which it was diverted. Milk so diverted for more than 10 days during any month August through January should be deemed received at the plant to which it was diverted for the entire period of diversion.

Provision should also be made so that milk of producers which is regularly received at a pool plant may be diverted for the account of a handler to nonpool plants without such producers losing their status under the order. This will permit milk regularly associated with the market to be diverted to manufacturing plants during periods of flush production or over week-ends and holidays, when supply and demand relationships may require that some reserve milk be manufactured in plants not regulated by the order. However, to insure that a producer's milk is needed by the market and is associated with it, some limitation on diversion should be provided in the order. Such limitation should be made in the fall months when production is seasonally low and the market needs the milk most. Thus, provision is made to limit diversion to a nonpool plant to ten days' production of milk of a producer during any month during the period, September through December. If such diversion exceeds ten days' production of any producer, the diverted milk should not be considered producer milk for the entire period of such diversion. Subject to the foregoing qualifications, producers whose milk is diverted should continue to receive the uniform price under the order and their milk should continue to be available for fluid use when needed on the market. Diverted milk should be considered to have been received at the plant from which it was diverted. In the case of milk diverted by a proprietary handler, the handler would continue to be responsible for such milk, just as though the milk had been received in his pool plant. In the case of milk diverted by a cooperative association which does not operate a pool plant, the milk should be considered to have been received by the cooperative association at a pool plant at the same location as the pool plant from which it was diverted. The cooperative association would be the handler for such milk and would be required to account for it according to its classification and to make payment to the producer for such milk.

Some cooperative associations have members which are associated with and supply milk to different Federal order markets. Such cooperative associations may divert milk of their producer members from one market to another market. To establish under which order such diverted milk should be pooled, the producer definition should exclude any person whose milk is diverted to a pool plant by a cooperative association if such person retains his status as a producer as defined in another Federal order and his milk is classified and priced under such other order.

The term, "producer-handler", should include a person who operates a distributing plant in which he handles only milk of his own production, and such milk from other handlers as is priced under the order at such other handler's plant. A producer-handler should be subject to the order only to the extent that he must submit reports to the market administrator as required, and maintain and make available to the market administrator the accounts, records, and facilities that are necessary for the mar-

ket administrator to verify such person's status as a producer-handler. It is unnecessary to require under the order that a producer-handler pay any particular price to himself for milk produced on his own farm.

The classification provisions of the proposed order should provide that any milk, skim milk, or cream transferred by a handler to a producer-handler should be Class I milk. Supplemental purchases which may be obtained by a producer-handler from other handlers may be presumed to be needed by the producer-handler for fluid use, and should be classified in the plant of the supplying handler as Class I milk. Purchases of milk from other handlers should not jeopardize a producer-handler's status as such. Producer-handlers, however, should not be permitted to maintain their status as producer-handlers if they dispose of other source milk as Class I. To permit a producer-handler to dispose of other source milk for Class I use, could result in serious disruption of orderly marketing, since it would enable such a person to purchase distress milk from nonpool plants during the period of flush production, thereby gaining a competitive advantage over regulated handlers.

Any milk which a handler receives from a producer-handler should be considered as other source milk, and it should be allocated to the lowest class utilization at the pool plant of the handler. This method of allocating receipts from a producer-handler recognizes that sales by a producer-handler to another handler is the means by which the producer-handler disposes of his surplus milk. It would be inappropriate under these circumstances to provide for the equal sharing by the producer-handler in the Class I market of another handler with respect to the producer-handler's surplus milk.

In their exceptions handlers suggested that the market administrator be required to publish each month a list of producer-handlers and that any milk purchased by a handler from a producer-handler not on the list be considered producer milk. In a market of this size there is little likelihood that a handler would purchase the milk of a producer-handler without knowing his status. The requirement to publish such a list would be unduly cumbersome in relation to the problem to be dealt with. Accordingly, no change should be made with respect to the treatment of milk received from a producer-handler.

"Other source milk" should be defined to include all skim milk and butterfat utilized by a handler in his operations, except fluid milk products received by such handler from producers. This would include any nonfluid milk products from any source, including those produced at the handler's plant during the same or an earlier month, which are reprocessed during the current month at the plant. The other source milk would represent all butterfat and skim milk from any source not subject to the pricing provisions of the attached order. Defining other source milk in this manner will insure uniformity among all handlers under the allocation and pricing provisions of the order.

(b) *Classification of milk.* Milk received by regulated handlers should be classified on the basis of skim milk and butterfat according to the form in which, or the purpose for which, it is used as either Class I milk or Class II milk.

A classified-use plan of this type will insure that minimum prices for milk will be uniform among handlers according to use, that a price may be fixed for the milk disposed of as Class I milk at a level that will bring forth an adequate supply of pure and wholesome milk, and that a necessary reserve supply of quality milk may be maintained without disrupting marketing and pricing conditions within and around the established marketing area.

The products which should be included in Class I milk are those which are required by the health authorities, exercising jurisdiction in the marketing area, to be produced from Grade A milk. The extra cost of getting quality milk produced and delivered to the market in the condition and quantities required, makes it necessary to provide for Class I milk a price somewhat higher than that received for non-Grade A milk produced for use in manufactured dairy products. This higher price should be at such a level that it will yield a return to producers that will encourage the production of enough milk to meet the requirements of the market.

The reserve milk which is not needed seasonally, or at other times during the year for Class I use, must be disposed of for use in manufactured dairy products. These products are not required to be made from Grade A milk, and must be sold in competition with similar products produced through the entire United States. Milk so used should be classified as Class II milk and should be priced in accordance with its value in manufactured dairy products.

In accordance with these standards, Class I milk should include all those products which are disposed of in the form of milk, skim milk (including reconstituted and concentrated nonfat milk solids), buttermilk, flavored milk, flavored milk drinks, cream and any mixtures in fluid form of milk, skim milk and cream, which are disposed of for fluid use, such as half and half, and all milk which cannot be accounted for as having been used to produce a Class II product.

Fluid milk products which contain concentrated skim milk solids such as skim milk drinks, fortified skim milk, and buttermilk to which extra solids have been added, or concentrated whole milk disposed of for fluid use, should be included within the definition of Class I milk, and all the nonfat solids contained therein should be priced equally. For brevity and convenience in referring to Class I milk items, they are included in a definition of "fluid milk product". Products such as evaporated or condensed milk packaged in bulk or in hermetically sealed containers will not be considered Class I milk, since they need not be handled as fluid milk products, and are not required to be made from Grade A milk.

Skim milk and butterfat are not used in many products in the same proportions as in the milk received from producers and, therefore, should be classified separately according to their respective uses. The skim milk serum and butterfat content of milk products received and disposed of by a handler may be determined through certain recognized testing procedures. Some of these products, such as ice cream and condensed products, present a difficult problem of testing and accounting, in that some of the water contained in the milk originally has been removed. It is necessary in the case of such products to provide a special means of ascertaining the amount of skim milk and butterfat contained in or used to produce these products. This may be accomplished through the use of adequate plant records made available to the market administrator in the case of products manufactured by the handler, or by means of standard conversion factors of skim milk and butterfat used to produce such products in the case of items purchased by a handler, or where adequate plant records are not available.

The accounting procedures to be used in the case of any condensed milk product disposed of as Class I milk should be based on the pounds of milk or skim milk required in its production. Concentrated skim milk solids which are reconstituted for distribution as Class I products, or are used to fortify other Class I products are included in this category. The value of each pound of nonfat solids utilized in Class I products has a value to the handler the same as every other pound contained therein. Neither the form in which, nor the source from which, such solids are obtained change their value to the handler for this purpose. Solids contained in producer skim milk are in fluid form and are paid for on the basis of all the water that was originally associated with such solids. In order to account for skim milk solids in powder or condensed form on a basis comparable to that used in accounting for regular skim milk, it is necessary to account for such solids on the basis of the quantity of skim milk necessarily used in the production of such solids. Therefore, the accounting procedures to be used in the case of this and any other condensed product should be based on the pounds of milk or skim milk required in its production.

Each handler must be held responsible for a full accounting of all his receipts of skim milk and butterfat in any form. A handler who first receives milk from producers should be responsible for establishing the classification of, and making payment to producers for, such milk. Fixing responsibility in this manner is a practice which is followed consistently in both regulated and nonregulated markets. It is necessary, for effective administration of the provisions of the order, that equality of minimum prices among handlers be maintained. The operator of the plant at which the milk is first received from producers is the person with whom contractual relationships have been made by producers or their representatives. Except for the limited quantities of skim milk which may be classified as Class II under circumstances set forth elsewhere, all skim milk and butterfat which is received, and

for which the handler cannot establish utilization, should be classified as Class I milk. This is necessary to remove any advantage to handlers who fail to keep complete and accurate records of their operations, and to assure that producers will receive full value for their milk on the basis of its use by the handler.

All skim milk and butterfat used to produce products, other than those which are classified as Class I milk, should be Class II milk. Included as Class II milk are such products as ice cream, ice cream mixes, frozen desserts and mixes, eggnog, yogurt, aerated cream, butter, cheese (including cottage cheese), evaporated and condensed milk (both plain and sweetened), nonfat dry milk solids, dry whole milk, sour cream, and any other product not specified as Class I. Class II milk should also include skim milk and butterfat disposed of to commercial food manufacturing plants, such as wholesale bakeries, soup companies, candy manufacturers, etc., which do not dispose of fluid milk products for fluid consumption. The health ordinances do not require that the milk utilized in these products be of Grade A quality.

Cream placed in storage and frozen should be classified as Class II milk. Such cream is intended primarily for use in ice cream and ice cream mixes. Should any frozen cream or other Class II product later be utilized in the manufacture of another product, it would be considered a receipt of other source milk in the plant of the handler and would be assigned to the lowest class price utilization in the plant.

Producers proposed that sour cream be included in Class I. The record, however, fails to establish that any of the health departments having jurisdiction in the marketing area require that it be made from Grade A milk. The facts established are that most of the sour cream disposed of by handlers in the marketing area is purchased from outside sources already processed and is not generally produced from producer milk.

Classification as Class II milk should be provided for skim milk which is disposed of for livestock feed and for skim milk which is dumped by the handler after prior notification to the market administrator of his intention to do so. In some sections of the proposed marketing area, manufacturing facilities are rather limited. Many of the handlers who would be subject to the order also have rather small operations. As a consequence, there will be times when a plant will have small quantities of milk, which are in excess of its bottling requirements, and which it would be uneconomical to transport to a manufacturing plant. In such instances, the handler should be permitted to dump the skim milk contained in such milk without having it classified as Class I milk. To prevent abuse of this privilege, however, the handler should be required to notify the market administrator of his intention to dump such skim milk so that the market administrator may have the opportunity to physically verify both the quantity of skim milk to be dumped, and its actual dumping, if he desires to do so. Failure to notify the market administrator in advance would result in such milk's being considered unaccounted for, and subject to classification in Class I milk as excess shrinkage.

While it is reasonable to permit skim milk for which a handler has no use to be disposed of to farmers for livestock feed or to be dumped, there is no justification for permitting fat to be so utilized. While excess skim milk may be of no value to a handler, except in condensed form, the fat can be disposed of in ice cream and possibly in butter at any point in the marketing area. The only appreciable quantities of fat which cannot be salvaged are those contained in returns of creamed cottage cheese and flavored milk. Any loss involved in such returns is a part of the normal risk associated with doing business, and should be compensated for by the 2 percent shrinkage permitted to be classified as Class II milk.

Shrinkage up to 2 percent of the handler's receipts from producers should be permitted to be classified as Class II milk, as should all shrinkage incurred in the handling of other source milk. Shrinkage should be determined by subtracting, from the total pounds of skim milk and butterfat received by the handler, his total utilization of skim milk and butterfat respectively, in the various products handled. The resulting figure should be prorated between the handler's receipts of milk from producers and from other sources. The shrinkage associated with the other source milk and that which is allocated to producer milk, in an amount not in excess of 2 percent of the handler's receipts of skim milk and butterfat from producers, should be classified as Class II. Any shrinkage allocated to producer milk in excess of 2 percent of the handler's receipts from producers, should be classified as Class I milk.

Handlers have inventories of fluid milk products at the beginning and end of each month, which enter into the problem of accounting for current receipts and utilization. Inventory is intended to include stocks on hand of bulk milk, skim milk, cream, and bottled milk, and other fluid milk products designated as Class I milk. Manufactured products on hand are not included in the inventory to be accounted for, because either they were in processed form or the milk used to produce such products will already have been accounted for as Class II milk. As noted above, handlers will be required to keep records of such products, but they will not be included in the inventory for the purpose of accounting for current receipts. Inventory should be accounted for as Class II milk. If fluid milk products in inventory are accounted for as Class II milk at the end of the month, it will be necessary to provide a method for dealing with the producer milk in inventory which is used in the current month for Class I purposes, but which the handler accounted for to producers as Class II at the end of the preceding month. Handlers at times will also have other source milk in inventory. Producer milk from inventory should have prior claim on Class I sales over current receipts of other source milk. This can be accomplished by considering the ending inventory in one month as a receipt by the handler in the following month, and substracting such receipt in series, starting with the Class II milk remaining after the subtraction of other source receipts during the month. To the extent that opening inventory is allocated to Class I Milk and there was an equivalent amount of producer milk classified in Class II in the preceding month, a reclassification charge should be made at the difference between the Class I price in the current month and the Class II price in the preceding month. This will ensure equality in the application of the minimum prices among handlers, and in returns to producers, whether such producer milk is from current receipts or from the preceding month's inventory.

Transfers. The classification of butterfat and skim milk used in the production of Class II items is established when the product is made. The classification of Class I milk should be established when butterfat or skim milk is disposed of by the handler. However, since some Class I items may be disposed of to other pool plants for processing, specified classification procedures must be prescribed for milk transferred to other pool plants.

Milk, skim milk, and cream, or other products designated as Class I milk, transferred by a handler to the plant of another handler, except a producer-handler, should be classified as Class I milk, unless both handlers indicate in their reports to the market administrator that they desire such milk to be classified as Class II milk. The plant to which the milk is transferred, however, must have sufficient Class II utilization available for such assignment after the prior allocation of shrinkage and other source milk. Furthermore, the assignment of classification must be such that it will result in the maximum amount of producer milk at both plants being assigned to Class I milk. This is in accordance with the principle that the higher valued usage should be assigned to those producers who regularly supply the market.

In order to reduce the administrative expenses of verifying the use of milk or skim milk transferred great distances, milk or skim milk which is moved to plants located more than 350 miles from Wichita Falls, Texas, should be Class I in all cases. There are ample manufacturing facilities within 350 miles of Wichita Falls to handle all of the excess supplies that may be produced seasonally for the market. It is a very costly procedure to verify the utilization of small lots of milk or skim milk moved great distances. In the interest of maintaining administrative costs as low as possible, any milk or skim milk moved more than 350 miles from Wichita Falls should be classified as Class I.

It is as uneconomical for the market administrator to travel several hundred miles to verify the utilization of a few cans of cream, as it is to travel the same distance to verify the utilization of a tank of milk. In the case of shipments of cream, however, the shipment is frequently labeled as being for use as manufacturing grade cream only. When this

occurs and the market administrator has knowledge of the fact, cream moved more than 350 miles from Wichita Falls may be classified as Class II milk if all the following conditions are met:

(1) The transferring handler requests such a classification;

(2) It is clearly labeled as manufacturing grade cream, and is so invoiced; and

(3) The market administrator is notified, prior to the shipment, so that he may have an opportunity to verify the labeling.

The most common form of transfer to a nonpool plant is the movement of excess milk to nearby plants which have manufacturing facilities. It is provided that if milk, skim milk, or cream is transferred from a pool plant to a nonpool plant located less than 350 miles from Wichita Falls, Texas, it shall be Class I unless Class II use is established. If the transferee plant distributes milk on routes the market administrator shall first allocate to the Class I utilization in such plant, the receipts from dairy farmers who constitute its regular source of Grade A supply. If the Class I disposition of such plant exceeds its receipts from such dairy farmers the milk, skim milk, or cream transferred to such plant shall be assigned to Class I up to the amount that Class I disposition exceeds receipts from dairy farmers. Any additional amount shall be classified as Class II.

If the transferee plant does not distribute milk on routes, the milk, skim milk, or cream shall be classified as Class II milk except that: (1) if the nonpool plant transfers milk, skim milk, or cream to a pool plant, an amount equal to skim milk and butterfat transferred to the nonpool plant from other pool plants shall be classified as though it had been transferred directly between the pool plants; and (2) if skim milk and butterfat is transferred from the nonpool plant to another nonpool plant which does distribute fluid milk on routes, the skim milk and butterfat transferred from the pool plant to the first nonpool plant shall be Class I in an amount equal to that transferred to the second nonpool plant unless it is established that such skim milk or butterfat was transferred to the second nonpool plant without Grade A certification with each container labeled to show that the contents were for manufacturing use only and that the shipment was so invoiced. If, however, the transferee plant is a pool plant under another order issued pursuant to the Act, the milk received at such plant from dairy farmers who are producers under such order should receive prior claim to the Class I utilization over the fluid milk products diverted or transferred to such plant.

Allocation. Because the order prices apply only to producer milk, it is necessary, if a pool plant has butterfat or skim milk other than that received from producers, to determine the quantities of milk in each class to be assigned to current receipts from producers. The milk of producers who are regularly engaged in supplying the market should be assigned to Class I before any other milk is so assigned. This is necessary to insure the effectiveness of the classified pricing program of the order. The system of assigning utilization of milk to receipts from different sources which will carry out this objective is set forth in detail in the order.

In general, this procedure requires that skim milk and butterfat, respectively, remaining in each class be assigned to producer milk by making the following deductions from the gross utilization of each handler, starting with Class II milk, except as otherwise noted:

(1) Class II shrinkage of producer milk;

(2) Other source milk;

(3) Opening inventory;

(4) Receipts from other pool plants according to its classification; and

(5) Overage.

Since uniform prices paid producers by each handler are to be calculated monthly, the assignment of utilization described above should be carried out with respect to all milk received during each month. To apply a shorter accounting period would place a burden upon handlers and would increase substantially the cost of administering the order.

(c) *Class prices.* In order to restore and maintain orderly marketing conditions in the Red River Valley marketing area, Class I and Class II prices for producer milk must be established at levels that will reflect economic conditions affecting the market supply and demand for milk or its products, and assure the maintenance of a supply of quality milk adequate for the needs of the market. The act requires that minimum prices established by Federal milk orders meet this standard. An important point is that prices be at a level that, over a reasonable period of time, will result in a supply of milk meeting the quality standards of the market about equal to the needs of the market, considering the necessity for a reserve supply of milk and a seasonal fluctuation in production. This means that the minimum prices provided in the order can be related to general economic conditions, but they cannot be maintained out of line with such conditions or with prices in surrounding markets. If producers' prices are too low, not enough milk of acceptable quality will be produced and delivered to plants to supply the Class I needs of the market, and there will be a tendency for producers to shift to other markets where the prices are more nearly adequate. Likewise, if prices are too high, milk production will be overstimulated, consumption will tend to fall off, and there will be a tendency for producers to shift from other markets to the Red River Valley marketing area. These actions would result in a supply of milk greater than needed to supply the demands of the market, and would eventually result in the shifting of agricultural resources toward the production of unnecessary and uneconomical surplus which would reduce the uniform prices received by producers.

The Red River Valley marketing area is situated near to several other Federally regulated milk markets. As noted above, the production area for the Red River Valley overlaps the milksheds of the North Texas, Central West Texas, and Texas Panhandle marketing areas and to an even greater degree that of the Oklahoma Metropolitan milk marketing area. For this reason, it is particularly important that prices in the Red River Valley be established at a level which will not disrupt the supply and demand relations of the several surrounding marketing areas.

The prices in the Oklahoma Metropolitan marketing area are the lowest of any of the above-mentioned marketing areas. As one progresses south or west from the Oklahoma Metropolitan marketing area, prices are increased to compensate for the additional costs of transporting supplemental milk from the area of surplus production, and to compensate for the additional costs of getting milk produced in Western Oklahoma and Texas. Accordingly, the price for Class I milk in the Red River Valley marketing area must be higher than that established in the Oklahoma Metropolitan milk marketing order, and lower than those provided in the Texas marketing orders.

The price for milk received at pool plants located in Texas should be 15 cents higher than the Class I price established under the Oklahoma Metropolitan milk marketing order. At all other pool plants located within 100 miles of the City Hall in Wichita Falls, Texas, it should be 10 cents higher than the price established under the Oklahoma Metropolitan marketing order. At all other plants a location differential should apply based on the distance such plants are from the City Hall in Wichita Falls, Texas. This level of prices will maintain a proper alignment between the Red River Valley marketing area and the Federal marketing areas mentioned above. A greater difference in prices between the Oklahoma Metropolitan marketing area and the Red River Valley marketing area would place handlers in the Red River Valley at a competitive disadvantage with plants regulated under the Oklahoma Metropolitan marketing order, which dispose of milk in the Red River Valley marketing area and in the area lying between the Oklahoma Metropolitan and the Red River Valley marketing areas. At the same time, a price less than that provided would afford handlers regulated under the Red River Valley marketing area, especially those located south of the Red River, a competitive advantage over handlers whose milk is priced under the North Texas or Central West Texas marketing orders.

If the Class I pricing as proposed herein had been operative, the Class I price at Wichita Falls, Texas, in 1956 would have ranged from about $5.15 to $5.75, and averaged $5.48 per hundredweight. For the first six months of 1957, an average Class I price of $5.19 per hundredweight would have resulted.

Comparable Class I prices actually paid by handlers in the Red River Valley marketing area are not available, but prices reported to have been paid producers for base milk in 1956 ranged from about $4.75 to $5.65 per hundredweight; and for the first six months of 1957, they

ranged from about $4.50 to $5.45 per hundredweight.

Exceptions to the Class I pricing provisions of the order were filed by several handlers who are subject to regulation under the Central West Texas order and by the cooperative association which supplies them with milk. It was their contention that the proposed price is too low and would place them at a competitive disadvantage. Their opposition is based largely on a comparison of the prices that would have prevailed under the proposed order with the prices that were actually effective in Central West Texas during the past four years. During a substantial portion of that period, however, the latter price was not based on the formula provided, but was fixed at a somewhat higher level because of the extreme drought which prevailed.

Were the proposed order in effect in July 1958, the Class I price would be 32 cents below the Central West Texas price at Abilene. This figure is very close to that which the exceptions allege should prevail.

On an annual average the difference in price between Wichita Falls and Abilene will exceed the above figure by a few cents. To increase the price at Wichita Falls, however, to bring it nearer to the Abilene price would cause a misalignment in price between Wichita Falls, and the Oklahoma Metropolitan, North Texas, and Texas Panhandle marketing areas.

Class II milk. Every fluid milk market needs a reserve supply of Grade A milk to meet day-to-day fluctuations in receipts from producers and in Class I sales. While sales of milk vary considerably on a day-to-day basis, they are rather uniform from season to season. Milk supplies, however, because of the seasonal variations in production, are greater during the late winter and spring months than they are in late summer and fall. As a result, handlers must process on a year-round basis the daily and seasonal surplus into various manufactured products. Since milk going into these products must be paid for at the Class II price, this price must be fixed at a level which will encourage handlers to accept whatever quantities of such milk may be offered from time to time by the producers who supply the market. It is of equal importance that the price be at a level which will return to producers the full value for their milk.

All products which are included in Class II may be made from milk which does not meet the requirements of the Grade A ordinances. Grade A milk which may be used in these products by regulated handlers, must be priced at a level which is competitive with the cost of alternative supplies of milk that would otherwise be used in the manufacture of such products. Ice cream, cottage cheese, and condensed milk are the most important outlets for reserve and surplus supplies on the market.

In the past, the Red River Valley has been relatively short of milk during the late summer and fall months, and it has been necessary for handlers to rely on receipts of ungraded milk to process the Class II products which they manufacture during the season of short supply. When milk is not available locally, these products have been purchased, for the most part, in the form of powder, condensed skim, and cream. It seems appropriate, therefore, that the formula for pricing Class II milk, at least during the season of short supply, should be one which would reflect the cost of obtaining supplies from alternative sources. Such a formula would be one which is based on the market value of butter and nonfat dry milk solids. One of the alternative formulas used for determining the Class I price under the Oklahoma Metropolitan milk marketing order is a formula based on the Chicago market prices of butter and nonfat dry milk solids. Since, as has been noted above, the prices in the Red River Valley marketing order must be aligned to those in the Oklahoma Metropolitan Order, the price for Class II milk under the Red River Valley marketing order during the season of short supply should be identical to the butter-powder formula in the Oklahoma Metropolitan milk marketing order. This formula arrives at a price for the butterfat by subtracting 3 cents from the price of 92-score butter at Chicago, adding 20 percent thereto, and multiplying by 4. The value of the skim milk is determined by subtracting from the average prices of nonfat dry milk solids both spray and roller process, f. o. b. manufacturing plants in the Chicago area, 5.5 cents, multiplying by 8.5, and then multiplying by 0.96. This is the price which should be effective for the months of August through January, inclusive.

During the months of heavier production, it will be necessary for many of the handlers in the Red River Valley marketing area to move excess supplies to nearby manufacturing plants for processing into Class II products, since the facilities of handlers for processing whole milk into manufactured dairy products are limited, particularly in the Texas portion of the proposed marketing area. During this period of the year, the Class II price should be one which will enable handlers to dispose of excess supplies to manufacturing plants without incurring a substantial loss on the transaction. The best reflector of the value of milk for Class II products during the months of flush production is the price paid by manufacturing plants for ungraded milk for use in these products. The Class II price during the months of February through July, therefore, should be the average of the prices paid for ungraded milk by the following plants: American Foods Company, Miami, Oklahoma; Gilt Edge Dairy, Norman, Oklahoma; the Muskogee Dairy Products Company, Muskogee, Oklahoma; the Page Milk Company, Coffeyville, Kansas; the Pet Milk Company, Siloam Springs, Arkansas; and the Real Test Foods Company, Tulsa, Oklahoma. These are the same plants whose pay prices are used in determining the Class II prices under the Oklahoma Metropolitan marketing order.

Prices determined in this manner will insure that handlers will make every effort during the months of short production to see that available supplies of producer milk are used in Class I to the greatest extent possible. It will also insure that handlers will be able to move surplus milk into manufacturing channels when it cannot be utilized in Class I on the market.

Producers proposed that for certain products, such as cottage cheese, ice cream, and similar products a Class II price be established somewhat higher than the price fixed for milk going into butter, cheese, nonfat dry milk solids, and other commodities which are less perishable and less bulky. At this time, it is not feasible to establish a separate classification for such products. Such products may be disposed of freely in the marketing area, regardless of whether they have been made from Grade A milk. Large quantities of cottage cheese and ice cream are distributed over the entire marketing area by plants which are subject to regulation under other Federal marketing orders, as well as by manufacturing plants which are completely free of regulation. Pricing milk going into these products at a somewhat higher level than the Class II price in surrounding markets, or than the price paid by unregulated manufacturing plants, would place regulated handlers at a competitive disadvantage and might result in their refusing to accept from producers more milk than was needed for their Class I use. Refusal by handlers to accept milk for use in ice cream, cottage cheese, and similar products would create disorderly marketing and would pose a severe problem for the cooperative association in disposing of the seasonal surplus in the market.

Location differentials. Class I milk products, because of their bulky, perishable nature, incur relatively high transportation costs, if such products or the milk used to produce them are moved a considerable distance. Milk delivered by farmers directly to plants in or near the centers of population is therefore, worth more to a handler than milk which is received from farmers at a plant located many miles from the point at which the milk is distributed. On such milk the handler must incur the additional cost of moving the milk to a central market. The producer, in turn, receives less for milk delivered to points distant from the central market in lieu of incurring the additional cost of hauling his milk directly to the central market. Under these conditions, the value of milk delivered by producers to plants located some distance from the central market is reduced by approximately the cost of transporting such milk from the point of receipt to the central market.

At the present time, there are no supply plants regularly furnishing milk to the Red River Valley marketing area. With the rapidly changing pattern that is developing in the milk industry, it is possible, however, that in the near future supply plants may begin to furnish milk to the market on a regular basis. In order to allow for the cost of moving Class I milk from distant plants that might become regular sources of supply for the market, it is necessary to establish the Class I price for milk delivered to plants at a point in the marketing

area and then provide a schedule of deductions from the Class I price as location differentials or adjustments. The city of Wichita Falls, Texas, is the largest population center in the proposed marketing area. It is also the most distant from alternative sources of supply and, therefore, the cost of milk from surplus producing areas delivered to Wichita Falls would be greater than at other population centers in the marketing area. Accordingly, the Class I price should be established at Wichita Falls. Because of the extensive nature of the marketing area and its peculiar location in relation to sources of supply and to other marketing areas, the prices at all points in Texas should be the same as that at Wichita Falls. At plants located in Oklahoma and within 100 miles of Wichita Falls, the price should be 5 cents less than the price at Wichita Falls. At all other plants, the price should be reduced 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is more than 100 miles distant from the City Hall at Wichita Falls, Texas. Although, normally, location differentials are uniform at the same distance from the central market regardless of the direction in which the plant is located, in the present instance, it is desirable to permit the deduction of a location differential only at those plants which are located north and east of Wichita Falls. Because the areas to the south and west are generally a deficit production area and the costs of alternative supplies in that area are higher than they are further north, prices at plants in other West Texas marketing areas are higher than those proposed for the Red River Valley marketing area by approximately the amount of the additional cost of transporting supplemental supplies from the surplus production areas in the north central states. If the prices at plants south of the Red River Valley were reduced because of their distance from the marketing area, it is possible that plants presently regulated under the Central West Texas marketing order might attempt to become regulated under the Red River Valley marketing order. If this were to happen, the prices such plants were required to pay would be substantially less than the prices paid by other plants regulated under the Central West Texas marketing order. The resulting competitive advantage enjoyed by such a handler would disrupt the orderly marketing in the Central West Texas marketing area.

One of the exceptions proposed that the location differential be revised so as to provide a Class I price at Ardmore, Oklahoma, four and one-half cents less than the price at Lawton, Oklahoma. This exception is denied since Ardmore is at least as far from the Oklahoma Metropolitan marketing area as Lawton is and is closer to the North Texas marketing area than any other point at which a plant is located in the Oklahoma portion of the proposed marketing area.

The proposed rate of 1.5 cents for each 10 miles or fraction thereof that a plant is more than 100 miles from the City Hall in Wichita Falls, Texas, reflects the actual cost of transporting milk in tank trucks. This rate is comparable to that which is generally contained in other Federal milk marketing orders.

A method is provided for determining, if necessary, the priority of milk from various plants and allocating milk to Class I use by computing the aggregate value of the location adjustments to be allowed, such adjustments to be made in sequence in the order that such plants are distant from the City Hall in Wichita Falls, Texas.

The value of milk used in manufactured dairy products is affected very little, if at all, by the location of the plant receiving and processing such milk. This occurs because of the differences in the cost of moving the two types of product.

Fluid milk products are bulky, easily contaminated, and highly perishable, whereas, such products as butter, cheese, and nonfat dry milk solids are easily transported and may be stored for long periods of time, and have a high value relative to the cost of transporting them. The cost of such products is virtually the same at the plant of origin as it would be delivered to Wichita Falls. For this reason, the price for Class II products varies little, regardless of the location of the plant. Accordingly, no adjustment should be made in the Class II price by reason of the location of the plant at which the milk is received from producers.

In line with the economic considerations which affect the value of milk for fluid uses when it is delivered by farmers to plants located some distance from the consuming market, it is necessary and appropriate that the prices paid producers for milk delivered to plants at which a location differential applies should also be reduced at the same rate to reflect the lower value of such milk, f. o. b. the point of actual delivery, in contrast to its value when delivered to Wichita Falls.

Butterfat differentials. As noted above, it has been concluded that butterfat and skim milk should be accounted for and classified separately. It will be necessary, therefore, to adjust the Class I and Class II prices in accordance with the average butterfat content of the milk in each class by a butterfat differential that will reflect differences of value due to variations in the butterfat content of such products. In order to maintain prices on the same basis as those in surrounding markets, prices for the Red River Valley marketing area should be computed and announced in terms of milk of 4.0 percent butterfat content.

The butterfat differentials for Class I milk and Class II milk should be appropriate to the level of class prices provided for herein for Class I milk and Class II milk. To achieve this end, the Class I price should be increased or decreased, for each one-tenth of 1 percent of butterfat content above or below 4.0 percent, by the value obtained by multiplying the Chicago butter price for the preceding month by 0.125. The Class II differential would be determined by multiplying the Chicago butter price for the current month by 0.115.

The use of butterfat differentials in this manner is practiced in most fluid milk markets for adjusting for butterfat variations. At these levels they reflect the situation in the market and will maintain the prices in this market in proper alignment with prices in surrounding markets, regardless of the butterfat content of the milk. Identical butterfat differentials are provided in the Oklahoma Metropolitan marketing order.

In order that the Class I butterfat differential may be announced early each month, at the same time that the Class I price is announced, the Class I butterfat differential should be based on the average price of butter during the preceding month. Since Class II prices will not be announced until after the end of the month, and will be based on market prices of commodities during the month in which the milk is manufactured, the Class II butterfat differential should be based on the value of butter during the month in which the milk is utilized. Accordingly, the Class II butterfat differential should be based on the price of butter during the current month, and should be announced at the end of the month at the same time as the Class II price is announced. Although handlers will not know the cost of such milk until after it is utilized, they will know that in any sales competition with other processors of manufactured dairy products, whether regulated or not, they will be paying for milk on the basis of current market prices the same as their competitors.

The butterfat differentials used in making payments to producers should be calculated at the average of the returns actually received from the sale of butterfat in producer milk. The rate to be used for this purpose would be the average of the Class I and Class II differentials weighted by the proportion of the butterfat in producer milk which is classified in each class. Thus, producer returns for butterfat will reflect the actual sales value of the butterfat in their milk at the class prices provided in the order. The producer butterfat differentials in no way affect the amount of a handler's obligations which are computed at the class prices. It is merely a means of prorating returns among producers in accordance with the variations in the butterfat test of the milk which they deliver.

Equivalent prices. A provision should also be written in the order directing the market administrator to use a price determined by the Secretary to be comparable, in the event that any of the prices used in making the various computations provided in the order is not published and available to the market administrator. This would prevent the lack of a price quotation from affecting the operation of the order. Such a provision is incorporated in most milk marketing orders.

Compensatory payments. A compensatory payment should be assessed on other source milk disposed of as Class I milk.

Some handlers in the proposed marketing area have made a practice of keeping their purchases of milk from producers at the lowest possible level even during the months of flush production and have relied on purchases of milk from other plants to fulfill their Class I require-

ments. These handlers have purchased distress milk, particularly during the season of flush supplies, from other markets or from other plants in the market, at prices equal to or slightly in excess of its manufacturing value, and have used such milk for Class I purposes. Such practices have had a demoralizing effect on the market and contributed greatly to the chaotic conditions which led producers to request a marketing order for the Red River Valley.

An important function of an order is to insure that handlers paying producers the Class I price for fluid milk will not be placed at a disadvantage by other handlers using the market's excess or surplus milk for Class I use. It is equally important that the Class I market be protected from the use of seasonal excess milk from other markets, as well as from its own surplus. If the order fails to provide such protection, handlers could continue to curtail purchases of milk from producers to their own advantage and secure low cost surplus supplies from other markets for Class I use.

Seasonal supplies may be obtained easily and cheaply during the months of flush production when most markets have receipts of milk considerably greater than necessary to supply their regular fluid requirements. If adjoining milksheds were to dispose of seasonal surpluses in each other's Class I markets, the result would be confused and disorderly marketing conditions. Class I prices would be demoralized, production of milk would be impaired, and the future permanent supply of milk of both markets would be in jeopardy. Such disorderly marketing conditions would be contrary to the purposes of the act. Therefore, in order to insure the effectiveness of the classified pricing program, and to promote orderly marketing, it is necessary that some method of compensating for or neutralizing the effect of the advantage created for unpriced milk should be provided as an essential provision of this order.

It is concluded therefore that the inclusion of compensation payment provisions in the order is necessary to insure against the displacement of producer milk for the purpose of cost advantage. This is essential to preserve the integrity of the classified pricing program of the order. Since minimum class prices may not be set under the order for plants which do not participate in the market-wide equalization the only alternative is to levy a charge against unpriced milk for the removal of any advantage there may be in using unregulated milk in Class I instead of producer milk.

The rate of the compensatory payment on other source milk should be the difference between the Class I and Class II prices during the months of February through July, and the difference between the Class I price and the uniform price during the remainder of the year.

Surplus fluid milk would be available to Red River Valley handlers from unregulated markets during the months of February through July. The alternative outlet for such milk is in manufactured dairy products. A fair index of the value of such milk when used in manufactured dairy products is the Class II price proposed herein. This represents the actual value of such other source milk during these months.

During the remainder of the year when milk is in much shorter supply, and there is a much greater demand for fluid milk for bottled use, handlers in the Red River Valley will not be able to purchase milk at its value for manufacturing. During these months, it is likely that the minimum price at which handlers would be able to purchase fluid milk from unregulated sources would be one equivalent to the uniform price computed under the Red River Valley order. During the months of August through January, therefore, the rate of the compensatory payment on other source milk should be equal to the difference between the uniform price and the Class I price. The purpose of this provision is to remove any price advantage the handler may have in using unregulated milk, and hence, in making the adjustment for butterfat content, both the Class I price and the uniform price should be adjusted by the Class I butterfat differential, and not by the producer differential which is otherwise used in adjusting the uniform prices.

In addition to the other source milk which may enter the market in the form of fluid milk products, there are times when other source milk will be imported from unregulated sources in concentrated form for use as Class I milk. In order to remove the price advantage a handler might have through the reconstitution of such products into fluid milk products, the rate of compensatory payment on other source milk received in concentrated form should be the same as on that received in the form of fluid milk products.

Since the handler must pay the cost of transporting other source milk from the plant of origin to the marketing area, the rate of the compensatory payment on other source milk should be reduced by the amount of the location differential which would apply at the plant of origin were it a regulated plant under the proposed order. No location differential should be deducted, however, in the case of condensed skim milk or nonfat dry milk which at times may be allocated to Class I use. In the case of these products it would be extremely difficult and at times impossible to determine the plant of origin. They may pass through several hands between the manufacturer and the ultimate user and the output of many plants in many different localities may be commingled by the broker or jobber from whom such products are acquired. The administrative difficulties which would be involved make it impractical to apply location differentials to the payment associated with condensed skim milk and nonfat dry milk. Moreover, since the cost of transporting milk solids in concentrated form is slight in terms of its milk equivalent, the difference in cost to handlers would be negligible.

