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Part I

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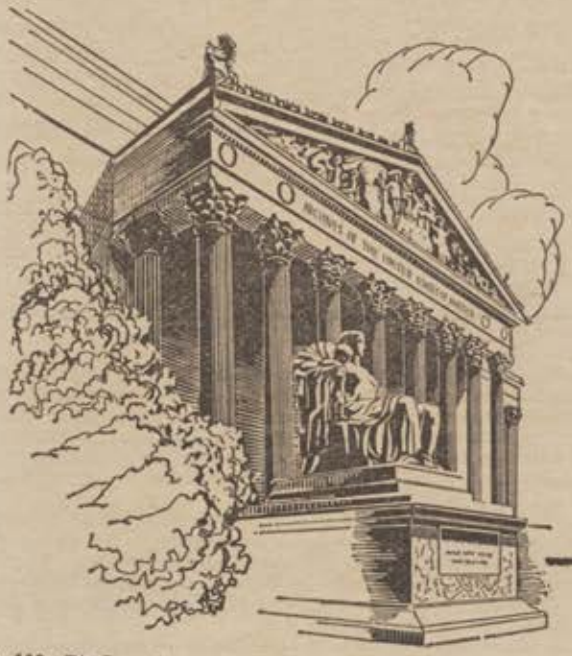

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Title 3—THE PRESIDENT

Proclamation 3985

PRAYER FOR PEACE, MEMORIAL DAY, 1970

By the President of the United States of America

A Proclamation

On Memorial Day we honor our war dead—not only for the sacrifices they made, but for the nation they helped to build and preserve by that sacrifice. We honor them most by remembering what it was they died for—not for glory, not for conquest, but for those concepts that bind a people together in nationhood—and brotherhood.

It is not enough to express our gratitude to the heroic dead by thought and prayer and with special reverence on Memorial Day. A more fitting memorial would be the creation of a peaceful world, free of the destructive conflicts that have plagued man's history.

We must, therefore, as individuals and as a nation, continue the difficult quest for tranquility among all peoples and the reasoned solution of our differences. Mindful of this, the Congress, by a joint resolution approved May 11, 1950, has requested the President to issue a proclamation calling upon the people of the United States to observe each May 30, Memorial Day, as a day of prayer for permanent peace and designating a period during such day when the people of the United States might unite in such supplication.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby designate Memorial Day, Saturday, May 30, 1970, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11 o'clock in the morning of that day as a time to unite in such prayer.

I urge the press, radio, television and all other information media to cooperate in this observance.

As a special mark of respect for those Americans who have given their lives in the tragic struggle in Vietnam, I direct that the flag of the United States be flown at half-staff all day on Memorial Day, instead of during the customary forenoon period, on all buildings, grounds, and naval vessels of the Federal government throughout the United States and all areas under its jurisdiction and control.

I also request the Governors of the States and of the Commonwealth of Puerto Rico and the appropriate officials of all local units of government to direct that the flag be flown at half-staff on all public buildings during that entire day, and request the people of the United States to display the flag at half-staff from their homes for the same period.

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

Richard Nixon

[F.R. Doc. 70-6446; Filed, May 21, 1970; 10:06 a.m.]

Rules and Regulations

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

SUBCHAPTER C—AIRCRAFT

[Airworthiness Docket No. 70-WE-16-AD; Amdt. 39-992]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 747-100 Series Airplanes

There have been two failures of the wing trailing edge aft flap support arm on 747-100 series airplanes attributed to fatigue. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require inspection of the wing trailing edge aft flap support arm for cracks and replacement if necessary on Boeing Model 747-100 series airplanes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

BOEING. Applies to Boeing Model 747-100 series airplanes.

Compliance required within the next 40 flights after the effective date of this AD on aircraft having 960 or more flights, and thereafter at intervals not to exceed 40 flights from the last inspection.

To detect cracking in the wing trailing edge aft flap support arms of Boeing Model 747-100 series airplanes accomplish the following or an alternate procedure approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(a) Inspect the wing trailing edge aft flap support arms for cracks in accordance with Boeing Alert Service Bulletin No. 27-2024, or later FAA approved revision.

(b) If no crack is found, repeat the inspection for cracks at intervals not to exceed 40 flights.

(c) If crack is found:

(1) and the crack length is 0.4 inches or greater, replace flap support arm with a serviceable part of the same part number in accordance with Boeing ASB 27-2024 (or later FAA approved revision) before further flight. After replacement repeat visual inspection per (b).

(2) and the crack length is less than 0.4 inches, the part may be continued in service provided that no more than one cracked support arm per flap panel exists. Parts so continued in service must be inspected at intervals not to exceed 20 flights, subject to the provisions of (c)(1) above.

NOTE: There will be a future revision to this AD to include provision for terminating action.

This amendment becomes effective May 25, 1970.

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

Issued in Los Angeles, Calif., on May 12, 1970.

ARVIN O. BASNIGHT,
Director, FAA Western Region.

[F.R. Doc. 70-6345; Filed, May 21, 1970; 8:47 a.m.]

SUBCHAPTER E—AIRSPACE

[Airspace Docket No. 70-SW-22]

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

Alteration of VOR Federal Airway Segments

The purpose of these amendments to Part 71 of the Federal Aviation Regulations is to make minor alterations to segments of VOR Federal airway Nos. 66 and 94.

The Deming, N. Mex., VOR is scheduled to be relocated to a new site (lat. 32°16'33" N., long. 107°36'18" W.) during July 1970. The relocation, approximately 2 miles west of its present location, will require minor realignment to segments of V-66 and V-94 which utilize radials of the Deming VOR for their alignment.

Accordingly, action is taken herein to provide for the new airway alignments.

Since these amendments are minor in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, these amendments will become effective more than 30 days after publication.

In consideration of the foregoing, Part 71 of the Federal Aviation Administration is amended, effective 0901 G.m.t., July 23, 1970, as hereinafter set forth.

Section 71.123 (35 F.R. 2009) is amended as follows:

a. In V-66 "INT Douglas 065°" is deleted and "INT Douglas 064°" is substituted therefor.

b. In V-94 all between "San Simon, Ariz.;" and "Salt Flat, Tex.," is deleted and "Deming, N. Mex.; Newman, Tex., including a S alternate via INT Deming 119° and Newman 271° radials;" is substituted therefor.

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

Issued in Washington, D.C., on May 18, 1970.

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

[F.R. Doc. 70-6329; Filed, May 21, 1970; 8:45 a.m.]

[Airspace Docket No. 70-EA-7]

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

Designation and Alteration of Federal Airways

On March 12, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 4412) stating that the Federal Aviation Administration was considering amendments to Part 71 of the Federal Aviation Regulations that would realign, designate and extend segments of VOR Federal airway, Nos. 6, 14, 45, and 435.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0901 G.m.t., July 23, 1970, as hereinafter set forth.

Section 71.123 (35 F.R. 2009, 4396, 5465, 6274) is amended as follows:

a. In V-6 "; Cleveland, Ohio;" is deleted and ", including a S alternate via INT Waterville 108° and Cleveland, Ohio, 258° radials; Cleveland;" is substituted therefor.

b. In V-14 all between "Findlay, Ohio;" and "Jefferson, Ohio;" is deleted and "INT Findlay 095° and Cleveland, Ohio, 241° radials; Cleveland;" is substituted therefor.

c. In V-45 "From Waterville, Ohio," is deleted and "From INT Waterville, Ohio, 085° and Cleveland, Ohio, 335° radials; Waterville;" is substituted therefor.

d. V-435 is amended to read:

V-435 From Rosewood, Ohio, via INT Rosewood 045° and Sandusky, Ohio, 221° radials; to Sandusky.

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

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

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

[F.R. Doc. 70-6330; Filed, May 21, 1970; 8:45 a.m.]

[Airspace Docket No. 70-WE-15]

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

Alteration of Transition Area; Correction

On April 29, 1970, F.R. Doc. 70-2734 was published in the FEDERAL REGISTER (35 F.R. 6749) adopting an amendment to Part 71 of the Federal Aviation Regulations that altered the description of the Lamar, Colo., transition area.

Subsequent to the publication of this document, it was determined that an error had been made in describing the transition area. Action is taken herein to correct this error.

Since this correction is minor in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the effective date, as originally adopted, may be retained.

In consideration of the foregoing, in § 71.181 (35 F.R. 6749), the description of the Lamar, Colo., transition area is amended by deleting "* * * 18.5 miles east * * *" where it appears in the text and substituting "* * * 18.5 miles north * * *" therefor.

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

Issued in Los Angeles, Calif., on May 11, 1970.

LEE E. WARREN,
Acting Director, Western Region.

[F.R. Doc. 70-6347; Filed, May 21, 1970; 8:47 a.m.]