In computing the applicable location differential, if a handler has received other source milk from two or more nonpool plants, the amount of skim milk and butterfat allocated to Class I milk should be considered to have been received from the plants in sequence, according to the smallest location adjustment applicable.

In addition to the other source milk which may enter the market through pool plants, other source milk may also be distributed within the marketing area directly from nonpool plants. There is no evidence of distribution within the marketing area at the present time by plants which would not meet the requirements of pool plants. There are plants, however, in the vicinity which could extend their distribution routes into the marketing area and by preserving their unregulated status could operate with a substantial price advantage over regulated handlers unless provision is made to assure that all competing plants pay the minimum class prices.

The compensatory payment applicable to other source milk disposed of from nonpool plants on routes in the marketing area should be the same as that applicable to other source milk disposed of through pool plants. This is the only method of dealing with such problems which was considered. It will remove the advantage that might accrue to a nonpool plant should it begin the distribution of other source milk in the marketing area.

No compensatory payment should apply to other source milk which is classified and priced under another Federal milk order whether such milk is disposed of in the market directly from such plant or through a pool plant. In either case its proper classification and price would have been determined by the other order.

Payments to producers—(a) *Type of pool.* The order should provide for a market-wide pool, rather than for an individual-handler pool as proposed in the recommended decision.

The market-wide pool was proposed by producers. Under the market-wide pool, all producers delivering milk to all pool plants would receive uniform prices for all milk so delivered regardless of the use made of such milk by the handler to whom it is delivered. Under the individual-handler pool the producers supplying each of the regulated handlers would be paid a blend price based upon the proportion of the receipts of producer milk classified as Class I milk and Class II milk at the plant(s) of the particular handler receiving the milk. Under either type of pool, the uniform or blend prices are subject to adjustment for location and the butterfat content of the milk. Producers may also be charged different rates for hauling their milk from the farm to the plant. These rates, however, are not established by the order.

Three cooperative associations whose members supply milk to the market, in their exceptions, requested a market-wide type of pool. One of them, as noted above, requested that the Texas portion of the area be established as a separate marketing area with a market-wide pool, at least for that portion of the area; the others urged a market-wide pool be adopted for the entire area. Under the conditions prevailing in the market it is concluded that a market-wide type of equalization pool would be most effective in establishing and maintaining

orderly marketing and pricing conditions.

Only two of the pool plants in the marketing area are equipped to process any appreciable quantity of the reserve and surplus milk.

One of these plants manufactures all of the cottage cheese for several other handlers in the market. For this reason, and those already pointed out in the discussion of the necessity for an appropriate Class II price, the type of pool established should provide for an equitable sharing, particularly during the flush production season, of the lower returns that will inevitably accompany an adequate and necessary reserve of milk.

A market-wide pool will permit any handler to bid on such business as that offered by the many military installations and other public institutions located in and adjacent to the marketing area, and obtain the necessary milk to supply such sales without upsetting the market stability whenever the contracts for supplying such installations might shift from one handler to another.

There are two cooperative associations which are in a position to assume the responsibility for removing the reserve and surplus milk of their member-producers. A market-wide pool will facilitate the movement of milk by these associations between handlers to meet their individual needs or to move milk, which is not needed on the market, to manufacturing plants. A market-wide pool will aid the market in retaining qualified producers during periods of seasonal surplus by permitting them to receive the market-wide uniform price regardless of the utilization of their milk. This is necessary if their milk is to be available to fill the Class I requirements of the market at other seasons of the year. These factors and the variation in the amount of reserve supplies among the several plants all support the adoption of a market-wide pool.

Base and excess plan. A base and excess plan of distributing returns for milk among producers should be employed in connection with the "market-wide" pool established herein. Receipts of milk from producers vary between spring and fall months in a much greater degree than do Class I sales. In addition, some handlers have difficulty in using, during the periods of seasonally high production, all of the milk delivered to them by producers. Consequently, there is a need for an incentive to maintain production in the late summer and fall months, relative to that of the winter and spring months.

Handlers and producers on the market are now relying on various forms of base-excess plans to provide the incentive needed to induce local dairymen to strive for a more nearly level milk production throughout the year. The presently operated plans have served a function in the market, even though their operation has been deficient from the standpoint of equality between handlers and fairness to producers. These conditions can arise because the distributors themselves establish the rules of the base-excess plan and control the adjustment and transfers of bases. Producers have no say whatever in the operations of the several base plans now in use.

Base and excess plans have proved an effective means of improving the seasonal pattern of milk deliveries, because they relate producers' returns directly to the deliveries of milk in the late summer and fall months when production conditions are more difficult and milk is less plentiful. Such a plan will help to achieve a production which is more nearly fitted to the sales pattern of fluid milk products in this area. Were some version of this plan not included in the attached order, the most likely results would be increased seasonality in production with the attendant problems of surplus disposal in the months of flush production and the need for additional imports of supplemental milk in the short production months. The base and excess plan uniformly applied to all producers, by being incorporated in the attached order, will play an essential part in stabilizing market conditions by encouraging the trend to a more nearly even production seasonally.

The base and excess plan proposed herein would establish for each producer a base equal to his average daily deliveries during the four months of September through December. If a producer did not deliver milk to the market during the entire period, the days of actual delivery from the first day of delivery, but not less than 90, would be used.

During the months of March through June, separate uniform prices will be computed for base milk and excess milk for the purpose of allocating Class I sales to base milk. Base milk would be that quantity of milk delivered by each producer up to his average daily base multiplied by the number of days in the month during which he delivers milk to any pool plant. The excess price would be the Class II price, except in those months when total Class I sales exceed the total quantity of base milk. During such months, the excess price would be a blend of the actual Class I and Class II utilization of excess milk.

Provision is made for producers who may enter the market after the start of the base-forming period to establish a full base by delivering a minimum of 90 days during the specified period. Producers delivering milk for less than 90 days will have their bases calculated by dividing their total deliveries during the base-forming period by 90.

Provision also is made for a person who becomes a producer after the base-forming period, and who has established a base under another Federal order, to be assigned a base equal to that which he would have received if he had been a producer during the base-forming period. This provision should facilitate the movement of milk of producers between the Red River Valley marketing area and adjacent Federal order marketing areas, where their milksheds overlap.

Although fewer than 90 days of the base-making period will remain after the effective date of the order, it provides for the establishment of bases during the current year. Section 986.65 (b) provides that persons who become producers after October 3d of any year as a result of the plants to which they deliver their milk having become pool plants shall have their bases computed in the same manner as if such plants had been pool plants during the entire base-forming period.

A producer should be permitted to transfer his base only to another member of his family and then only in the case of retirement of the producer or his entrance into the military service. In the event of death of a producer, the base should be transferable to a surviving member of the family who carries on the producing functions. In the case of a partnership composed of members of the same family, the base may be transferred in whole or in part to either member of the partnership upon its dissolution. For a base to be so divided, both parties must file application with the market administrator requesting division of the base, and the application must set forth the portion of the base which is to be transferred to each of the parties.

(b) *Payments to individual producers and to members of cooperative associations.* Handlers should make payment to each producer for milk delivered by such producer at the appropriate uniform prices. Payments due any producer for milk should be paid by the handler to a cooperative association that makes a written request for such payment, if the producer has given the cooperative association written authorization in the form of a contract or in any other form to collect such payments. The association's request should also agree to indemnify the handler for any loss incurred because of improper claim. In making such payments for producers' milk to a cooperative association, the handler should, at the same time, furnish the cooperative association with a statement showing the name of each producer for whom payment is being made to the cooperative association, the volume and butterfat content of the milk delivered by each such producer, and the amount of, and the reason for, any deduction which the handler withheld in the amount payable to each producer. This statement is necessary for the cooperative association in making proper distribution of the money it collects to the producer members for whom collection is made.

Qualified cooperative associations of dairymen should be permitted to receive a payment from handlers for their producer members as a group. In order to enable the association to carry out its essential functions as authorized in the Agricultural Marketing Agreement Act, a cooperative association, if it is to carry out these functions, must have full authority in the collective bargaining and sale of members' milk.

The proponent cooperative associations, in other markets, have assumed the responsibility for moving producers' milk during months of flush production. They are expected to assume the same responsibility with respect to the Red River Valley marketing area. Sales of surplus milk outside the marketing area may result in financial losses or gains to the cooperative associations. They must be in a position to spread such losses or

gains over the entire membership, if they are to handle such milk effectively and efficiently. The Agricultural Marketing Agreement Act authorizes a qualified cooperative association to collect payment on behalf of all its members for milk caused to be moved by it to all types of outlets, and to reblend the proceeds from all sales over its entire membership. The order should provide that payment to such a cooperative association is proper satisfaction of the payments required by the order to be made to individual producer-members.

Producer settlement fund. Since the amount which the order requires a particular handler to pay for his milk may be more or less than the amount he is required to pay to producers or cooperatives associations, it is necessary to provide for some method of balancing these amounts. The producer-settlement fund is established for this purpose. All handlers who are required to pay more for their milk on the basis of their utilization, than they are required to pay to producers or cooperative associations, must pay the difference into the producer-settlement fund, and those handlers who are required to pay to producers or cooperative associations more than the utilization value of their milk must be reimbursed for the difference from the producer-settlement fund. The amounts paid into and out of the producer-settlement fund, except for minor differences that may result from the rounding-off of uniform prices will be equal. In order to permit this rounding-off of prices and to allow for unavoidable delays in receiving payments from handlers, and to permit payments to be made to any handler, which audit reveals is due to such handler a reserve should be held in the producer-settlement fund at all times. The amount of the reserve contemplated in the proposed order should be sufficient for these purposes. This reserve should be adjusted each month by the market administrator adding in the computation of the uniform price, not less than one-half of the balance in the producer-settlement fund at that time.

If at any time the balance in the producer-settlement fund is insufficient to cover payments due handlers from such fund, the payments to such handlers should be reduced at a uniform rate per hundredweight of milk. The handlers may then reduce payments to producers and cooperative associations by an equivalent amount per hundredweight. The amount remaining due such handlers from the producer-settlement fund, should be paid as soon as the balance in the fund is sufficient and handlers should then complete payments to producers and cooperative associations. In order to reduce the possibility of this occurring, milk received by any handler who has not made the payments required of him in the preceding month should not be considered in the computation of the uniform price.

(e) *Other administrative provisions.* Certain other provisions are needed in the order to carry out the administrative steps necessary to accomplish the purpose of the proposed regulation.

Terms and definitions. In addition to the definitions discussed earlier in this decision which define the scope of the regulation, certain other terms and definitions are desirable in the interest of brevity and to assure that each usage of the term implies the same meaning. Definitions for "base" and "excess" milk are included. The other terms defined in the proposed order are common to most other Federal milk marketing orders.

Market administrator. Provision should be made for the appointment by the Secretary of a market administrator to administer the terms and provisions of the order, and the powers and duties essential to the proper functioning of his office should be specified.

Records and reports Provisions should be included in the order to advise handlers that they are required to maintain adequate records of their operations and to make the reports necessary to establish the proper classification and pricing of producers' milk and the payments due producers for such milk. Time limits must be prescribed for filing such reports and for making payments to producers. Dates must be established for the announcement of prices by the market administrator.

It should be provided that the market administrator report to a cooperative association, which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For purposes of this report the utilization of members' milk in each handler's plant will be prorated to each class in the same proportion that total receipts of producer milk were used by such handler.

In addition to the regular reports of handlers, provision is made for the handler, prior to the diversion of milk, to notify the market administrator and the cooperative association, if the producer is a member, of his intention to divert such milk, setting forth the dates of the proposed diversion and the plant to which it is to be diverted. This report is necessary if the weight of the milk delivered to a nonpool plant is to be verified and a sample taken for determining its butterfat content.

Handlers should maintain and make available to the market administrator all records and accounts of their operation and such facilities as are necessary to determine the accuracy of the information reported to the market administrator and any other information upon which the classification of producer milk depends. The market administrator must likewise be permitted to check the accuracy of the weights and tests of milk and milk products received and handled, and to verify all payments required to be made under the order.

It is necessary that handlers retain records to prove the utilization of the milk received from producers and that proper payment was made therefor. Since the books of all handlers associated with the market cannot be audited immediately after the milk has been delivered to a plant, it is necessary that such records be retained for a reasonable period of time.

The order should provide for specific limitations on the time that handlers are required to retain books and records and on the period of time within which obligations under the order should terminate. The provision made in this regard is identical in principle with the general amendment made to all milk orders in operation, July 30, 1947, following the Secretary's decision of January 26, 1949 (14 F. R. 444). That decision covering the retention of records and limitations of claims is equally applicable in this situation and is adopted as part of this decision. Without a provision for termination of obligation after a reasonable period of time has elapsed, handlers may file claims which, because the period involved might extend back over many years, could be in substantial amounts. This creates uncertainties which could endanger the stability of the market and lead to serious inequities. The order should provide that any obligation to pay a handler shall terminate two years after the month in which the milk was received if an overpayment is claimed, or within two years after payment was made if a refund is claimed, unless within the time specified the handler filed a petition, pursuant to section 8c (15) (A) of the act claiming such money. Handlers also need the protection of provisions terminating their obligations to make payments.

Since handlers cannot be forewarned always as to their contingent liabilities, it is extremely difficult and burdensome to make adequate provision by setting up reserves, or by taking other precautionary measures. The obligation of any handler to pay money should, except under certain extraordinary circumstances such as litigation, terminate two years after the last day of the month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. It is concluded that a period of two years is a reasonable time within which the market administrator should complete his auditing and inspection work and render his billing for money due under the order. Provisions are necessary as contained in the order included herewith to meet such contingencies, as failure of the handler to submit required books and records and to deal with situations where fraud or willful concealment of information may be involved.

It was proposed that if a handler fails to make the required reports or payments, his name should be publicly announced at the discretion of the market administrator. Such announcement is provided for by the act and it is concluded that its adoption will facilitate the enforcement of the details of the order.

Expense of administration. Each handler who operates a pool plant should be required to pay to the market administrator as his pro rata share of the cost of administering the order, not

more than 5 cents per hundredweight or such lesser amount as the Secretary may from time to time see fit with respect to:

(a) Producer milk (including a handler's own production); and

(b) Other source milk which is allocated to Class I milk.

Each handler who operates a nonpool plant, not subject to the classification and pricing provisions of another Federal order, should be required, as his pro rata share of the cost of administering the order, to make such payment with respect to the volume of milk which is disposed of within the marketing area as Class I milk from such plant.

The market administrator must have sufficient funds to enable him to administer properly the terms of the order. The act provides that the cost of administration shall be financed through an assessment on handlers.

One of the duties of the market administrator is to verify the receipts and disposition of milk from all sources. Other source milk is received by handlers to supplement local producer supplies of milk. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment to all producer milk (including a handler's own production) and all other source milk allocated to Class I. Since the market administrator must also verify reports submitted by handlers who operate nonpool plants, it is necessary that a charge for administrative assessment be levied against the milk disposed of by such handlers in the marketing area.

In view of the anticipated volume of milk, and the cost of administering orders in markets of comparable size and circumstances, it is concluded that an initial rate of 5 cents per hundredweight is necessary to meet the expenses of administration. Provision should be made to enable the Secretary to reduce the rate of assessment below the 5 cents per hundredweight maximum without necessitating an amendment to the order. This should be done at any time that experience in the market reveals that a lesser rate will provide sufficient revenue to administer the order properly.

Marketing services. A provision should be included in the order for furnishing marketing services to producers, such as the verification of the tests and weights of producer milk and the furnishing of market information to producers. These services should be provided by the market administrator and the cost should be borne by the producer receiving the service. If a cooperative association is performing such services for member-producers, the market administrator may accept this in lieu of his own service. There is need for a marketing service program in connection with the administration of an order in this area. Orderly marketing will be promoted by assuring individual producers that the payments received for their milk will be in accordance with the classified pricing and pooling provisions of the order and reflect accurately the weights and tests of such milk. To accomplish this fully it is necessary that the butterfat tests and weights of individual producer's deliveries of milk, as reported by the handler, be verified for accuracy. In the case of producers who are members of a cooperative association, which the Secretary has determined is under the complete control of such producers and is actually marketing the milk of its member-producers such services may be rendered by the cooperative association rather than by the market administrator. The two cooperative associations in the area have been performing check-weighing and check-testing services for their members who are producers under other milk marketing orders. At the time of the hearing they had not been successful in securing permission from handlers to perform such services for their member-producers in the Red River Valley marketing area. It is assumed, however, that such services will be performed for their members if an order is issued and made effective. In order that such services be performed on a market-wide basis, the market administrator should provide them for producers not otherwise receiving such services through a cooperative association.

An important phase of the marketing service program order is to furnish producers with correct market information. Efficiency in the production, utilization and marketing of milk will be promoted by the dissemination of current information on a market-wide basis to all producers.

To enable the market administrator to furnish these services, provisions should be made for a maximum deduction of 5 cents per hundredweight with respect to receipts of milk from producers for whom he renders marketing services. If later experience indicates that marketing services can be performed at a lesser rate provision is made for the Secretary to adjust the rate downward without the necessity of a hearing. In the event a qualified cooperative association has been determined to be performing such services for its members, handlers would be required to pay to the cooperative association such dues as are authorized by its members.

Rulings on exceptions.[1] 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.

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

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 Red River Valley marketing area", and "order regulating the handling of milk in the Red River Valley marketing area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

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 attached order which will be published with this decision.

Referendum order; determination of representative period; and designation of referendum agent. It is hereby directed that a referendum be conducted among producers to determine whether the issuance of the attached order regulating the handling of milk in the Red River Valley marketing area, is approved or favored by the producers, as defined under the terms of the proposed order, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of March 1958 is hereby determined to be the representative period for the conduct of such referendum.

A. T. Radigan and H. E. Crone are hereby designated, jointly and severally, agents of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177) such referendum to be completed on or before the 20th day from the date this decision is issued.

Issued at Washington, D. C., this 12th day of September 1958.

[SEAL] E. L. PETERSON,
Assistant Secretary.

Order[1] *Regulating the Handling of Milk in the Red River Valley Marketing Area*

[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.

AUTHORITY: §§ 986.0 to 986.101 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 986.0 *Findings and determinations.* (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 a proposed marketing agreement and a proposed order regulating the handling of milk in the Red River Valley marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, 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 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 regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to (a) producer milk, including a handler's own production, (b) other source milk classified as Class I milk; and Class I milk disposed of on routes in the marketing area from nonpool plants.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Red River Valley marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

§ 986.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Act of 1937, as amended (7 U. S. C. 601 et seq.).

§ 986.2 *Secretary.* "Secretary" means the Secretary of Agriculture or any officer or employee of the United States who is authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ 986.3 *Department of Agriculture.* "Department of Agriculture" means the United States Department of Agriculture, or such other Federal agency as may be authorized to perform the price reporting functions specified in this part.

§ 986.4 *Red River Valley marketing area.* "Red River Valley marketing area", hereinafter called "marketing area" means all territory within the following counties, including all municipal corporations; Federal reservations, facilities, and installations; and state institutions located therein: Caddo, Carter, Comanche, Grady, Jackson, Kiowa, Stephens, and Tillman in Oklahoma, and Hardeman, Wichita, and Wilbarger in Texas.

§ 986.5 *Person.* "Person" means any individual, partnership, corporation, association or other business unit.

§ 986.6 *Producer.* "Producer" means any person, other than a producer-handler, who produces milk in compliance with the requirements specified in paragraph (a) or in paragraph (b) of this section, which milk is received directly from the farm at a pool plant or is caused to be diverted by a handler within the limits prescribed in § 986.63:

(a) Produces milk on a dairy farm subject to regular inspection by a duly constituted state or municipal health authority, under a dairy farm rating or permit issued by such authority for the production of milk to be disposed of for fluid consumption;

(b) Produces milk which is acceptable to an agency of the Federal Government for fluid consumption in its reservation, facility, or installation.

The term producer shall not include any person with respect to milk received by a handler who is partially exempt from the provisions of this part pursuant to § 986.61; nor shall it include a person whose milk is diverted to a pool plant by a cooperative association if such person retains his status as a producer as defined in another order issued pursuant to the act and his milk is classified and priced under such other order.

§ 986.7 *Distributing plant.* "Distributing plant" means all the buildings, premises, and facilities of a plant: (a) which is subject to regular inspection by a duly constituted state or municipal health authority, or by an agency of the Federal Government located in the marketing area, (b) in which milk or skim milk is processed or packaged and (c) from which Class I milk is disposed of during the month on routes (including routes operated by venders or through plant stores) to wholesale or retail outlets located in the marketing area (except deliveries in bulk to other pool plants) in an amount greater than an average of 600 pounds per day.

§ 986.8 *Supply plant.* "Supply plant" means all the buildings, premises, and facilities of a plant from which fluid milk products equal to not less than 50 percent of its receipts of milk from dairy farmers, who would be producers if this plant qualified as a pool plant, are shipped to a distributing plant during such month: *Provided*, That any plant

which qualifies as a supply plant for each of the months of September through December shall, upon written application to the market administrator before January 31 of the following year, be designated as a supply plant for the months of January through August.

§ 986.9 *Pool plant.* "Pool plant" means a distributing plant (other than that of a producer-handler or one which is exempt pursuant to § 986.61) or a supply plant.

§ 986.10 *Nonpool plant.* "Nonpool plant" means any milk processing or manufacturing plant other than a pool plant.

§ 986.11 *Handler.* "Handler" means:

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

(b) Any person in his capacity as the operator of a nonpool plant from which Class I milk is disposed of in the marketing area; or

(c) A cooperative association with respect to the milk of producers diverted for the account of such association from a pool plant to a nonpool plant within the limits prescribed in § 986.63.

§ 986.12 *Cooperative association.* "Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) Has and is exercising full authority in the sale of milk of its members.

§ 986.13 *Producer-handler.* "Producer-handler" means any person who produces milk and who operates a plant from which there is distributed as Class I milk on routes in the marketing area only milk of such person's own production or milk which has been received from a pool plant.

§ 986.14 *Producer milk.* "Producer milk" means all skim milk or butterfat contained in milk of a producer which is received at a pool plant or which is diverted within the limits prescribed in § 968.63.

§ 986.15 *Fluid milk product.* "Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream or any mixture in fluid form of cream and milk or skim milk (except cultured sour cream, frozen storage cream, aerated cream products, ice cream and frozen dessert mix, evaporated or condensed milk, and sterilized products in hermetically sealed containers).

§ 986.16 *Other source milk.* "Other source milk" means all skim milk and butterfat, other than that contained in producer milk or in receipts of fluid milk products from other pool plants, including products designated as Class II milk pursuant to § 986.41 (b) from any source (including those from a plant's own production), which are reprocessed or converted to another product in the plant during the month and any disappearance of nonfluid milk products not otherwise accounted for.

§ 986.17 *Base milk.* "Base milk" means milk received at a pool plant(s) from a producer during any of the months of March through June which is not in excess of such producer's daily average base computed pursuant to § 986.65 multiplied by the number of days in such month.

§ 986.18 *Excess milk.* "Excess milk" means milk received at a pool plant(s) from a producer during any of the months of March through June which is in excess of the base milk of such producer for such months, and shall include all milk received during such months from a producer for whom no daily average base can be computed pursuant to § 986.65.

MARKET ADMINISTRATOR

§ 986.25 *Designation.* The agency for the administration of this part shall be a market administrator, who shall be a person selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of the Secretary.

§ 986.26 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(c) To receive, investigate, and report to the Secretary complaints of violations; and

(d) To recommend amendments to the Secretary.

§ 986.27 *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 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties, and conditioned upon the faithful performance of such 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 § 986.86: (1) The cost of his bond and the bonds of his employees, (2) his own compensation, and (3) all other expenses (except those incurred under § 986.85) 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 section and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly disclose, at his discretion, unless otherwise directed by the Secretary, the name of any handler who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 986.30 and 986.31 or payments pursuant to §§ 986.80 to 986.86;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk and the percentage relationship of such receipts to the total pounds of Class I milk available to assign to such receipts exclusive of the Class I milk disposed of by such handler to the pool plant(s) of other handlers and to nonpool plants. For the purpose of these reports the milk so received from members of such association shall be prorated to each class in accordance with the same percentage as the total receipts of producer milk bear to such utilization of milk by such handler;

(i) Verify all reports and payments of each handler by audit of the records of such handler or any other handler or person to whom skim milk and butterfat are transferred, or by such other means as are necessary;

(j) Prepare and make available for the benefit of producers, consumers and handlers, general statistics and information concerning the operation of this part which do not reveal confidential information; and

(k) On or before the date specified publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each month as follows:

(1) On or before the 12th day of each month, the Class I price and the Class I butterfat differential, both for the current month;

(2) On or before the 5th day of each month, the Class II price, and the Class II butterfat differential, both for the preceding month; and

(3) On or before the 12th day of each month, the uniform price(s) computed pursuant to § 986.71 or § 986.72, whichever is applicable, and the butterfat differential computed pursuant to § 986.73, both for the preceding month.

REPORTS, RECORDS, AND FACILITIES

§ 986.30 *Reports of receipts and utilization.* On or before the 7th day after the end of each month, each handler, except a producer-handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(a) The quantities of skim milk and butterfat contained in milk received from producers and, for the months of March through June, the aggregate quantities of base milk and excess milk;

(b) The quantities of skim milk and butterfat contained in (or used in the production of) receipts of fluid milk products from other handlers;

(c) The quantities of skim milk and butterfat contained in (or used in the production of) other source milk (except Class II products disposed of in the same form in which received without further processing or packaging by the handler) and any disappearance of other source milk held in inventory;

(d) The utilization of all skim milk and butterfat required to be reported pursuant to this section;

(e) The disposition of Class I products on routes wholly outside the marketing area;

(f) The quantities of fluid milk products on hand at the beginning and end of the month; and

(g) Such other information with respect to receipts and utilization as the market administrator may prescribe.

§ 986.31 *Reports of payments to producers.* On or before the 20th day of each month, each handler shall submit to the market administrator his producer payroll for deliveries of the preceding month showing:

(a) The total pounds of milk received from each producer and cooperative association, the total pounds of butterfat contained in such milk and the number of days' production represented by the milk received from such producer(s), including for the months of March through June each producer's deliveries of base and excess milk;

(b) The amount of payment to each producer or cooperative association; and

(c) The nature and amount of any deductions or charges involved in such payments.

§ 986.32 *Other reports.* (a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who causes milk to be diverted to another pool plant or to a nonpool plant shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which it is to be diverted.

§ 986.33 *Records and facilities.* Each handler shall maintain and make available to the market administrator or his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of all skim milk and butterfat handled in any form;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream, and milk products handled;

(c) Payments to producers and cooperative associations; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and milk products on hand at the beginning and end of each month.

§ 986.34 *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 three years to begin at the end of the 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

§ 986.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat received by a handler during the month, which is required to be reported pursuant to § 986.30, shall be classified by the market administrator pursuant to the provisions of §§ 986.41 to 986.46, inclusive.

§ 986.41 *Classes of utilization.* Subject to the conditions set forth in §§ 986.43 and 986.44, the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk (including reconstituted skim milk and concentrated nonfat milk solids) and butterfat (1) disposed of from the plant in the form of fluid milk products, except those classified pursuant to paragraph (b) (4) of this section, and (2) not specifically accounted for as Class II milk;

(b) Class II milk shall be all skim milk and butterfat:

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

(2) Disposed of to commercial food manufacturing establishments which do not dispose of fluid milk products for fluid consumption;

(3) Contained in inventories of fluid milk products on hand at the end of the month;

(4) Skim milk disposed of for livestock feed, or dumped after prior notification to and opportunity for verification by the market administrator;

(5) In shrinkage not to exceed 2 percent of the skim milk and butterfat contained in producer milk, except that diverted pursuant to § 986.63; and

(6) In shrinkage of other source milk.

§ 986.42 *Shrinkage.* The market administrator shall determine the assignment of shrinkage to Class II milk as follows:

(a) Determine the total shrinkage of skim milk and butterfat in each pool plant; and

(b) Assign the shrinkage of skim milk and butterfat pro rata between producer milk and other source milk received in the form of a fluid milk product.

§ 986.43 *Responsibility of handlers and reclassification of milk.* (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk and butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat classified as Class II milk, if later disposed of by such handler or another handler (whether in original or other form) as any fluid milk product, shall be reclassified as Class I milk. Any skim milk or butterfat classified as Class II milk in the previous month pursuant to § 986.41 (b) (3) shall be reclassified as Class I milk if it is substracted from Class I during the current month pursuant to § 986.46 (a) (6) or the corresponding step of § 986.46 (b).

§ 986.44 *Transfers.* Skim milk and butterfat if disposed of by a handler by transfer or diversion from a pool plant shall be classified as follows:

(a) If transferred or diverted to a pool plant of another handler (except a producer-handler) in the form of fluid milk products it shall be classified so as to result in the maximum assignment of the producer milk of both handlers to Class I milk. Any additional amounts of skim milk and butterfat shall be classified as Class I milk unless the operators of both plants claim utilization thereof in Class II milk in their reports submitted pursuant to § 986.30: *Provided,* That the skim milk or butterfat so assigned to Class II milk for any month shall be limited to the respective amounts thereof remaining in Class II milk for such month at the pool plant(s) of the receiving handler after subtraction of other source milk pursuant to § 986.46;

(b) As Class I milk, if transferred to the plant of a producer-handler in the form of fluid milk products;

(c) As Class I milk, if diverted or transferred in bulk in the form of milk or skim milk to a nonpool plant located more than 350 miles from the City Hall in Wichita Falls, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator;

(d) As Class I milk, if transferred in the form of cream to a nonpool plant, located more than 350 miles from the City Hall in Wichita Falls, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator, unless the handler claims classification as Class II milk, establishes the fact that such cream was transferred without Grade A certification, each container was tagged or labeled to show that the contents were only for manufacturing use, the shipment was invoiced accordingly, and the market administrator was given sufficient notice to allow him to verify the shipment;

(e) (1) As Class I milk, if transferred or diverted in bulk form as milk, skim milk, or cream to a nonpool plant located not more than 350 miles by the shortest hard-surfaced highway distance from the City Hall in Wichita Falls, Texas, from which fluid milk is disposed of on wholesale or retail routes or to other milk plants, unless the handler claims classification of Class II milk pursuant

to § 986.30 and all of the following conditions are met:

(i) The operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant and the market administrator is permitted to audit such books and records for purposes of verification; and

(ii) Such nonpool plant received milk from dairy farmers who constitute a regular source of supply for Class I use as determined by the market administrator;

(2) If the above conditions are fulfilled, the market administrator shall classify such milk, subject to verification, in the following manner: (i) Determine the use of all skim milk and butterfat at such nonpool plant, and (ii) allocate the skim milk and butterfat so transferred to the highest use classification remaining after allowing first priority to that received at the nonpool plant directly from dairy farmers whom the market administrator determines constitute its regular source of Grade A milk for Class I use;

(f) As Class II milk, if transferred or diverted in bulk form as milk, skim milk, or cream to a nonpool plant which is not a pool plant as defined in any other order issued pursuant to the Act and which is located not over 350 miles from the City Hall, Wichita Falls, Texas, and from which no fluid milk is disposed of on wholesale or retail routes, except:

(1) If milk, skim milk, or cream is transferred from such nonpool plant to a pool plant, an amount equal to the skim milk and butterfat transferred to such nonpool plant from the pool plants of other handlers shall be deemed to have been transferred directly to the second pool plant and shall be classified in accordance with paragraph (a) of this section; and

(2) If milk, skim milk, or cream is transferred from such nonpool plant to a second nonpool plant from which fluid milk is distributed on wholesale or retail routes, the skim milk or butterfat transferred from the pool plant to the first nonpool plant shall be Class I milk in an amount equal to that transferred to such second nonpool plant, unless it is established that such milk or skim milk was transferred to the second nonpool plant without Grade A certification with each container labeled to show that the contents were for manufacturing use only, and that the shipment was invoiced accordingly.

(g) As Class II milk if transferred or diverted in bulk form as milk, skim milk or cream to a nonpool plant which is a pool plant as defined in another order issued pursuant to the Act and which is located not over 350 miles from the City Hall in Wichita Falls, Texas, and from which no fluid milk is distributed on wholesale or retail routes, except that if such transferee plant disposes of to other nonpool plants, which do distribute fluid milk products on wholesale or retail routes, more milk than the milk received at such transferee plant which is classified and priced under such other order, an amount equal to the difference shall be classified as Class I milk, except that if such transferee plant has received milk, skim milk or cream from other plants regulated under this or other Federal orders, the amount of such transferred milk allocated to Class I shall be determined by prorating the amount of milk available for Class I allocation in accordance with the receipts from all such plants at the transferee plant.

§ 986.45 *Computation of the skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical or other obvious errors the monthly report submitted by each handler pursuant to § 986.30, and shall compute the pounds of skim milk and butterfat in Class I milk and Class II milk. Skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 986.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 986.45, the market administrator shall determine the classification of milk received from producers for each handler in the following manner:

(a) Skim milk shall be allocated as follows:

(1) Subtract from the total pounds of skim milk in Class II milk, the pounds of shrinkage of skim milk in producer milk determined pursuant to § 986.41 (b) (5);

(2) Subtract from the remaining pounds of skim milk, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of nonfluid milk products other than condensed skim milk or nonfat dry milk;

(3) Subtract from the remaining pounds of skim milk in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of condensed skim milk or nonfat dry milk;

(4) Subtract from the remaining pounds of skim milk, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products which were not subject to the Class I pricing and payment provisions of another order issued pursuant to the act;

(5) Subtract from the remaining pounds of skim milk, in series beginning with Class II milk, the pounds of skim milk in other source milk received in fluid milk products which were subject to the Class I pricing and payment provisions of another order issued pursuant to the act;

(6) Subtract from the remaining pounds of skim milk, in series beginning with Class II milk, the pounds of skim milk in inventory at the beginning of the month in the form of fluid milk products;

(7) Subtract from the remaining pounds of skim milk in each class the skim milk received from other handlers in the form of fluid milk products pursuant to § 986.44;

(8) Add to the pounds of skim milk remaining in Class II the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(9) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk received from producers, subtract such excess from the pounds of skim milk remaining in the classes in series beginning with Class II milk. Any amount so subtracted shall be called "overage";

(b) Butterfat shall be allocated in the same manner prescribed in paragraph (a) of this section for determining the allocation of skim milk to producer milk; and

(c) Add the pounds of skim milk and the pounds of butterfat in each class computed pursuant to paragraphs (a) and (b) of this section and determine the percentage of butterfat in producer milk allocated to each class.

MINIMUM PRICES

§ 986.50 *Class prices.* Subject to the provisions of §§ 986.51 and 986.52 the minimum price per hundredweight to be paid by each handler for milk received at his plant from producers during the month shall be as follows:

(a) *Class I milk.* The Class I price shall be the price for Class I milk established under Federal Order No. 6 regulating the handling of milk in the Oklahoma Metropolitan marketing area at Oklahoma City, plus 15 cents.

(b) *Class II milk.* (1) For the months of February through July the Class II price per hundredweight shall be the average of the basic or field prices reported to have been paid or to be paid for ungraded milk of 4.0 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department of Agriculture.

Present Operator and Location

American Foods Company, Miami, Okla.
Gilt Edge Dairy, Norman, Okla.
Muskogee Dairy Products Company, Muskogee, Okla.
Page Milk Company, Coffeyville, Kans.
Pet Milk Company, Siloam Springs, Ark.
Real Test Foods Company, Tulsa, Okla.

(2) For the months of August through January, the Class II price per hundredweight shall be computed by adding the plus values pursuant to subdivisions (i) and (ii) of this subparagraph as follows:

(i) From the simple average as computed by the market administrator of the daily wholesale selling prices (using the mid-point of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago, as reported by the Department of Agriculture during the month, subtract 3 cents, add 20 percent thereof and multiply by 4.0; and

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

preceding month through the 25th day of the current month, deduct 5.5 cents, multiply by 8.5 and then multiply by 0.96.

§ 986.51 *Butterfat differentials to handlers.* If the average butterfat content of the producer milk of any handler allocated to any class pursuant to § 986.46 is more or less than 4.0 percent there shall be added to the respective class price, computed pursuant to § 986.50 for each one-tenth of one percent that the average butterfat content of such milk is above 4.0 percent, or subtracted for each one-tenth of one percent that such average butterfat content is below 4.0 percent, an amount equal to the butterfat differential computed by multiplying the simple average, as computed by the market administrator, of the daily wholesale selling price per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the Department of Agriculture during the month specified below by the applicable factor listed and dividing the result by 10:

(a) *Class I milk.* Multiply such price for the preceding month by 1.25; and

(b) *Class II milk.* Multiply such price for the current month by 1.15.

§ 986.52 *Location adjustment credit to handlers.* For that milk which (a) is received from producers at a pool plant located outside the State of Texas and which is classified as Class I, the prices specified in § 986.50 shall be reduced 5 cents per hundredweight, plus an additional 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is more than 100 miles distant from the City Hall in Wichita Falls, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator: *Provided*, That in calculating such adjustment, transfers to a pool plant at which a location adjustment credit is not applicable or at which it is less than at the transferor plant, shall be assigned to Class I milk only to the extent that Class I disposition at the transferee plant exceeds 95 percent of the receipts from producers at such plant. Such assignment to transferor plants should be made first to plants at which no location adjustment credit is applicable and then in sequence to plants at which the lowest rate of such adjustment credit would apply.

§ 986.53 *Rate of compensatory payments.* The rate of compensatory payment per hundredweight applicable to other source milk assigned to Class I use at pool plants, or disposed of as Class I milk on routes in the marketing area from nonpool plants, shall be calculated as follows:

(a) For the months of February through July, subtract the Class II milk price, adjusted by the Class II butterfat differential from the Class I price, adjusted by the Class I butterfat differential, and, except in the case of condensed skim milk and nonfat dry milk, by the location adjustment pursuant to § 986.52 which would apply if the nonpool plant were a pool plant; and

(b) For the months of August through January, subtract the uniform price, adjusted by the Class I butterfat differential, from the Class I price, adjusted by the Class I butterfat differential, and, except in the case of condensed skim milk and nonfat dry milk, by the location adjustment pursuant to § 986.52 which would apply if the nonpool plant were a pool plant.

§ 986.54 *Use of equivalent prices.* If for any reason a price quotation required by this part for computing class prices or for any other purpose is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 986.60 *Producer-handlers.* Sections 986.40 to 986.46, 986.50 to 986.54, 986.65 to 986.67, 986.70 to 986.74, and 986.80 to 986.86, shall not apply to a producer-handler.

§ 986.61 *Handlers subject to other orders.* In the case of any handler who the Secretary determines disposes of a greater portion of his milk as Class I milk in another marketing area regulated by another milk marketing order issued pursuant to the Act and whose milk is classified and priced under such other order, the provisions of this part shall not apply except that such handler shall, with respect to his total receipts and utilization or disposition of skim milk and butterfat, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

§ 986.62 *Handlers operating nonpool plants.* Each handler who is the operator of a nonpool plant which is not subject to the classification and pricing provisions of another order issued pursuant to the act, shall report as required pursuant to §§ 986.30 and 986.31, reporting receipts from and payments to dairy farmers in lieu of such information with respect to producers, and shall allow verification of such reports, and, on or before the 12th day of each month, he shall pay to the market administrator an amount computed by multiplying the total volume of Class I milk disposed of on routes in the marketing area from such nonpool plant during the preceding month by the rate of compensatory payment computed pursuant to § 986.53.

§ 986.63 *Diverted milk.* (a) Milk of a producer diverted by a handler, other than a cooperative association, from a pool plant to the pool plant of another handler for any day during the months of February through July and for not more than 10 days' production of a producer during any month for the period of August through January, shall be deemed to have been received by the diverting handler at the pool plant from which such milk was diverted, except that for the purpose of determining shrinkage pursuant to § 986.41 (b) (5), such milk shall be considered as producer milk at the pool plant to which it was diverted. Milk so diverted for more than 10 days during any of the months of August through January, shall be considered as received at the plant to which it was diverted for the entire period of diversion.

(b) Milk diverted by a cooperative association, which does not operate a pool plant, for the account of such association from the pool plant of another handler to a nonpool plant, shall be deemed to have been received by such association at a pool plant at the same location as that from which the milk was diverted.

(c) Milk diverted from a pool plant by the handler operating such pool plant to a nonpool plant shall be considered to have been received at the plant from which diverted.

(d) Milk diverted by a handler, including a cooperative association, to a nonpool plant for more than 10 days' production of a producer during any month during the months of September through December, shall not be considered producer milk for the entire period of such diversion during the month.

DETERMINATION OF BASE

§ 986.65 *Computation of daily average base for each producer.* Subject to the rules set forth in § 986.66, the daily average base of each producer for the months of March through June of each year shall be computed by the market administrator by dividing the total pounds of milk received by a handler(s) at a pool plant(s) from such producer during the months of September through December immediately preceding by the number of days' production delivered by such producer during the period, or by 90, whichever is more: *Provided*, (a) That any person who becomes a producer after the base-forming period and who has established a base under another order issued pursuant to the act shall be assigned a base equal to that which he would have received if he had been a producer during the base-forming period if his milk is received at a pool plant during an entire month, and (b) That for any person who becomes a producer after the 3d day of October of any year by virtue of the plant to which such person delivers his milk having become a pool plant, the market administrator shall compute a base equal to that which such producer would have established had the plant to which he ships his milk been a pool plant during the entire base-forming period.

§ 986.66 *Base rules.* (a) A base shall apply to deliveries of milk by the producer for whose account that milk was delivered during the base-forming period;

(b) Base may be transferred during the months of March through June only in the following manner:

(1) In the event of death, retirement or entry into military service of a producer, the entire base may be transferred to a member(s) of such producer's immediate family who carries on the dairy enterprise, such transfer to be effective the first of the month following notification of the market administrator

in writing of the person to whom such base is to be transferred;

(2) If a base is held jointly and such joint holding is terminated, the entire base may be transferred to either of the joint holders, or it may be divided, but only if the joint holders are members of the same family, and only upon application to the market administrator prior to the month in which the division is to become effective: *Provided*, That such application sets forth the percentage of the jointly held base which is to be assigned to each of the joint holders or his heirs and is signed by each joint holder or his heirs.

(c) A producer who ceases to deliver milk to a pool plant for more than 45 consecutive days during the six months prior to March 1, shall forfeit his base for the following base-utilization period.

§ 986.67 *Announcement of established bases.* On or before February 25 of each year, the market administrator shall notify each producer and the handler receiving milk from such producer, of the daily average base established by the producer.

DETERMINATION OF UNIFORM PRICES

§ 986.70 *Computation of value of producer milk for each handler.* For each month, the market administrator shall compute the value of producer milk for each handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 986.46 by the applicable class price (adjusted pursuant to §§ 986.51 and 986.52) and add together the resulting amounts;

(b) Add an amount computed by multiplying the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 986.46 (a) (2) (3) and (4) and the corresponding step of § 986.46 (b) by the rate of compensatory payment as determined pursuant to § 986.53;

(c) Add an amount computed by multiplying the pounds of any overage deducted from either class pursuant to § 986.46 (a) (9) and the corresponding step of § 986.46 (b) by the applicable class price(s); and

(d) Add any charges computed as follows: For any skim milk or butterfat in inventory reclassified pursuant to § 986.43 (b), which is not in excess of the quantity in producer milk classified as Class II milk (other than as shrinkage) in the handler's plant(s) for the preceding month, a charge shall be computed at the difference between its value at the Class I price for the current month and its value at the Class II price for the preceding month;

§ 986.71 *Computation of the uniform price.* For each of the months of July through February, the market administrator shall compute the uniform price per hundredweight of producer milk of 4.0 percent butterfat content, at Wichita Falls, Texas, as follows:

(a) Combine into one total the values computed pursuant to § 986.70 for the producer milk of all handlers who submitted reports prescribed in § 986.30 and who have made the payments pursuant to §§ 986.30 and 986.82 for the preceding month;

(b) Subtract, if the average butterfat content of the producer milk included under paragraph (a) of this section is greater than 4.0 percent, or add, if such average butterfat content is less than 4.0 percent, an amount computed as follows: Multiply the amount by which the average butterfat content of such milk varies from 4.0 percent by the butterfat differential computed pursuant to § 986.73, and multiply the resulting figure by the total hundredweight of such milk;

(c) Add an amount equal to the total value of all allowable location adjustments to producers pursuant to § 986.74;

(d) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund;

(e) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) of this section; and

(f) Subtract not less than 4 cents nor more than 5 cents.

§ 986.72 *Computation of uniform prices for base and excess milk.* For each of the months of March through June, the market administrator shall compute the uniform prices per hundredweight for base and for excess milk, each of 4.0 percent butterfat content, at Wichita Falls, Texas, as follows:

(a) Compute the total value of excess milk for all handlers who submitted reports pursuant to § 986.30, and who have made the payments pursuant to §§ 986.80 and 986.82 as follows: (1) Multiply the hundredweight of such milk not in excess of the total quantity of producer milk assigned to Class II milk in the pool plants of such handlers by the Class II milk price, (2) multiply any additional hundredweight of excess milk not included in subparagraph (1) of this paragraph by the Class I milk price, and (3) add together the resulting amounts;

(b) Divide the total value of excess milk obtained in paragraph (a) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 4.0 per cent butterfat received from producers;

(c) Subtract the total value of excess milk obtained in paragraph (a) of this section from the total value of milk computed pursuant to § 986.71 (a) to (d) and adjust by any amount involved in the adjustment of the uniform price of excess milk to the nearest cent;

(d) Divide the amount obtained in paragraph (c) of this section by the total hundredweight of base milk included in these computations; and

(e) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (d) of this section. The resulting figure shall be the uniform price for base milk of 4.0 percent butterfat received from producers.

§ 986.73 *Butterfat differential to producers.* The applicable uniform price(s) to be paid each producer shall be increased or decreased for each one-tenth of one percent that the average butterfat content of his milk is above or below 4.0 percent, respectively, at the rate determined by multiplying the pounds of butterfat in producer milk allocated to each class by the appropriate butterfat differential for such class as determined pursuant to § 986.51, dividing by the total pounds of butterfat in producer milk and rounding to the nearest even tenth of a cent.

§ 986.74 *Location adjustment to producers.* In making payments to producers pursuant to § 986.80, for the months of July through February, each handler may deduct, for each hundredweight of milk, and for the months of March through June for each hundredweight of base milk received from producers at a pool plant which is located outside the State of Texas, 5 cents per hundredweight plus an additional 1.5 cents for each 10 miles or fraction thereof that such plant is more than 100 miles from the City Hall in Wichita Falls, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator.

PAYMENTS

§ 986.80 *Time and method of payment for producer milk.* (a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month, to each producer who did not discontinue shipping milk to such handler during the month, an amount equal to not less than the Class II price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month;

(2) On or before the 15th day of the following month, an amount equal to not less than the applicable uniform price(s) adjusted by the butterfat and location differentials to producers multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to subparagraph (1) of this paragraph, (ii) less marketing service deductions made pursuant to § 986.85, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment pursuant to § 986.83, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) (1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall:

(i) Pay to the cooperative association on or before the 27th and 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owed by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer;

(ii) Submit to the cooperative association on or before the 10th day of each month written information which shows for each member-producer (a) the total pounds of milk received during the preceding month, (b) the total pounds of butterfat contained in such milk, (c) the number of days of production included in such receipts, (d) for the months of March through June, the amount of base and excess milk received, and (e) the amounts withheld by the handler in payment for supplies sold; and

(iii) Submit to the cooperative association on or before the 25th day of each month written information which shows for each such member-producer the total pounds of milk received during the first 15 days of the current month.

The foregoing payment and submission of information shall be made with respect to the milk, of each producer who the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association; and

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audits of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

§ 986.81 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 986.62, 986.82, and 986.84, and out of which he shall make all payments to handlers pursuant to §§ 986.83 and 986.84: *Provided*, That any payments due to any handler may be offset by any payments due from such handler.

§ 986.82 *Payments to the producer-settlement fund.* On or before the 13th day after the end of each month, each handler shall pay to the market administrator any amount by which the value of producer milk as computed pursuant to § 986.70 for such month is greater than the amount required to be paid by him for such milk pursuant to § 986.80.

§ 986.83 *Payments out of the producer-settlement fund.* On or before the 14th day after the end of each month, the market administrator shall pay to each handler any amount by which the total value of his producer milk, computed pursuant to § 986.70, for such month is less than the amount required to be paid producers by such handler pursuant to § 986.80: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly per hundredweight such payments and shall complete such payments as soon as the necessary funds are available.

§ 986.84 *Adjustments of accounts.* Whenever audit by the market administrator or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such errors occurred.

§ 986.85 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 986.80 shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section) make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of such deductions and the amount of milk for which such deduction was computed for each producer.

§ 986.86 *Expense of administration.* On or before the 15th day after the end of each month, each handler who operates a pool plant shall pay to the market administrator, as his pro rata share of the expense of the administration of this part, 5 cents or such lesser amount as the Secretary may prescribe for each hundredweight of butterfat and skim milk contained in (a) producer milk, including such handler's own production, and (b) other source milk classified as Class I milk; and each handler who operates a nonpool plant, not subject to the classification and pricing provisions of another Federal order, shall make such payment only with respect to Class I milk disposed of within the marketing area on routes.

§ 986.87 *Termination of obligations.* The provisions of this section shall apply to any obligations under this part for the payment of money.

(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 two years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) 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 order to be made available, the market administrator may within the two-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 two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such books and records pertaining to such obligations are made available to the market administrator or his representative;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(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 two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (in-

cluding deduction or setoff by the market administrator) was made by the handler, if a refund of such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 986.90 *Effective time.* The provisions of this part, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 986.91 *Suspension or termination.* The Secretary shall, whenever he finds that any or all provisions of this part, or any amendment thereto, obstruct or do not tend to effectuate the declared policy of the act, terminate or suspend the operation of any or all provisions of this part or any amendment thereto.

§ 986.92 *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this part, or any amendment thereto, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 986.93 *Liquidation.* Upon the suspension or termination of any or all provisions of this part, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 986.100 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent and representative in connection with any of the provisions of this part.

§ 986.101 *Separability of provisions.* If any provisions of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

[F. R. Doc. 58-7610; Filed, Sept. 17, 1958; 8:51 a. m.]

[7 CFR Parts 1011, 1016]

[Docket No. AO-299]

MILK IN MICHIGAN UPPER PENINSULA AND NORTHEASTERN WISCONSIN MARKETING AREAS

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENTS AND ORDERS

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR, Part 900), a public hearing was held at Escanaba, Michigan, on October 8–15, 1957, pursuant to notice thereof issued on September 13, 1957 (22 F. R. 7429), and at Green Bay, Wisconsin, pursuant to notice to reconvene which was issued October 30, 1957 (22 F. R. 8852), upon proposed marketing agreements and orders regulating the handling of milk in the Michigan Upper Peninsula and Northeastern Wisconsin marketing areas.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on May 28, 1958 (23 F. R. 3818), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of opportunity to file written exceptions thereto.

On the basis of exceptions to the previous recommended decision certain changes were made in the regulation proposed, thus the Deputy Administrator, Agricultural Marketing Service, on August 20, 1958 (23 F. R. 6510), filed with the Hearing Clerk, United States Department of Agriculture, his revised recommended decision containing notice of opportunity to file written exceptions thereto.

The material issues of record relate to:

1. Whether the handling of milk produced for sale in each of the proposed marketing areas is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether marketing conditions show the need for the issuance of milk marketing agreements or orders which will tend to effectuate the policy of the act; and

3. If orders are issued what their provisions should be with respect to:

(a) The scope of regulation;

(b) The classification and allocation of milk;

(c) The determination and level of class prices;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

1. *Character of commerce.* The handling of milk in each of the Michigan Upper Peninsula and Northeastern Wisconsin marketing areas is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk and milk products.

The Michigan Upper Peninsula marketing area defined in the order proposed for that area includes fourteen counties in Michigan and portions of three counties in Wisconsin. Within this area there is a continuous and substantial interstate commerce in the procurement of milk from producers and the sale of fluid milk and its products to consumers. Distributing plants in Iron Mountain, Ironwood and Bessemer, Michigan, distribute fluid milk products in Saxon, Hurley, Florence, Aurora, Niagara and Wausaukee, Wisconsin. Distributing plants in Rhinelander and Green Bay, Wisconsin, distribute fluid milk products throughout various portions of the area in Michigan. Distributing plants in the Sault St. Marie portion of the marketing area distribute fluid milk products to ore boats passing through the locks at Sault St. Marie proceeding to ports in Ohio, Indiana, Illinois and Minnesota.

Producers supplying milk to plants in the Michigan portion of the marketing area are on farms located in several counties in Wisconsin and all the Upper Peninsula counties of Michigan. Milk produced on farms in the states of Wisconsin and Michigan is inextricably commingled at processing plants in Ironwood, Iron Mountain, Crystal Falls and Bessemer, Michigan; and in Green Bay, Wisconsin. Supplemental supplies of milk come primarily from plants procuring supplies of milk from Wisconsin dairy farmers.

The marketing area proposed for this Northeastern Wisconsin area includes the city of Menominee, Michigan. Milk dealers in Menominee distribute milk in Marinette and other nearby Wisconsin areas. Wisconsin dealers likewise distribute milk in Menominee.

One of the major distributors serving the proposed Northeastern Wisconsin marketing area processes milk at a plant in Green Bay, Wisconsin, and distributes approximately 25 percent of his total fluid milk sales in the Michigan Upper Peninsula marketing area as proposed herein. Milk used in these products is procured from producers with farms located in Michigan and Wisconsin. Other distributors at Rhinelander and Sheboygan, Wisconsin, in the proposed Northeastern Wisconsin marketing area distribute fluid milk products in Michigan. The distributor at Rhinelander distributes milk in Ironwood, Watersmeet and Iron River, Michigan. The distributor at Sheboygan distributes fluid milk products in Menominee, Michigan. Fluid milk products are distributed throughout the Wisconsin area from plants of handlers regulated by the Milwaukee, Wisconsin, order.

Farm milk supplies for each of the proposed marketing areas are intermingled with farm supplies of numerous manufacturing plants. Such products as nonfat dry milk, cheese, butter, evaporated milk and other related products are processed by national dairy concerns for distribution in the current of interstate commerce. Within the Northeastern Wisconsin marketing and supply areas are more than four thousand farms supplying milk to the Chicago, Illinois, market.

2. *Need for regulation.* Milk marketing and pricing conditions in the Michi-

gan Upper Peninsula and Northeastern Wisconsin marketing areas justify the issuance of milk marketing orders to establish and maintain orderly marketing conditions. Orders for each of these areas will tend to effectuate the declared policy of the Agricultural Marketing Agreement Act.

Northeastern Wisconsin is in general an area of intensive milk production. Of the 21 counties proposed for inclusion in the marketing area milk cow population in 13 counties exceeded 50 per square mile of land in farms, and was less than 25 in only three counties. In this area are located 17 supply plants for the Chicago market which receive milk from more than 4,000 producers qualified for Chicago. The total volume of Chicago pool milk has varied from 63 to 93 million pounds per month in a recent 12 month period. Extensive manufacturing of dairy products such as cheese, butter, nonfat dry milk and other products is conducted in the area.

Approximately 1,250 producers of Grade A milk supply the needs of plants engaging in the fluid milk trade of this area. None of this milk is purchased from producers on the basis of use made of it by the dealer. Most producers receive a flat price for their milk without being in position to negotiate with respect to prices, terms or conditions of sale. In a few instances base and excess prices are paid as a means of encouraging level production, but without regard to utilization of the milk.

For the most part the prices paid producers approximate the producer prices of the Chicago order applicable in the immediate vicinity. This does not mean, however, that local milk dealers are paying the applicable Chicago order prices for the milk they sell in fluid form. Handler testimony for a group of dealers claimed to be representative showed that in May 1957 they used 73.6 percent of receipts from producers as Class I milk and in September 1957 their Class I utilization was 82 percent. Chicago Class I and II utilization was 56.9 percent in May and 76.5 percent in September. The Chicago utilization percentages include in Class II ice cream use and for Class II volumes are computed on a milk equivalent basis; had the computation for Chicago been identical with that for the Northeastern Wisconsin dealers a somewhat greater difference in utilization would have been shown. No Chicago plants regularly distribute milk in Northeastern Wisconsin that is priced under the Chicago order. Three cooperative associations and one proprietary concern operating Chicago supply plants also operate separate facilities for the Northeastern Wisconsin trade.

The flat price system prevalent in the Northeastern Wisconsin area by its very nature promotes instability in the marketing of milk for the fluid trade of the area. The milk dealer who can restrict his purchases to the volume of his trade sales will have a Class I cost equal to the flat price paid. A certain amount of reserve milk is necessary for the market, however, to assure an adequate supply at all times. Fluctuation brought about by the seasonal nature of production and day to day variations in milk sales require the disposition of some Grade A milk produced for the market into manufacturing channels at a value lower than that for fluid sales. To the extent that a dealer can avoid or minimize the cost of handling such reserve milk he can achieve a competitive advantage over the dealer who carries the reserve milk associated with his share of the market. As a result producers have no assurance of a continuing market for their milk. Instances were shown on the record of producers being "cut off" with little or no notice.

While the supply competition from Chicago determines the general level of prices in the area, the flat prices paid are by no means uniform. In some cases different prices are paid to producers delivering to the same dealer. These price differences accentuate disparities in costs of milk for fluid use.

A cooperative association representing a substantial number of producers has been unsuccessful in attempts to negotiate uniform prices based upon use of milk. With most dealers they have been unable to negotiate prices on any basis. Dealer resistance has prevented this association from fully serving its members through check testing and weighing services.

Classified prices are negotiated separately by areas between the principal milk dealers with plants located in or near the Michigan Upper Peninsula cities of Ironwood, Marquette, and Sault St. Marie and local units of a cooperative association representing producers supplying each of these cities. Other cooperative associations own and operate plants at which milk produced by members of such associations is received, processed, and packaged, and from which such milk is distributed to wholesale and retail outlets. A considerable volume of milk in the Upper Peninsula is, however, purchased at flat prices without regard to the use made of the milk.

Substantial quantities, estimated at 10 to 14 million pounds annually, of milk packaged in Northeastern Wisconsin plants is distributed in the Michigan Upper Peninsula. The principal distribution is from a plant at Green Bay, Wisconsin. Milk from this plant is now sold throughout most of the Upper Peninsula. A plant at Rhinelander, Wisconsin also distributes substantial volumes of milk in the Peninsula, principally in the western portion. Distribution from other Wisconsin plants is of a more localized nature. This regular distribution of milk packaged in Wisconsin is a relatively recent development associated with improved roads, paper packages, and growth of the Upper Peninsula tourist trade. Classified price negotiations between producers and dealers in the Upper Peninsula are of comparatively recent origin, such negotiations having been carried on only since January 1954 at Marquette, December 1954 at Ironwood, and June 1956 at Sault Ste. Marie. While income from dairying represents a substantial proportion of the cash farm income of the Upper Peninsula, climate, topography and soil conditions are such that only 10–15 percent of the total area is in farmland. Twenty to twenty-five percent of the milk produced is for fluid use, the large majority of the remainder being made into cheese.

Negotiation of classified prices for milk delivered to Upper Peninsula dealers has been severely affected by the sales competition from milk bought on the flat price basis. The complex problem of proper price relationship between the production area of the Upper Peninsula and that of the intensive Wisconsin production area cannot properly be solved by negotiation when prices do not apply equally on the basis of classified use.

Stability of marketing conditions can be assured for these areas only (1) when all milk handlers in each area have substantially equal prices of milk according to use, (2) such use is verified by impartial audit, when all producers supplying each handler in each market receive the same price for milk of the same quality, with the quality and quantity of such milk verified by an adequate check weighing and testing program, and (3) when accurate marketwide information relative to receipts and sales of milk in these areas is provided to all (giving in each case due consideration to the point of receipt). The milk marketing orders herein proposed will provide the only practical means for accomplishing these ends.

3. *Order provision*—(a) *The scope of regulation*—(1) *Marketing areas.* The three cooperative associations of producers that initiated the request for an order proposed in the notice of hearing an order with a marketing area of all territory in the Michigan Upper Peninsula, exclusive of Menominee township in Menominee County, plus five towns and the city of Hurley in Iron County, Wisconsin. A handler who distributes in the Upper Peninsula about one-fourth of the milk processed at his plant in Green Bay, Wisconsin, proposed in the notice of hearing that the area also include 25 counties in Northeastern Wisconsin and Menominee township, Menominee County, Michigan. Handlers with local distribution proposed minor additions, all of which were within the area proposed by the Green Bay handler.

In the course of the hearing the proponent cooperative associations supported the need for regulation in much of the additional Wisconsin territory proposed, but advocated that this be accomplished by means of a separate order. Consideration was given to issuance of a single regulation for the Michigan Upper Peninsula and Northeastern Wisconsin areas. While substantial volumes of milk are distributed in Michigan by plants located in Wisconsin, the number of dealers making such distribution is relatively few. Additional plant and farm supply inspections are required, since Michigan statutes do not provide for reciprocal approvals. Prior to July 1, 1957, milk could not practicably be labeled Grade A in Michigan so that milk meeting Grade A standards could not be sold in Michigan under the label used for the Wisconsin trade. A large majority of the dealers in Northeastern Wisconsin limit their distribution to Wisconsin points. Wisconsin distribu-

tion from Michigan plants is localized to nearby points for which appropriate consideration can be given in defining separate marketing areas.

In view of these considerations and differences in supply conditions in the two areas, it is concluded that issuance of separate orders for the Michigan Upper Peninsula and Northeastern Wisconsin areas with prices properly aligned is the most appropriate means of providing regulation adapted to the needs of each area.

The Michigan Upper Peninsula marketing area should be defined to include all area within 14 of the 15 Upper Peninsula counties (omitting Menominee County) and the following territory in Wisconsin: five towns and the cities of Hurley and Montreal in Iron County; two towns in Florence County and one town and the village of Niagara in Marinette County. For the purposes of the pricing provisions this area is divided into two zones which are discussed in detail under pricing.

The total population of this area is approximately 290,000. The principal cities with population over 10,000 are Sault St. Marie, Escanaba, Ironwood and Marquette. There are, in addition, six other cities of more than 5,000 population.

While no one dealer distributes milk throughout the Upper Peninsula, a dealer whose plant is located in Marquette distributes throughout the greater portion. Milk bottled at this plant is sold at Sault St. Marie, and St. Ignace, each approximately 165 miles east of Marquette, at Manistique and Escanaba to the southeast, at Houghton 100 miles to the northwest, and to the south, at Crystal Falls, near the Wisconsin border. Milk bottled at Bessemer and Ironwood is likewise sold in the Copper Country near Houghton, and a cooperative association with bottling facilities in Houghton County sells milk in and near Marquette. Ironwood and Bessemer dealers serve the adjoining cities of Hurley and Montreal and other nearby territory in Iron County, Wisconsin. Iron Mountain dealers serve the nearby areas in Florence and Marinette counties, Wisconsin, and Wisconsin dealers in Florence County compete in Iron Mountain.

The health regulations of the State of Michigan provide a uniform minimum standard with respect to all milk marketed within the State of Michigan. While Grade A milk regulations similar to United States Public Health standards have only recently become effective in Michigan on a permissive basis, practically all plants in the Upper Peninsula either have complied or will comply with Grade A standards. Grade A labeling under United States Public Health standards is widespread in Wisconsin and will become compulsory July 1, 1959.

While resident population in many areas of the Upper Peninsula is sparse the distribution of tourist and vacation trade is widespread. It is therefore concluded that the marketing area in Michigan should be defined by county boundries. The southernmost county, Menominee, is largly devoted to farming with its principal population center, the City of Menominee, at the southern extremity of the county, which adjoins the City of Marinette, Wisconsin. Inclusion of these cities in the Northeastern Wisconsin marketing area appears appropriate. There is little, if any, distribution of milk in other portions of Menominee County that would not be regulated under either of the orders.

The Northeastern Wisconsin marketing area should include the Wisconsin counties of Brown, Calumet, Kewaunee, Langlade, Lincoln, Manitowoc, Oneida, Outagamie, Portage, Sheboygan, Vilas, Waupaca and Winnebago. In addition there should be included, as more precisely defined in the order, the northern portion of Fond du Lac County, the eastern portion of Marathon County, all of Shawano County not a part of the Menominee Indian Reservation, the southeastern portion of Wood County, the City of Sturgeon Bay in Door County, the cities of Marinette and Peshtigo and the town of Peshtigo in Marinette County, the cities of Gillett, Oconto and Oconto Falls in Oconto County, all in Wisconsin, and the City of Menominee, Menominee County, Michigan.

The total population of this area is approximately 900,000. The principal cities, ranging in population from 25,000 to more than 50,000, are Green Bay, Sheboygan, Oshkosh, Appleton, Wausau, Fond du Lac, and Manitowoc, and the companion cities of Marinette and Menominee the combined population of which is approximately 25,000. There are, in addition, some sixteen other cities of more than 5,000 population.

Milk from one Green Bay plant is distributed throughout this entire area. A cooperative association operates a bottling plant at West DePere in Brown County from which milk is distributed throughout the major portion of the area. Another plant of the same cooperative furnishes the entire milk supply of a dealer in Rhinelander whose distribution covers the remainder of the area. Milk bottled at Sheboygan and Manitowoc is distributed extensively throughout a number of the more densely populated counties in the southern and eastern portions of the area. A number of other plants extend their distribution throughout two or more counties. There is also a substantial distribution of milk throughout much of the area from at least three plants regulated under the order for the Milwaukee market.

Wausau dealers offered testimony to show that the volume of milk from other areas sold in that city is not sufficient to justify its inclusion in the marketing area. Approximately 7–8 percent of the sales in Wausau are by dealers with extensive distribution throughout the area. The same general need for regulation was shown with respect to marketing conditions in Wausau as for the remainder of the area. Producers supplying Wausau dealers belong to the same cooperative association as do the producers supplying numerous dealers throughout the area. Wausau dealers extend their distribution into other parts of the proposed area. It is concluded that Wausau should be included in the area.

Almost all milk distributed in the area meets the Grade A labeling standards of Wisconsin. Most of the cities have Grade A ordinances and milk inspected under one authority moves freely into other jurisdictions within the area.

In the counties of Marinette and Oconto on the western shore of Green Bay it is necessary to include in the marketing area only the cities which are the principal centers of population. It is not necessary to regulate distribution in the remainder of these counties, in Forest County, or in that part of Florence County not included in the Michigan Upper Peninsula order. Population in these areas is predominantly rural, and there is little opportunity for substantial distribution of milk by dealers who will not otherwise be regulated. Likewise in Door County, lying between the shores of Green Bay and those of Lake Michigan, it is necessary to include only the City of Sturgeon Bay to provide effective regulation. Inclusion of all of Fond du Lac County would result in the marketing area boundary passing through the city of Waupun, which lies partly in Fond du Lac County and partly in Dodge County. For this reason the southern portion of Fond du Lac County is not included in the area.

(2) *Milk to be regulated.* The milk to be regulated by each of the proposed marketing agreements and orders should be that which represents the primary sources of supply of milk distributed on routes in the respective proposed marketing areas. To be eligible for such distribution milk must be produced, processed and distributed in conformity with applicable health regulations. Provision should be made to designate clearly what milk will be subject to the pricing and the respective pooling provisions of each of the recommended marketing agreements and orders. For this reason, definitions of fluid milk plant or pool plant, handler, producer, producer milk, producer-handler, route, fluid milk product and other source milk are provided in the orders.

The definition of a fluid milk plant, or pool plant, should be such as to determine which producers, as hereinafter defined, are to be included in the determination of the uniform prices to be paid by handlers under the Michigan Upper Peninsula and Northeastern Wisconsin orders. The two broad categories of milk plants to be regulated by these orders are distributing plants and supply plants. There are distributing plants at which milk received from local dairy farmers or other plants is processed and packaged and from which such milk is distributed as fluid milk products in one or both of these extensive marketing areas. At other plants milk is received directly from dairy farmers and delivered in bulk to distributing plants. This category of plant is generally known as a supply plant.

Elsewhere in this decision it is concluded that under the Michigan Upper Peninsula order distribution of returns to producers should be through individ-

ual-handler pools, and that under the Northeastern Wisconsin order such distribution should be through a marketwide pool. Under handler pooling the incentive for a handler to engage in the fluid milk trade of the area is based strictly upon the fluid milk business he can develop. In a marketwide pool, however, there is incentive for plants to be placed under regulation as a means of sharing in the utilization of the market without becoming an integral part of the supply for the market. The marketwide pooling system provides opportunity for partial regulation with respect to milk not priced and pooled under the order. Similar provisions would encounter practical difficulties in a handler pool order. For these reasons the standards of market participation used to determine full regulation of distributing plants and supply plants vary somewhat under the two pooling systems. In conformity with the nomenclature included in other orders, fully regulated plants are defined as "fluid milk plants" under the Michigan Upper Peninsula order and as "pool plants" under the Northeastern Wisconsin order.

To be eligible for distribution in fluid form in the State of Michigan milk must conform to the requirements of Public Law No. 169. Permissive standards for Grade A milk have recently become effective and it is probable that milk labeled Grade A will shortly constitute the principal distribution in the Upper Peninsula. Distributing plants to be defined as fluid milk plants under the Michigan Upper Peninsula order should include those plants at which fluid milk products either labeled Grade A or conforming to the requirements of Michigan Public Law No. 169 are processed or packaged for distribution in the marketing area.

Under this order provision should be made to exempt from regulation distributing plants located outside the marketing area from which only a minor volume of milk is distributed in the marketing area. Regulation of such plants might place them in an uneconomic and unfavorable position with respect to the major portion of their sales in nonregulated areas. As long as the volume of sales an exempt plant may make in the proposed marketing area is left relatively low, such distribution would not present a disruptive force. An average of 600 pounds per day on routes in the marketing area is considered to be an appropriate limit for such exemption.

The fluid milk plant definition of the Michigan Upper Peninsula order should include provision for supply plants at which milk produced in conformity with health regulations of the area is received from dairy farmers and from which fluid milk products are moved to distributing plants. Supply plants from which regular shipments of milk are delivered to the market should be fully regulated. Regular shipments of milk from sources where no minimum price regulations are in effect would be a threat to the stability of this market were there no provisions for pricing receipts of supply plants. As a result of handlers' receiving milk from outside the order in unlimited shipments, a situation could arise in which a significant portion of the market supply of milk would not be subject to the pricing and payment provisions of the order. These plants would be a constant threat to the classified pricing plan of the order.

Handlers in the Michigan Upper Peninsular area receive both regular and incidental supplemental supplies of milk when demand for fluid milk products exceeds the production of milk in this area. Further, there are supply plants which are integral parts of a certain handler's sources of supply. One of the proponent cooperatives, with a plant located at Crystal Falls, receives producer milk to supply various handlers with supplemental supplies of milk. A dealer performing functions somewhat similar to those of a supply plant plans to construct a receiving station at Carney, Michigan. Supply plants which constitute regular sources of supply should be fully regulated. Provision should be made, however, for receipt of some supplemental unpriced supplies during the vacation and short production seasons. Thus, it is concluded that the fluid milk plant definition in the Michigan Upper Peninsula order should provide that a supply plant be one from which milk or skim milk is delivered to a distributing plant on 10 or more days in any of the months of July through December or on 3 or more days in the months of January through June.

In the Northeastern Wisconsin marketing area, uniform minimum standards of the State of Wisconsin presently apply only to milk labeled Grade A. Grade labeling will become compulsory in 1959. Grade A milk represents the dominant distribution in the Northeastern Wisconsin marketing area. Distributing plants to be regulated under the Northeastern Wisconsin order should be those at which fluid milk products labeled Grade A are processed or packaged for distribution in the marketing area and from which disposition of fluid milk products on routes in the marketing area represents 20 percent or more of receipts of Grade A milk from dairy farmers. Such plants should also be limited to those having a total route disposition of 50 percent or more of receipts from dairy farmers and supply plants. To qualify for pool status a supply plant should move 50 percent or more of its receipts of Grade A milk from dairy farmers to a qualified distributing plant. If a supply plant qualifies on this basis during each of the months of August through November, it should be able to retain pool plant status the following December through July.

The extent to which other markets draw supplies from the same area as the Northeastern Wisconsin market and the substantial manufacturing milk production in the area necessitate these pool plant requirements in order to insure that the producers sharing in the uniform price of the market pool be those delivering to plants from which a substantial portion of the receipts is disposed of as fluid milk products in the marketing area, and that the receipts of plants primarily associated with other markets or uses be excluded from sharing in the pool.

The proponent of marketwide pooling at the hearing proposed that disposition of 30 percent of receipts from producers as Class I milk in the marketing area be required each month for both distributing and supply plants. This proponent, a cooperative association, operates a supply plant at Wittenberg, Wisconsin, that supplies the entire needs of a distributing plant at Rhinelander. Other than this regular full-supply arrangement handlers provided little evidence of need for supply plants. This is a concentrated milk production area where there are abundant supplies of milk available for direct delivery. Supply plants most commonly are called upon for heaviest shipments in periods of low supply. Accordingly, provision is made for a supply plant to retain pool status if it has made substantial shipments in the August-November period for which milk production is normally seasonally low. The requirement that 20 percent of its farm milk supply be disposed of on routes in the marketing area will limit pool participation of distribution plants to those with a substantial interest in the fluid trade of the area. The requirement that a distribution plant have 50 percent or more of its total Grade A receipts disposed of on routes, either in or out of the area, serves to distinguish those plants that must qualify as supply plants from those that may qualify as distributing plants. In view of its inclusion in the recommended decision, provision is retained to exempt from regulation distributing plants located outside the marketing area from which Class I disposition on routes in the marketing area averages less than 600 pounds per day.

There are at least three distributing plants, which would be regulated by the proposed Northeastern Wisconsin order that currently sell fluid milk products within the proposed Michigan Upper Peninsula marketing area. There are at least three milk plants regulated under the Milwaukee, Wisconsin, order that currently sell fluid milk products within the proposed Northeastern Wisconsin marketing area. Since handlers distribute fluid milk products in various regulated markets in this area, provisions must be adopted to avoid possible dual regulation. In this connection, it is concluded that a plant should be regulated under the order where such plant's monthly sales of fluid milk products are greatest. However, operators of plants subject to regulation under another order should be required to file reports and submit to audits by the market administrator in order that he may verify the status of such plant.

"Handler" should be defined under the respective orders as any person who operates one or more fluid milk or pool plants, in his capacity as such, or who operates a plant that does not qualify as a fluid milk or pool plant but from which any fluid milk product is distributed on routes in the marketing area. The handler receives the milk of producers and must be held responsible for reporting its receipts and utilization, and for making payment for it at not less

than specified minimum prices. Producer-handlers and operators of plants (including those that fail to qualify for pool status under the Northeastern Wisconsin order) distributing minimum volumes in the marketing areas should be defined as handlers so that they may be required to report to the market administrator the information necessary to determine their status and relationship to the market at any given time. In certain cases, obligations imposed by the order must also be ascertained.

It was proposed that a cooperative association be defined as a handler with respect to milk of member producers diverted for the account of the cooperative to nonfluid milk plants even though the association operated no plant. In another portion of this decision it is concluded that proceeds of the sale of producer milk under the Michigan Upper Peninsula order be by means of individual-handler pools. The pool of the cooperative handler, with respect to milk delivered to unregulated plants, would reflect only the value of the diverted milk which presumably would be in manufacturing milk classes. For the producers diverted for the account of the cooperative to receive any share of the value of Class I milk of the market, it would be necessary for the cooperative to collect the proceeds for milk of other member producers and reblend them with those from the diverted milk. This may be done without defining the cooperative association as a handler or the farmers whose milk is diverted by the cooperative as producers. The proposal would serve no useful purpose under this order. Under the Northeastern Wisconsin order, a cooperative association may be a handler with respect to milk so diverted. This provision will enable milk so diverted for short periods of time to continue to receive the uniform price under the order and be available for fluid use when needed.

"Producer" should be defined under the Michigan Upper Peninsula order as any person, other than a producer-handler, who produces milk in compliance with Grade A requirements or Michigan Public Law No. 169, which milk is received at a fluid milk plant. Provision should be made that the milk of producers regularly received at a fluid milk plant may be diverted for the account of the handler operating such plant to a nonfluid milk plant without such producers losing their status as producers under the proposed order. This will permit milk regularly associated with this market to be diverted to manufacturing plants during periods of flush production, holidays and weekends when deliveries exceed sales, should there be need for this milk to be manufactured in nonregulated plants. Producers whose milk is so diverted will continue to receive the diverting handler's uniform price under the order and their milk should be available for fluid use when needed. Diverted milk shall be deemed to have been received at the fluid milk plant from which it was diverted. Under the Northeastern Wisconsin order, "producer" should be defined as any person, other than a producer-handler, who produces milk in compliance with Grade A requirements of any duly constituted health authority, which milk is received at a pool plant or is diverted from a pool plant to a nonpool plant for the account of a handler or cooperative association. An exception should be made, however, to exclude from the definition of "producer" during the months of March through June those farmers with bases established under the Chicago and Milwaukee orders by delivery to plants, subject to such orders, operated under common control with the Northeastern Wisconsin pool plant to which the farmer may deliver during these months. A number of handlers operate both Chicago or Milwaukee and Northeastern Wisconsin plants. Payments under a base plan are made in these months under the Chicago order and in all but March under the Milwaukee order, but no base plan is provided herein. Without the exception provided in the producer definition a handler with plants in other pools could transfer producers with wider seasonal production to the Northeastern Wisconsin pool for these months of seasonally high production.