[Airspace Docket No. 70-SO-23]

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

PART 73—SPECIAL USE AIRSPACE

Revocation of Restricted Area and Alteration of Restricted Area, Continental Control Area, Control Zone and Transition Area

The purpose of these amendments to Parts 71 and 73 of the Federal Aviation Regulations is to revoke the Fort Benning, Ga., Restricted Area R-3002B; renumber the Fort Benning Restricted Area R-3002A as R-3002; designate the Federal Aviation Administration, Atlanta ARTC Center as the controlling agency of R-3002; and reflect this renumbering of R-3002A in the descriptions of the Continental Control Area, Columbus, Ga., control zones and the Columbus, Ga., transition area.

The Department of the Army has advised the Federal Aviation Administration that Restricted Area R-3002B is no longer required. Accordingly, action is taken herein to revoke this restricted area and renumber Restricted Area R-3002A as R-3002 and designate the Atlanta ARTC Center the controlling agency of R-3002.

Since these amendments restore airspace to the public use and relieve a restriction, notice and public procedure thereon are unnecessary, and good cause exists for making these amendments effective on less than 30 days notice.

In consideration of the foregoing, Parts 71 and 73 of the Federal Aviation Regulations are amended, effective immediately, as hereinafter set forth.

1. In § 71.151 (35 F.R. 2043) "R-3002B Fort Benning, Ga." is deleted and "R-3002 Fort Benning, Ga." is substituted therefor.

2. In § 71.171 (35 F.R. 2054) the texts of Columbus, Ga. (Lawson AAF) and Columbus, Ga. (Columbus Metropolitan Airport) are amended by deleting "R-3002A" and substituting "R-3002" therefor.

3. In § 71.181 (35 F.R. 2134) the text of Columbus, Ga., is amended by deleting "R-3002A" and substituting "R-3002" therefor.

4. Section 73.30 (35 F.R. 2325) is amended as follows:

a. "R-3002B Fort Benning, Ga." is revoked.

b. In the text R-3002A Fort Benning, Ga., "R-3002A" is deleted and "R-3002" is substituted therefor; and "Controlling agency. Federal Aviation Administration, Atlanta ARTC Center." is added.

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

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

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

[F.R. Doc. 70-6331; Filed, May 21, 1970; 8:45 a.m.]

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

[Reg. Docket No. 10312; Amdt. 95-193]

PART 95—IFR ALTITUDES

Miscellaneous Amendments

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

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

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 95 of the Federal Aviation Regulations is amended, effective June 25, 1970, as follows:

1. By amending Subpart C as follows:

Section 95.47 *Green Federal Airway 7* is amended to read:

From, to, and MEA

Nome, Alaska, LFR; Moses Point, Alaska, LFR; *5,000, *4,200—MOCA.
Moses Point, Alaska, LFR; Koyuk INT, Alaska; 4,000.
Koyuk INT, Alaska; Galena, Alaska, NDB; *5,800, *5,500—MOCA.
Galena, Alaska, NDB; Birch INT, Alaska; *5,800, *5,200—MOCA.
Birch INT, Alaska; Fairbanks, Alaska, LFR; 4,100.

Section 95.49 *Green Federal Airway 9* is amended to read in part:

Sparrevohn, Alaska, LF/RBN; *Spurr INT, Alaska; 13,000. *12,000—MCA Spurr INT, westbound.
Spurr INT, Alaska; Anchorage, Alaska, LFR; 6,000.

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

College Station, Tex., VOR; Bastrop INT, Tex.; *2,500, *1,700—MOCA.
New Orleans, La., VOR; Caesar INT, Miss.; *4,000, *1,400—MOCA.

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

Utica, N.Y., VOR; Norway INT, N.Y.; *3,500, *2,900—MOCA.
Norway INT, N.Y.; *Mariaville INT, N.Y.; **3,500, *3,500—MRA, **2,600—MOCA.
Mariaville INT, N.Y.; Albany, N.Y., VOR; *3,000, *2,600—MOCA.
Bismarck, N. Dak., VOR; Sterling DME Fix, N. Dak.; *3,600, *3,200—MOCA.
Sterling DME Fix, N. Dak.; Jamestown, N. Dak., VOR; *3,900, *3,200—MOCA.

Section 95.6006 *VOR Federal airway 6* is amended to read in part:

*Ogden, Utah, VOR; Pineview INT, Utah; eastbound, 12,000; westbound, 10,000. *11,800—MCA Ogden VOR, eastbound.
Pineview INT, Utah; Fort Bridger, Wyo., VOR; *12,000, *11,800—MOCA.

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

Santa Barbara, Calif., VOR; *Henderson INT Calif.; 7,000. *5,600—MCA Henderson INT, westbound.

Section 95.6013 *VOR Federal airway 13* is amended to read in part:

*Alma City INT, Minn., via W alter.; New Prague INT, Minn., via W alter.; **4,300. *4,300—MRA, **2,500—MOCA.

Section 95.6014 *VOR Federal airway 14* is amended to read in part:

Godfrey INT, Ill., via N alter.; INT, 057° M rad, St. Louis VOR and 269° M rad, Vandalia VOR via N alter.; *2,500. *2,000—MOCA.
INT, 057° M rad, St. Louis VOR and 269° M rad, Vandalia VOR via N alter.; Vandalia, Ill., VOR via N alter.; *2,500. *2,100—MOCA.

Section 95.6015 *VOR Federal airway 15* is amended to read in part:

Aberdeen, S. Dak., VOR; Braddock DME Fix, N. Dak.; *4,700. *3,500—MOCA.
Braddock DME Fix, N. Dak.; Hazelton DME Fix, N. Dak.; *3,900. *3,200—MOCA.
Hazelton DME Fix, N. Dak.; Bismarck, N. Dak. VOR; *3,900. *3,300—MOCA.

Section 95.6019 *VOR Federal airway 19* is amended to read in part:

From, to, and MEA

Cimarron, N. Mex., VOR; *Gordon INT, Colo.; **11,000. *MCA—14,000 northbound for aircraft arriving Gordon INT, southwestbound via V-210. **10,200—MOCA.

Section 95.6020 *VOR Federal airway 20* is amended to read in part:

Elizabeth INT, Ga., via N alter.; Easley INT, S.C., via N alter.; *4,500. *2,200—MOCA.
Easley INT, S.C., via N alter.; Spartanburg, S.C., VOR via N alter.; 3,300.
Monroeville, Ala., VOR; Pineapple INT, Ala.; *2,100. *1,800—MOCA.

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

Delta, Utah, VOR; Fairfield, Utah, VOR; 10,300.
Fairfield, Utah, VOR; Salt Lake City, Utah, VOR; 9,800.
#*Ogden, Utah, VOR; **Corinne INT, Utah; northbound, 11,000; southbound, 7,600. #MCA—11,800 northbound for aircraft arriving Ogden VOR, eastbound via V-6 and southeastbound via V-101. *MCA—11,800 southbound for aircraft arriving Ogden VOR, northeastbound via V-236. **13,000—MRA.

Section 95.6025 *VOR Federal airway 25* is amended to read in part:

*Henderson INT, Calif.; Santa Barbara, Calif., VOR; 7,000. *5,600—MCA Henderson INT, westbound.

Section 95.6026 *VOR Federal airway 26* is amended to read in part:

Huron, S. Dak., VOR; *Oakwood INT, S. Dak.; **4,000. *4,000—MRA. **3,200—MOCA.
United States-Canadian border; Cleveland, Ohio, VOR; *3,000. *2,000—MOCA.

Section 95.6035 *VOR Federal airway 35* is amended to read in part:

Anderson, S.C., VOR; Easley INT, Ga.; 2,500.
Easley INT, S.C.; Cleveland INT, S.C.; *3,400. *3,200—MOCA.

Section 95.6040 *VOR Federal airway 40* is amended to read in part:

Briggs, Ohio, VOR; Calcutta INT, Ohio; 3,000.

Section 95.6041 *VOR Federal airway 41* is amended to read in part:

Calcutta INT, Ohio; Youngstown, Ohio, VOR; 3,100.

Section 95.6042 *VOR Federal airway 42* is amended to read in part:

Crib INT, Ohio, via E alter.; Akron, Ohio, VOR via E alter.; 3,000.

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

Lighthouse INT, N.J.; INT, and 115° M rad, Robbinsville VOR and 221° M rad, Deer Park VOR; *8,000. *2,000—MOCA.
INT, 115° M rad, Robbinsville VOR and 221° M rad, Deer Park VOR; Southgate INT, N.J.; *6,000. *2,000—MOCA.

Section 95.6053 *VOR Federal airway 53* is amended to read in part:

Mitchell INT, N.C.; *Roan Mountain INT, Tenn.; 9,000. *7,000—MCA—Roan Mountain southbound.

Section 95.6062 *VOR Federal airway 62* is amended to read in part:

Field INT, Tex.; Texico, Tex., VOR; *6,500. *5,900—MOCA.