"Producer milk" should include all skim milk and butterfat contained in milk produced by producers and received at the fluid milk plant or pool plant directly from producers or diverted by a handler from such a plant. All provisions concerning the classification of producer milk should apply also to the milk received from handlers' own herds.

"Producer-handler" should be defined as a dairy farmer who operates a plant from which fluid milk products are distributed on a route in the marketing area but who receives no milk from other dairy farmers, nonfluid milk plants or nonpool plants. Reports to the market administrator at such time and in such manner as may be requested, with examinations of accounts, records and facilities should provide ample means to determine the status of a producer-handler.

A producer-handler may receive milk from other fluid milk or pool plants and still maintain status as a producer-handler. However, the classification provisions of each of the proposed orders should provide that any milk, skim milk or cream in bulk form transferred or diverted from a fluid milk or pool plant to a producer-handler will be Class I milk. Supplemental supplies of milk which may be obtained from other fluid milk or pool plants, by virtue of the type of operation involved, may be presumed to be needed by the producer-handler for fluid milk use and should be classified in the supplying handler's plant as Class I milk. Any milk which is received at a fluid milk or pool plant from a producer-handler would be "other source milk" and would, therefore, be allocated to the lowest class utilization at the plant(s) of such handler after the allocation of allowable shrinkage on producer milk. This method of allocating milk received from producer-handlers at regulated plants will insure producers priority on Class I sales made by the handler operating the plant where the producer-handler's milk is received. The producer-handler who by being exempt enjoys the full advantage of his fluid milk sales, should not also share in the Class I sales of other producers.

The definition of a route is included in each of the orders to clarify other definitions or provisions and avoid lengthy repetition in order language. The term route should be defined as a delivery (including delivery by a vendor or sale from a plant or plant store) of any fluid milk product other than a delivery to any milk processing plant.

A definition of "fluid milk product" is included to mean milk, flavored milk, flavored milk drinks, skim milk, buttermilk, half and half and cream. This definition of "fluid milk product" will clarify other order provisions and definitions.

"Other source milk" should be defined as all skim milk and butterfat contained in fluid milk products received by a handler at his fluid milk or pool plant(s), except producer milk and fluid milk products received from other regulated plants. This definition would include milk products, other than fluid milk products, from any source (including those produced at the fluid milk or pool plant) which are reprocessed and converted to another product in the plant during the month. The amount of supplemental supplies received from unregulated milk plants, varies from season to season and between handlers. This definition of other source milk will insure uniformity among all handlers under the allocation and pricing provisions of each of the proposed orders.

(b) *The classification and allocation of milk.* Milk under each order would be classified in three classes reflecting the principal differences in the value and in the quality of milk required for different uses.

Because skim milk and butterfat are not used in most products in the same proportion as received from producers, these components should be classified separately. Class prices, however, will apply per hundredweight of milk and will be adjusted for the butterfat content of the milk actually used in each class through butterfat differentials.

Class I utilization under each order should include all skim milk and butterfat disposed of for consumption as fluid milk products, namely milk, skim milk, flavored milk, flavored milk drinks, buttermilk, half and half, and cream. Plant loss of producer milk in excess of 2 percent of receipts and skim milk and butterfat not accounted for as Class II or Class III utilization should also be Class I.

The products to be included in Class I are those required by health authorities in each marketing area to be from inspected sources. The extra cost of producing and delivering to the market milk of approved quality in the quantities required for fluid distribution justifies a price for Class I milk somewhat higher than that for manufacturing quality milk. It is appropriate that the products requiring approval be included in a single class so that all milk required for their use may contribute uniformly to the cost of supplying the market needs for inspected milk.

Reserve milk in excess of market needs for fluid consumption must usually be

manufactured into various dairy products for which approved inspected sources of milk are not required. Such products must be sold in competition with like products from uninspected sources produced over a wide area. Most such products are less perishable than fluid milk products. Milk used to produce these products should be classified in lower classes and priced in accordance with its value in such outlets.

It was proposed that all such uses be included in Class II milk. It is desirable, however, that separate classification and pricing be provided for milk used to produce butter, cheese, and nonfat dry milk. Substantial volumes of milk priced under the Chicago order are made into these products at plants located in the Northeastern Wisconsin area. A separate class (Class IV) is provided under that order for the milk equivalent of butterfat made into butter and cheese. A separate classification for these products (including also nonfat dry milk, the manufacture of which frequently complements the manufacture of butter) will permit pricing milk used for these products under the Northeastern Wisconsin order in close alignment with the Chicago order. In the Michigan Upper Peninsula some excess milk must be disposed of to cheese factories, and prices that can be realized in this area for milk disposed of to such outlets differ considerably from the value of such milk in other nonfluid products. In addition to these products, skim milk dumped or disposed of for livestock feed after notification to the market administrator and opportunity for verification of volumes should also be included in Class III milk, as should shrinkage within allowable limits.

Class II milk should then include all skim milk and butterfat used to produce products not specified as Class I or Class III and in inventories of fluid milk products on hand at the end of the month.

Unaccounted for milk in excess of a reasonable allowance for plant loss should be Class I so as to require full accounting by handlers for their receipts. Two percent is considered a reasonable maximum allowance for plant loss. No limit need be put on shrinkage of other source milk (assigned to Class III) since such milk is deducted from the lowest use class under the allocation procedures.

Since it is not feasible to segregate shrinkage of producer milk from that of other source milk in the same plant, total shrinkage is prorated on the basis of the volume of receipts. Allowance for loss on producer milk diverted to another plant regulated by the same order should be at the plant where actually received. Each handler must be held responsible for full accounting of all his receipts of skim milk or butterfat in any form. The handler who first receives the milk from producers should be responsible for establishing the classification of and the payment for producer milk. Except for such limited quantities of shrinkage as may be classified in Class III, all skim milk and butterfat which is received and for which the handler cannot establish utilization should be classified as Class I milk. This provision is necessary to remove any advantage to handlers who fail to keep complete and accurate records and to assure that producers receive full value for their milk on the basis of its use.

Uniformity of minimum prices to handlers and simplicity of accounting are achieved if, so far as possible, Class I utilization each month is assigned to current receipts of producer milk. This can be accomplished by classification of closing inventory as Class II, and allocation of opening inventory to Class I only when current receipts of producer milk (except allowable Class III shrinkage) are less than Class I sales. In such case the handler should pay the difference between the Class II price for such milk in the preceding month and the current Class I price. The volume on which this charge is made should not exceed the volume for which producers were paid at the Class II price in the preceding month.

Provisions should be made for classification of fluid milk products transferred in bulk between regulated plants and from regulated plants to unregulated plants. Transfers between fluid milk plants, or between pool plants, should be permitted in any class agreed upon by the handlers operating such plants so long as the prior claim of producer milk for Class I sales is maintained.

Transfers to an unregulated plant may be at Class II or Class III if such plant does not engage in the fluid milk business, or has receipts from inspected farmers equal to any Class I sales. If Class I sales exceed such receipts, the milk transferred should be Class I to the extent of the excess. In any event, in order to substantiate a classification other than Class I the unregulated plant must have and make available records adequate to verify any such utilization claimed.

When handlers receive butterfat and skim milk from sources other than from producers, it is necessary to provide a method for allocating such receipts to the classes of utilization in such a manner as to determine the classification of producer milk. Inasmuch as producer milk is the regular available supply for fluid consumption in the marketing area, producer milk should be assigned the Class I utilization in preference to other source milk. This is necessary to assure the effectiveness of a classified pricing program. The system of assigning utilization of milk to receipts from different sources is set forth in detail in the proposed order. A monthly accounting period is provided for this assignment in order that uniform prices to producers may be computed for each month's delivery of milk.

(c) *Class prices.* The price of milk for fluid use in the Michigan Upper Peninsula and Northeastern Wisconsin marketing areas should be closely related to the prices of milk used in the production of manufactured dairy products. In both of these areas substantial volumes of milk are produced, relative to fluid milk production, for use in the production of manufactured milk products. Producers' farms where milk is produced for the Chicago and Northeastern Wisconsin markets are intermingled in the Northeastern Wisconsin milkshed. Surplus and reserve supplies of milk from the Chicago market are manufactured in plants located in the Northeastern Wisconsin area. Dealers in the Northeastern Wisconsin and Michigan Upper Peninsula areas have based their fluid milk prices on the prices paid by manufacturing plants in the areas and on prices paid by plants regulated under the Chicago order. Class I prices in the nearby Federal order markets of Chicago, Milwaukee, Duluth-Superior, Minneapolis-St. Paul and Upstate Michigan are based on similar manufacturing values. Use of a basic formula price to which a Class I differential is added will, for each order, reflect manufacturing values.

(1) *Basic formula price.* The basic formula price used to determine the Class I price should be the higher of the average price paid by 12 Wisconsin and Michigan condenseries or a formula price based on market values of butter and nonfat dry milk. These prices measure the value of milk used in each of these major manufactured dairy products which are marketed nationally. These same factors are used in the Chicago and Milwaukee Federal order markets.

Several of the 12 condenseries whose prices are included are located in the Northeastern Wisconsin area. A butter-powder formula price using slightly different factors from that included in the attached orders was proposed in the notice of hearing. In view of the desirability of maintaining alignment with prices of the orders for the Chicago and Milwaukee markets the formula price used in those orders is included as the alternative basic formula price. Use of the basic formula price of the preceding month in the determination of Class I prices will permit these prices to be announced early in the month to which they apply, and will assist in maintenance of alignment with Chicago and Milwaukee prices.

(2) *Class I price.* The Class I price differential to be added to the basic formula price should be at a level which will reflect the additional costs of providing an adequate but not excessive year-round supply of milk meeting the inspection requirements of each of these areas. For the initial 18 months of operation of the Northeastern Wisconsin order this differential should be established at an annual level of $0.74, varied seasonally to be $0.94 for the months of August, September, October, and November; $0.74 for the months of January, February, July, and December; and $0.54 for the months of March, April, May, and June; and at those plants located in the Wisconsin counties of Florence, Forest, Marinette, Oneida, and Vilas, or in the State of Michigan, the Class I price under the Northeastern Wisconsin order should be increased ten cents. For the initial 18 months of operation of the Michigan Upper Peninsula order this differential should be established for those plants located in (1) Zone 1 at an annual level of $0.97, varied seasonally to be $1.15 for the months of July through November, and $0.95 for the months of January,

February, and December, and $0.75 for all other months; and (2) Zone 2 at an annual level of $1.17, varied seasonally to be $1.35 for the months of July through November, $1.15 for the months of January, February, and December, and $0.95 for all other months.

It was proposed at the hearing that the Class I differential of the Northeastern Wisconsin order be $1.00 in all months of the year and that of the Michigan Upper Peninsula order be $1.35 for all months. While zone price differences for the Upper Peninsula were proposed in the notice of hearing, proponents at the hearing supported the application of a single Class I differential applicable at all locations.

Prices of the Chicago and Milwaukee markets are a dominating influence on the price structure of the Northeastern Wisconsin area. The volume of milk priced under the Chicago order delivered to Chicago pool plants located in the Northeastern Wisconsin area averaged approximately 78 million pounds per month over a recent 12 month period. This is substantially more milk than that to be regulated under the Northeastern Wisconsin order. Chicago prices at these points are clearly the dominant competitive factor in procurement of milk. Milwaukee handlers also compete for sales in the Northeastern Wisconsin marketing area. Producer prices under the Milwaukee order are directly related to those of the Chicago order.

Under the Chicago order the Class I prices at plants located more than 70 miles from the Chicago City Hall are decreased 2 cents for each 15 miles or fraction thereof in excess of 70 miles. An annual average Class I differential, of 90 cents is provided at the 55–70 mile zone. Chicago pool plants are located in the Northeastern Wisconsin area in zones 7–14 so that the annual average Class I price differentials applicable at these plants range from 64 to 78 cents. Under the Milwaukee order an average annual differential of 86 cents, which represents the Chicago zone prices at Milwaukee, applies at all plants.

Approximately two-thirds of the milk to be regulated by the Northeastern Wisconsin order is received at points which would lie in zones 7–10 of the Chicago order, for which the applicable Class I differential of that order ranges from 72 to 78 cents on the annual average. Furthermore, it is from plants located in this area that route distribution is most extensive throughout other parts of the area.

This area also represents the primary concentration of receipts under the Chicago order. Thirteen of the 17 Chicago pool plants are located in zones 7–10. While the record does not show the volume of receipts for plants in this particular group of zones, at 10 plants in zones 7–9 receipts were more than 61 percent of the Chicago milk received in the entire area. The six Chicago plants in zone 9 received approximately 35 percent of the total volume for the area.

It is concluded that a Class I differential with an annual average of 74 cents, which is that applicable under the Chicago order at plants in zone 9, is appropriate for all parts of the Northeastern Wisconsin marketing area except for the northern portion of the area discussed elsewhere in this decision. Throughout the remainder of the area the extensive competition between handlers makes it desirable that the Class I price be uniform to handlers rather than be varied by the zone differentials of the Chicago order. The concentration of receipts under both Chicago and the proposed Northeastern Wisconsin order at or near zone 9 makes this the most appropriate price for the area.

In conformity with the seasonal price patterns of the Chicago order the Northeastern Wisconsin Class I differential should be 20 cents above the annual average level for the months of August through November, 20 cents less for the months of March through June, and at the annual average level for other months.

The Chicago and Milwaukee orders provide for the adjustment of Class I and II prices on the basis of supply and demand in the Chicago market. In view of the lack of data with respect to producer receipts and utilization in the Wisconsin area there is no basis for providing similar provisions for the Northeastern Wisconsin order at this time. While consideration was given to providing precise price alignment by use of the amount of adjustment each month under the Chicago order such precise alignment is not required for an initial 18 month period of operation of the order necessary to provide data with respect to the market. The differences in classification and accounting provisions of the orders make it impossible to provide precise alignment on a comparable basis. The inclusion of ice cream and fluid cream as Class II uses under the Chicago order accounted for on the milk equivalent of butterfat used results in a higher cost to handlers and consequently a higher average producer price for identical utilization than will result from the classification and accounting procedure of the order recommended herein. Experience during the initial period will provide data upon which proper allowance may be made for these factors.

In Oneida and Vilas counties milk production is much less intensive than in the remaining portions of the Northeastern Wisconsin area. The principal handler located in this area, whose plant is at Rhinelander in Oneida County, receives his entire supply from a plant at Wittenberg, 74 miles to the south in the area to which the 74 cent differential would apply. This area, and the companion cities of Marinette-Menominee are the portions of the Northeastern Wisconsin area nearest to the Michigan Upper Peninsula area from which local distribution in adjacent portions of that area may be expected. A Class I price 10 cents higher than that applicable in other portions of the area should apply under the Northeastern Wisconsin order at plants in these areas and the territory intervening between the two marketing areas. This will reflect differences in supply conditions in that portion of the area.

Other than this zone price differential, there is no need to provide any reductions in the Class I price for plants at distant locations. This is an area where substantial volumes of milk in excess of local requirements are produced and as a consequence producer prices approach the minimum. To the east is Lake Michigan, to the south Chicago order prices increase at locations nearer Chicago, while Milwaukee prices are maintained at the Chicago level applicable at Milwaukee, and to the north this decision establishes Michigan Upper Peninsula prices higher than those here provided. To the west the nearest regulated markets, Minneapolis-St. Paul and Duluth-Superior, are also at higher levels.

It was proposed by proponent cooperatives that the Michigan Upper Peninsula marketing area be zoned as three areas for the purpose of establishing Class I price differentials, for each zone. However, at the hearing producers recommended that the Class I price be the basic formula price plus $1.35 in all months, and for all portions of the marketing area. Negotiated prices in the two markets of Marquette and Ironwood have been established by one of the proponent cooperatives for several years. In 1956, the average monthly price differential for fluid milk, above manufacturing prices, using the recommended basic formula price, was $1.30 in the Marquette market and $1.05 in the Ironwood market. Negotiated prices for the Sault Ste. Marie market have not been in effect for a sufficient period to permit a reasonable determination of the average differential. The prices negotiated at this point have, however, have been substantially higher at all times than those for Marquette. The classification to which these prices apply is not similar in all respects to that recommended herein inasmuch as the negotiated Class I price does not apply to cream and half and half.

The influence of the Northeastern Wisconsin market should be reflected in the level of the Class I price under the Michigan Upper Peninsula order. The Wisconsin area is not only a source of alternative supplies of milk but provides considerable direct competition for sales from Wisconsin plants. The Michigan Upper Peninsula area is, however, quite extensive geographically, and some portions are much farther from the Wisconsin production area than others. As a consequence transportation costs from Wisconsin points are substantially higher in certain parts of the area.

For Zone 1, representing the area lying nearest to the Wisconsin production, a Class I price 23 cents higher than that of the principal portion of the Northeastern Wisconsin area is provided. This price is 13 cents more than that for the nearby northern portions of the Wisconsin area. Such difference approximates the costs of movement of supplemental supplies in this area. The Class I price is increased an additional 20 cents for the remainder of the area, which is at a greater distance from Northeastern Wisconsin. This difference between zones approximates that which has been established through negotiations at Ironwood in Zone 1 and Marquette in Zone 2. The relationship between prices in the principal cities in each of these zones and that provided in the concen-

trated Wisconsin production area continues to approximate reasonable allowances for transportation for movements of supplemental supplies of milk.

In the previous recommended decision it was proposed that a third zone, consisting of the counties of Chippewa, Luce and Mackinac be provided, with an additional increase of 20 cents in the minimum Class I price. This would have included the city of Sault Ste. Marie. As a result of exceptions received, the record with respect to the pricing history of this proposed zone has been reviewed. It is hereby concluded that the data available with respect to price relationships between this area and the area proposed in Zone 2 in the recommended decision covers too short a period to justify establishment at this time of a fixed differential in the minimum Class I prices applicable in these areas. Accordingly, only two pricing zones are provided in the order attached hereto, with the same minimum Class I price applicable at all points in the area outside Zone 1.

The price relationships between the Michigan Upper Peninsula and Northeastern Wisconsin orders have also been reviewed and it is concluded that the prices of the Michigan order should be increased 3 cents in order to more appropriately reflect past relationships and cost of transportation.

The demand for fluid milk during the vacation season in the Michigan Upper Peninsula makes appropriate the inclusion of July with the months of highest Class I prices. With this exception the seasonal pattern of the Class I price in the Michigan Upper Peninsula order should follow that of the Northeastern Wisconsin order. The price differences cited apply to the annual average levels provided.

In contrast to the situation in Northeastern Wisconsin the possibility that distant plants are or might become regulated under the Michigan Upper Peninsula order requires that provision be made to allow for the cost of moving Class I milk from such plants. While the distant plants presently distributing milk in the area would be regulated under the Northeastern Wisconsin order, plants not subject to any other order may become regulated as either supply plants or distributing plants. If such plants are west of Lake Michigan, presumably in Wisconsin or Minnesota the nearest portion of the marketing area will be Zone 1, in which the cities of Ironwood and Iron Mountain provide appropriate points from which distances may be determined. If such plants are east of Lake Michigan, presumably in the lower peninsula of Michigan, the portion of the marketing area accessible to them will be Zone 2, via the newly constructed bridge over the Straits of Mackinac. St. Ignace, located at the straits, provides a convenient point for measurement of distances from Zone 2. Accordingly, location adjustments from the Zone 1 price are provided for plants located west of Lake Michigan and more than 50 miles from the nearer of Ironwood or Iron Mountain, and from the Zone 2 price for plants located east of Lake Michigan and more than 50 miles from St. Ignace. The rate of adjustment should be 10 cents per hundred-weight for distances of 50–70 miles, plus 2 cents for each additional 20 miles or fraction thereof. The application of these rates to the Northeastern Wisconsin plants with substantial distribution in the marketing area will approximate the prices established for such plants under the Wisconsin order.

Under the handler pooling provisions included in the Michigan Upper Peninsula order the producer prices computed reflect the location value of milk if the handler does not operate two or more plants at which different Class I values are applicable. If such is the case the uniform price applicable to milk received at the plant to which the higher Class I price applies is computed and a location differential equal to the difference in Class I values is used in determining minimum producer prices at other plants of such handler. The uniform price of the Northeastern Wisconsin order is computed as that applicable at plants in the major portion of the area with a 10 cent plus differential for milk delivered to plants in the higher priced zone.

(3) *Class II price.* The Class II price should reflect a value for milk used in cottage cheese, ice cream and related products under each of these orders. Reserve supplies of milk that are needed because handlers' sales fluctuate on a daily basis are converted to such products as cottage cheese, ice cream and related products. Ungraded milk for these purposes commands higher prices than that for butter, cheese, or nonfat dry milk. The level of Class II milk price should not be below that paid for ungraded milk for the same use, since such "pay" prices represent the prevailing value for milk for such uses. It is to be expected that such supplies of milk will be used in the highest valued manufactured products. It is concluded that the Class II price under each of these orders should be the basic formula price of the current month which represents the higher of the prices established for milk for manufacturing purposes.

(4) *Class III price.* The Class III price should reflect the value of milk for manufacture into butter, nonfat dry milk, and cheese (other than cottage cheese) in the Michigan Upper Peninsula and Northeastern Wisconsin marketing areas. The plants which manufacture butter, nonfat dry milk and cheese are not comparable in these two areas. In the Northeastern Wisconsin area there are centered some of the largest manufacturing plants in the country. Plants manufacture into these products milk from the Chicago market for which the price is established on the basis of the butter-powder formula price. Thus, it is appropriate that the butter-powder formula portion of the basic formula price should be used to price milk used to produce butter and cheese under the Northeastern Wisconsin order. That computed from the current month quotations should apply.

Producer proponents of the Michigan Upper Peninsula order proposed that the pay prices at local cheese plants and creameries should be the price for "distressed" milk during the flush months. Products, principally cheese, made at these plants must be assembled and shipped considerable distances to the central markets. As a consequence the prices paid by these plants are less than prices paid by cheese factories and creameries in Northeastern Wisconsin. Many of these plants are operated by producer cooperatives so that their current pay prices may not reflect accurately returns to the farmers supplying milk to such plants. It is concluded that the butter-powder formula price less ten cents will approximate the level of prices paid by manufacturing plants in the area and should determine the Class III milk price.

(5) *Handler butterfat differentials.* Butterfat and skim milk will be accounted for separately for classification purposes since they are not used in most products in the same proportions as received from producers. The basic test for which class prices are determined is 3.5 percent butterfat content, the usual fat test at which prices are quoted in these areas, and on which the two markets have operated for some time. It will then be necessary to adjust Class I, Class II and Class III prices of milk to each handler in accordance with the average test of milk used in each class by such handler. Butterfat differentials which reflect differences in value due to differences in butterfat content are used for this purpose.

Producers proposed that a single butterfat differential apply to all classes of milk. They proposed that this differential be 0.122 times the average price of 92-score butter at Chicago. Producers contend there is a shortage of butterfat for fluid milk uses which has resulted in part from the requirements of recently enacted Michigan statutes.

Butterfat in fluid milk products (which include cream) from inspected sources has a higher value than that in ungraded milk, which will be approximately reflected by a butterfat differential 0.125 times the Chicago butter price. Such a differential should be used to adjust the hundredweight price of Class I milk for each one-tenth percent variation from 3.5 percent butterfat content. The Class II and Class III butterfat differential should be 0.115 times the Chicago butter price. This differential reflects an appropriate value of butterfat for Class II and Class III uses in these areas.

In order that the Class I butterfat differential may be announced early each month for the current month, it is provided that the Class I differential be based on the average price of butter in the preceding month. This will permit the announcement of the Class I butterfat differential at the same time that the Class I price is announced.

The Class II and Class III butterfat differential will not be announced until after the end of the current month. Although handlers will not know precisely the cost of such milk as it is utilized, they will know that their cost will follow that of their principal competitors for manufactured outlets. Trends in butter and nonfat dry milk

prices may be observed from daily and weekly reports issued by the Department.

(d) *Distribution of proceeds to producers*—(1) *Types of pool.* The act specifies that an order must provide for (1) the payment to all producers delivering milk to the same handler of uniform prices for all milk delivered by them, or (2) the payment to all producers delivering milk to all handlers of uniform prices for all milk so delivered, without regard to the uses made of such milk by the handler to whom it was delivered. The former method of payment is by individual-handler pools, the latter by a marketwide pool. Under either method all handlers pay the class prices for producer milk, except for differences in the location at which received and for butterfat content.

Under the individual-handler pool, the minimum prices to be paid producers will be uniform to all producers delivering their milk to the same handler. The uniform price will depend upon the proportion of producer receipts used in each class by the handler. Although each handler will be required to pay minimum uniform prices to all the producers who deliver milk to him during each month, the prices paid by different handlers may differ because the proportion of milk used in each class may vary.

(i) Michigan Upper Peninsula: The individual-handler type of pool should be included in the Michigan Upper Peninsula order as a means of distributing to producers the returns from the sale of their milk.

In the Michigan Upper Peninsula area the Michigan Milk Producers Association has operated separate association pools at Marquette, Ironwood and Sault Ste. Marie with respect to milk of those members delivered to handlers at each of these points. Handler pooling will permit continuation of this practice should the association so desire. At least three other cooperative associations operate plants in other points in this marketing area. The area is very extensive, with substantial differences in production conditions surrounding various centers of population. While Class I price differences are provided in recognition of this situation, it is also desirable that differences in the supply and sales relationships throughout the area be reflected in producer prices. Individual handler pooling was supported by all producer organizations with members supplying the Michigan Upper Peninsula market.

It was proposed that, in addition to the milk each handler received from producers or diverted for his account to nonfluid milk plants, there should be included in the computation of his pool price, milk of dairy farmers who had supplied such handler any time during the preceding months of July-December and certified their willingness and ability to deliver inspected milk currently, but whose milk was not received at a fluid milk plant. It was proposed that such dairy farmers be designated "associated producers" and receive payments from the handler through the market administrator equal to the difference between the uniform price of the handler and the manufacturing milk price of the order. The source of such payments would be a reduction in the uniform price otherwise payable to producers by the handler. It was claimed that such provisions would prevent producers from loss of their market through arbitrary action of the handler.

A number of things in addition to conformity with health requirements are influential in farmers' acquiring and retaining a fluid milk market. A number of plants in this area receive milk only in bulk tanks and other plants are in the course of changing to this type of delivery. Only dairy farmers equipped with farm storage tanks can continue to market milk at such plants. Seasonality of production is another factor which may affect the ability of a dairy farmer to retain his market with any specific handler. It is difficult from this record to find a basis on which failure of a farmer to meet market practice requirements could be distinguished from arbitrary action of a handler in determining the producer who should share in the Class I business of a handler without current delivery of milk. It is concluded that such provision should not be included without more definite evidence of actual need to provide stable market conditions.

(ii) Northeastern Wisconsin: The marketwide type of pool should be used in the Northeastern Wisconsin order to distribute returns to producers.

In the recommended decision it was recommended that handler pools also be included in the Northeastern Wisconsin order, principally upon the basis that it was not shown that any particular group of plants serve to balance supplies among other plants. As a result of numerous exceptions received to the proposed pooling provisions for this area it is concluded that handler pooling in this area might operate to prevent adequate reserve supplies of milk from being carried by many Northeastern Wisconsin plants. Such reserve supplies for this market would thus accumulate either in the Chicago pool or in the hands of cooperative handlers under the Northeastern Wisconsin order. In view of these considerations it is concluded that returns under the Northeastern Wisconsin order should be by means of a marketwide type of pool. Appropriate modification of the definitions of "plant", "producer" and "handler", and provision for payments on unpriced milk are included on the basis of findings contained elsewhere in this decision.

(2) *Payments on unpriced milk.* Northeastern Wisconsin order: The order should provide compensatory payments with respect to unpriced milk which is allocated to Class I in a pool plant when receipts from producers exceed 110 percent of the Class I utilization.

An important function of the order is to insure that the position of handlers paying producers a Class I price for fluid milk will not be undermined by other handlers using the market's excess or surplus milk for Class I use. It is equally important that the Class I market be protected from the use of seasonal excess milk from other markets as well as from its own surplus. If the order failed to provide such protection, a handler could curtail purchases of producer milk to his own advantage and secure low cost reserve supplies from other markets for Class I use.

Seasonal supplies may be obtained easily and cheaply during the months of flush production, when most markets have receipts of milk considerably greater than necessary to supply their current fluid requirements. If adjoining milksheds dispose of their seasonal surplus in each other's Class I markets, the result would be confused and disorderly marketing conditions. Market prices would be demoralized, production of milk would be impaired, and the future supply of milk for both markets would be jeopardized. Such disorderly marketing conditions would be contrary to the purposes of the Agricultural Marketing Agreement Act. Therefore, in order to insure the effectiveness of the classified pricing program and to promote orderly marketing, it is necessary that some method of compensating for, or neutralizing the effect of, the advantage created for unpriced milk should be provided as an essential provision of this order. Since the need for such payments arises because of the availability of unpriced milk (milk not procured at specified prices by class usage), compensatory payments should not apply to milk entering the marketing area from a plant regulated under another order. Its proper classification and pricing is determined pursuant to the other order.

It is not practicable to price all milk which may enter the market. However, it is necessary to make provision to prevent the displacement of producer milk by such unpriced milk for the purpose of cost advantage. The alternative available under the order is to make a charge against unpriced milk used in Class I to the extent necessary to remove any advantage in using such milk in lieu of milk from producers.

To remove the price advantage that a handler might achieve by purchasing surplus milk from other markets for use as Class I milk, a compensatory payment should be assessed on such milk equal to the difference between the Class I price and the Class III price. The Class III price provided by the order is a fair index of the value of such milk in manufactured dairy products which is the alternative outlet for such milk. As indicated elsewhere in this decision manufacture of such dairy products is highly concentrated in this and adjoining areas.

It was proposed that the rate of payment be the difference between the Class I price of the order and the uniform price. It is likely that the uniform price of the Chicago order rather than that of the Northeastern Wisconsin order will be the dominant competitive procurement factor in the area. Further, as demonstrated clearly by present procurement practices in the area, it cannot be assumed that payment of a uniform price determines the cost of Class I milk to a handler.

In order to permit handlers to secure supplementary supplies without making a payment when the market is actually short of milk, it has been provided that no compensatory payment will apply any month in which receipts of producer milk on the market are less than 110 percent of Class I sales. Such utilization percentage would be a more practical demarcation of adequate supply and deficit supply conditions than the 125 percent mentioned at the hearing.

In the case of a handler whose plant fails to qualify as a distributing plant but who has sales of fluid milk products on routes in the marketing area, such handler also should under certain conditions be required to make payments to the producer-settlement fund. The amount of these payments would be the lesser of (1) the difference between the Class I and Class III price multiplied by the amount of Class I milk sold in the marketing area, or (2) the amount by which total payments to dairy farmers are less than the total amount of the plant's obligation to producers if such obligation is computed as if such plant were a pool plant.

If the handler elects to make payments under the first option, the regulatory plan will be protected in the same manner and to the same extent as is provided with respect to compensatory payments on other source milk. If the handler chooses to pay the full utilization value of his milk either directly to his own farmers or by combination of payments to his farmers and to the producer-settlement fund, he will obviously not have any advantage in terms of the minimum order class prices on his sales of Class I milk in the marketing area, for his total minimum obligation for milk will be determined in exactly the same way as if he were a fully regulated handler.

Affording this latter option to nonpool plants from which some Class I milk is distributed in the marketing area will adequately protect the regulatory plan in this market. Under the standards adopted herein for pooling the only such nonpool plants would be those with less than half their receipts disposed of on routes or with only a minor share of their route business in the marketing area, being primarily associated with other fluid markets. Distributing plants primarily associated with other unregulated markets do not procure their milk supplies in the milkshed of the Northeastern Wisconsin area, which is practically coextensive with the marketing area. It is expected that Class I utilization of pool milk in this market will substantially exceed 50 percent. Under these circumstances no advantage in the procurement of milk could accrue to handlers operating such nonpool plants. The volumes of milk that might be involved would be relatively small in comparison to the volume of milk in the pool. There is no necessity in this market to require these partially regulated plants to make payments into the producer-settlement fund if it is ascertained that they have paid their Grade A dairy farmers at least the total amount of money which they would be required to pay if they were fully regulated.

The nonpool handler should also pay his pro rata share of the costs of administration of the order. Complete verification of receipts, utilization and payments is required if such a handler is to be given credit for payments as related to the classified use value of skim milk and butterfat received. Accordingly, administrative expense should be determined on the same basis as for fully regulated plants. Should a handler operating a nonpool distributing plant elect when filing his report to make payments to the pool at the difference between the Class I and Class III prices with respect to sales in the marketing area, the expenses of administration will be assessed only with respect to such sales, since need for verification will then be confined to that volume.

(3) *Producer-settlement fund.* Since the amount which the Northeastern Wisconsin order requires a particular handler to pay for his milk may be more or less than the amount he is required to pay to producers or cooperative associations, some method of balancing these amounts is necessary. A producer-settlement fund should be established for this purpose. All handlers who are required to pay more for their milk on the basis of their utilization than they are required to pay to producers or cooperative associations should pay the difference into the producer-settlement fund; and all handlers who are required to pay more to producers or cooperative associations than they are required to pay for their milk on the basis of utilization should receive the difference from the producer-settlement fund. Amounts paid into and out of the producer-settlement fund for this purpose will be equal except for minor differences that may result from rounding of uniform prices. In order to permit this rounding of prices, to allow for unavoidable delays in receiving payments from handlers, and to permit payments to be made to any handler which audit by the market administrator reveals is due such handler from the producer-settlement fund, a reserve should be held in the producer-settlement fund at all times. The amount of the reserve contemplated in the proposed Northeastern Wisconsin order should be sufficient for these purposes. This reserve would be accumulated by deducting between 4 and 5 cents each month from the uniform price, after adding half of the unobligated balance to the pool from which such prices are computed.

If at any time the balance in the producer-settlement fund is insufficient to cover payments due to all handlers from the producer-settlement fund, payments to such handlers should be reduced uniformly per hundredweight of milk. The handlers may then reduce payments to producers by an equivalent amount per hundredweight. Amounts remaining due such handlers from the producer-settlement fund should be paid as soon as the balance in the fund is sufficient, and handlers should then complete payments to producers.

4. *Producer butterfat differentials.* The butterfat differential used in making payments to producers should be calculated at the average of the returns actually received from the sale of butterfat in producer milk by each handler. The rate to be used for this purpose would be the average of the Class I, Class II, and Class III differentials weighted by the proportion of butterfat in producer milk classified in each class. Thus, producer returns for butterfat will reflect the actual sale value of their butterfat at the class differentials provided in the order. The producer butterfat differential in no way affects the handlers' costs of milk but merely prorates returns among producers according to the varying butterfat tests of their milk.

(e) *Other administrative provisions.* Certain other provisions are needed in each of the orders to carry out the administrative steps necessary to accomplish the purpose of the proposed regulations.

(1) *Terms and definitions.* In addition to the definitions discussed earlier in this decision which define the scope of the regulation, certain other terms and definitions are desirable in the interest of brevity and to assure that each usage of the term implies the same meaning. Other terms defined in each of the proposed orders are common to many other Federal milk orders.

(2) *Market Administrator.* Provisions are made for the appointment by the Secretary of market administrators to administer each of the orders and to set forth the powers and duties of the market administrators.

(3) *Records and reports.* Provision should be included in each of the orders to inform handlers that they are required to maintain adequate records of their operations and to make the reports necessary to establish the proper classification and pricing of milk and payments due producers for milk. Time limits must be prescribed for filing such reports and for making payments to producers. Dates must be established for the announcement of prices by the market administrators.

In view of the adoption of marketwide pooling under the Northeastern Wisconsin order, it is necessary to provide additional time for computation of the marketwide uniform price based upon receipt of reports from all handlers, and for handlers to make payments to producers. Under this type of pooling sufficient time must be provided for receiving monies due the producer-settlement fund and payments to handlers which are required to balance the pool. The dates of these payments will follow, in general, those under the Chicago order. The following time schedules should allow all interested persons adequate time to perform each function. These time limits apply to the indicated day of the month following the month for which computations are being made except Class I price announcements which are for the current month.

(i) Day of the month and function under the Michigan Upper Peninsula order are as follows:

5th day—Announcement of class prices by market administrator.

5th working day (exclusive of Sundays and holidays)—Submission of monthly reports of receipts and utilization by handlers.

10th day—Payment by handlers at class prices to cooperative associations operating fluid milk plants.

12th day—Announcement of uniform price for each handler by market administrator.

12th day—Notification by market administrator to each handler of the value of his producer milk in each class, and payments due for expenses of administration.

13th day—Payments by handlers to cooperative associations.

15th day—Payments by handlers to producers.

20th day—Submission of producer payrolls by each handler to the market administrator.

(ii) Day of the month and function under the Northeastern Wisconsin order are as follows:

5th day—Announcement of class prices by market administrator.

5th working day (exclusive of Sundays and holidays)—Submission of monthly reports of receipts and utilization by handlers.

10th day—Payment by handlers at class prices for milk received from pool plants of cooperative associations.

14th day—Announcement by market administrator of uniform price, notification to each handler of the value of producer milk in each class and payments due for expense of administration.

16th day—Payments by handler to cooperative associations collecting on behalf of members.

16th day—Payments by handler to market administrator for producer-settlement fund.

17th day—Payment by market administrator due to handlers out of producer-settlement fund.

18th day—Payments by handlers to producers.

25th day—Submission of producer payroll by each handler to the market administrator.

It is necessary that handlers retain records to prove the utilization of the milk received and that proper payments were made therefor. Since the books of all handlers associated with the market cannot be audited immediately it is necessary that such records be kept for a reasonable period of time.

Each of the orders should provide for specific limitations of the time that handlers should be required to retain their books and records and of the period of time in which obligations under the order should terminate. The provisions made in this regard are identical in principle with the general amendment made to all orders in operation on July 30, 1947, effective February 22, 1949, and the Secretary's decision of January 26, 1949 (14 F. R. 444) covering the retention of records and limitation of claim is equally applicable in this situation and is adopted as a part of this decision.

(4) *Expense of administration.* As his share of the expenses of administering the respective order under which he is regulated each handler should pay not in excess of 5 cents per hundredweight with respect to all receipts of producer milk and such other source milk, not priced under another order, as is classified Class I milk. The expense of administration for handlers partially regulated under the Northeastern Wisconsin order is discussed elsewhere in this decision.