Section 95.6067 *VOR Federal airway 67* is amended to read in part:

From, to, and MEA

Burlington, Iowa, VOR; Wapello INT, Iowa; *2,600. *2,000—MOCA.
Wapello INT, Iowa; Iowa City, Iowa, VOR; *2,500. *2,000—MOCA.

Section 95.6083 *VOR Federal airway 83* is amended to read in part:

Alamosa, Colo., VOR; *Gordon INT, Colo.; **14,000. 13,500—MCA Gordon INT, southwestbound. *MCA—14,000 northbound for aircraft arriving Gordon INT, southwestbound via V-210. **13,600—MOCA.

Section 95.6097 *VOR Federal airway 97* is amended to read in part:

Falmouth, Ky., VOR via E alter.; Cincinnati, Ohio, VOR via E alter.; 2,500.

Section 95.6101 *VOR Federal airway 101* is amended to read in part:

*Ogden, Utah, VOR; Blue Creek INT, Utah; 9,400. *MCA—11,800 southbound for aircraft arriving Ogden VOR, northeastbound via V-236.

Section 95.6149 *VOR Federal airway 149* is amended to read:

Turner INT, Pa.; Allentown, Pa., VOR; *2,700. *2,500—MOCA.
Allentown, Pa., VOR; Lake Henry, Pa., VOR; 4,000.
Lake Henry, Pa., VOR; Binghamton, N.Y., VOR; 4,000.

Section 95.6153 *VOR Federal airway 153* is amended to read:

Stillwater, N.J., VOR; Lake Henry, Pa., VOR; 4,000.
Lake Henry, Pa., VOR; Hancock, N.Y., VOR; 4,400.
Hancock, N.Y., VOR; Oxford INT, N.Y.; 4,200.
Oxford INT, N.Y.; Georgetown, N.Y. VOR; 3,900.
Georgetown, N.Y., VOR; Pompey INT, N.Y.; 3,900.
Pompey INT, N.Y.; Syracuse, N.Y., VOR; 3,500.

Section 95.6163 *VOR Federal airway 163* is amended to read in part:

Maysville INT, Okla.; *Washington INT, Okla.; **2,800. *4,000—MRA. **2,600—MOCA.
Washington INT, Okla.; Oklahoma City, Okla., VOR; *2,800. *2,600—MOCA.

Section 95.6167 *VOR Federal airway 167* is amended to delete:

Coyle, N.J., VOR; Tomlin INT, N.Y.; *2,500. *1,400—MOCA.
Tomlin INT, N.Y.; Channel INT, N.Y.; 2,300.
Channel INT, N.Y.; Kennedy, N.Y., VOR; 1,500.
Kennedy, N.Y., VOR; Northport INT, N.Y.; *2,500. *1,500—MOCA.
Northport INT, N.Y.; Hartford, Conn., VOR; 2,000.

Section 95.6169 *VOR Federal airway 169* is amended to read in part:

Dupree, S. Dak., VOR; Solen DME Fix, N. Dak.; *4,400. *3,600—MOCA.
Solen DME Fix, N. Dak.; Bismarck, N. Dak., VOR; 4,400.

Section 95.6200 *VOR Federal airway 200* is amended to read in part:

*Fairfield, Utah, VOR; Peak INT, Utah; eastbound, 13,000; westbound, 11,000. *12,000—MCA Fairfield VOR, eastbound.

Section 95.6205 *VOR Federal airway 205* is amended to read in part:

From, to, and MEA

INT, 034° M rad, Sparta VOR and 250° M rad, Pawling VOR; Pawling, N.Y., VOR; 3,000.

Section 95.6210 *VOR Federal airway 210* is amended to read in part:

Alamosa, Colo., VOR; *Gordon INT, Colo.; **14,000. *13,500—MCA Gordon INT, southwestbound. **13,600—MOCA.

Section 95.6235 *VOR Federal airway 235* is amended to read in part:

*Fairfield, Utah, VOR; Fort Bridger, Wyo., VOR; **14,000. *12,500—MCA Fairfield VOR, northeastbound. **13,500—MOCA.

Section 95.6253 *VOR Federal airway 253* is amended to read in part:

*Fairfield, Utah, VOR; **Stansbury INT, Utah; 12,000. *10,500—MCA Fairfield VOR, northwestbound. **11,000—MCA Stansbury INT, southeastbound.

Section 95.6297 *VOR Federal airway 297* is amended to read in part:

Akron, Ohio, VOR; Vermilion INT, Ohio; 3,500.
Vermilion INT, Ohio; United States-Canadian border; *3,500. *2,000—MOCA.
United States-Candian border; Carleton, Mich., VOR; 2,100.