Market administrators must verify receipts and utilization of all such milk, therefore, all such milk should be subject to the expenses of adminstration. Experience in other markets indicates that 5 cents per hundredweight with respect to all such milk should yield sufficient money to cover expenses of administration. If payment of expenses of administration at the rate of 5 cents per hundredweight yields more money than is needed, under either order, provision is made for the Secretary to prescribe a lesser rate of payment from time to time.

(5) *Marketing services.* A provision should be included in each of the orders for furnishing marketing services to producers, such as verifying tests and weights of producer milk and furnishing market information. These should be provided by the market administrators and the cost should be borne by the producers receiving the service. If a qualified cooperative association is found to be performing such services for any member producers in a similar manner, this will be accepted by the market administrators in lieu of their own service. These orders should provide that 6 cents per hundredweight, or such lesser amount as the Secretary may determine, be deducted from payments to such producers for use of the market administrators in financing such services.

Rulings on proposed findings and conclusions. Briefs were filed on behalf of certain interested parties in the market. These briefs 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 set forth in the briefs are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied.

General findings. (a) The proposed marketing agreements and orders and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

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

(c) The proposed marketing agreements and orders will regulate the handling of milk in the same manner as, and will be applicable 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 regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled.

Marketing agreement and order. Annexed here to and made a part hereof are four documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Michigan Upper Peninsula Marketing Area", "Order Regulating the Handling of Milk in the Michigan Upper Peninsula Marketing Area", "Marketing Agreement Regulating the Handling of Milk in the Northeastern Wisconsin Marketing Area", and "Order Regulating the Handling of Milk in the Northeastern Wisconsin Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreements, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreements are identical with those contained in the attached orders which will be published with this decision.

Referendum order; determination of representative period; and designation of referendum agent. It is hereby directed that a referendum be conducted among producers to determine whether the issuance of the attached order regulating the handling of milk in the Michigan Upper Peninsula marketing area, is approved or favored by the producers, as defined under the terms of the proposed order, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of June 1958, is hereby determined to be the representative period for the conduct of such referendum.

A. T. Radigan is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177), such referendum to be completed on or before the 30th day from the date this decision is issued.

Referendum order; determination of representative period; and designation of referendum agent. It is hereby directed that a referendum be conducted among producers to determine whether the issuance of the attached order regulating the handling of milk in the Northeastern Wisconsin marketing area, is approved or favored by the producers, as defined under the terms of the proposed order, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of June 1958, is hereby determined to be the representative period for the conduct of such referendum.

A. T. Radigan is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders, as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177), such referendum to be completed on or before the 30th day from the date this decision is issued.

Issued at Washington, D. C. this 15th day of September 1958.

[SEAL] TRUE D. MORSE, *Acting Secretary.*

Order[1] Regulating the Handling of Milk in the Michigan Upper Peninsula Marketing Area

AUTHORITY: §§ 1011.0 to 1011.101 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 1011.0 *Findings and determinations*—(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 a proposed marketing agreement and a proposed order regulating the handling of milk in the Michigan Upper Peninsula marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order 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 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 regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to (a) All receipts within the month of milk from producers, including milk of such handler's own production; and (b) Any other source milk allocated to Class I pursuant to § 1011.46 (b) and the corresponding step of § 1011.47.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Michigan Upper Peninsula marketing area shall be in conformity to and in compliance with the following terms and conditions:

DEFINITIONS

§ 1011.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

§ 1011.2 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ 1011.3 *U. S. D. A.* "U. S. D. A." means the United States Department of Agriculture.

§ 1011.4 *Person.* "Person" means any individual, partnership, corporation, association, or any other business unit.

§ 1011.5 *Michigan Upper Peninsula marketing area.* (a) "Michigan Upper Peninsula marketing area" (hereinafter referred to as the "marketing area") means all the territory including all municipal corporations within the zones described below in this section.

(b) "Zone 1": Counties of Delta, Dickinson, Gogebic, Iron, Ontonagon, all in the State of Michigan; the town of Niagara and the village of Niagara, in Marinette County; the towns of Aurora and Florence, in Florence County, and the towns of Carey, Kimball, Oma, Pence, Saxon and the cities of Hurley and Montreal in Iron County, all in the State of Wisconsin.

(c) "Zone 2": Counties of Alger, Baraga, Chippewa, Houghton, Keweenaw, Luce, Mackinac, Marquette and Schoolcraft, all in the State of Michigan.

§ 1011.6 *Fluid milk product.* "Fluid milk product" means milk, skim milk, flavored milk, flavored milk drinks, buttermilk, half and half and cream (sweet or sour).

§ 1011.7 *Route.* "Route" means a delivery (including delivery by a vendor or sale from a plant or plant store) of any fluid milk product, other than a delivery to any milk processing plant.

§ 1011.8 *Fluid milk plant.* "Fluid milk plant" means the premises, buildings and facilities of any milk receiving, processing or packaging plant handling milk eligible for distribution in the marketing area as Grade A milk or conforming to the requirements of Michigan Act No. 169, Public Acts 1929, as amended:

(a) From which fluid milk products are disposed of during the month on routes in the marketing area except as provided in § 1011.81; or

(b) From which milk or skim milk is delivered to a plant(s) described in paragraph (a) of this section on 10 or more days in any of the months of July through December or on three or more days in any of the months of January through June.

§ 1011.9 *Handler.* "Handler" means a person who operates one or more fluid

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

milk plants or any other plant from which fluid milk products are disposed of during the month on routes in the marketing area.

§ 1011.10 *Producer.* "Producer" means a person, other than a producer-handler, who produces milk in conformity with the sanitation requirements for Grade A milk of any duly constituted health authority, or in conformity with the requirements of Michigan Act No. 169, Public Acts 1929, as amended, which milk is:

(a) Received at a fluid milk plant; or

(b) Diverted from such plant for the account of a handler (milk so diverted shall be deemed to have been received by the diverting handler at the fluid milk plant from which it was diverted).

§ 1011.11 *Producer-handler.* "Producer-handler" means a dairy farmer who distributes fluid milk products on a route in the marketing area but receives no fluid milk products during the month except his own production or from fluid milk plants.

§ 1011.12 *Producer milk.* "Producer milk" means milk received at a fluid milk plant directly from producers, or diverted to a nonfluid milk plant pursuant to § 1011.10.

§ 1011.13 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in (or represented by):

(a) Receipts during the month of fluid milk products except: (1) Receipts from other fluid milk plants or (2) producer milk; and

(b) Products, other than fluid milk products, from any source (including those produced at the fluid milk plant) which are reprocessed or converted to another product in the fluid milk plant during the month.

§ 1011.14 *Cooperative association.* "Cooperative association" means any cooperative marketing association of producers, as defined in § 1011.10, which the Secretary determines after application by the association is qualified under provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act".

MARKET ADMINISTRATOR

§ 1011.20 *Designation.* The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal by the Secretary.

§ 1011.21 *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.

§ 1011.22 *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 30 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(c) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(d) Pay out of the funds provided by § 1011.71:

(1) The cost of his bond and of the bonds of his employees,

(2) His own compensation, and

(3) All other expenses, except those incurred under § 1011.72, 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 in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the day upon which he is required to perform such acts, has not made (1) reports pursuant to §§ 1011.30 through 1011.33, or (2) payments pursuant to §§ 1011.70, 1011.71, and 1011.72;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) Audit records of all handlers or persons upon whose utilization the classification of skim milk and butterfat for each handler depends, to verify the reports and payments required pursuant to the provisions of this part; and

(i) Publicly announce the prices determined for each month as follows:

(1) On or before the 5th day of each month the minimum price for Class I milk pursuant to § 1011.51 and Class I butterfat differential pursuant to § 1011.54 (a), both for the current month; the minimum price for Class II milk pursuant to § 1011.52 and the Class II butterfat differential pursuant to § 1011.54 (b), both for the preceding month; and the minimum price for Class III milk pursuant to § 1011.53 and the Class III butterfat differential pursuant to § 1011.54 (b), both for the preceding month;

(2) On or before the 12th day of each month the uniform price for each handler for the preceding month, computed pursuant to § 1011.61 and the producer butterfat differential computed pursuant to § 1011.62.

REPORTS, RECORDS AND FACILITIES

§ 1011.30 *Monthly reports of receipts and utilization.* On or before the 5th day (exclusive of Sundays and holidays) of each month, each handler who operates fluid milk plant(s) shall report to the market administrator for the preceding month for each fluid milk plant, in the detail and on forms prescribed by the market administrator as follows:

(a) The quantities of butterfat and skim milk contained in or represented by:

(1) Producer milk,

(2) Fluid milk products received from other fluid milk plants,

(3) Other source milk, and

(4) Inventories of fluid milk products on hand at the end of each month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section; and

(c) Such other information with respect to sources and disposition as the market administrator may prescribe.

§ 1011.31 *Payroll reports.* On or before the 20th day of each month each handler operating fluid milk plant(s) shall report his producer payroll for each fluid milk plant for the preceding month which shall show:

(a) The pounds of milk received from each producer and the percentage of butterfat contained therein;

(b) The date and net amount of payment to such producer, or to a cooperative association for such producer's milk, with the price, deductions and charges involved and the nature of each.

§ 1011.32 *Producer-handler reports.* Each producer-handler shall make reports at such time and in such manner as the market administrator may request.

§ 1011.33 *Exempt handler reports.* Each handler exempt pursuant to §§ 1011.81 and 1011.82 shall report to the market administrator his disposition of fluid milk products on routes within the marketing area at such time and in such manner as the market administrator shall prescribe.

§ 1011.34 *Records and facilities.* Each handler shall maintain and make available to the market administrator, during the usual hours of business, such accounts and records of all of his operations and such facilities as are necessary to verify reports or to ascertain the correct information with respect to:

(a) The receipts and utilization or disposition of all skim milk and butterfat received, including all milk products received and disposed of in the same form;

(b) The weights and tests for butterfat, skim milk and other content of all milk and milk products handled;

(c) Inventories of all dairy products on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations.

§ 1011.35 *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 three years to begin at the end of the month to which such books and records pertain: *Provided,* That if within such three year period, the market administrator notifies a handler in writing that the reten-

tion 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 until further written notification from the market administrator. 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

§ 1011.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat required to be reported pursuant to § 1011.30 shall be classified (separately as skim milk and butterfat), pursuant to §§ 1011.41 through 1011.45.

§ 1011.41 *Classes of utilization.* Subject to the conditions set forth in §§ 1011.42 and 1011.43, the classes of utilization shall be:

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

(1) Disposed of in the form of fluid milk products, except those classified pursuant to paragraph (c) (2) of this section; and

(2) Not accounted for as Class II or Class III utilization.

(b) Class II utilization shall be all skim milk and butterfat:

(1) Used to produce any product other than those specified in paragraphs (a) or (c) of this section; and

(2) In inventories of fluid milk products on hand at the end of the month.

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

(1) Used to produce butter, nonfat dry milk or cheese in any form except cottage cheese;

(2) In skim milk disposed of for livestock feed or dumped subject to prior notification to and verification (at his discretion) by the market administrator;

(3) In shrinkage of skim milk and butterfat allocated to milk received from producers, but not to exceed 2 percent of such receipts; and

(4) In shrinkage of other source milk.

§ 1011.42 *Shrinkage.* (a) When producer milk is utilized in conjunction with other source milk, the shrinkage shall be allocated pro rata between the receipts of skim milk and butterfat in producer milk and other source milk.

(b) Producer milk transferred by a handler to another handler without first having been received in the transferor handler's plant shall be included in the receipts at the plant of the transferee handler for the purpose of computing his shrinkage and shall be excluded at the plant of the transferor handler in computing his shrinkage.

§ 1011.43 *Transfers.* Skim milk and butterfat transferred or diverted as milk, skim milk or cream in bulk form from a fluid milk plant to:

(a) The fluid milk plant of another handler shall be classified at the utilization indicated by the operators of both plants in their reports submitted pursuant to § 1011.30, otherwise as Class I utilization, subject in either event to the following conditions:

(1) The receiving plant has utilization in such class of an equivalent amount of skim milk and butterfat, respectively, and

(2) Such skim milk and butterfat shall be classified so as to allocate to producer milk the greatest possible total Class I utilization in the two plants;

(b) A plant operated by a producer-handler or a handler exempt pursuant to § 1011.81, shall be Class I utilization; and

(c) A nonfluid milk plant (except as specified in paragraph (b) of this section) shall be Class I utilization unless the following conditions apply:

(1) Utilization in another class is claimed by the transferring handler in his report submitted pursuant to § 1011.30 for the month;

(2) Class I utilization in the nonfluid milk plant does not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers who the market administrator determines are the regular source of supply for fluid disposition of such plant. If Class I utilization exceeds such receipts, the skim milk and butterfat transferred shall be Class I to the extent of such excess, and

(3) The operator of the nonfluid milk plant maintains books and records which are made available if requested by the market administrator and which are adequate for the verification of such utilization.

§ 1011.44 *Responsibility of handlers.* All skim milk and butterfat shall be classified as Class I utilization unless the handler who first received such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 1011.45 *Computation of skim milk and butterfat in each class.* For each month the market administrator shall correct for mathematical and obvious errors the monthly report submitted by each handler and compute the total pounds of skim milk and butterfat respectively, in Class I, Class II and Class III utilization for such handler: *Provided*, That 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 disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water normally associated with such solids in the form of whole milk.

§ 1011.46 *Allocation of butterfat classified.* The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to milk received from producers:

(a) Subtract from the total pounds of butterfat in Class III utilization, the pounds of butterfat shrinkage allowed pursuant to § 1011.41 (c) (3);

(b) Subtract from the pounds of butterfat remaining in each class, in series beginning with the lowest-priced utilization, the pounds of butterfat in other source milk received from a plant(s) other than those subject to another marketing agreement or order issued pursuant to the act;

(c) Subtract from the pounds of butterfat remaining in each class, in series beginning with the lowest-priced utilization, the pounds of butterfat in other source milk received from a plant subject to another marketing agreement or order issued pursuant to the act;

(d) Subtract from the pounds of butterfat remaining in Class II milk and Class I milk, in series beginning with Class II, the pounds of butterfat contained in inventory of fluid milk products on hand at the beginning of the month;

(e) Subtract from the remaining pounds of butterfat in each class the pounds of butterfat received from fluid milk plants of other handlers according to the classification established pursuant to §§ 1011.41 and 1011.43 (a);

(f) Add to the remaining pounds of butterfat in Class III utilization the pounds subtracted pursuant to paragraph (a) of this section; and

(g) If the remaining pounds of butterfat in all classes exceed the pounds of butterfat in milk received from producers, subtract such overage from the remaining pounds of butterfat in each class in series, beginning with the lowest-priced utilization.

§ 1011.47 *Allocation of skim milk classified.* Allocate the pounds of skim milk in each class to milk received from producers in the same manner as that prescribed for butterfat in § 1011.46.

§ 1011.48 *Computation of total producer milk in each class.* The amounts computed pursuant to §§ 1011.46 and 1011.47 will be combined into one total for each class and the weighted average butterfat content of producer milk in each class will be determined.

MINIMUM PRICES

§ 1011.50 *Basic formula price.* The basic formula price shall be the higher of the prices computed pursuant to paragraphs (a) and (b) of this section:

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

Present Operator and Location

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

(b) The price per hundredweight computed from the following formula:

(1) Multiply by 4.24 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade AA (93-

score) bulk creamery butter per pound at Chicago, as reported by the U. S. D. A., during the month: *Provided*, That if no price is reported for Grade AA (93-score) butter, the highest of the prices reported for Grade A (92-score) butter for that day shall be used in lieu of the price for Grade AA (93-score) butter.

(2) Multiply by 8.2 the weighted average of carlot prices per pound for spray process nonfat dry milk, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding delivery period through the 25th day of the current delivery period, by the U. S. D. A.; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 75.2 cents and adjust to the nearest full cent.

§ 1011.51 *Class I milk price.* Subject to the provisions of § 1011.54 the minimum price to be paid by each handler for milk received at his fluid milk plant from producers or the fluid milk plant of a cooperative association during the month and utilized as Class I milk during the 18 month period following the effective date of this part shall be the basic formula price for the preceding month, plus the applicable amounts specified below for the marketing area zone in which such plant is located. For plants located outside the marketing area and west of Lake Michigan the price (subject to § 1011.55) shall be that specified for Zone 1. For plants located outside the marketing area and east of Lake Michigan the price (subject to § 1011.55) shall be that specified for Zone 2.

Zone	Months of March through June	Months of January February and December	Months of July through November
1	$0.75	$0.95	$1.15
2	.95	1.15	1.35

§ 1011.52 *Class II milk price.* Subject to the provisions of § 1011.54, the minimum price to be paid by each handler for milk received at his fluid milk plant from producers or from the fluid milk plant of a cooperative association, during the month and utilized as Class II milk shall be the basic formula price.

§ 1011.53 *Class III milk price.* Subject to the provisions of § 1011.54 the minimum price per hundredweight to be paid by each handler for milk received at his fluid milk plant from producers or the fluid milk plant of a cooperative association during the month and utilized as Class III milk shall be the price computed pursuant to § 1011.50 (b) less ten cents.

§ 1011.54 *Handler butterfat differential.* If the average butterfat test of Class I milk, Class II milk or Class III milk as computed pursuant to § 1011.48 is more or less than 3.5 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization, for each one-tenth of one percent that such average butterfat test is above or below 3.5 percent, a butterfat differential computed by multiplying the simple average, as computed by the market administrator, of the daily wholesale selling price per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the U. S. D. A. during the month specified below by the applicable factor listed, and rounding to the nearest one-tenth cent:

(a) For Class I milk, multiply such price for the preceding month by 0.125;

(b) For Class II and Class III milk, multiply such price for the current month by 0.115.

§ 1011.55 *Handler location adjustments.* (a) For milk received at a fluid milk plant located outside the marketing area, west of Lake Michigan and more than 50 miles from the nearer of the City Hall in Ironwood, Michigan, or the City Hall in Iron Mountain, Michigan, the applicable Zone 1 price for Class I milk shall be reduced 10 cents, plus 2 cents for each 20 miles or fraction thereof in excess of 70 miles.

(b) For milk received at a fluid milk plant located outside the marketing area, east of Lake Michigan, and more than 50 miles from the City Hall in St. Ignace, Michigan the applicable Zone 2 price for Class I milk shall be reduced 10 cents, plus 2 cents for each 20 miles or fracton thereof in excess of 70 miles.

(c) Any distance used to determine locaton adjustments shall be the shortest hard surfaced highway distance as determined by the market administrator.

§ 1011.56 *Equivalent price provision.* Whenever the provisions of this part require the market administrator to use a specific price (or prices) for milk or any milk product for the purpose of determining minimum class prices or for any other purpose and the specified price is not reported or published, the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with, the price specified.

HANDLER'S OBLIGATION AND UNIFORM PRICE

§ 1011.60 *Value of producer milk.* The value of producer milk received by each handler at fluid milk plant(s) shall be computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1011.48, by the applicable respective class prices (adjusted pursuant to §§ 1011.54 and 1011.55), and add together the resulting amounts;

(b) Add the amounts computed by multiplying the quantity of overage assigned to each class pursuant to § 1011.46 (g) and the corresponding step of § 1011.47 by the applicable class price;

(c) Add the amount obtained in multiplying by the difference between the Class II price for the preceding month and the Class I price for the current month the lesser of:

(1) The hundredweight of milk subtracted from Class I pursuant to § 1011.46 (d) and the corresponding step of § 1011.47; or

(2) The hundredweight of producer milk classified as Class II, during the preceding month; and

(d) Add or subtract, as the case may be, the amount necessary to correct errors in receipts or utilization for previous months as disclosed by audit by the market administrator.

§ 1011.61 *Computation of uniform price.* For each month the market administrator shall compute for each handler a "uniform price" per hundredweight of producer milk of 3.5 percent butterfat content delivered to fluid milk plants of such handler as follows:

(a) From the value of milk computed for such handler pursuant to § 1011.60, subtract, if the weighted average butterfat test of all milk represented by such value is greater than 3.5 percent or add, if the weighted average butterfat test of such milk is less than 3.5 percent an amount computed by multiplying the total pounds of butterfat represented by the difference of such weighted average butterfat test from 3.5 percent by the butterfat differential computed pursuant to § 1011.62 multiplied by 10;

(b) Adjust the resulting amount by the sum of money used in adjusting the uniform price, pursuant to paragraph (c) of this section for the previous month to the nearest cent;

(c) Except as provided in paragraph (d) of this section, divide the result by the total hundredweight of producer milk represented by the amount computed pursuant to § 1011.60 (a) and adjust the resulting figure to the nearest cent. The "uniform price" so computed shall be that applicable to milk delivered to the fluid milk plant(s) of a handler at whose plant or plants a single Class I price is applicable pursuant to §§ 1011.51 and 1011.55;

(d) For each handler operating two or more fluid milk plants at which different Class I prices are applicable pursuant to §§ 1011.51 and 1011.55, the value of milk used in the computation provided in paragraph (c) of this section shall first be further adjusted by adding the value of all applicable producer location adjustments pursuant to § 1011.63. The uniform price as computed shall be that applicable at the plant or plants of such handler at which the highest Class I price is applicable.

§ 1011.62 *Producer butterfat differential.* The applicable uniform prices to be paid pursuant to § 1011.70 to producers delivering milk to each handler shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a) and (b) of § 1011.54, weighted by the pounds of butterfat in producer milk used by such handler in each class and the result rounded to the nearest tenth of a cent.

§ 1011.63 *Producer location adjustments.* In making payments pursuant to § 1011.70 to producers or a cooperative association for milk for which a uniform price was computed pursuant to § 1011.61 (d) such uniform price for milk received at a plant at which a lesser Class I price is applicable than at the plant for which the uniform price is computed shall be

reduced by an amount equal to the difference between the applicable Class I prices.

§ 1011.64 *Notification.* On or before the 12th day after the end of each month, the market administrator shall mail to each handler, at his last known address a statement showing for such month:

(a) The amount and value of his producer milk in each class;

(b) The uniform price applicable at each fluid milk plant of such handler pursuant to §§ 1011.61 and 1011.63 and the butterfat differential computed pursuant to § 1011.62; and

(c) The amounts to be paid by such handler pursuant to §§ 1011.71 and 1011.72.

PAYMENT FOR MILK

§ 1011.70 *Time and method of payment.* (a) Except as provided in paragraph (b) or (c) of this section, on or before the 15th day after the end of each month each handler who received milk from producers shall pay for milk received during such month to each producer for milk received from him the uniform price as provided in § 1011.61 adjusted by the butterfat differential pursuant to § 1011.62 and the location adjustment pursuant to § 1011.63.

(b) (1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any claim on the part of the association, each handler shall pay to the cooperative association on or before the 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amount owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer and submit to the cooperative association on or before the 13th day of each month, written information which shows for each such member-producer:

(i) The total pounds of milk received from him during the preceding month,

(ii) The total pounds of butterfat contained in such milk,

(iii) The number of days on which milk was received, and

(iv) The amounts withheld by the handler in payment for supplies sold.

The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association.

(2) A copy of each such request, promise to reimburse, and a certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, shall be made by written notice to the market administrator, and shall be subject to his determination.

(c) Each handler shall make payment to a cooperative association for milk received from the fluid milk plant of such cooperative association on or before the 10th day after the end of the month in which it was received, at not less than the applicable class prices.

§ 1011.71 *Expense of administration.* As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 13th day after the end of each month, 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe with respect to:

(a) All receipts within the month of milk from producers, including milk of such handler's own production; and

(b) Any other source milk allocated to Class I pursuant to § 1011.46 (b) and the corresponding step of § 1011.47.

§ 1011.72 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments pursuant to § 1011.70 for milk received from each producer (excluding milk of such handler's own production) at a plant not operated by a cooperative association of which such producer is a member, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as the Secretary may prescribe, and on or before the 13th day after the end of each month shall pay such deductions to the market administrator. Such monies shall be used by the market administrator to verify weights, samples and tests of milk received from producers and to provide producers with market information, such services to be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers whose milk is received at a fluid milk plant not operated by a cooperative association of which such producers are members, and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to § 1011.70 as may be authorized by such producers, and pay such deductions on or before the 13th day after the end of the month to the cooperative association rendering such services of which such producers are members.

§ 1011.73 *Errors in payment.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due:

(a) To the market administrator from such handler,

(b) To such handler from the market administrator, or

(c) To any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due; and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

§ 1011.74 *Overdue accounts.* Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1011.71, 1011.72 and 1011.73 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

§ 1011.75 *Termination of obligations.* The provisions of this section shall apply to any obligations under this part for the payment of money irrespective of when such obligation arose.

(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 two years after the last day of the month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) 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 a cooperative association, the name of such producer(s) or association or, if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-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 two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his 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 two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or set off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the Act, a petition claiming such money.

APPLICATION OF PROVISIONS

§ 1011.80 *Producer-handler exemption.* A producer-handler shall be exempt from all provisions of this part except §§ 1011.32, 1011.34 and 1011.35.

§ 1011.81 *Exempt handler.* A handler who operates a fluid milk plant, of the type specified in § 1011.8 (a), located outside the marketing area from which an average of less than 600 pounds of fluid milk products per day are disposed of during the month in the marketing area on route(s), shall be exempt from all provisions of this part except §§ 1011.33 through 1011.35.

§ 1011.82 *Handlers subject to other Federal orders.* The provisions of this part shall not apply to a handler with respect to the operation of a fluid milk plant during any month in which the milk at such plant would be subject to the classification, pricing and payment provisions of another marketing agreement or order issued pursuant to the Act and the disposition of fluid milk products in the other Federal marketing area exceeds that in the Michigan Upper Peninsula marketing area: *Provided*, That the operator of a fluid milk plant which is exempted from the provisions of this part pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1011.90 *Effective time.* The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1011.91 *Suspension or termination.* The Secretary shall, whenever he finds that this part, or any provision of this part, obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this part or any such provision of this part.

§ 1011.92 *Continuing obligation.* If upon the suspension or termination of any or all provisions of this part, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 1011.93 *Liquidation.* Under the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers, in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1011.100 *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.

§ 1011.101 *Separability of provisions.* If any provision of this part, or the application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Order[1] Regulating the Handling of Milk in the Northeastern Wisconsin Marketing Area

Sec.

AUTHORITY: §§ 1016.0 to 1016.101 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 1016.0 *Findings and determinations*—(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 a proposed marketing agreement and a proposed order regulating the handling of milk in the Northeastern Wisconsin marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, and all of the terms and conditions thereof, will tend

[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 orders, have been met.

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 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 regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to (a) all receipts within the month of milk from producers, including milk of such handler's own production; (b) any other source milk allocated to Class I pursuant to § 1016.46 (b) and the corresponding step of § 1016.47; and (c) the applicable amount specified in § 1016.83 (a) (2) or (b) (2).

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeastern Wisconsin marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

DEFINITIONS

§ 1016.1 *Act.* "Act" means Public Act No. 10, 73d Congress as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C., 601 et seq.).

§ 1016.2 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ 1016.3 *U. S. D. A.* "U. S. D. A." means the United States Department of Agriculture.

§ 1016.4 *Person.* "Person" means any individual, partnership, corporation, association, or any other business unit.

§ 1016.5 *Northeastern Wisconsin marketing area.* The Northeastern Wisconsin marketing area, hereinafter referred to as the "marketing area", means all territory within (a) the counties of Brown, Calumet, Kewaunee, Langlade, Lincoln, Manitowoc, Oneida, Outagamie, Portage, Shawano (exclusive of the Menominee Indian Reservation), Sheboygan, Vilas, Waupaca and Winnebago, all in Wisconsin, including all towns, villages and cities; (b) the County of Fond du Lac, Wisconsin, exclusive of the towns of Alto, Ashford, Auburn, Byron, Eden, Oakfield, Osceola and Waupun, the villages of Campbellsport, Eden and Oakfield, and the city of Waupun; (c) the city of Sturgeon Bay in Door County, Wisconsin; (d) the towns of Bergen, Berlin, Bevent, Easton, Elderon, Franzen, Guenther, Harrison, Hewitt, Knowlton, Kronenwetter, Maine, Marathon, Mosinee, Norrie, Plover, Reid, Rib Mountain, Ringle, Stettin, Texas, Wausau and Weston, the villages of Brokaw, Elderon, Hatley, Marathon and Rothschild, and the cities of Mosinee Schofield and Wausau, all in Marathon County, Wisconsin; (e) the town of Peshtigo and the cities of Marinette and Peshtigo in Marinette County, Wisconsin; (f) the cities of Gillett, Oconto and Oconto Falls in Oconto County, Wisconsin; (g) the towns of Cranmoor, Grand Rapids, Port Edwards, Rudolph, Saratoga and Seneca, the villages of Biron and Port Edwards, and the cities of Nekoosa and Wisconsin Rapids in Wood County, Wisconsin; and (h) the city of Menominee in Menominee County, Michigan.

§ 1016.6 *Fluid milk product.* "Fluid milk product" means milk, skim milk, flavored milk, flavored milk drinks, buttermilk, half and half and cream (sweet or sour).

§ 1016.7 *Route.* "Route" means a delivery (including delivery by a vendor or sale from a plant or plant store) of any fluid milk product, other than a delivery to any milk processing plant.

§ 1016.8 *Pool plant.* "Pool Plant" means any milk plant approved by a duly constituted authority for the handling of milk to be labeled Grade A, except as provided in §§ 1016.80, 1016.81 and 1016.82:

(a) At which milk is processed or packaged and from which during the month:

(1) Disposition on routes in the marketing area of fluid milk products labeled Grade A is 20 percent or more of receipts of Grade A milk from dairy farmers, and

(2) Total disposition on routes of fluid milk products labeled Grade A is 50 percent or more of receipts of Grade A milk from dairy farmers and other milk plants; or

(b) At which milk eligible for distribution as Grade A milk is received from dairy farmers and from which during the month 50 percent or more of such receipts is moved to a plant described in paragraph (a) of this section. Any such receiving plant that was a pool plant during each of the months of August through November immediately preceding shall continue to be a pool plant for each of the succeeding months of December through July unless written request to the contrary is filed with the market administrator on or before the first day of any such month.

§ 1016.9 *Handler.* "Handler" means (a) the operator of a pool plant in his capacity as such; (b) the operator of any other plant from which fluid milk products labeled Grade A are disposed of during the month on routes in the marketing area; or (c) a cooperative association with respect to milk of producers diverted for the account of such association from a pool plant to a nonpool plant.

§ 1016.10 *Producer.* (a) "Producer" means a person, other than a producer-handler, who produces Grade A milk in conformity with the sanitation requirements of any duly constituted Federal, state, county, or municipal authority, whose milk is received at a pool plant. "Producer" shall also include any such person with respect to milk diverted from a pool plant to a nonpool plant for the account of a handler or cooperative association. Milk so diverted shall be deemed to have been received at the pool plant from which diverted, if for the account of the operator of such plant, or at an identical location if for the account of a cooperative association through diversion from the pool plant of another handler.

(b) During the months of March, April, May and June "producer" shall not include any such person whose milk is received or diverted from a farm from which a base applicable for the current year was earned under the provisions of either Federal Order No. 41 or Federal Order No. 7 by delivery to a plant subject to such order operated by the handler, an affiliate of such handler or any person who controls or is controlled by such handler.

§ 1016.11 *Producer-handler.* "Producer-handler" means a dairy farmer who distributes fluid milk products on a route in the marketing area, but receives no fluid milk products during the month except his own production or by transfer from pool plants.

§ 1016.12 *Producer milk.* "Producer milk" means milk received at a pool plant directly from producers, or diverted to a nonpool plant pursuant to § 1016.10.

§ 1016.13 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in (or represented by):

(a) Receipts during the month of fluid milk products except

(1) Receipts from other pool plants or

(2) Producer milk; and

(b) Products, other than fluid milk products, from any source (including those produced at the pool plant) which are reprocessed or converted to another product in the pool plant during the month.

§ 1016.14 *Cooperative Association.* "Cooperative Association" means any cooperative marketing association of producers, as defined in § 1016.10, which the Secretary determines after application by the association is qualified under provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act."

MARKET ADMINISTRATOR

§ 1016.20 *Designation.* The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined

by, and shall be subject to removal by the Secretary.

§ 1016.21 *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.

§ 1016.22 *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 30 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(c) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(d) Pay out of the funds provided by § 1016.74;

(1) The cost of his bond and of the bonds of his employees,

(2) His own compensation, and

(3) All other expenses, except those incurred under § 1016.75, 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 in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the day upon which he is required to perform such acts, has not made (1) reports pursuant to §§ 1016.30 through 1016.33, or (2) payments pursuant to §§ 1016.70 through 1016.76;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) Audit records of all handlers or persons upon whose utilization the classification of skim milk and butterfat for each handler depends, to verify the reports and payments required pursuant to the provisions of this part; and

(i) Publicly announce the prices determined for each month as follows:

(1) On or before the 5th day of each month the minimum price for Class I milk pursuant to § 1016.51 and the Class I butterfat differential pursuant to § 1016.54 (a), both for the current month; the minimum price for Class II milk pursuant to § 1016.52 and the Class II butterfat differential pursuant to § 1016.54 (b), both for the preceding month; and the minimum price for Class III milk pursuant to § 1016.53 and the Class III butterfat differential pursuant to § 1016.54 (b), both for the preceding month;

(2) On or before the 14th day of each month the uniform price for the preceding month, computed pursuant to § 1016.61 and the producer butterfat differential computed pursuant to § 1016.62.

Reports, Records and Facilities

§ 1016.30 *Monthly reports of receipts and utilization.* On or before the 5th day (exclusive of Sundays and holidays) of each month, each handler who operates pool plants, each cooperative association that is a handler pursuant to § 1016.9 (c) and each handler whose obligation is computed pursuant to § 1016.83 shall report to the market administrator for the preceding month for each pool plant, in the detail and on forms prescribed by the market administrator as follows:

(a) The quantities of butterfat and skim milk contained in or represented by:

(1) Producer milk, or receipts from dairy farmers producing Grade A milk,

(2) Fluid milk products received from other pool plants,

(3) Other source milk, and

(4) Inventories of fluid milk products on hand at the end of each month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section; and

(c) Such other information with respect to sources and disposition as the market administrator may prescribe.

§ 1016.31 *Payroll reports.* On or before the 25th day of each month each handler operating a pool plant or receiving Grade A milk from dairy farmers shall report his producer payroll for each pool plant for the preceding month which shall show:

(a) The pounds of milk received from each producer or dairy farmer producing Grade A milk and the percentage of butterfat contained therein;

(b) The date and net amount of payment to such producer or dairy farmer, or to a cooperative association for such producer's milk, with the price, deductions and charges involved and the nature of each.

§ 1016.32 *Producer-handler reports.* Each producer-handler shall make reports at such time and in such manner as the market administrator may request.

§ 1016.33 *Exempt handler reports.* Each handler exempt pursuant to §§ 1016.81 and 1016.82 shall report to the market administrator his disposition of fluid milk products on routes within the marketing area at such time and in such manner as the market administrator shall prescribe.

§ 1016.34 *Records and facilities.* Each handler shall maintain and make available to the market administrator, during the usual hours of business such accounts and records of all of his operations and such facilities as are necessary to verify reports or to ascertain the correct information with respect to:

(a) The receipts and utilization or disposition of all skim milk and butterfat received, including all milk products received and disposed of in the same form;

(b) The weights and tests for butterfat, skim milk and other content of all milk and milk products handled;

(c) Inventories of all dairy products on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations.

§ 1016.35 *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 three years to begin at the end of the month to which such books and records pertain: *Provided,* That if within such three year period, the market administrator notifies a 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 until further written notification from the market administrator. 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

§ 1016.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat required to be reported pursuant to § 1016.30 shall be classified (separately as skim milk and butterfat), pursuant to §§ 1016.41 through 1016.45.

§ 1016.41 *Classes of utilization.* Subject to the conditions set forth in §§ 1016.42 and 1016.43, the classes of utilization shall be:

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

(1) Disposed of in the form of fluid milk products, except those classified pursuant to paragraph (c) (2) of this section; and

(2) Not accounted for as Class II and Class III utilization.

(b) Class II utilization shall be all skim milk and butterfat:

(1) Used to produce any product other than those specified in paragraphs (a) or (c) of this section; and

(2) In inventories of fluid milk products on hand at the end of the month.

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

(1) Used to produce butter, nonfat dry milk or cheese in any form except cottage cheese;

(2) In skim milk disposed of for livestock feed or dumped subject to prior notification to and verification (at his discretion) by the market administrator;

(3) In shrinkage of skim milk and butterfat allocated to milk received from producers, but not to exceed 2 percent of such receipts; and

(4) In shrinkage of other source milk.

§ 1016.42 *Shrinkage.* (a) When producer milk is utilized in conjunction with other source milk, the shrinkage shall be allocated pro rata between the receipts of skim milk and butterfat in producer milk and other source milk.

(b) Producer milk transferred by a handler to another handler without first having been received in the transferor handler's plants shall be included in the receipts at the plant of the transferee handler for the purpose of computing his shrinkage and shall be excluded at the plant of the transferor handler in computing his shrinkage.

§ 1016.43 *Transfers.* Skim milk and butterfat transferred or diverted as milk, skim milk or cream in bulk form from a pool plant to:

(a) The pool plant of another handler shall be classified at the utilization indicated by the operators of both plants in their reports submitted pursuant to § 1016.30, otherwise as Class I utilization, subject in either event to the following conditions:

(1) The receiving plant has utilization in such class of an equivalent amount of skim milk and butterfat, respectively, and

(2) Such skim milk and butterfat shall be classified so as to allocate to producer milk the greatest possible total Class I utilization in the two plants;

(b) A plant operated by a producer-handler or a handler exempt pursuant to § 1016.81, shall be Class I utilization;

(c) A nonpool plant (except as specified in paragraph (b) of this section) shall be Class I utilization unless the following conditions apply:

(1) Utilization in another class is claimed by the transferring handler in his report submitted pursuant to § 1016.30 for the month,

(2) Class I utilization in the nonpool milk plant does not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers who the market administrator determines are the regular source of supply of Grade A milk for such plant. If Class I utilization exceeds such receipts, the skim milk and butterfat transferred shall be Class I to the extent of such excess, and

(3) The operator of the nonpool milk plant maintains books and records which are made available if requested by the market administrator and which are adequate for the verification of such utilization.