Section 95.6307 *VOR Federal airway 307* is amended to read in part:

Sandspit, British Columbia, VOR; Annette Island, Alaska, VOR; *#5,000. *4,900—MOCA. #For that airspace over U.S. territory.
Tokeen INT, Alaska; Port Walter INT, Alaska; *9,000. *6,000—MOCA
Port Walter INT, Alaska; Biorka Island, Alaska, VOR; 6,000.
Biorka Island, Alaska, VOR; Sisters Island, Alaska, VOR; *6,500. *6,000—MOCA.

Section 95.6317 *VOR Federal airway 317* is amended to read in part:

United States-Canadian border; Annette Island, Alaska, VOR; *5,000. *4,900—MOCA.
United States-Canadian border via W alter; Annette Island, Alaska, VOR via W alter; *5,000. *4,900—MOCA.
Annette Island, Alaska, VOR; Gravina Island INT, Alaska; *5,000. *4,900—MOCA.
Gravina Island INT, Alaska; Guard Island INT, Alaska; *5,000. *4,700—MOCA.
Guard Island INT, Alaska; Level Island, Alaska, VOR; *7,000. *5,100—MOCA.
Level Island, Alaska, VOR; Hood Bay INT, Alaska; *9,000. *6,900—MOCA.
Hood Bay INT, Alaska, Sisters Island, Alaska, VOR; *7,000. *6,900—MOCA.

Section 95.6337 *VOR Federal airway 337* is amended to read in part:

Calcutta INT, Ohio; Akron, Ohio, VOR; 3,000.

Section 95.6430 *VOR Federal airway 430* is amended to read in part:

Minot, N. Dak., VOR; Farmer INT, N. Dak.; *3,200. *2,800—MOCA.
Farmer INT, N. Dak.; Devils Lake, N. Dak., VOR; *3,600. *3,000—MOCA.

Section 95.6434 *VOR Federal airway 434* is amended to read in part:

Packwood INT, Iowa; Wapello INT, Iowa; *2,400. *2,000—MOCA.
Wapello INT, Iowa; Grandview INT, Iowa; * 2,400. * 1,700—MOCA.

Section 95.6475 *VOR Federal airway 475* is amended to read in part:

From, to, and MEA

Providence, R.I., VOR; Millis INT, Mass.; *2,000. *1,700—MOCA.

Section 95.6483 *VOR Federal airway 483* is amended to delete:

Sparta, N.Y., VOR; Huguenot, N.Y., VOR; 3,500.
Huguenot, N.Y., VOR; Delancey, N.Y., VOR; 5,000.

Section 95.7009 *Jet Route No. 9* is amended to read in part:

From, to, MEA, MAA

Milford, Utah, VORTAC; Fairfield, Utah, VORTAC; 18,000; 45,000.
Fairfield, Utah, VORTAC; Salt Lake City, Utah, VORTAC; 18,000; 45,000.

Section 95.7066 *Jet Route No. 66* is amended by adding:

Memphis, Tenn., VORTAC; Rome, Ga., VOR; 18,000; 45,000.

Section 95.7011 *Jet Route No. 11* is amended to read in part:

Bryce Canyon, Utah, VORTAC; Fairfield, Utah, VORTAC; 18,000; 45,000.
Fairfield, Utah, VORTAC; Salt Lake City, Utah, VORTAC; 18,000; 45,000.

Section 95.7114 *Jet Route No. 114* is amended to read in part:

From, to, MEA, MAA

Salt Lake City, Utah, VORTAC; Fairfield, Utah, VORTAC; 18,000; 45,000.
Fairfield, Utah, VORTAC; Meeker, Colo., VORTAC; 18,000; 45,000.

Section 95.7149 *Jet Route No. 149* is amended to read:

Casanova, Va., VORTAC; Weston INT, W. Va.; 18,000; 45,000.
Weston INT, W. Va.; Harrisville INT, W. Va.; 27,000; 45,000.
Harrisville INT, W. Va.; Rosewood, Ohio, VORTAC; 18,000; 45,000.

Section 95.7151 *Jet Route No. 151* is amended by adding:

St. Louis, Mo., VORTAC; Farmington, Mo., VORTAC; 18,000; 45,000.
Farmington, Mo., VORTAC; Birmingham, Ala., VORTAC; 21,000; 45,000.