§ 1016.44 *Responsibility of handlers.* All skim milk and butterfat shall be classified as Class I utilization unless the handler who first received such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 1016.45 *Computation of skim milk and butterfat in each class.* For each month the market administrator shall correct for mathematical and obvious errors the monthly report submitted by each handler and compute the total pounds of skim milk and butterfat respectively, in Class I, Class II and Class III utilization for such handler: *Provided,* That 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 disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water normally associated with such solids in the form of whole milk.

§ 1016.46 *Allocation of butterfat classified.* The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to milk received from producers:

(a) Subtract from the total pounds of butterfat in Class III utilization, the pounds of butterfat shrinkage allowed pursuant to § 1016.41 (c) (3);

(b) Subtract from the pounds of butterfat remaining in each class, in series beginning with the lowest-priced utilization, the pounds of butterfat in other source milk received from a plant(s) other than those subject to another marketing agreement or order issued pursuant to the act;

(c) Subtract from the pounds of butterfat remaining in each class, in series beginning with the lowest-priced utilization, the pounds of butterfat in other source milk received from a plant subject to another marketing agreement or order issued pursuant to the act;

(d) Subtract from the pounds of butterfat remaining in Class II milk and Class I milk, in series beginning with Class II, the pounds of butterfat contained in inventory of fluid milk products on hand at the beginning of the month;

(e) Subtract from the remaining pounds of butterfat in each class the pounds of butterfat received as fluid milk products from pool plants of other handlers according to the classification established pursuant to §§ 1016.41 and 1016.43 (a);

(f) Add to the remaining pounds of butterfat in Class III utilization the pounds subtracted pursuant to paragraph (a) of this section; and

(g) If the remaining pounds of butterfat in all classes exceed the pounds of butterfat in milk received from producers, subtract such overage from the remaining pounds of butterfat in each class in series, beginning with the lowest-priced utilization.

§ 1016.47 *Allocation of skim milk classified.* Allocate the pounds of skim milk in each class to milk received from producers in the same manner as that prescribed for butterfat in § 1016.46.

§ 1016.48. *Computation of total producer milk in each class.* The amounts computed pursuant to §§ 1016.46 and 1016.47 will be combined into one total for each class and the weighted average butterfat content of producer milk in each class will be determined.

MINIMUM PRICES

§ 1016.50 *Basic formula price.* The basic formula price shall be the higher of the prices computed pursuant to paragraphs (a) and (b) of this section:

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

Present Operator and Location

Borden Co., Mt. Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richmond Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed from the following formula:

(1) Multiply by 4.24 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter per pound at Chicago, as reported by the U. S. D. A., during the month: *Provided,* That if no price is reported for Grade AA (93-score) butter, the highest of the prices reported for Grade A (92-score) butter for that day shall be used in lieu of the price for Grade AA (93-score) butter.

(2) Multiply by 8.2 the weighted average of carlot prices per pound for spray process nonfat dry milk, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding delivery period through the 25th day of the current delivery period, by the U. S. D. A.; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 75.2 cents and adjust to the nearest full cent.

§ 1016.51 *Class I milk price.* Subject to the provisions of § 1016.54 the minimum price to be paid by each handler for milk received at his pool plant from producers or the pool plant of a cooperative association during the month and utilized as Class I milk during the 18 month period following the effective date of this part shall be:

(a) Except as provided in paragraph (b) of this section, the basic formula price for the preceding month plus $0.54 for the months of March, April, May and June; $0.74 for the months of January, February, July and December; and $0.94 for all other months.

(b) For plants located in the Wisconsin counties of Florence, Forest, Marinette, Oneida and Vilas or in the State of Michigan, the price computed in paragraph (a) of this section shall be increased ten cents.

§ 1016.52 *Class II milk price.* Subject to the provisions of § 1016.54 the minimum price to be paid by each handler for milk received at his pool plant from producers or the pool plant of a cooperative association, during the month and utilized as Class II milk shall be the basic formula price.

§ 1016.53 *Class III milk price.* Subject to the provision of § 1016.54 the minimum price per hundredweight to be paid by each handler for milk received at his pool plant from producers or the pool plant of a cooperative association during the month and utilized as Class III milk shall be the price computed pursuant to § 1016.50 (b).

§ 1016.54 *Handler butterfat differential.* If the average butterfat test of Class I milk, Class II milk or Class III milk as computed pursuant to § 1016.48 is more or less than 3.5 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization, for each one-tenth of one percent that such average butterfat test is above or below 3.5 percent, a butterfat differential computed by multiplying the simple average, as computed by the market administrator, of the daily wholesale selling price per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the U. S. D. A. during the month specified below by the applicable factor listed, and rounding to the nearest one-tenth cent:

(a) For Class I milk, multiply such price for the preceding month by 0.125;

(b) For Class II and Class III milk, multiply such price for the current month by 0.115.

§ 1016.55 *Equivalent price provision.* Whenever the provisions of this part require the market administrator to use a specific price (or prices) for milk or any milk product for the purpose of determining minimum class prices or for any other purpose and the specified price is not reported or published, the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with, the price specified.

HANDLER'S OBLIGATION AND UNIFORM PRICE

§ 1016.60 *Value of producer milk.* The value of producer milk received by each handler at pool plant(s) and by any cooperative association with respect to milk for which it is a handler pursuant to § 1016.9 (c) shall be computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1016.48, by the applicable respective class prices (adjusted pursuant to § 1016.54);

(b) Add the amounts computed by multiplying the quantity of overage assigned to each class pursuant to § 1016.46 (g) and the corresponding step of § 1016.47 by the applicable class price;

(c) Add the amount obtained in multiplying by the difference between the Class II price for the preceding month and the Class I price for the current month the lesser of:

(1) The hundredweight of milk subtracted from Class I pursuant to § 1016.46 (d) and the corresponding step of § 1016.47; or

(2) The hundredweight of producer milk classified as Class II, during the preceding month; and

(d) If during the month total receipts of producer milk were 110 percent or more of the total Class I milk at pool plants, add an amount equal to the difference between the values (at test and location) at the Class I price and Class III price with respect to (1) Other source milk subtracted from Class I pursuant to § 1016.46 (b) and the corresponding step of § 1016.47; and

(2) Milk in inventory subtracted from Class I pursuant to § 1016.46 (d) and the corresponding step of § 1016.47 which is in excess of the sum of:

(i) The quantity for which payment is computed pursuant to paragraph (c) of this section; and

(ii) The quantity subtracted from Class II pursuant to § 1016.46 (c) and the corresponding step of § 1016.47 in the month preceding.

§ 1016.61 *Computation of uniform price.* For each month, the market administrator shall compute the uniform price per hundredweight for producer milk of 3.5 percent butterfat content delivered to pool plants other than those specified in § 1016.63, as follows:

(a) Combine into one total the individual values of milk of all handlers computed pursuant to § 1016.60;

(b) Add, if the weighted average butterfat test of all producer milk represented in paragraph (a) of this section is less than 3.5 percent, or subtract, if the weighted average butterfat test of such milk is more than 3.5 percent, an amount computed by multiplying the total pounds of butterfat represented by the difference of such average butterfat test from 3.5 percent by the butterfat differential provided in § 1016.62 multiplied by 10;

(c) Subtract the aggregate of the values of the applicable producer location adjustments pursuant to § 1016.63;

(d) Add not less than one half of the unobligated balance in the producer-equalization fund;

(e) Divide the resulting amount by the hundredweight of milk received from producers; and

(f) Subtract not less than 4 cents nor more than 5 cents.

§ 1016.62 *Producer butterfat differential.* The applicable uniform prices to be paid pursuant to § 1016.70 to producers delivering milk to each handler shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a) and (b) of § 1016.54, weighted by the pounds of butterfat in producer milk used by such handler in each class and the result rounded to the nearest tenth of a cent.

§ 1016.63 *Producer location adjustments.* In making payments pursuant to § 1016.70 to producers or a cooperative association for milk received at a plant located in the Wisconsin counties of Florence, Forest, Marinette, Oneida or Vilas or in the State of Michigan, the uniform price computed pursuant to § 1016.61 shall be increased 10 cents.

§ 1016.64 *Notification.* On or before the 14th day after the end of each month, the market administrator shall mail to each handler, at his last known address a statement showing for such month:

(a) The amount and value of his producer milk in each class;

(b) The uniform price for the month pursuant to §§ 1016.61 and 1016.63 and the butterfat differential computed pursuant to § 1016.62; and

(c) The amount due such handler pursuant to § 1016.73 and the amounts to be paid by such handler pursuant to §§ 1016.72, 1016.74 and 1016.75.

PAYMENT FOR MILK

§ 1016.70 *Time and method of payment.* (a) (1) Except as provided in paragraphs (b) and (c) of this section, on or before the 18th day after the end of each month each handler who received milk from producers shall pay for milk received during such month to each producer for milk received from him the uniform price as provided in § 1016.61 adjusted by the butterfat differential pursuant to § 1016.62 and the location adjustment pursuant to § 1016.63.

(2) If by such date a handler has not received full payment pursuant to § 1016.73, he may reduce his total payments to all producers and cooperative associations uniformly by not more than the amount of reduction in payment from the market administrator; he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b) (1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any claim on the part of the association, each handler shall pay to the cooperative association on or before the 16th day of each month, in lieu of payments pursuant to paragraph (a) of this section an amount equal to the gross sum due for all milk received from certified members, less amount owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer and submit to the cooperative association on or before the 16th day of each month, written information which shows for each such member-producer:

(i) The total pounds of milk received from him during the preceding month,

(ii) The total pounds of butterfat contained in such milk,

(iii) The number of days on which milk was received, and

(iv) The amounts withheld by the handler in payment for supplies sold.

The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until

the original request is rescinded in writing by the association.

(2) A copy of each such request, promise to reimburse, and a certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, shall be made by written notice to the market administrator and shall be subject to his determination.

(c) Each handler shall make payment to a cooperative association for milk received from the pool plant of such cooperative association on or before the 10th day after the end of each month in which it was received, at not less than the applicable class prices.

§ 1016.71 *Producer-equalization fund.* The market administrator shall establish and maintain a separate fund, known as the "producer-equalization fund" into which he shall deposit all payments received pursuant to §§ 1016.72 and 1016.83 (a) (1) or (b) (1) (including any adjustments thereto pursuant to § 1016.76) and out of which he shall make all payments pursuant to § 1016.73 (including any adjustments thereto pursuant to § 1016.76).

§ 1016.72 *Payments to the producer-equalization fund.* On or before the 16th day after the end of each month, each handler whose value of milk is required to be computed pursuant to § 1016.60 shall pay to the market administrator any amount by which such value for such month is greater than the minimum amount required to be paid by him pursuant to § 1016.70.

§ 1016.73 *Payments out of the producer-equalization fund.* On or before the 17th day after the end of each month, the market administrator shall pay to each handler any amount by which the value of milk for such handler for the month pursuant to § 1016.60 is less than the total minimum amount required to be paid by him pursuant to § 1016.70, less any unpaid obligations of such handler to the market administrator pursuant to § 1016.72: *Provided*, That if the balance in the producer-equalization fund is insufficient to make all payments to all such handlers pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 1016.74 *Expense of administration.* As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 16th day after the end of each month 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe with respect to:

(a) All receipts within the month of milk from producers, including milk of such handler's own production;

(b) Any other source milk allocated to Class I pursuant to § 1016.46 (b) and the corresponding step of § 1016.47; and

(c) The applicable amount specified in § 1016.83 (a) (2) or (b) (2).

§ 1016.75 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments pursuant to § 1016.70 for milk received from each producer (excluding milk of such handler's own production) at a plant not operated by a cooperative association of which such producer is a member, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as the Secretary may prescribe, and on or before the 16th day after the end of each month shall pay such deduction to the market administrator. Such monies shall be used by the market administrator to verify weights, samples and tests of milk received from producers and to provide producers with market information, such services to be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers whose milk is received at a pool plant not operated by a cooperative association of which such producers are members, and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to § 1016.70 as may be authorized by such producers, and pay such deductions on or before the 16th day after the end of the month to the cooperative association rendering such services of which such producers are members.

§ 1016.76 *Errors in payment.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due:

(a) To the market administrator from such handler,

(b) To such handler from the market administrator, or

(c) To any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

§ 1016.77 *Overdue accounts.* Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1016.72 through 1016.76 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

§ 1016.78 *Termination of obligations.* The provisions of this section shall apply to any obligations under this part for the payment of money irrespective of when such obligation arose.

(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 two years after the last day of the month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) 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 a cooperative association, the name of such producer(s) or associations 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 two-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 two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his 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 two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the 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 period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

APPLICATION OF PROVISIONS

§ 1016.80 *Producer-handler exemption.* A producer-handler shall be exempt from all provisions of this part except §§ 1016.32, 1016.34 and 1016.35.

§ 1016.81 *Exempt handler.* A handler who operates a fluid milk plant located outside the marketing area from which an average of less than 600 pounds of fluid milk products per day are disposed of during the month in the marketing area on route(s), shall be exempt from all provisions of this part except §§ 1016.33 through 1016.35.

§ 1016.82 *Handlers subject to other Federal orders.* The provisions of this part shall not apply to a handler with respect to the operation of a pool plant during any month in which the milk at such plant would be subject to the classification, pricing and payment provisions of another marketing agreement or order issued pursuant to the act and the disposition of fluid milk products in the other Federal marketing area exceed that in the Northeastern Wisconsin marketing area: *Provided,* That the operator of a pool plant which is exempted from the provisions of this part pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

§ 1016.83 *Handler operating a nonpool distributing plant.* Each handler, other than a producer-handler or one exempt pursuant to §§ 1016.81 or 1016.82, who during the month operates a Grade A milk plant from which fluid milk products are distributed on a route in the marketing area, shall, in lieu of the payments required pursuant to §§ 1016.70 through 1016.74, pay to the market administrator as follows:

(a) If such handler so elects at the time of reporting pursuant to § 1016.30, his obligations shall be as follows:

(1) On or before the 16th day after the end of the month, for the producer-equalization fund, an amount equal to the difference between the value of the Class I milk disposed of during the month on routes in the marketing area at the applicable Class I price for the month and the value of such milk at the Class III price; and

(2) On or before the 16th day after the end of the month, as his pro rata share of the expense of administration, the rate specified in § 1016.74 with respect to Class I milk disposed of on routes in the marketing area.

(b) Unless such handler elects to have his obligations computed pursuant to paragraph (a) of this section, his obligations shall be as follows:

(1) On or before the 25th day after the end of the month, for the producer-equalization fund, the lesser of the amount computed pursuant to paragraph (a) (1) of this section, or any plus amount resulting from the following computation:

(i) Compute an amount equal to the value of milk which would be computed pursuant to § 1016.60 for Grade A milk received from dairy farmers at such plant for such month if such plant had been a pool plant;

(ii) Deduct the gross payments made by the handler to dairy farmers, for Grade A milk received at such plant for such month. Gross payments to be included in this computation shall be limited to cash payments made to the dairy farmer or his assignee on or before the date of the report required pursuant to § 1016.31, plus the value of any supplies or services furnished by the handler on prior written authorization or as evidenced by a delivery ticket signed by the dairy farmer; and

(2) On or before the 16th day after the end of the month, as his pro rata share of the expense of administration, an amount equal to that which would have been computed pursuant to § 1016.74 had such plant been a pool plant.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1016.90 *Effective time.* The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1016.91 *Suspension or termination.* The Secretary shall, whenever he finds that this part, or any provision of this part, obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this part or any such provision of this part.

§ 1016.92 *Continuing obligation.* If upon the suspension or termination of any or all provisions of this part, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 1016.93 *Liquidation.* (a) Under the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent.

(b) If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers, in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1016.100 *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.

§ 1016.101 *Separability of provisions.* If any provision of this part, or the application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

[F. R. Doc. 58-7635; Filed, Sept. 17, 1958; 8:56 a. m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 193]

[Ex Parte No. MC-40]

MOTOR CARRIERS; PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

BRAKES

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 5th day of September, A. D. 1958.

The matter of parts and accessories necessary for safe operation, particularly the provisions of § 193.42 (c) of the Motor Carrier Safety Regulations relating to brakes required on trucks and truck-tractors having three or more axles, and § 193.48, requiring all brakes to be operative, with certain exceptions, as prescribed by order dated April 14, 1952, as amended, the record in the entitled proceeding, and petition of Pacific Intermountain Express Company, dated April 30, 1958, for reconsideration, in part, of our order of April 3, 1958, denying petition of November 8, 1957; being under consideration, and

It appearing that petitioner's prayer for a stay of our order of April 3, 1958, denying petition of November 8, 1957, was denied by our order issued this date;

It further appearing that continuing study and investigation have shown that some amendment of § 193.42 (c), but in a different manner than that proposed by the petitioner, may be warranted, and that amendment of § 193.48 may be desirable in the interest of improved safety of motor vehicle operation; and good cause appearing therefor:

It is ordered, That pursuant to section 4 (a) of the Administrative Procedure Act (60 Stat. 237, 5 U. S. C. 1003) notice is hereby given of the Commission's proposal to amend §§ 193.42 (c) and 193.48 of the Motor Carrier Safety Regulations, adopted April 14, 1952, as amended (49 CFR 193.42 (c) and 193.48) (49 Stat. 546, as amended, 49 U. S. C. 304) by substituting the following rules for the rules now in effect:

§ 193.42 *Brakes required on all wheels.* • • •

(c) Trucks and truck-tractors having three or more axles may have brakes omitted on only one axle: *Provided,* That such axle shall not have more than two tires in use, that such tires are no larger than the smallest tires used on that vehicle, and that the vehicle be not equipped with means for removing or reducing the braking effort on the front wheels.

§ 193.48 *Brakes to be operative.* (a) With exceptions noted in the following paragraphs of this section, all brakes with which motor vehicles are equipped shall be operative at all times. Means for reducing or removing the braking effort shall not be used except when operating under adverse conditions such as wet, snowy, or icy roads.

(b) Brakes on vehicles being towed in driveaway and towaway operations need not all be operative, as provided in § 193.42 (b).

(c) On any bus, truck, or truck-tractor, having not more than two axles, means may be used for reducing the braking effort on the front wheels: *Provided*, That such means be incapable of reducing such brakes to less than 50 percent of their operating pressure.

(d) On any truck or truck-tractor with three or more axles, having brakes on all wheels, means may be used for reducing or removing the braking effort on the front axle.

It is further ordered, That interested persons may on or before November 14, 1958, submit written statements containing data, views, or arguments, verified under oath by a person having knowledge of such data, views, or arguments, and that thereafter consideration will be given to the proposed amendments, or some revision thereof, in the light of the statements which may be submitted.

It is further ordered, That one signed copy and 14 additional copies of such statements be furnished for the use of the Commission by mailing to the Secretary of the Interstate Commerce Commission, Washington, D. C. No oral hearing is contemplated, but any request for such hearing shall be supported by an explanation as to why the evidence to be presented cannot reasonably be submitted in the form heretofore provided. The Commission thereafter will determine whether or not assignment of the matter for oral hearing is necessary or desirable.

And it is further ordered, That notice of this proposed rule modification shall be given to motor carriers, other persons of interest, and to the general public by depositing a copy thereof in the office of the Secretary of the Interstate Commerce Commission, Washington, D. C., and by filing a copy with the Director, Federal Register Division.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 58-7612; Filed, Sept. 17, 1958; 8:51 a. m.]

NOTICES

DEPARTMENT OF THE TREASURY

Office of Treasurer of the United States

[Revision 2]

ORDER OF SUCCESSION OF PERSONS TO ACT AS TREASURER OF THE UNITED STATES

Under the authority conferred upon me by Treasury Department Order No. 129, Revision No. 2, dated April 22, 1955, it is hereby ordered that the following officers in the Office of the Treasurer of the United States and the Bureau of the Public Debt in the order of succession enumerated shall act as Treasurer during the absence or disability of the Treasurer.

Deputy Treasurer.
Assistant Deputy Treasurer.
Assistant to the Deputy Treasurer.
Chief, General Accounts Division.
Cashier, Treasurer's Office.
Director, Parkersburg Office, Bureau of the Public Debt.

In the event of an enemy attack on the continental United States, and in the absence of the Treasurer of the United States, the senior officer, in descending order in the foregoing line of succession, present at the site of the operations of the Treasurer of the United States shall act as Treasurer. If none of such officers is present at the site of the Treasurer's operations it is hereby ordered that the officer acting as District Director, Internal Revenue Service, at the city at which the Treasurer's operations are reestablished shall act as Treasurer of the United States.

In the event of an enemy attack on the continental United States and the occurrence of a vacancy in the Office of the Treasurer, the Treasurer's functions shall be deemed to have been transferred, pursuant to the above described Treasury Department Order, to the Deputy Treasurer, and in the event of a vacancy in the Office of the Deputy Treasurer, to the senior officer, in descending order in the following line of succession, present at the site of the operations of the Treasurer of the United States.

Assistant Deputy Treasurer.
Assistant to the Deputy Treasurer.
Chief, General Accounts Division.
Cashier, Treasurer's Office.
Director, Parkersburg Office, Bureau of the Public Debt.

If none of such officers is present at the site of the Treasurer's operations, the Treasurer's functions shall be deemed to have been transferred, pursuant to the aforesaid order, to the officer acting as District Director, Internal Revenue Service at the city at which the Treasurer's operations are reestablished.

This order supersedes the order of succession dated March 21, 1957.

Dated: September 4, 1958.

[SEAL] IVY BAKER PRIEST, *Treasurer of the United States.*

[F. R. Doc. 58-7632; Filed, Sept. 17, 1958; 8:55 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

UTAH

[Utah 030049]

ORDER PROVIDING FOR OPENING OF PUBLIC LANDS

SEPTEMBER 4, 1958.

In exchanges of lands made under the provisions of section 8 of the act of June 28, 1934 (48 Stat. 1269), as amended, the following described lands have been reconveyed to the United States:

SALT LAKE MERIDIAN

Minerals in the following lands were reconveyed to the United States:

Salt Lake 062724

T. 12 N., R. 13 W.,
Sec. 19: All (fractional);
Sec. 22: W½;
Sec. 26: E½NE¼, SW¼, W½SE¼, NE¼SE¼.
T. 12 N., R. 14 W.,
Sec. 9: All;
Sec. 15: All.
T. 12 N., R. 15 W.,
Sec. 23: All;
Sec. 25: All.
T. 13 N., R. 13 W.,
Sec. 31: All (fractional).

Salt Lake 062937

T. 28 S., R. 23 E.,
Sec. 26: E½SE¼.
T. 29 S., R. 23 E.,
Sec. 22: SW¼SW¼;
Sec. 27: W½NW¼, SE¼NW¼.

Salt Lake 062962

T. 29 S., R. 23 E.,
Sec. 22: N½S½.
T. 37 S., R. 22 E.,
Sec. 23: NE¼NE¼.

Salt Lake 063104

T. 19 S., R. 9 W.,
Sec. 22: N½;
Sec. 23: SW¼NW¼.
T. 25 S., R. 11 W.,
Sec. 16: S½SW¼, SW¼SE¼.

Salt Lake 063125

T. 25 S., R. 11 W.,
Sec. 11: N½NE¼, NE¼NW¼.

Salt Lake 063151

T. 25 S., R. 11 W.,
Sec. 10: SW¼, W½SE¼.

Salt Lake 063157

T. 20 S., R. 8 W.,
Sec. 17: E½NE¼.

Salt Lake 063165

T. 24 S., R. 9 W.,
Sec. 32: All.

Salt Lake 063169

T. 25 S., R. 11 W.,
Sec. 26: SE¼.

Salt Lake 063170

T. 14 S., R. 11 E.,
Sec. 20: SE¼SE¼.

Salt Lake 063223

T. 6 N., R. 13 W.,
Sec. 9: All.
T. 9 N., R. 18 W.,
Sec. 2: All (fractional);
Sec. 8: E½.
T. 11 N., R. 9 W.,
Sec. 5: All (fractional).
T. 12 N., R. 9 W.,
Sec. 4: All (fractional);
Sec. 33: All.
T. 12 N., R. 14 W.,
Sec. 1: Lots 1, 2, 3, S½NE¼, SE¼NW¼;
Sec. 3: E½SE¼;

Sec. 4: SW¼;
Sec. 6: Lots 3, 4, 5, S½NE¼, SE¼NW¼, NE¼SW¼;
Sec. 23: W½;
Sec. 24: S½;
Sec. 34: N½.
T. 12 N., R. 15 W.,
Sec. 12: W½.
T. 15 N., R. 9 W.,
Sec. 36: All.

Salt Lake 063253

T. 17 S., R. 9 W.,
Sec. 35: NE¼, N½SE¼, SW¼SE¼.

Salt Lake 063270

T. 24 S., R. 10 W.,
Sec. 32: SW¼SW¼.
T. 25 S., R. 11 W.,
Sec. 11: S½N½.

Salt Lake 063304

T. 24 S., R. 10 W.,
Sec. 22: S½SW¼;
Sec. 27: NW¼NE¼, N½NW¼.

Salt Lake 063522

T. 12 N., R. 8 W.,
Sec. 5: All (fractional).
T. 12 N., R. 9 W.,
Sec. 8: S½.

Salt Lake 063706 (Part)

T. 17 S., R. 8 W.,
Sec. 17: NE¼.
T. 19 S., R. 8 W.,
Sec. 26: SE¼NW¼, NW¼SW¼;
Sec. 27: N½, SW¼, SW¼SE¼, E½SE¼;
Sec. 28: N½NE¼, S½N½, S½;
Sec. 29: S½NE¼, SE¼NW¼, SW¼, N½SE¼, SE¼SE¼;
Sec. 30: E½SW¼, SE¼;
Sec. 31: NE¼, E½SE¼;
Sec. 32: NW¼SW¼, S½SW¼;
Sec. 33: NW¼NW¼;
Sec. 34: E½, N½NW¼, SE¼SW¼;
Sec. 35: W½, SE¼SE¼;
Sec. 36: SW¼.
T. 20 S., R. 8 W.,
Sec. 2: Lots 2, 3, 4, S½N½;
Sec. 4: Lots 1, 2, SW¼NE¼.
T. 23 S., R. 7 W.,
Sec. 19: Lots 2, 3, SW¼NE¼, SE¼NW¼;
Sec. 28: N½;
Sec. 32: All;
Sec. 33: W½;
Sec. 36: E½, SW¼.
T. 24 S., R. 7 W.,
Sec. 4: Lots 3, 4, SE¼NW¼;
Sec. 5: Lots 1, 2, 3, 4, SW¼NE¼, SW¼, W½SE¼;
Sec. 7: E½NE¼;
Sec. 8: W½NE¼, NW¼.
T. 25 S., R. 10 W.,
Sec. 2: Lots 3, 4, S½NW¼;
Sec. 3: Lots 3, 4, S½NW¼, SW¼;
Sec. 4: SE¼NW¼, S½;
Sec. 5: All (fractional);
Sec. 6: Lots 6, 7, E½SW¼, SE¼;
Sec. 8: N½NE¼;
Sec. 9: NW¼, NW¼NE¼;
Sec. 20: S½;
Sec. 29: N½, SE¼;
Sec. 30: Lot 4, S½NE¼, N½SE¼;
Sec. 31: NE¼, SW¼SE¼;
Sec. 32: NE¼, N½NW¼.
T. 26 S., R. 7 W.,
Sec. 2: Lots 2, 3, SE¼NW¼, SW¼NE¼.

Salt Lake 064355

T. 15 S., R. 10 E.,
Sec. 10: N½SE¼, SE¼SE¼;
Sec. 11: W½SW¼.

Salt Lake 065160

T. 36 S., R. 22 E.,
Sec. 31: N½SE¼.
T. 37 S., R. 22 E.,
Sec. 5: Lot 3.

Salt Lake 070035 (part)

T. 25 S., R. 11 W.,
Sec. 11: S½.

Salt Lake 071338

T. 19 S., R. 4 W.,
Sec. 24: NE¼NE¼.

Utah 02779

T. 28 S., R. 6 W.,
Sec. 31: SE¼NW¼.
T. 29 S., R. 7 W.,
Sec. 1: Lots 7, 8 (N½NE¼).

Utah 03224

T. 25 S., R. 23 E.,
Sec. 21: N½ (minerals were reserved by United States in original conveyance).

Utah 04140

T. 27 S., R. 13 W.,
Sec. 6: N½SE¼;
Sec. 8: E½SE¼;
Sec. 17: E½NE¼, NE¼SE¼, S½S½;
Sec. 18: Lot 4, SE¼SW¼, S½SE¼.
T. 27 S., R. 14 W.,
Sec. 1: N½S½;
Sec. 6: Lots 3, 4, 5, 6, SE¼NW¼, NE¼SW¼;
Sec. 13: S½S½.
T. 27 S., R. 15 W.,
Sec. 1: Lots 1, 2, 3, 4, S½N½;
Sec. 2: Lots 1, 2.

Utah 05787

T. 13 S., R. 3 W.,
Sec. 24: SE¼NW¼, NE¼SW¼.

Utah 05869

T. 13 S., R. 3 W.,
Sec. 24: SE¼SW¼, SW¼SE¼;
Sec. 25: W½NE¼, NE¼SE¼.

Utah 06008

T. 42 S., R. 16 W.,
Sec. 10: SE¼NE¼, NE¼SE¼ (water reserved to proponent).

Utah 07177

T. 12 N., R. 5 E.,
Sec. 36: Lots 10, 11.
T. 12 N., R. 6 E.,
Sec. 31: NE¼SW¼.

Utah 07280

T. 35 S., R. 18 W.,
Sec. 4: Lot 4, SW¼NW¼, N½SW¼, S½S½;
Sec. 5: Lot 1, SE¼NE¼, SE¼;
Sec. 7: Lot 1, E½W½;
Sec. 8: N½NE¼;
Sec. 9: N½N½;
Sec. 18: NE¼NW¼.
T. 35 S., R. 19 W.,
Sec. 1: S½;
Sec. 12: N½NE¼.

Utah 010877

T. 4 S., R. 9 W.,
Sec. 36: All.
T. 5 S., R. 9 W.,
Sec. 2: All (fractional).

Utah 010986

T. 18 S., R. 2 W.,
Sec. 33: NE¼NE¼;
Sec. 34: NW¼, N½SW¼, SW¼SW¼.

Utah 012458

T. 25 S., R. 11 W.,
Sec. 25: S½.

Utah 014356

T. 12 N., R. 10 W.,
Sec. 23: N½.
T. 13 N., R. 10 W.,
Sec. 14: W½.

Utah 016830

T. 8 S., R. 4 W.,
Sec. 22: N½NE¼, SW¼NE¼, NE¼NW¼, SE¼;
Sec. 27: SW¼;
Sec. 28: E½SE¼;
Sec. 33: E½NE¼;
T. 8 S., R. 5 W.,
Sec. 12: SE¼;
Sec. 13: E½E½.
T. 9 S., R. 4 W.,
Sec. 6: Lots 3, 4, 5, 6, 7, SE¼NW¼, E½SW¼.

Utah 019394

T. 23 S., R. 7 W.,
Sec. 8: N½.

Minerals in the following lands were not reconveyed to the United States:

Salt Lake 063189

T. 32 S., R. 24 E.,
Sec. 24: N½.

Salt Lake 063706 (part)

T. 19 S., R. 8 W.,
Sec. 29: SW¼SE¼.
T. 24 S., R. 7 W.,
Sec. 4: Lot 2, SW¼NE¼;
Sec. 5: SW¼NW¼;
Sec. 6: Lots 1, 8, SE¼NE¼.

Salt Lake 063784

T. 9 S., R. 4 W.,
Sec. 33: E½SE¼;
Sec. 34: S½NW¼, SW¼.
T. 13 N., R. 10 W.,
Sec. 33, E½SE¼.
T. 14 N., R. 9 W.,
Sec. 8: NW¼;
Sec. 12: S½NE¼;
Sec. 34: SE¼SW¼, SE¼.
T. 14 N., R. 10 W.,
Sec. 24: S½.

Salt Lake 064129

T. 12 N., R. 9 W.,
Sec. 17: S½.
T. 14 N., R. 9 W.,
Sec. 32: W½.

Salt Lake 067366

T. 17 S., R. 8 E.,
Sec. 11: SW¼NE¼.

Salt Lake 067606

T. 11 N., R. 12 W.,
Sec. 1: All (fractional);
Sec. 11: All;
Sec. 15: All;
Sec. 21: All;
Sec. 29: All.
T. 12 N., R. 11 W.,
Sec. 31: All (fractional), except 39.12 acres railroad right-of-way in SE¼NE¼, E½SE¼.

Salt Lake 070035 (part)

T. 25 S., R. 11 W.,
Sec. 2: Lots 3, 4, S½NW¼, SW¼.

Salt Lake 071386

T. 12 N., R. 9 W.,
Sec. 3: All (fractional);
Sec. 19: All (fractional);
Sec. 29: All;
Sec. 31: All (fractional).
T. 12 N., R. 10 W.,
Sec. 19: All (fractional);
Sec. 21: All;
Sec. 23: All;
Sec. 25: All;
Sec. 27: All;
Sec. 29: All.
T. 13 N., R. 9 W.,
Sec. 7: All (fractional);
Sec. 9: All;
Sec. 15: All;
Sec. 17: All;
Sec. 21: All;
Sec. 27: All;
Sec. 29: All;
Sec. 32: NE¼;
Sec. 33: All.

T. 13 N., R. 10 W.,
Sec. 1: All (fractional);
Sec. 3: All (fractional);
Sec. 5: All (fractional);
Sec. 7: All (fractional);
Sec. 9: All;
Sec. 13: All;
Sec. 15: All;
Sec. 17: All;
Sec. 19: All (fractional);
Sec. 21: All;
Sec. 23: All;
Sec. 27: All.
T. 14 N., R. 9 W.,
Sec. 31: All (fractional).
T. 14 N., R. 10 W.,
Sec. 19: Lots 1, 2, 3, 4, E½W½, SE¼;
Sec. 21: All;
Sec. 23: All;
Sec. 25: All;
Sec. 27: All;
Sec. 29: All;
Sec. 31: All (fractional);
Sec. 32: All;
Sec. 33: All;
Sec. 35: All.

Utah 03224 (part)

T. 25 S., R. 23 E.,
Sec. 16: All.

Utah 04123

T. 12 N., R. 9 W.,
Sec. 15: All.

Utah 04193

T. 19 S., R. 9 W.,
Sec. 19: All (fractional);
Sec. 20: All;
Sec. 30: All (fractional);
Sec. 31: Lots 1, 2, N½NE¼, E½NW¼.
T. 19 S., R. 10 W.,
Sec. 13: All;
Sec. 14: SE¼NE¼, SE¼SW¼, SE¼;
Sec. 23: All;
Sec. 24: All;
Sec. 25: All.
T. 24 S., R. 10 W.,
Sec. 16: SE¼;
Sec. 17: All;
Sec. 32: E½SE¼;
Sec. 33: All.

Utah 05030

T. 35 S., R. 25 E.,
Sec. 16: N½N½, SW¼NW¼, W½SW¼.

Utah 05168

T. 12 N., R. 11 W.,
Sec. 21: N½, SE¼, except 24.61 acres railroad right-of-way in S½SE¼, and 3 acres railroad pipeline right-of-way in SW¼NW¼.

Utah 06124

T. 8 N., R. 15 W.,
Sec. 1: All (fractional);
Sec. 7: All (fractional);
Sec. 9: All;
Sec. 11: All;
Sec. 13: All;
Sec. 15: All;
Sec. 17: All.
T. 8 N., R. 18 W.,
Sec. 3: Lots 1, 2, S½NE¼, SE¼;
Sec. 11: All;
Sec. 15: E½.
T. 9 N., R. 15 W.,
Sec. 1: All (fractional);
Sec. 11: All;
Sec. 13: E½, E½W½, NW¼NW¼, SW¼SW¼;
Sec. 23: All;
Sec. 25: All;
Sec. 35: All.
T. 9 N., R. 18 W.,
Sec. 3: Lots 1, 2, S½NE¼, SE¼;
Sec. 15: E½;
Sec. 27: E½.
T. 10 N., R. 15 W.,
Sec. 13: All;
Sec. 23: All;
Sec. 25: All;
Sec. 35: All.
T. 10 N., R. 18 W.,
Sec. 2: Lot 4, SW¼NW¼, W½SW¼;
Sec. 3: Lots 1, 2, 3, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 15: E½, E½W½;
Sec. 27: E½.
T. 11 N., R. 18 W.,
Sec. 25: All;
Sec. 27: E½;
Sec. 35: All.

Utah 08938

T. 31 S., R. 19 W.,
Sec. 22: N½.
T. 35 S., R. 18 W.,
Sec. 28: S½.
T. 36 S., R. 17 W.,
Sec. 23: E½NE¼.

Utah 09272

T. 9 S., R. 4 W.,
Sec. 14: SE¼;
Sec. 23: NE¼.

Utah 09775

T. 12 S., R. 5 W.,
Sec. 3: S½SE¼;
Sec. 10: SE¼SE¼;
Sec. 12: SW¼SW¼;
Sec. 13: NW¼NW¼;
Sec. 14: N½N½, SW¼, W½SE¼;
Sec. 15: NE¼NE¼, S½SW¼, E½SE¼;
Sec. 22: N½NW¼.

Utah 09972

T. 24 S., R. 10 W.,
Sec. 22: N½NE¼.

Utah 010135

T. 23 S., R. 8 W.,
Sec. 5: S½;
Sec. 8: E½.

Utah 010560

T. 12 N., R. 14 W.,
Sec. 19: Lots 1, 2, 3, 4, SE¼SW¼.

Utah 012172

T. 12 N., R. 14 W.,
Sec. 31: All (fractional).
T. 12 N., R. 15 W.,
Sec. 35: NW¼, NE¼SW¼.

Utah 012310

T. 12 N., R. 14 W.,
Sec. 28: S½.

Utah 013306

T. 13 N., R. 10 W.,
Sec. 11: N½, N½S½, S½SE¼.

Utah 013540

T. 11 N., R. 13 W.,
Sec. 1: Lots 1, 2, 3, 4, S½N½, N½SE¼, SW¼SE¼;
Sec. 11: N½;
Sec. 15: All.

Utah 013714

T. 12 S., R. 4 W.,
Sec. 16: All.

Utah 014272

T. 11 N., R. 13 W.,
Sec. 1: SW¼;
Sec. 13: NW¼, S½.

Utah 014273

T. 11 N., R. 12 W.,
Sec. 7: Lots 3, 4, SE¼NE¼, E½SW¼, SE¼.
T. 11 N., R. 13 W.,
Sec. 13: NE¼.
T. 12 N., R. 15 W.,
Sec. 35: W½SW¼, SE¼SW¼.

Utah 015532

T. 13 N., R. 9 W.,
Sec. 3: All (fractional).

Utah 015533

T. 14 N., R. 9 W.,
Sec. 19: All (fractional).

Utah 017549

T. 13 N., R. 10 W.,
Sec. 11: S½SW¼.

Utah 018035

T. 11 N., R. 13 W.,
Sec. 9: All.

Utah 018041

T. 12 N., R. 15 W.,
Sec. 36: SW¼.

Utah 019698

T. 29 S., R. 1 E.,
Sec. 16: All;
Sec. 21: All.
T. 30 S., R. 1 E.,
Sec. 14: S½NW¼, N½SW¼;
Sec. 16: All.

Utah 023090

T. 13 N., R. 11 W.,
Sec. 14: E½.

Utah 023758

T. 9 S., R. 7 W.,
Sec. 28: SE¼NW¼.

In the following lands one-half (½) interest in the minerals was reconveyed to the United States, and one-half (½) interest was reserved to the proponent:

Salt Lake 064930

T. 19 S., R. 8 E.,
Sec. 27: NW¼SE¼.

The areas described total 103,511.01 acres of public land.

Further information as to mineral rights, reservations for rights-of-way, etc., in these lands is of record in the Land Office, Bureau of Land Management, 312 Federal Building, P. O. Box 777, Salt Lake City 10, Utah.

The lands are in widely scattered parcels distributed throughout the State. They are generally desert or semi-desert in character, and not suitable for farming.

No application for these lands will be allowed under the homestead, desert-land, small-tract, or any other nonmineral public land law, unless the lands have already been classified as valuable, or suitable for such type of application, or shall be so classified upon consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

Subject to any existing valid rights and the requirements of applicable law, the lands described above are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws and applications and offers under the mineral leasing laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allow-

ance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications under the Homestead, Desert-Land, and Small Tract Laws by qualified veterans of World War II or of the Korean Conflict, and by others entitled to preference right under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284 as amended), presented by 10:00 a. m. on October 10, 1958, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and by 10:00 a. m. on January 9, 1959, will be governed by the time of filing.

(3) All valid applications, and selections under the nonmineral public land laws, other than those coming under paragraphs (1) and (2) above, and applications and offers under the mineral leasing laws, presented by 10:00 a. m. on January 9, 1959, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands will be open to location under the United States mining laws, beginning 10:00 a. m., on January 9, 1959.

Persons claiming veteran's preference rights under Paragraph a (2) above must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning these lands shall be addressed to the Manager, Land Office, Bureau of Land Management, 312 Federal Building, P. O. Box 777, Salt Lake City 10, Utah.

VAL B. RICHMAN,
State Supervisor.

[F. R. Doc. 58-7619; Filed, Sept. 17, 1958; 8:53 a. m.]

[Fairbanks 013704]

ALASKA

WITHDRAWING PUBLIC LANDS AT NOATAK, ALASKA, FOR SCHOOL PURPOSES

SEPTEMBER 12, 1958.

By virtue of the authority vested in the Secretary of the Interior by the act of May 31, 1938 (52 Stat. 593; 48 U. S. C. 353a), and pursuant to Departmental Order No. 2583, section 2.22 (a) of August 16, 1950, it is ordered as follows:

Subject to valid existing rights, the following-described public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws and disposals under the act of July 31, 1947 (61 Stat. 681; 30 U. S. C. 601–604) as amended, and reserved under the jurisdiction of the Bureau of Indian Affairs, Department of the Interior, for school purposes:

NOATAK AREA

Beginning at Corner No. 1 of U. S. Survey 2037; thence N. 18°51' E., 29.0 ft.; thence N. 71°09' W., 264.0 ft.; thence S. 18°51' W., 230.0 ft.; thence S. 71°09' E., 402 ft. more or less to a point along the bank of the Noatak River; thence northerly following the meanders of the bank of the Noatak River 90.0 ft. more or less to the intersection of line 3—4 of U. S. Survey 2037; thence N. 65°50' W., 130.0 ft. more or less to Corner No. 4 of U. S. Survey 2037; thence N. 18°51' E., 99.0 ft. to Corner No. 1 of U. S. Survey 2037; the point of beginning.

The tract described contains 2.9 acres.

EDWARD WOOZLEY,
Director.

[F. R. Doc. 58-7589; Filed, Sept. 17, 1958; 8:46 a. m.]

COLORADO

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

SEPTEMBER 10, 1958.

The U. S. Forest Service of the Department of Agriculture has filed an application, Serial Colorado 06813, for withdrawal of the lands described below from location and entry under the General Mining Laws, subject to existing valid claims.

The applicant desires the land for use as a roadside zone.

For a period of thirty days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, 339 New Custom House, P. O. Box 1018, Denver 1, Colorado.

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

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.

The lands involved in the application are:

NEW MEXICO PRINCIPAL MERIDIAN, COLORADO

RIO GRANDE NATIONAL FOREST

Colorado Highway No. 17 Roadside Zone

A strip of land 200 feet wide on each side of the center line through the following legal subdivisions:

T. 32 N., R. 4 E.,
Sec. 13, S½SE¼;
Sec. 24, NW¼NE¼, E½NW¼ to Tierra Amarilla Land Grant (lots 1, 2, 3).
T. 32 N., R. 5 E.,
Sec. 3, W½NW¼SW¼ and SW¼SW¼;
Sec. 10, W½NW¼;
Sec. 9, SE¼NE¼ and E½SE¼;
Sec. 16, N½N½;
Sec. 17, NE¼NE¼;
Sec. 8, SW¼, S½SE¼;
Sec. 7, E½SE¼;
Sec. 18, E½NE¼, SW¼NE¼, SE¼NW¼, and NW¼SW¼ (lot 3).
T. 33 N., R. 5 E.,
Sec. 1, S½S½;
Sec. 12, W½;
Sec. 13, W½W½ and NE¼NW¼;
Sec. 14, E½SE¼;
Sec. 23, NE¼NE¼, S½NE¼, SE¼, and E½SW¼;
Sec. 26, NW¼;
Sec. 27, S½NE¼ and SE¼;
Sec. 33, SE¼SE¼;
Sec. 34, E½ and S½SW¼.
T. 33 N., R. 6 E.,
Sec. 25, lots 2 and 3, N½NW¼, and NW¼NE¼;
Sec. 26, lots 1 and 2, and N½NE¼;
Sec. 23, lot 1;
Sec. 22, lots 1, 2, 3, 4, 6, and 7, and NW¼SE¼;
Sec. 15, lots 1 and 2, SW¼NW¼, and SE¼SW¼;
Sec. 16, lot 2;
Sec. 9, lots 2, 4, and 5;
Sec. 8, lot 1;
Sec. 5, lots 8, 9, 10, 11, 12, 16, and 17, and NE¼SE¼;
Sec. 6, lots 12, 13, 14, 15, 16, and 21.
T. 33 N., R. 7 E.,
Sec. 29, SW¼SE¼ and S½SW¼;
Sec. 30, lots 2 and 3, and NE¼SW¼.

The above described area totals 936 acres.

J. ELLIOTT HALL,
Lands and Minerals Officer.

[F. R. Doc. 58-7590; Filed, Sept. 17, 1958; 8:46 a. m.]

[UTAH (II-2)]

UTAH

SMALL TRACT CLASSIFICATION; PUBLIC SALE

SEPTEMBER 11, 1958.

1. Pursuant to authority delegated to me by Bureau Order No. 541 dated April 21, 1954 (19 F. R. 2473), I hereby classify the following described public lands in Kane County, Utah, as suitable for public sale under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended:

SALT LAKE MERIDIAN

T. 43 S., R. 2 E.,
Sec. 13: Lots 29, 31 to 62, incl., 65, 66, 67, 77, 81, 82, 83, 86, 87, 88, 89, 92, 93, 94, 95, 98.

2. The above described lots were segregated from all appropriation, including the general mining laws, except applications under the mineral leasing laws, by the classification of September 4, 1957, which was published in the FEDERAL REGISTER of September 12, 1957, Vol. 22, Page 7290.

3. The lands are located approximately 66 miles east of Kanab, Utah, and 14 miles northwest of the Glen Canyon Dam site. Utah Highway 259, a limited access highway, traverses the area. All lots are accessible. The topography is gently sloping toward the northeast. Soils vary from sandy-loam to sandy. The native vegetation consists principally of black brush with assorted weeds and grasses. Culinary water is not now available from any developed source, but water has been developed in wells to the northwest.

There are no schools or other public facilities in the area at the present time, but limited shopping facilities will be available nearby. An electric transmission line has been extended to a point about one mile northwest of the northern part of the area herein considered.

4. The individual tracts vary in size from 2.60 acres to 3.15 acres and are all rectangular in shape. A plat of survey showing the location of each tract can be secured for $1.00 from the Manager, Land Office, 312 Post Office Building, P. O. Box 777, Salt Lake City, Utah. The appraised value of the tracts vary from $175.00 to $300.00 per tract as shown below. Rights-of-way for street and road purposes and for public utilities will be reserved as shown below. All minerals in the lands will be reserved to the United States.

Lot No.	Acres	Right-of-way (width and location)	Appraised value
29	2.93	33' NE and SE sides	$300.00
31	2.93	33' NW and SW sides	300.00
32	2.93	33' NE and NW sides	300.00
33	3.15	33' NW side and 66' SW side.	300.00
34	2.80	66' SW side	275.00
35	2.60	33' NE side	275.00
36	2.60	33' SW side	275.00
37	2.60	33' SW side	275.00
38	2.60	33' NE side	275.00
39	2.80	66' SW side	225.00
40	2.80	66' SW side	275.00
41	2.60	33' NE side	175.00
42	2.60	33' SW side	275.00
43	2.93	33' SW and SE sides	175.00
44	2.93	33' SE and NE sides	300.00
45	3.15	66' SW side and 33' SE side	300.00
46	3.15	66' SW side and 33' NW side.	300.00
47	2.93	33' NW and NE sides	300.00
48	2.93	33' NW and SW sides	300.00
49	2.60	33' SW side	275.00
50	2.60	33' NE side	275.00
51	2.80	66' SW side	275.00
52	2.80	66' SW side	275.00
53	2.60	33' NE side	275.00
54	2.60	33' SW side	275.00
55	2.60	33' SW side	275.00
56	2.60	33' NE side	275.00
57	2.80	66' SW side	275.00
58	3.15	66' SW side, 33' SE side	300.00
59	2.93	33' SE and NE sides	300.00
60	2.93	33' SW and SE sides	300.00
61	2.93	33' NW and SW sides	300.00
62	2.93	33' NW and NE sides	300.00
65	2.60	33' NE side	275.00
66	2.60	33' SW side	275.00
67	2.60	33' SW side	275.00
77	2.80	66' NE side	225.00
81	2.80	66' NE side	275.00
82	2.80	66' NE side	275.00
83	2.60	33' SW side	275.00
86	2.93	33' SW and SE sides	300.00
87	3.15	33' SE side and 66' NE side	300.00
88	3.15	33' NW side and 66' NE side.	300.00
89	2.93	33' NW and SW sides	300.00
92	2.60	33' SW side	275.00
93	2.80	66' NE side	275.00
94	2.80	66' NE side	275.00
95	2.60	33' SW side	275.00
98	2.80	66' NE side	275.00

5. Persons who have previously acquired a tract under the Small Tract Act are not qualified to purchase a tract at the sale unless they can make a showing satisfactory to the Bureau of Land Management that the acquisition of another tract is warranted in the circumstances.

6. The above-described tracts will be sold at public auction at a sale to be held in the Ballroom, Hotel Newhouse, Salt Lake City, Utah at 10:00 a. m. and at 3:00 p. m. on January 7, 1959. The sale at 10:00 a. m. will be open only to those persons who qualify for veterans' preference under the provisions outlined in Paragraph 9, below. The 3:00 p. m. sale will be open to the public generally but will be held only if any of the tracts described in Paragraph 4, above, remain unsold after the 10:00 a. m. sale. Bids may be made personally by an individual or by his agent at either sale, or by mail. Bids sent by mail will be considered only if received at the Land Office, Bureau of Land Management, 312 Post Office Building, Salt Lake City, Utah, prior to 10:00 a. m., January 6, 1959. No bid will be accepted if it is less than the appraised price of the tract. See Paragraph 4, above, for appraised prices.

7. To facilitate the completion of the sale, all oral bidders at the 10:00 a. m. sale should bring with them a photostatic copy of their discharge papers or other acceptable certification of proof of right to veterans' preference as outlined in Paragraph 9.

8. Each bid sent by mail must clearly show: (a) The full name and mailing address of the bidder; (b) Classification Order No. Utah II-2; (c) The number of the lot for which the bid is made, described in accordance with Paragraph 4, of this order. Each bid must be accompanied by the full amount of the bid in the form of a certified or cashier's check, post office money order, or bank draft made payable to the Bureau of Land Management. All unsuccessful bids will be promptly returned after the sale. A photostatic copy of bidder's discharge papers, or other certification showing proof of veteran's preference as outlined in Paragraph 9, below, must accompany the bid. Such papers will be returned promptly after the sale. Bids for separate lots must be enclosed in separate envelopes but payment and proof of veterans' preference need only accompany the highest bid, providing all other bids designate the envelope containing the payment and the veterans' preference proof. Each envelope must be addressed to the Manager, Land Office, Bureau of Land Management, Post Office Box 777, Salt Lake City, Utah, and carry in the lower left hand corner of its face the following information and nothing else: (a) "Bid for Small Tract"; (b) "Classification Order No. II-2"; (c) "Veterans' Preference", if the bidder is entitled to such preference; (d) the number of the lot for which the bid is made showing lot number in accordance with Paragraph 4, above. Sender's name and return address should be shown on the reverse side of the envelope.

9. In accordance with 43 CFR 257.14 (e), each tract at the 10:00 a. m. sale will be awarded to the highest bidder among persons entitled to veterans' preference. No person will be awarded more than one tract, unless he is an agent acting for one or more persons. Persons entitled to veterans' preference in brief are: (a) Honorably discharged veterans who served at least 90 days after September 15, 1940; (b) surviving spouse or minor orphan children of such veterans; and (c) with the consent of the veteran, the spouse of living veterans. Veterans who were discharged on account of wounds or disability incurred in the line of duty, or the surviving spouse or minor children of veterans killed in the line of duty are eligible for veterans' preference regardless of whether such servicemen served less than 90 days after September 15, 1940.

10. Sealed bids will be opened in the presence of the public in Room 312, Post Office Building, Salt Lake City, Utah, beginning at 1:00 p. m. on January 6, 1959. Sealed bids must be in multiples of $5.00. Lists of the highest sealed bids received for each lot will be posted for public inspection at the sale.

11. All inquiries concerning these lands should be addressed to the Manager, Land Office, Bureau of Land Management, 312 Post Office Building, Post Office Box 777, Salt Lake City, Utah.

EVAN L. RASMUSSEN,
Acting State Supervisor.

[F. R. Doc. 58-7591; Filed, Sept. 17, 1958; 8:47 a. m.]

[No. 59-4]

OREGON

REVOCATION AIR NAVIGATION SITE WITHDRAWAL NO. 32

Pursuant to a report of the Civil Aeronautics Administration, United States Department of Commerce, and by virtue of the authority contained in section 4 of the act of May 24, 1928 (45 Stat. 729; 49 U. S. C. 214), and pursuant to the authority delegated by section 2.5 of the Bureau of Land Management Order No. 541 of April 21, 1954 (19 F. R. 2473), as amended, it is ordered as follows:

1. Air Navigation Site Withdrawal No. 32, as modified on April 11, 1949, affecting lands described below, is hereby revoked:

WILLAMETTE MERIDIAN, OREGON

T. 31 S., R. 5 W.,
Sec. 3: Lot 9, approximately 52.38 acres.

2. The above-described land is revested Oregon and California Railroad Grant land and is valuable for the perpetual production of timber as part of the South Umpqua Sustained-Yield Unit.

3. The land has been classified for retention in Federal ownership to be managed for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield as authorized under the act of August 28, 1937 (50 Stat. 874).

4. No application will be allowed under the Homestead, Desert Land, Small Tract, or any other nonmineral public land law.

5. Beginning at 10 a. m. on January 13, 1959, the lands described in paragraph 1 above will (subject to valid existing rights) become subject to location or leasing under mining and mineral leasing laws.

6. Inquiries concerning the land should be addressed to the Manager, Portland Land Office, 809 N. E. Sixth Avenue, Portland, Oregon.

TOM D. CONKLIN,
Acting State Supervisor.

[F. R. Doc. 58-7592; Filed, Sept. 17, 1958; 8:47 a. m.]

[Sacramento 056544]

CALIFORNIA

ORDER PROVIDING FOR OPENING OF PUBLIC LANDS

SEPTEMBER 11, 1958.

Pursuant to following listed determinations of the Federal Power Commission, and in accordance with the authority delegated to me by the California State Supervisor, Bureau of Land Management, Part II, Document 4, California State Office, dated November 19, 1954 (19 F. R. 7697), it is ordered as follows:

1. Subject to valid existing rights and the provisions of existing withdrawals, the lands hereinafter described, so far as they are withdrawn and reserved for power purposes are hereby restored to disposition under the public land laws, subject to the provisions of section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U. S. C. 818), as amended, and as to DA-937 and DA-943 it is further stipulated that in the event described areas are required for power purposes, any improvements or structures placed thereon which shall be found to interfere with such development shall be removed or relocated as may be necessary to eliminate interference with power development at no cost to the United States, its permittees or licensees.

Determination No.	Date and type of withdrawal	Type of restoration	Description of lands
			Mount Diablo Meridian
DA-900	Power Site Reserve No. 232 of Nov. 25, 1911.	Under applicable land laws.	T. 33 N., R. 8 W., Section 18: E½NE¼ SW¼SE¼SW¼SE¼, N½SE¼SE¼ SW¼SE¼.
DA-937	Power Site Reserve No. 232 of Nov. 25, 1911.	Under applicable land laws.	T. 33 N., R. 8 W., Section 18: Lots 1 and 4, NE¼, E½NW¼, W½SE¼ SW¼, SE¼SE¼SW¼, N½N½ SE¼, N½SW¼NW¼SE¼, SE¼ NW¼SE¼, NE¼SW¼SE¼, N½ SW¼SW¼SE¼, S½S½SW¼SW¼ SE¼, W½SW¼SE¼SW¼SE¼, W½E½SW¼SE¼SW¼SE¼, E½ SE¼SW¼SE¼SW¼SE¼, S½SE¼ SE¼SW¼SE¼, NW¼SE¼SE¼, E½E½SE¼SE¼.
DA-943	Power Site Reserve No. 232 of Nov. 25, 1911.	Under applicable land laws.	T. 33 N., R. 9 W., Section 13: N½SE¼ NW¼, SE¼SE¼NW¼.

The areas described total approximately 479.30 acres of public land and private land.

The following lands have been patented:

T. 33 N., R. 8 W., M. D. M.,
Sec. 18: E½E½SE¼SE¼, E½NE¼NE¼ SE¼.

2. The subject lands are located in Eastern Trinity County near Lewiston, California. The land consists mainly of high, steep ridges, interspersed by gulches, draining into the Trinity River. The most level part lies along the main course of the Trinity River and consists of dredge tailings left by mining operations of past years. The thin stony soil and steep slopes preclude agricultural use of the land. Elevations range from 1,800 feet at river level to 2,500 feet on ridge tops.

Most of the steep slopes are covered with a semi-dense chaparral of live oak, ceanothus and manzanita overstoried by scattered hardwoods, digger pine and some ponderosa pine. The ground cover is mostly annual grasses and weeds. The land covered by tailings is devoid of vegetation.

3. No application for these lands will be allowed under the homestead, desert land, small tract or any other nonmineral public land law, unless the lands have already been classified as valuable, or suitable for such type of application, or shall be so classified upon consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

4. The lands described shall be subject to application by the State of California for a period of 90 days from the date of publication of this order in the FEDERAL REGISTER for right-of-way for public highways or as a source of material for construction and maintenace of such highways, in accordance with and subject to the provisions of section 24 of the Federal Power Act, as amended, and the special stipulations provided in paragraph 1.

5. Subject to any existing valid rights and the requirements of applicable law, the lands described are hereby opened to filing of applications and selections in accordance with the following:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications under the Homestead, Desert Land, and Small Tract Laws by qualified veterans of World War II or of the Korean Conflict, and by others entitled to preference rights under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284 as amended), presented prior to 10:00 a. m., local time, on October 17, 1958, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and before 10:00 a. m., local time, on January 16, 1959, will be governed by the time of filing.

(3) All valid applications and selections under the nonmineral public land laws, other than those coming under paragraphs (1) and (2) above, presented prior to 10:00 a. m. local time, on January 16, 1959, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

6. The lands have been open to applications and offers under the mineral-leasing laws, and to location under the United States mining laws pursuant to the act of August 11, 1955 (69 Stat. 682; 30 U. S. C. 621–625).

7. Persons claiming veteran's preference rights must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 Code of Federal Regulations.

8. Inquiries regarding these lands shall be addressed to the Manager, Land Office, Bureau of Land Management, 10th Floor, California Fruit Building, Fourth and J Streets, Sacramento 14, California.

R. G. SPORLEDER,
Officer in Charge,
Northern Field Group,
Sacramento, California.

[F. R. Doc. 58-7593; Filed, Sept. 17, 1958; 8:47 a. m.]

COLORADO

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

SEPTEMBER 12, 1958.

The U. S. Forest Service of the Department of Agriculture has filed an application, Serial Colorado 022828, for withdrawal of the lands described below from location and entry under the General Mining Laws, subject to existing valid claims.

The applicant desires the land for use as a lookout, administrative sites, and nursery.

For a period of thirty days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, 339 New Custom House, P. O. Box 1018, Denver 1, Colorado.

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

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.

The lands involved in the application are:

SIXTH PRINCIPAL MERIDIAN, COLORADO

PIKE NATIONAL FOREST

Devils Head Lookout

T. 9 S., R. 69 W.,
Sec. 22, NW¼NE¼.

Indian Creek Administrative Site (Addition)

T. 8 S., R. 69 W.,
Sec. 3, S½SW¼SE¼.

Jefferson Creek Administrative Site

T. 7 S., R. 76 W.,
Sec. 23, NW¼NE¼.

Lake George Administrative Site (Addition)

T. 12 S., R. 71 W.,
Sec. 28, S½SW¼NW¼, and S½N½SW¼NW¼;
Sec. 29, SW¼NE¼NE¼, S½NW¼NE¼, N½SW¼NE¼, and N½S½SW¼NE¼.

Mount Herman Nursery (Addition)

T. 11 S., R. 67 W.,
Sec. 20, SW¼NE¼, SE¼NW¼, NE¼SW¼NW¼, S½NE¼NE¼SW¼, N½SE¼NE¼SW¼, and N½SE¼.

Woodland Park Administrative Site

T. 12 S., R. 68 W.,
Sec. 7, lots 8, 10, 11, 12, and N½.

The areas described above total 826.88 acres.

J. ELLIOTT HALL,
Lands and Minerals Officer.

[F. R. Doc. 58-7594; Filed, Sept. 17, 1958; 8:47 a. m.]

Bureau of Reclamation

HANOVER-BLUFF UNIT, MISSOURI RIVER BASIN PROJECT, WYOMING

FIRST FORM RECLAMATION WITHDRAWAL

AUGUST 19, 1958.

By virtue of the authority vested in the Secretary of the Interior by section 3 of the Act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 416), and pursuant to Departmental Order No. 2765 of July 30, 1954, I hereby withdraw the following-described lands from public entry under the first form of withdrawal:

SIXTH PRINCIPAL MERIDIAN

T. 46 N., R. 92 W.,
Sec. 3, tract 1, lots 5, 6, 9, 10, SE¼NE¼, and E½SE¼;
Sec. 4, tract 1, lot 6, SW¼NE¼, N½NW¼SE¼, and N½S½NW¼SE¼;
Sec. 9, SW¼NW¼;
Sec. 18, tract 1, lot 26.
T. 46 N., R. 93 W.,
Sec. 13, tracts 2 and 4, lots 6 and 7;
Sec. 24, tracts 2 and 3.
T. 45 N., R. 94 W.,
Sec. 1, tract 1;
Sec. 2, tracts 1, 3, and 5, lot 18;
Sec. 3, lot 23.

The areas described aggregate 710.46 acres.

FLOYD E. DOMINY,
Acting Commissioner.

[68710]

SEPTEMBER 12, 1958.

I concur.

The lands shall be administered by the Bureau of Land Management until such time as they are needed for reclamation purposes.

EDWARD WOOZLEY,
Director,
Bureau of Land Management.

[F. R. Doc. 58-7595; Filed, Sept. 17, 1958; 8:48 a. m.]

COLORADO RIVER STORAGE PROJECT, CALIFORNIA

ORDER OF REVOCATION

By virtue of the authority vested in the Secretary of the Interior by section 3 of the Act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 416), and pursuant to Departmental Order No. 2765 of July 30, 1954, I hereby revoke Departmental order dated October 16, 1931, in so far as said order affects the following-described land: *Provided, however,* That such revocation shall not affect the withdrawal of any other lands by said order or affect any other orders withdrawing or reserving the land hereinafter described:

SAN BERNARDINO MERIDIAN, CALIFORNIA

T. 7 N., R. 24 E.,
Sec. 8, S½NW¼SW¼NE¼, S½SW¼NE¼, and NW¼SE¼.

The areas described aggregate 65 acres.

WILLIAM I. PALMER,
Acting Associate Commissioner.

[Los Angeles 0156749]

SEPTEMBER 12, 1958.

I concur.

The released land is proposed for exchange under the provisions of section 8 of the Act of June 28, 1934 (48 Stat. 1272; 49 Stat. 1976; 43 U. S. C. 315g) as amended, by which the offered land will benefit a Federal land program. This revocation, therefore, is not subject to the provisions contained in the Act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279-284) as amended, granting preference rights to veterans of World War II, the Korean Conflict, and others.

EDWARD WOOZLEY,
Director,
Bureau of Land Management.

[F. R. Doc. 58-7596; Filed, Sept. 17, 1958; 8:48 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

HEREFORD LIVESTOCK AUCTION AND ZACHARY STOCK YARDS

PROPOSED POSTING OF STOCKYARDS

The Director of the Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U. S. C. 202), and should be made subject to the provisions of the act.

Hereford Livestock Auction, Hereford, Tex.
Zachary Stock Yards, Zachary, La.

Notice is hereby given, therefore, that the said Director, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U. S. C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the act, as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule may do so by filing them with the Director, Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D. C., within 15 days after publication hereof in the FEDERAL REGISTER.

Done at Washington, D. C., this 15th day of September 1958.

[SEAL] DAVID M. PETTUS,
Director, Livestock Division,
Agricultural Marketing Service.

[F. R. Doc. 58-7634; Filed, Sept. 17, 1958; 8:55 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 12416 etc.; FCC 58M-991]

NICK J. CHACONAS ET AL.

ORDER CONTINUING HEARING

In re applications of Nick J. Chaconas, Gaithersburg, Maryland, Docket No. 12416, File No. BP-10996; I. T. Cohen and Anne H. Cohen, d/b as Tri-County Broadcasting Company, Laurel, Maryland, Docket No. 12417, File No. BP-11309; The Eleven Fifty Corp., Capitol Heights, Maryland, Docket No. 12418, File No. BP-11379; TCA Broadcasting Corporation, College Park, Maryland, Docket No. 12419, File No. BP-11741; for construction permits.

The Chief Hearing Examiner having under consideration the joint motion of Nick J. Chaconas and Tri-County Broadcasting Company, filed September 12, 1958, that certain procedural dates heretofore specified in this proceeding be amended, and that the formal hearing be continued without date;

It appearing that all parties to the proceeding consent to a grant of this motion and to a waiver of the provisions of section 1.43 of the rules to permit immediate consideration thereof;

It is ordered, This 12th day of September 1958, that the motion is granted and that the following procedural dates shall be observed in the above-entitled proceeding:

Exchange of nontechnical exhibits—September 15, 1958.
Exchange of technical exhibits—September 19, 1958.

It is further ordered, That formal hearing in the proceeding, which is presently scheduled to begin September 18, 1958, is continued to a date which will be later specified.

Released: September 15, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-7623; Filed, Sept. 17, 1958; 8:54 a. m.]

[Docket No. 12501 etc.; FCC 58M-988]

COMMUNITY TELECASTING CORP. ET AL.

ORDER CONTINUING HEARING

In re applications of Community Telecasting Corporation, Moline, Illinois, Docket No. 12501, File No. BPCT-2339; Tele-Views News Company, Inc., Moline, Illinois, Docket No. 12503, File No. BPCT-2367; Midland Broadcasting Co., Moline, Illinois, Docket No. 12504, File No. BPCT-2370; Illiway Television, Inc., Moline, Illinois, Docket No. 12505, File No. BPCT-2428; Moline Television Corp., Moline, Illinois, Docket No. 12506, File No. BPCT-2440; Iowa-Illinois Television Co., Moline, Illinois, Docket No. 12508, File No. BPCT-2496; for construction permits for new television broadcast stations.

It is ordered, This 12th day of September 1958, that the hearing in the above-entitled matter presently scheduled for October 1, 1958, is hereby rescheduled to commence at 10:00 a. m., December 1, 1958, and that a further prehearing conference is hereby scheduled to commence at 10:00 a. m., November 21, 1958, both in the Commission's offices in Washington, D. C.

Released: September 15, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-7624; Filed, Sept. 17, 1958; 8:54 a. m.]

[Docket Nos. 12546, 12547; FCC 58M-989]

NEWARK BROADCASTING CORP. AND WMGM BROADCASTING CORP.

ORDER CONTINUING HEARING CONFERENCE

In re applications of Newark Broadcasting Corporation, Newark, New Jersey, Docket No. 12546, File No. BPH-2427; WMGM Broadcasting Corporation, New York City, New York, Docket No. 12547, File No. BPH-2442; for construction permits.

Upon the oral request of counsel for the Commission's Broadcast Bureau, and with the agreement of all parties concerned: *It is ordered*, This 12th day of September 1958, that the prehearing conference in the above-entitled matter presently scheduled to be held on September 16, 1958, is hereby rescheduled to commence at 10:00 a. m., September 25, 1958, in the offices of the Commission in Washington, D. C.

Released: September 15, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-7625; Filed, Sept. 17, 1958; 8:54 a. m.]

[Docket Nos. 12548, 12549; FCC 58M-987]

FALCON BROADCASTING CO. AND SIERRA MADRE BROADCASTING CO.

ORDER SCHEDULING PREHEARING CONFERENCE

In re applications of George A. Baron, tr/as Falcon Broadcasting Company, Vernon, California, Docket No. 12548, File No. BPH-2382; Max H. Isoard, tr/as Sierra Madre Broadcasting Company, Sierra Madre, California, Docket No. 12549, File No. BPH-2403; for construction permit.

The Hearing Examiner having under consideration the procedure to be followed in the above-entitled matter which is scheduled for hearing on October 16, 1958; and

It appearing that counsel for all parties have informally agreed to the prehearing conference date hereinafter ordered;

It is ordered, This 12th day of September 1958, pursuant to § 1.111 of the Commission's rules, that the parties or their attorneys shall appear at the offices of the Commission in Washington, D. C., at 10:00 a. m., on Thursday, September 25, 1958, for a prehearing conference to consider:

1. The necessity or desirability of simplification, clarification, amplification, or limitation of the issues;

2. The possibility of stipulating with respect to facts;

3. The procedures to be followed prior to and at the hearing;

4. The limitation of the number of witnesses;

5. The procedures and schedules for the prior mutual exchange between the parties of prepared testimony and exhibits; and

6. Such other matters as may aid in the disposition of this proceeding.

Released: September 15, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-7626; Filed, Sept. 17, 1958; 8:54 a. m.]

[Docket No. 12553; FCC 58M-986]

MORTON BORROW

ORDER SCHEDULING PREHEARING CONFERENCE

In the matter of Morton Borrow, 2930 Haverford Road, Ardmore, Pennsylvania, Docket No. 12553; application for renewal of first-class radiotelephone operator license No. P1-3-1121, and first-class radiotelegraph operator license No. T1-3-116.

It is ordered, This 12th day of September 1958, that a prehearing conference, in accordance with § 1.111 of the rules, will be held in the above-entitled matter at 10:00 o'clock a. m., on Thursday, September 18, 1958, in the offices of the Commission, Washington, D. C.

Released: September 15, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-7627; Filed, Sept. 17, 1958; 8:54 a. m.]

[Docket No. 12569; FCC 58M-982]

AMERICAN TELEPHONE AND TELEGRAPH CO.

ORDER CONTINUING HEARING

In the matter of the applications of American Telephone and Telegraph Company (Long Lines Department): for modification of its point-to-point microwave radio station licenses in Portland, Maine; Brunswick, Maine; Liberty, Maine; Kings Mountain, Maine; Franklin, Maine; and Cooper Hill, Maine, for facilities connecting with the trans-Atlantic telephone cable system, to authorize the furnishing of an alternate voice and digital data transmission service to the United States Air Force; Docket No. 12569:

Call sign:	*File No.*
KCB 81	2943-C1-ML-58
KCB 82	2944-C1-ML-58
KCB 83	2945-C1-ML-58
KCC 85	2946-C1-ML-58
KCC 86	2947-C1-ML-58
KCC 92	2948-C1-ML-58

The Hearing Examiner having under consideration a motion filed September 5, 1958, by the American Telephone and Telegraph Company requesting that a prehearing conference in the above-entitled proceeding be scheduled for September 22, 1958, and that the evidentiary hearing in this proceeding now scheduled to begin on September 22, 1958 be continued to a date to be determined at the prehearing conference; and

It appearing that the suggested time schedule meets the convenience of the other parties to the proceeding, and good cause for granting the motion having been shown;

It is ordered, This the 11th day of September 1958, that the motion is granted and a prehearing conference in the above-entitled proceeding will be held on Monday, September 22, 1958, beginning at 2: 00 p. m. in the offices of the Commission, Washington, D. C. and the matters to be considered are those specified in § 1.111 of the Commission's rules; and

It is further ordered, That the evidentiary hearing in the above-entitled proceeding now scheduled to begin on September 22, 1958 is continued to a date to be determined at the prehearing conference to be held on September 22, 1958.

Released: September 12, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-7628; Filed, Sept. 17, 1958; 8: 54 a. m.]

[Mexican List 211, Correction]

MEXICAN BROADCAST STATIONS

LIST OF CHANGES, PROPOSED CHANGES AND CORRECTIONS IN ASSIGNMENTS

AUGUST 20, 1958.

Notification under the provisions of part III, section 2 of the North American Regional Broadcasting Agreement.

List of changes, proposed changes, and corrections in assignments of Mexican broadcast stations modifying the appendix containing assignments of Mexican broadcast stations (Mimeograph 47214-6) attached to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941.

Call letter	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
XEYG (New)	Iguala, Guerrero	250 w	1530 Kc. ND	D	IV	Feb. 20, 1959

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-7630; Filed, Sept. 17, 1958; 8:55 a. m.]

[Docket No. 12598; FCC 58-868]

M & M BROADCASTING CO. (WMBV-TV)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of M & M Broadcasting Company (WMBV-TV), Marinette, Wisconsin, Docket No. 12598, File No. BPCT-2524; for television construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D. C. on the 10th day of September 1958;

The Commission having under consideration the above-captioned application requesting a construction permit to move the transmitter site of Station WMBV-TV from a point approximately 14 miles southeast of Marinette, Wisconsin and approximately 38 miles northeast of Green Bay, Wisconsin, to a point approximately 38 miles southeast of Marinette and approximately 14 miles northeast of Green Bay, to increase the antenna height above average terrain from 780 to 960 feet, to increase the visual effective radiated power from 240 to 316 kw and to make other equipment changes;

It appearing that Valley Telecasting Company and Norbertine Fathers, licensees of Stations WFRV-TV and WBAY-TV respectively, of Green Bay, Wisconsin, have filed objections to the above-captioned application alleging, inter alia, that a grant thereof would result in a diminution of service to Marinette, and a loss of the only service to areas north of Marinette; that action be withheld pending a decision in Docket No. 12429, involving applicant corporation; and

It further appearing that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-named applicant was advised by letter of the reasons why the Commission was unable to conclude that a grant would serve the public interest, of all objections to its application, of the necessity for a hearing, and was given an opportunity to reply; and

It further appearing that upon due consideration of the above-captioned application, the objections thereto and the reply to the above letter, the Commission finds that pursuant to section 309 (b) of the Communications Act of 1934, as amended, a hearing is necessary; that the applicant is legally, financially, and technically qualified to construct, own and operate the station as proposed and is otherwise qualified except as to the issues below;

It is ordered, That the petitions of Norbertine Fathers and Valley Telecasting Company are granted to the extent hereinafter provided and are denied in all other respects;

It is further ordered, That pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-captioned application of M & M Broadcasting Company is designated for hearing at a time and place to be specified in a subsequent order upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose service from the proposed operation, and the availability of other service to such areas and population.

2. To determine in light of the evidence adduced pursuant to the above issue, whether a grant of the above-captioned application would serve the public interest, convenience and necessity.

It is further ordered, That Norbertine Fathers and Valley Telecasting Company are hereby made parties to the proceeding;

It is further ordered, That to avail themselves of the opportunity to be heard, M & M Broadcasting Company, Norbertine Fathers and Valley Telecasting Company pursuant to § 1.140 (c) of the Commission's rules, in person or by attorney, shall within 20 days of the mailing of this order file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issue specified in this order.

Released: September 12, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-7629; Filed, Sept. 17, 1958; 8:54 a. m.]

CIVIL AERONAUTICS BOARD

[Docket Nos. 9559, 9608]

AMERICAN SHIPPERS, INC.; JOINT COMPLAINT

NOTICE OF HEARING

In the matter of the joint complaint of Shulman, Inc. Airborne Freight Corporation and Western Transportation Co., Inc., and complaint of ABC Air Freight Co., Inc. against American Shippers, Inc.

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, that a hearing on the above-entitled dockets is assigned to be held on October 1, 1958, at 10:00 a. m., e. d. s. t., in Room E-210, Temporary Building No. 5, Sixteenth Street and Constitution Avenue, NW., Washington, D. C., before Examiner Paul N. Pfeiffer.

Dated at Washington, D. C., September 15, 1958.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 58-7621; Filed, Sept. 17, 1958; 8:53 a. m.]

[Docket No. 9743]

PERU AIR WAYS, S. A.

NOTICE OF PREHEARING CONFERENCE

In the matter of the application of Peru Air Ways for a foreign air carrier permit to operate from Peru via Panama City, Panama and Havana, Cuba to Miami, Florida and Washington, D. C. and beyond to Montreal, Canada.