Section 95.7540 *Jet Route No. 540* is added to read:

Mullan Pass, Idaho, VORTAC; United States-Canadian border; 18,000; 45,000.

Section 95.7554 *Jet Route No. 554* is amended to read:

From, to, MEA, MAA

INT, 106° M rad, Joliet VORTAC and 279° M rad, Fort Wayne VORTAC; Carleton, Mich., VORTAC; 18,000; 45,000.
Carleton, Mich., VORTAC; United States-Canadian border; 18,000; 45,000.
United States-Canadian border; Jamestown, N.Y., VORTAC; 18,000; 45,000.

2. By amending Subpart D as follows:

Section 95.8003 *VOR Federal airway changeover points:*

From; to—Changeover point: Distance; from

V–130 is added to read:

Albany, N.Y., VOR; Hartford, Conn., VOR; 24; Albany.

V–235 is amended to read in part:

Fairfield, Utah, VORTAC; Fort Bridger, Wyo., VORTAC; 32; Fairfield.

V–307 is amended to read in part:

Sandspit, British Columbia, VOR; Annette Island, Alaska, VOR; 64; Annette Island.

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

Issued in Washington, D.C., on May 14, 1970.

WILLIAM G. SHREVE, Jr.,
Acting Director,
Flight Standards Service.

[F.R. Doc. 70–6255; Filed, May 21, 1970; 8:45 a.m.]

[Reg. Docket No. 10297; Amdt. 701]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

The amendments to the standard instrument approach procedures contained herein are adopted to become effective when indicated in order to promote safety. The amended procedures supersede the existing procedures of the same classification now in effect for the airports specified therein. For the convenience of the users, the complete procedure is republished in this amendment indicating the changes to the existing procedures.

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

In view of the foregoing and pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 97 (14 CFR Part 97) is amended as follows:

By amending § 97.11 of Subpart B to delete low or medium frequency range (L/MF), automatic direction finding (ADF) and very high frequency omnirange (VOR) procedures as follows:

Bettles, Alaska—Bettles, NDB (ADF) Runway 36, Amdt. 3, 14 Oct. 1967 (established under Subpart C).
Johnson City, Tex.—Johnson City, NDB (ADF) Runway 35, Amdt. 7, 13 May 1967 (established under Subpart C).
Oakland, Calif.—Metropolitan Oakland International, NDB (ADF) Runway 29, Amdt. 5, 29 July 1967 (established under Subpart C).
Wisconsin Rapids, Wis.—Alexander Field South Wood County, NDB (ADF) Runway 2, Orig., 30 Mar. 1967 (established under Subpart C).
Cody, Wyo.—Cody, VOR–1, Orig., 17 Aug. 1967 (established under Subpart C).
Oakland, Calif.—Metropolitan Oakland International, VOR (R–114), Amdt. 4, 23 Oct. 1965 (established under Subpart C).
San Antonio, Tex.—Stinson Municipal, VOR 1, Amdt. 6, 29 Oct. 1966 (established under Subpart C).
Vineland, N.J.—Kroelinger, VOR–1, Amdt. 1, 4 Mar. 1967 (established under Subpart C).
Vineland, N.J.—Rudy's, VOR–1, Amdt. 1, 4 Mar. 1967 (established under Subpart C).

2. By amending § 97.11 of Subpart B to cancel low or medium frequency range (L/MF), automatic direction finding (ADF) and very high frequency omnirange (VOR) procedures as follows:

McComb, Miss.—McComb-Pike County, VOR 1, Amdt. 7, effective 18 June 1966, canceled, effective 4 June 1970.

3. By amending § 97.13 of Subpart B to delete terminal very high frequency omnirange (TerVOR) procedures as follows:

Bettles, Alaska—Bettles, TerVOR–1, Amdt. 1, 16 Nov. 1963 (established under Subpart C).

4. By amending § 97.15 of Subpart B to delete very high frequency omnirange-distance measuring equipment (VOR/DME) procedures as follows:

Oakland, Calif.—Metropolitan Oakland International, VOR/DME No. 1, Amdt. 3, 23 Oct. 1965 (established under Subpart C).

5. By amending § 97.15 of Subpart B to cancel very high frequency omnirange-distance measuring equipment (VOR/DME) procedures as follows:

Oakland, Calif.—Metropolitan Oakland International, VOR/DME No. 2, Amdt. 4, effective 9 Apr. 1966, canceled, effective 4 June 1970.