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on September 22, 1958, at 10:00 a. m., e. d. s. t., in Room 1417, Temporary Building No. 4, Seventeenth Street and Constitution Avenue, NW., Washington, D. C., before Examiner Ferdinand D. Moran.

Dated at Washington, September 15, 1958.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 58-7622; Filed, Sept. 17, 1958; 8:54 a. m.]

[Docket No. 9786]

EAGLE AIRWAYS (BERMUDA) LTD.

NOTICE OF HEARING

In the matter of the application of The Eagle Airways (Bermuda) Ltd. for an amendment of its foreign air carrier permit, pursuant to section 402 of the Civil Aeronautics Act of 1938, as amended.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, that a hearing in the above-entitled proceeding is assigned to be held on September 19, 1958, at 10:00 a. m., e. d. s. t., in Room 1064, Temporary Building No. 5, Sixteenth Street and Constitution Ave., NW., Washington, D. C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D. C., September 12, 1958.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 58-7620; Filed, Sept. 17, 1958; 8:53 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-15345]

CITIES SERVICE GAS CO.

NOTICE OF APPLICATION AND DATE OF HEARING

SEPTEMBER 12, 1958.

Take notice that Cities Service Gas Company (Applicant), a Delaware corporation with principal place of business at Oklahoma City, Oklahoma, filed in Docket No. G-15345 on June 23, 1958, an

application for a certificate of public convenience and necessity, pursuant to section 7 (c) of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant proposes to construct and operate, as an integral part of its existing natural-gas system, the following facilities: (1) A new 1,350 horsepower compressor station on its existing field-pipeline system in the Hugoton Field, Haskell County, Kansas, to act as a booster for the existing Hugoton Compressor Station, and (2) a 1,350 horsepower addition to its existing Ulysses Compressor Station in the Hugoton Field, Grant County, Kansas. The Hugoton Field is one of Applicant's principal sources of gas supply.

The application states that the well pressures are declining in the Hugoton Field of Kansas and that, if Applicant were to attempt with its existing compressor facilities to maintain present inputs into its system from the Hugoton Field, it would be necessary to operate its Ulysses and Hugoton Compressor Stations at overloads of 32 percent and 25.5 percent, respectively. Applicant considers this degree of overloading to be excessive and hazardous, and states that installation of the proposed compressor facilites would reduce such overloading to 8.2 percent at the Hugoton Station, which is not considered excessive, and would completely eliminate overloading at Ulysses Station.

Applicant estimates that the capital cost of the proposed facilities will total approximately $787,000, which will be financed out of treasury cash.

Applicant states that since the proposed facilities are intended for the purpose of maintaining present inputs into its system, no additional revenues can be attributed to the proposed investment.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

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 on October 14, 1958, at 9:30 a. m., e. d. s. t., in a hearing room of the Federal Power Commission, 441 G Street, NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before October 3, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-7597; Filed, Sept. 17, 1958; 8:48 a. m.]

[Docket No. G-15710]

CENTRAL PENNSYLVANIA GAS CO.

NOTICE OF APPLICATION AND DATE OF HEARING

SEPTEMBER 12, 1958.

Take notice that Central Pennsylvania Gas Company (Applicant), a Pennsylvania corporation, having its operating headquarters at 107 West Broad Street, Tamaqua, Pennsylvania, filed on July 28, 1958, an application pursuant to section 7 (a) of the Natural Gas Act, for an order directing Manufacturers Light and Heat Company (Manufacturers) to sell and deliver natural gas to it for resale to the public in the area served and to be served by Applicant, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant states that it is presently manufacturing and selling propane air gas in the Boroughs of State College and Bellefonte and the communities of Lemont and Pleasant Gap, all located in Centre County. Applicant proposes to serve these communities with natural gas and also one new industrial customer located in Clarence, Pennsylvania, whose plant is adjacent to Applicant's proposed pipeline.

Applicant proposes to construct an 8-inch pipeline extending from Manufacturer's line No. 1711 in Centre County, approximately 21.4 miles in length to its existing plant located at Axeman, Pennsylvania.

Applicant estimates its peak-day and annual natural gas requirements as follows:

VOLUMES IN MCF

Year	Peak day	Annual
1st	867	281, 139
2d	1624	518, 521
3d	1804	557, 554
4th	2022	580, 493
5th	2242	603, 729

Applicant estimates the cost of its proposed construction will be $600,000 which it proposes to finance with the proceeds of a $650,000 six per cent first mortgage, twenty year bond issue and $150,000 in subordinated debt and equity financing. From the funds derived from this financing, Applicant will retire $159,000 existing first mortgage bonds. The balance of the funds will be used for construction and working capital purposes.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

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 on October 7, 1958, at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before October 3, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-7598; Filed, Sept. 17, 1958; 8:48 a. m.]

[Docket No. G-16238]

QUINTIN LITTLE

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

SEPTEMBER 12, 1958.

Quintin Little on August 15, 1958, tendered for filing a proposed change in his presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated August 1, 1958.

Purchaser: Lone Star Gas Company.

Rate schedule designation: Supplement No. 1 to Quintin Little's FPC Gas Rate Schedule No. 1.

Effective date: September 15, 1958 (effective date is the first day after expiration of the required thirty days' notice).

In support of the proposed favored-nation rate increase, Quintin Little submits a copy of a letter from the Lone Star Gas Company notifying that effective July 1, 1958, the price of gas it purchases from properties in the same area would be increased to a base rate of 14 cents per Mcf. Quintin Little cites the contract provisions and states that denial of the increase would be inequitable.

The increased rate and charge so proposed has not been shown to be justified, and 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 said proposed change, and that Supplement No. 1 to Quintin Little'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 be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 1 to Quintin Little's FPC Gas Rate Schedule No. 1.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until February 15, 1959, and 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) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-7599; Filed, Sept. 17, 1958; 8:48 a. m.]

[Docket No. G-16239]

GRUBBS & HAWKINS ET AL.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

SEPTEMBER 12, 1958.

Grubb & Hawkins et al. (Respondent) on August 14, 1958, tendered for filing a proposed change in its presently effective rate schedule [1] for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated August 12, 1958.

Purchaser: Trunkline Gas Company.

Rate schedule designation: Supplement No. 13 to Respondent's FPC Gase Rate Schedule No. 1.

Effective date: October 1, 1958 (effective date is that proposed by Respondent).

In support of the proposed periodic rate increase, Respondent states that the increase is provided by a contract resulting from arm's-length bargaining in good faith. The increased rate and charge also reflects (in whole or in part) the additional "excise, license, or privilege tax" of one cent per Mcf levied by the State of Louisiana pursuant to Act No. 8 of 1958 (House Bill No. 303), as approved on June 16, 1958, amending Title 47 of the Louisiana Revised Statutes of 1950. The Commission is advised that litigation is being instituted to challenge the constitutionality of the said Act No. 8 of 1958. In consideration of this fact, and in order to assure appropriate refund in the event said Act No. 8 of 1958 should be declared unconstitutional or otherwise held invalid by final judicial decision, it is deemed advisable to suspend the said proposed increased rate and charge.

This suspension, however, is based solely on the possibility of the additional tax being invalidated and only such tax reimbursement shall be made effective subject to refund.

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 said proposed change, and that Supplement No. 13 to Respondent'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 Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 13 to Respondent's FPC Gas Rate Schedule No. 1.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until October 2, 1958, and 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) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-7600; Filed, Sept. 17, 1958; 8:49 a. m.]

[Docket No. G-16240]

TEXAS GULF PRODUCING CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATE

SEPTEMBER 12, 1958.

Texas Gulf Producing Company (Texas Gulf) on August 15, 1958, tendered for filing a proposed change in its presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated August 11, 1958.

Purchaser: Trunkline Gas Company.

Rate schedule designation: Supplement No. 9 to Texas Gulf's FPC Gas Rate Schedule No. 4.

Effective date: September 15, 1958 (effective date is the first day after the expiration of the required 30-days' notice).

In support of the proposed favored-nation rate increase Texas Gulf cites the contractural provisions and submits a letter dated March 10, 1958, from Trunkline advising that Trunkline has executed a new contract with Coastal States Gas Producing Company to purchase gas at a similar price in Bee County, Texas, and that deliveries began on March 7, 1958.

The increased rate and charge so proposed has not been shown to be justified, and 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 said proposed change, and that Supplement No. 9 to Texas Gulf's FPC Gas Rate Schedule No. 4 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 be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 9 to Texas Gulf's FPC Gas Rate Schedule No. 4.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until February 15, 1959, and 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) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-7601; Filed, Sept. 17, 1958; 8:49 a. m.]

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[1] Supplement No. 12 to Respondent's FPC Gas Rate Schedule No. 1 (Louisiana gathering tax increase) was suspended for one day until August 2, 1958, in Docket No. G-15600, and is now in effect subject to refund.

[Docket No. G-16249]

SHELL OIL CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

SEPTEMBER 12, 1958.

Shell Oil Company (Shell) on August 15, 1958, tendered for filing a proposed change in its presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated August 12, 1958.

Purchaser: West Lake Natural Gasoline Company.

Rate schedule designation: Supplement No. 1 to Shell's FPC Gas Rate Schedule No. 173.

Effective date: September 15, 1958 (effective date is the first day after expiration of the required thirty days' notice).

In support of the proposed periodic rate increase, Shell merely states that the proposed rate was agreed to after arm's-length negotiations and formed a major consideration for seller entering into the contract.

The increased rate and charge so proposed has not been shown to be justified, and 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 said proposed change, and that Supplement No. 1 to Shell's FPC Gas Rate Schedule No. 173 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 be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 1 to Shell's FPC Gas Rate Schedule No. 173.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until September 16, 1958, and 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) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioner Kline dissenting).

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-7602; Filed, Sept. 17, 1958; 8:49 a. m.]

[Docket No. G-14810 etc.]

NORTEX OIL & GAS CORP. ET AL.

NOTICE OF APPLICATIONS AND DATE OF HEARING

SEPTEMBER 12, 1958.

In the matters of Nortex Oil & Gas Corporation [1], Docket No. G-14810; Neville G. Penrose, Inc. (Operator), et al.[2], Docket No. G-14811; Carr Oil and Gas Company (By Holly Nester, Agent), Docket No. G-14812; The Reger Gas Company (By Glenn L. Haught, Agent) [3], Docket No. G-14815; Bailey Gas Company (By D. L. Gainer, Agent) [4], Docket No. G-14816; Ward Run Development Company (By Willard E. Farrell, Agent) [5], Docket No. G-14817; Roy G. Hildreth, et al.[6], Docket No. G-14818; E. B. Alexander, Jr., et al.[7], Docket No. G-14819; Mrs. Betty D. Mortimer, et al.[8], Docket No. G-14820; Graham-Michaelis Drilling Company (Operator),[9] Docket No. G-14821; The Spurgeon Gas Company (By Glenn L. Haught, Agent) [10], Docket No. G-14822; Champlin Oil & Refining Company [11] (formerly Champlin Refining Company), Operator, Docket No. G-14830; Claud E. Aikman, Docket No. G-14831; Wm. H. Perkins, et al.[12], Docket No. G-14838; Raymond Oil Company, Agent [13], Docket No. G-14839.

Take notice that each of the above Applicants has filed an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing each to render service as hereinafter described, subject to the jurisdiction of the Commission as more fully represented in the respective applications which are on file with the Commission and open to public inspection. Each Applicant has submitted a related rate schedule for such service.

The respective Applicants produce and propose to sell natural gas for transportation in interstate commerce for resale as indicated below:

Docket No., Field, Location, and Purchaser

G-14810; West Weesatche Field, Goliad County, Tex.; United Gas Pipe Line Co.

G-14811; Orcones Field, Duval County, Tex.; Transcontinental Gas Pipe Line Corp.

G-14812; Washington District, Calhoun County, W. Va.; Hope Natural Gas Co.

G-14815; Murphy District, Ritchie County, W. Va.; Hope Natural Gas Co.

G-14816; Lee District, Calhoun County, W. Va.; Hope Natural Gas Co.

G-14817; Union District, Ritchie County, W. Va.; Hope Natural Gas Co.

G-14818; Lee District, Calhoun County, W. Va.; Hope Natural Gas Co.

G-14819; Maxie-Pistol Ridge Field, Forrest County, Miss.; United Gas Pipe Line Co.

G-14820; Maxie-Pistol Ridge Field; Pearl River County, Miss.; United Gas Pipe Line Co.

G-14821; Hugoton Field, Meade County, Kans.; Panhandle Eastern Pipe Line Co.

G-14822; Murphy District Field, Ritchie County, W. Va.; Hope Natural Gas Co.

G-14830; Boonesville Field, Jack and Wise Counties, Tex.; Natural Gas Pipeline Co. of America.

G-14831; Aztec (Pictured Cliffs) Field, San Juan County, N. Mex.; El Paso Natural Gas Co.

G-14838; Acreage In Field, Stephens County, Okla.; Lone Star Gas Co.

G-14839; Elm Grove Field, Logan County, Colo.; Kansas-Nebraska Natural Gas Co., Inc.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

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 on October 20, 1958 at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before October 7, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

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[1] Application covers the proposed sale of natural gas under amendatory agreement dated February 19, 1958, which adds additional acreage to a basic contract dated October 1, 1956, as amended. Applicant was authorized in Docket No. G-11419 covering sale of gas under the basic contract.

[2] Neville G. Penrose, Inc., Operator, is filing for itself and on behalf of the following non-operators: Broseco Corporation and John B. Rich. All are signatory seller parties to the gas sales contract dated February 14, 1958.

[3] The Rager Gas Company, Applicant, is a partnership consisting of Glenn L. Haught, Teddie C. Fredrick, L. D. Nutter, Mountain Iron and Supply Company, Arthur M. Taylor, Guy R. Neely, Elwood Harrigan, Sydney Renehan, Howard E. Koontz, Lewis J. Fuccy, Ridgeway T. Johnston, Paul McCoy, Margaret Sperry, J. E. Kintner, Warren R. Haught, Eldon J. Haught, and Richard G. Lynch. Glenn L. Haught is a signatory seller party to the gas sales contract dated March 19, 1958 and the remaining above-named partners are also signatory seller parties through the signature of Glenn L. Haught who has signed the contract as attorney-in-fact for said partners.

[4] Bailey Gas Company, Applicant, is a partnership consisting of C. N. Hall, Sr., P. P.

See footnotes at end of document.

Gunn, Harry Stevens, Lloyd Jackson, Arvil Browning, Verbie Browning, E. G. Chapman, Hal Pack, L. E. Thompson, L. M. Pack, Ercel Midkiff, Paul Le Masters, Hal S. McComas, Curtis M. Tackett, Wylie Stowers, Euraxel Hall, Juanita Hall, Carl Hanson, Margie Phillips, Dr. Rodgers Harshbarger, Harry E. Martin, Kyle Dunlop, R. L. Martin, D. V. Quick, and Juanita Quick. C. N. Hall, Sr., P. P. Gunn, and Harry Stevens are signatory seller parties to the subject gas sales contract, and the remaining partners are signatory seller parties through the signatures of C. N. Hall, Sr., P. P. Gunn and Harry Stevens who have signed the subject contract as attorneys-in-fact for said partners.

[4] Ward Run Development Company, Applicant, is a partnership consisting of Willard E. Ferrell and eighty-one additional partners listed in the subject gas sales contract. Willard E. Ferrell is a signatory seller party to the gas sales contract, and the remaining eighty-one partners are signatory seller parties through the signature of Willard E. Ferrell who has signed the subject contract as attorney-in-fact for said partners.

[5] Roy G. Hildreth, et al., Applicant, is a partnership consisting of Roy G. Hildreth, Lester L. Hildreth, Buena Ogden, Ruth Hildreth, Jason Taylor, R. L. McCulty, Lee Ellis, Roy G. Hildreth, Jr., James E. Oakley, Bliss L. Hildreth, William E. Boggess, John H. Niday, W. G. Drake, Virgil E. Daugherty, H. E. Ross, and O. R. Hardman. All of the above named partners are signatory seller parties to the gas sales contract dated March 4, 1958.

[6] E. B. Alexander, Jr., and Katherine B. Alexander are filing jointly for their combined 4.16667 percent interest in the SE–72 Gas Unit. Both are signatory seller parties to the gas sales contract dated February 24, 1958.

[7] Mrs. Betty D. Mortimer and Mrs. Frances D. Harrell are filing for their interests in gas produced from the subject acreage through their attorney, John M. Shuey. Mrs. Betty D. Mortimer and Mrs. Frances D. Harrell are named as seller parties to the subject gas sales contract dated November 4, 1957, which contract has been signed by C. M. Dorchester, attorney-in-fact.

[8] Graham-Michaelis Drilling Company, Operator, a co-partnership consisting of W. A. Michaelis, Jr., Marjorie Lois Graham, and William L. Graham, is filing for its 40.625 percent interest in production from the Jones "B No. 1" Unit and on behalf of the following nonoperators: William Graham, Inc., 25 percent; Petrolite Corporation, 25 percent; Robert White, 6.25 percent; and Guy Young, 3.125 percent. The above-named partners of Graham-Michaelis Drilling Company are signatory seller parties to the gas sales contract, and the nonoperators by instrument of assignment dated February 25, 1958, have become signatory parties to the subject contract to the extent of their individual interests.

[9] The Spurgeon Gas Company, Applicant, is a partnership consisting of Glenn L. Haught, Mountain Iron and Supply Company, Teddie C. Frederick, Clifton G. Valentine, L. D. Nutter, Paul McCoy, Howard E. Koontz, Jr., Sydney Renehan, Lewis J. Fuccy, Elwood Harrigan, Arthur M. Taylor, Warren R. Haught, Eldon J. Haught, Richard G. Lynch, and J. E. Kintner. Glenn L. Haught is a signatory seller party to the subject gas sales contract, and the remaining partners are also signatory seller parties through the signature of Glenn L. Haught, who has signed the subject contract as attorney-in-fact for said partners.

[10] Champlin Oil and Refining Company, Operator, is filing for its interest in the subject acreage. As operator of the D. P. Dunn Unit, Applicant lists Christie Mitchell & Mitchell Company, as nonoperator and owner of 41.94 percent working interest, which company has negotiated a separate contract to dispose of its share of the production. Champlin is the only signatory seller party to the gas sales contract dated March 10, 1958.

[11] Wm. H. Perkins, J. R. Perkins, R. R. Goldsmith, Marvin J. Coles, Osias Biller, Howard W. Jennings, and Fieldon L. Parkham are filing jointly for their 100 percent interest in ten acres. All are signatory seller parties to the gas sales contract dated January 15, 1958.

[12] Raymond Oil Company, Applicant, is a partnership consisting of Francis M. Raymond, Charles F. Raymond, William Mike Raymond, and Shirley Salem, filing for its 31.28125 percent working interest and as agent for Artnell Co., and Western Crude Marketers, Inc., who respectively own 42.87500 percent and 10.71875 percent working interests in the subject acreage. The individual partners of Raymond Oil Co. (Shirley Salem through the signature of Francis M. Raymond, attorney-in-fact) are the only signatory seller parties to the gas sales contract dated February 6, 1958. Production is limited to formations down to and including the "D" Sand. Supplement filed concurrently with the certificate application but under separate cover is statement invoking the provisions of section 157.28 for temporary authorization.

[F. R. Doc. 58–7603; Filed, Sept. 17, 1958; 8:49 a. m.]

[Docket No. 14981 etc.]

PERMIAN BASIN PIPELINE CO., ET AL.

NOTICE OF APPLICATIONS AND DATE OF HEARING

SEPTEMBER 12, 1958.

In the matters of Permian Basin Pipeline Company, Docket No. G–14981; Northern Natural Gas Company, Docket No. G–14982; El Paso Natural Gas Company, Docket No. G–15139.

Take notice that Permian Basin Pipeline Company (Permian), a Delaware corporation having its principal place of business in Omaha, Nebraska, filed an application in Docket No. G–14981 on April 25, 1958, and amendments thereto on May 22, 1958 and August 6, 1958, pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities subject to the jurisdiction of the Commission, as are fully described in the application on file with the Commission, and open to public inspection.

Take further notice that Northern Natural Gas Company (Northern), a Delaware corporation with a principal office in Omaha, Nebraska, filed an application on April 25, 1958 in Docket No. G–14982 pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities subject to the jurisdiction of the Commission, as more fully described in the application on file with the Commission, and open to public inspection.

Take further notice that El Paso Natural Gas Company (El Paso), a Delaware corporation with a principal place of business in El Paso, Texas, filed an application on May 21, 1958 in Docket No. G–15139, pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of an additional 50,000 Mcf daily of natural gas delivered to it by Northern in Yoakum County, Texas, to a point on Northern's system in Moore County, Texas, subject to the jurisdiction of the Commission, as more fully described in the application on file with the Commission and open to public inspection.

The applicants recite that Permian proposes to sell and deliver an additional 50,000 Mcf daily to Northern for transportation to and for Northern by El Paso.

The proposed facilities together with their location, estimated costs and method of financing are summarized for the subject dockets in the following table.

	Facilities requested	Location facilities	Estimated cost and method of financing
Permian, G–14981	Three 550 hp. compression units	On Plymouth to Sprayberry line.	$379,300
	Turbocharge 3—2,000 hp. units to 2,800 hp. Florey Station.		226,000
	Interest and overhead		24,200
	Total		[1] 629,500
El Paso, G–15139	Additional meter station	Dumas plant	[2] 24,044
Northern, G–14982	8.1 miles 30" pipeline	North of Beaver, Okla	770,400
	11.1 miles of 30" pipeline	South of Beaver, Okla	1,033,400
	2,000 hp. compressor	Sunray, Tex	478,000
	2,000 hp. compressor	Beaver, Okla	749,600
	Interest and overhead		121,300
	Total		[3] 3,152,700

[1] From cash on hand.
[2] From current working funds.
[3] From cash on hand, and if required, short-term bank notes.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

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 on October 20, 1958, at 10:00 a. m., e. d. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications.

Protest or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and pro-

cedure (18 CFR 1.8 or 1.10) on or before October 6, 1958.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-7604; Filed, Sept. 17, 1958; 8:49 a. m.]

[Docket No. G-16115]

WARREN PETROLEUM CORP.

ORDER FOR HEARING, SUSPENDING PROPOSED CHANGE IN RATE, AND ALLOWING INCREASED RATE TO BECOME EFFECTIVE

SEPTEMBER 12, 1958.

Warren Petroleum Corporation (Respondent), on August 14, 1958, tendered for filing a proposed change in its presently effective rate schedule for sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated July 25, 1958.[1]

Purchaser: Texas Eastern Transmission Corp.

Rate schedule designation: Supplement No. 10 to Respondent's FPC Gas Rate Schedule No. 18.

Effective date: August 28, 1958 (effective date is the date proposed by Respondent).

The increased rate and charge so proposed is intended to reflect (in whole or in part) the additional "excise, license, or privilege tax" of one cent per Mcf levied by the State of Louisiana pursuant to Act No. 8 of 1958 (House Bill 303), as approved on June 16, 1958, amending Title 47 of the Louisiana Revised Statutes of 1950. The Commission is advised that litigation is being instituted to challenge the constitutionality of the said Act No. 8 of 1958. In consideration of this fact, and in order to assure appropriate refund in the event said Act No. 8 of 1958 should be declared unconstitutional or otherwise held invalid by final judicial decision, it is deemed advisable to suspend the said proposed increased rate and charge until August 29, 1958, and thereafter to permit it to become effective as of that date; provided, that within 20 days from the date of this order Respondent shall file with the Secretary of the Commission an appropriate undertaking to assure such refund as may be ordered.

The Commission finds:

(1) 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 said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

(2) It is necessary and proper in the public interest in carrying out the provisions of the Natural Gas Act that Respondent's proposed increased rate be made effective as hereinafter provided and that Respondent be required to file an undertaking as hereinafter ordered and conditioned.

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 be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 10 to Respondent's FPC Gas Rate Schedule No. 18.

(B) Pending such hearing and decision thereon, said supplement be and it hereby is suspended and the use thereof deferred until August 29, 1958, and until such further time as it is made effective in the manner hereinafter prescribed.

(C) The rate, charge, and classification set forth in the above-designated supplement to Respondent's FPC Gas Rate Schedule shall be effective as of August 29, 1958: *Provided, however,* That within 20 days from the date of this order, Respondent shall execute and file with the Secretary of the Commission the agreement and undertaking described in paragraph (E) below.

(D) Respondent shall refund at such times and in such amounts to the persons entitled thereto, and in such manner as may be required by final order of the Commission, the difference between the presently effective rate and charge and the proposed increased rate and charge hereby allowed to become effective in the event the additional tax of one cent per Mcf levied by the State of Louisiana is for any reason held to be invalid. Should such additional tax eventually be held invalid and the State of Louisiana makes refund, with interest, of the tax monies collected pursuant to the said Act No. 8 of 1958, then, and in that event, a proportionate part of the interest so received by the Respondent herein shall be passed on and paid to the persons entitled thereto at such times and in such amounts, and in such manner as may be required by final order of the Commission. Respondent shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rate or charge allowed by this order to become effective, for each billing period, specifying by whom and in whose behalf such amounts were paid; and shall report (original and four copies), in writing and under oath, to the Commission quarterly, or monthly if Respondent so elects, for each billing period, and for each purchaser, the billing determinants of natural gas sales to such purchasers and the revenues resulting therefrom, as computed under the rate in effect immediately prior to the date upon which the increased rate allowed by this order becomes effective, and under the rate allowed by this order to become effective, together with the differences in the revenues so computed.

(E) As a condition of this order, within 20 days from the date of issuance thereof, Respondent shall execute and file in triplicate with the Secretary of this Commission its written agreement and undertaking to comply with the terms of paragraph (D) hereof, signed by a responsible officer of the corporation, evidenced by proper authority from the board of directors, and accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved, as follows:

Agreement and Undertaking of Warren Petroleum Corporation to Comply with the Terms and Conditions of Paragraph (D) of Federal Power Commission's Order Making Effective Proposed Rate Changes

In conformity with the requirements of the order issued_____, in Docket No. G-16115, Warren Petroleum Corporation hereby agrees and undertakes to comply with the terms and conditions of paragraph (D) of said order, and has caused this agreement and undertaking to be executed and sealed in its name by its officers, thereupon duly authorized in accordance with the terms of the resolution of its board of directors, a certified copy of which is appended hereto this_____day of_____.

WARREN PETROLEUM CORPORATION

By _____

Attest:

_____

Secretary

Unless Respondent is advised to the contrary within 15 days after the date of filing such agreement and undertaking, the agreement and undertaking shall be deemed to have been accepted.

(F) If Respondent shall, in conformity with the terms and conditions of paragraph (D) of this order, make the refunds as may be required by order of the Commission, the undertaking shall be discharged; otherwise, it shall remain in full force and effect.

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

(H) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-7605; Filed, Sept. 17, 1958; 8:50 a. m.]

[Docket No. G-15121]

MANUFACTURERS LIGHT AND HEAT CO.

NOTICE OF APPLICATION AND DATE OF HEARING

SEPTEMBER 12, 1958.

Take notice that The Manufacturers Light and Heat Company (Applicant), a Pennsylvania corporation and a subsidiary of The Columbia Gas System, Inc., having its principal place of business at 800 Union Trust Building, Pittsburgh, Pennsylvania, filed on May 19, 1958 an application, pursuant to section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to install and operate (1) a 55 horsepower portable compressor unit at its Hanst Compressor Station, Beaver Township, Clarion County, Pennsylvania

[1] Said Notice of Change, together with another concurrently submitted but not subject to this order, are submitted in substitution for prior filing made on July 28, 1958.

and (2) a 75 horsepower portable compressor unit at its Cross Creek Compressor Station in Jefferson Township, Washington County, Pennsylvania. In connection with the installation and operation of compressor units at its Hanst and Cross Creek Compressor Stations, Applicant also requests permission to abandon (1) its entire existing Hanst Compressor Station, consisting of 7 compressor units with a total of 540 horsepower, and (2) its entire existing Cross Creek Compressor Station, consisting of one 300 horsepower compressor unit, subject to the jurisdiction of the Commission, all as more fully represented in the application, which is on file with the Commission and open for public inspection.

Applicant states that the maximum deliverability of Hanst producing field is 200 Mcf per day, for which the proposed compressor unit will be adequate. Applicant also states that the existing Hanst station is not suitable for reinstallation and will be sold for junk. It is estimated that this proposed retirement will result in a decrease of $7,400 per year in operating and maintenance costs.

Applicant states that the maximum deliverability of the Cross Creek field is 310 Mcf per day for which the proposed 75 horsepower compressor unit will be adequate. This proposed replacement will result in an estimated decrease in operating and maintenance costs of $15,000 per year.

Applicant also proposes to construct new buildings for the proposed new compressor units and to retire the old buildings at said Hanst and Cross Creek stations.

The estimated cost of the proposed construction at Hanst Compressor Station is $7,000. It is estimated that the salvage will amount to $2,000, that retirement costs will be $2,000, and that there will be a credit to fixed capital of $54,300.

The estimated cost of construction at Cross Creek Compressor Station is $38,000. It is estimated that the salvage will amount to $20,000, that retirement costs will be $5,000, and that there will be a credit to fixed capital of $40,000.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

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 on October 16, 1958, at 9:30 a. m., e. d. s. t., in a hearing room of the Federal Power Commission, 441 G Street, NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before October 6, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-7606; Filed, Sept. 17, 1958; 8:50 a. m.]

[Docket No. G-16126]

TENSAS GAS GATHERING CORP.

ORDER FOR HEARING, SUSPENDING PROPOSED CHANGE IN RATE, AND ALLOWING INCREASED RATE TO BECOME EFFECTIVE

SEPTEMBER 12, 1958.

Tensas Gas Gathering Corporation (Tensas Gas) on August 13 and 14, 1958, tendered for filing three revised tariff sheets[1] to its FPC Gas Tariff, Original Volume No. 1, by which Tensas Gas proposes to increase its rate for sale of gas in an amount in excess of $30,000 annually to Olin Gas Transmission Corporation supplied with gas produced or gathered by Tensas Gas in the State of Louisiana.

The increased rate and charge so proposed, which Tensas Gas proposes to be effective as of August 14, 1958, is intended to reflect (in whole or in part) the additional "excise, license, or privilege tax" of one cent per Mcf levied by the State of Louisiana pursuant to Act No. 8 of 1958 (House Bill No. 303), as approved on June 16, 1958, amending Title 47 of the Louisiana Revised Statutes of 1950. The Commission is advised that litigation is being instituted to challenge the constitutionality of the said Act No. 8 of 1958. In consideration of this fact, and in order to assure appropriate refund in the event said Act No. 8 of 1958 should be declared unconstitutional or otherwise held invalid by final judicial decision, it is deemed advisable to suspend the said proposed increased rates and charges until August 15, 1958, and thereafter to permit them to become effective as of that date: *Provided,* That within 20 days from the date of this order Tensas Gas shall file with the Secretary of the Commission an appropriate undertaking to assure such refund as may be ordered.

The Commission finds:

(1) 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 said proposed changes, and that the above-designated revised tariff sheets be suspended and the use thereof deferred as hereinafter ordered.

(2) It is necessary and proper in the public interest in carrying out the provisions of the Natural Gas Act that Tensas Gas' proposed increased rate be made effective as hereinafter provided and that Tensas Gas be required to file an undertaking as hereinafter ordered and conditioned.

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 be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in the above-designated revised tariff sheets.

(B) Pending such hearing and decision thereon, said First Revised Sheet Nos. 5, 6 and 7 to Tensas Gas FPC Gas Tariff, Original Volume 1, are each hereby suspended and the use thereof deferred until August 15, 1958, and until such further time as each is made effective in the manner hereinafter prescribed.

(C) The rate, charge, and classification set forth in the above-designated filings shall be effective as of August 15, 1958: *Provided, however,* That within 20 days from the date of this order, Tensas Gas shall execute and file with the Secretary of the Commission the agreement and undertaking described in paragraph (E) below.

(D) Tensas Gas shall refund at such time and in such amounts to the persons entitled thereto, and in such manner as may be required by final order of the Commission, the difference between the presently effective rate and charge and the proposed increased rate and charge hereby allowed to become effective in the event the additional tax of one cent per Mcf levied by the State of Louisiana is for any reason held to be invalid. Should such additional tax eventually be held invalid and the State of Louisiana makes refund, with interest, of the tax monies collected pursuant to the said Act No. 8 of 1958, then, and in that event, a proportionate part of the interest so received by Tensas Gas herein shall be passed on and paid to the persons entitled thereto as such times and in such amounts, and in such manner as may be required by final order of the Commission. Tensas Gas shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rates or charges allowed by this order to become effective, for each billing period, specifying by whom and in whose behalf such amounts were paid; and shall report (original and four copies), in writing and under oath, to the Commission quarterly, or monthly if Tensas Gas so elects, for each billing period, and for each purchaser, the billing determinants of natural gas sales to such purchasers

[1] First Revised Sheet Nos. 5, 6 and 7 to Tensas Gas' FPC Gas Tariff, Original Volume No. 1, comprising its Rate Schedule G-2. Aforementioned Sheet Nos. 6 and 7 were filed on August 13 and Sheet No. 5 was filed on August 14. On July 28, 1958, Tensas Gas tendered for filing Supplement No. 1 to Rate Schedule G-2 to effect the proposed change. The aforementioned revised sheets were filed pursuant to a Commission letter dated August 7, 1958, which informed Tensas Gas that changes in rates may be effected only by tendering revised tariff sheets.

and the revenues resulting therefrom, as computed under the rates in effect immediately prior to the date upon which the increased rate allowed by this order becomes effective, and under the rate allowed by this order to become effective, together with the difference in the revenues so computed.

(E) As a condition of this order, within 20 days from the date of issuance thereof, Tensas Gas shall execute and file in triplicate with the Secretary of this Commission its written agreement and undertaking to comply with the terms of paragraph (D) hereof, signed by a responsible officer of the corporation, evidenced by proper authority from the board of directors, and accompanied by a certificate showing service of copies thereof upon all purchasers under the revised tariff sheets involved, as follows:

Agreement and Undertaking of Tensas Gas Gathering Corporation to Comply with the Terms and Conditions of Paragraph (D) of Federal Power Commission's Order Making Effective Proposed Rate Changes.

In conformity with the requirements of the order issued _____, in Docket No. G-16126, Tensas Gas Gathering Corporation hereby agrees and undertakes to comply with the terms and conditions of paragraph (D) of said order, and has caused the agreement and undertaking to be executed and sealed in its name by its officers, thereupon duly authorized in accordance with the terms of the resolutions of its board of directors, a certified copy of which is appended hereto this day of _____.

TENSAS GAS GATHERING CORPORATION

By _____

Attest:

_____

Secretary

Unless Tensas Gas is advised to the contrary within 15 days after the date of filing such agreement and undertaking, the agreement and undertaking shall be deemed to have been accepted.

(F) If Tensas Gas shall, in conformity with the terms and conditions of paragraph (D) of this order, make the refunds as may be required by order of the Commission, the undertaking shall be discharged; otherwise, it shall remain in full force and effect.

(G) The revised tariff sheets hereby suspended shall not be changed until the period of suspension has expired, unless otherwise ordered by the Commission.

(H) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-7607; Filed, Sept. 17, 1958; 8:50 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3074]

CORNUCOPIA GOLD MINES

ORDER SUMMARILY SUSPENDING TRADING

SEPTEMBER 12, 1958.

I. The Common Stock, $.05 par value, of Cornucopia Gold Mines being listed and registered on the American Stock Exchange; and

II. The Commission on July 25, 1958, issued its order and notice of hearing under section 19 (a) (2) of the Securities Exchange Act of 1934 (hereinafter called "the Act") to determine at a hearing to be held September 2, 1958, whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months, or to withdraw, the registration of the common stock of Cornucopia Gold Mines (hereinafter called "registrant") on the American Stock Exchange for failure to comply with section 13 of the Act and the rules and regulations adopted thereunder, and for failure to comply with the disclosure requirements of Regulation 14 adopted pursuant to section 14 (a) of the Act.

On September 2, 1958, the Commission issued its order summarily suspending trading of said securities on the exchange pursuant to section 19 (a) (4) of the Act for the reasons set forth in said order to prevent fraudulent, deceptive or manipulative acts or practices for a period of ten days from the date of the aforesaid order.

III. The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on the American Stock Exchange and that such action is necessary and appropriate for the protection of inyestors; and

The Commission being of the opinion that such suspension is necessary in order to prevent fraudulent, deceptive, or manipulative acts or practices, with the result that it will be unlawful under section 15 (c) (2) of the Securities Exchange Act of 1934 and the Commission's Rule X-15C2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, such security otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19 (a) (4) of the Securities Exchange Act of 1934, that trading in said securities on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive, or manipulative acts or practices for a period of ten (10) days, September 13 to 22, 1958, inclusive.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F. R. Doc. 58-7608; Filed, Sept. 17, 1958; 8:50 a. m.]

INTERSTATE COMMERCE COMMISSION

[No. 3666]

[Ex Parte No. MC-13]

TRANSPORTATION OF NITROMETHANE

At a special session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 10th day of September A. D. 1958.

It appearing, that the occurrence of violent explosions at Niagara Falls, N. Y., on January 22, 1958, and at Mt. Pulaski, Ill., on June 1, 1958, of nitromethane in bulk in railroad tank cars, indicates the desirability, in the public interest, of imposing at the earliest practicable date, regulations for the transportation of nitromethane (a chemical presently classified as a nonexplosive), when transported in bulk, in railroad tank cars or in tank motor vehicles;

It further appearing, that because of the urgent and immediate need for such regulations, rule making procedure under section 4 (a) of the Administrative Procedure Act, 5 U. S. C. 1003 (a), would be impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than 30 days notice pursuant to section 4 (c) of the Administrative Procedure Act, 5 U. S. C. 1003 (c);

It is ordered, That under authority contained in 18 U. S. C. 831-835, all shipments of nitromethane (lacquer solvent), in bulk, in railroad tank cars, and under authority contained in 49 U. S. C. 304, all shipments of the same commodity in tank motor vehicles by common, contract or private carriers by motor vehicle, from all shippers to all consignees, shall be prohibited until further order of the Commission;

It is further ordered, That this order shall be effective on September 19, 1958.

And it is further ordered, That notice of this proposed order shall be given to rail carriers, motor carriers, other persons of interest, and to the general public by depositing a copy thereof in the Office of the Secretary of the Interstate Commerce Commission, Washington, D. C., and by filing a copy with the Director, Federal Register Division.

(Sec. 204, 49 Stat. 546, as amended, 62 Stat. 738; 49 U. S. C. 304; 18 U. S. C. 831-835)

By the Commission, Division 3.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F. R. Doc. 58-7613; Filed, Sept. 17, 1958; 8:51 a. m.]