6. By amending § 97.17 of Subpart B to delete instrument landing system (ILS) procedures as follows:

Oakland, Calif.—Metropolitan Oakland International, ILS–27R, Amdt. 21, 20 Aug. 1966 (established under Subpart C).
Oakland, Calif.—Metropolitan Oakland International, ILS Runway 29, Amdt. 10, 1 Jan. 1970 (established under Subpart C).

7. By amending § 97.17 of Subpart B to cancel instrument landing system (ILS) procedures as follows:

Oakland, Calif.—Metropolitan Oakland International, ILS–11 (Back Course), Amdt. 7, effective 23 Oct. 1965, canceled, effective 4 June 1970.

8. By amending § 97.23 of Subpart C to establish very high frequency omnirange (VOR) and very high frequency-distance measuring equipment (VOR/DME) procedures as follows:

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE VOR

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator. Initial approach minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: BTT VOR.
				Climbing right turn to 3500' on R 200° within 15 miles. Supplementary charting information: 1097' hill 2 miles N of airport. 2000' terrain 5 miles NE of airport. High terrain E of airport. Final approach crs intercepts runway centerline 5200' from threshold.

Procedure turn E side of crs, 200° Outbnd, 020° Inbnd, 3100' within 12 miles of BTT VOR.
Final approach crs, 020°.
Minimum altitude over BTT VOR, 1080'.
MSA: 000°-090°—6000'; 090°-180°—3700'; 180°-270°—5000'; 270°-360°—6000'.
NOTES: (1) Air carrier will not reduce takeoff visibility due to local conditions Runway 1. (2) Night operations not authorized if runway lights inoperative.
%Runway 1, turn left immediately. Northbound (210° through 110°) IFR departures, proceed direct to BTT VOR/NDB, shuttle climb on R 128°/128° bearing, left turns to cross VOR/NDB at or above 4000'.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S1	1080	1	437	1080	1	437	1080	1	437	1080	1	437
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	1100	1	457	1100	1	457	1100	1¼	457	1400	2	757

Takeoff %Runway, 1, 500-2; Runway 19, Standard. Alternate—Standard.

City, Bettles; State, Alaska; Airport name, Bettles; Elev., 643'; Fac. Ident., BTT; Procedure No. VOR Runway 1, Amdt. 2; Eff. date, 4 June 70; Sup. Amdt. No. TerVOR-1, Amdt. 1; Dated, 16 Nov. 63

Terminal routes				Missed approach
From	To—	Via	Minimum altitudes (feet)	MAP: 6.4 nautical miles after COD VOR.
				Left-climbing turn to 8500' direct to COD VOR and hold.* Additional flight data: *Hold N, 1 minute, left turns, 185° Inbnd. Chart Worland, Wyo., Radio LRCO. Final approach crs aligned to midpoint Runway 04-22.

Procedure turn NE side of crs, 005° Outbnd, 185° Inbnd, 8500' within 16 miles of COD VOR.
FAF, COD VOR. Final approach crs, 185°. Distance FAF to MAP, 6.4 nautical miles.
Minimum altitude over COD VOR, 6500'.
MSA: 340°-160°—8000'; 610°-340°—13,300'.
PROCEDURAL DATA/NOTES.—When control zone not effective, the following applies: Except operators with approved weather reporting service. (1) Use Worland, Wyo., altimeter setting, (2) $MDA becomes 6500', (3) #Alternate minimums not authorized.
%IFR departure procedures: Climb visually over airport to 6000' or above; thence direct COD VOR, continue climb in holding pattern to 8500'.
Final approach from holding pattern not authorized, procedure turn required.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C$	6000	1¼	911	6000	1½	911	6000	1¼	911	6000	2	911

Takeoff Standard.% Alternate—1,500-2 miles.#

City, Cody; State, Wyo.; Airport name, Cody Airport; Elev., 5089'; Fac. Ident., COD; Procedure No. VOR-A, Amdt. 1; Eff. date, 4 June 70; Sup. Amdt. No. VOR-1, Orig.; Dated, 17 Aug. 67

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE VOR—Continued

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: OAK VOR.
Sunol Int	Irvington Int	SCK R 229°	4000	Climb to 3000' via OAK R 313° to Richmond Int.
Irvington Int	Decoto Int (NOPT)	Direct	3500	Supplementary charting information: Chart 222' stack 1.6 miles N of airport (37°44'27"/122°10'45").

Procedure turn not authorized.
Approach crs (profile) starts at Decoto Int.
Final approach crs, 294°.
Minimum altitude over Decoto Int, 3500'; over Mount Eden Int, 2500'; over San Lorenzo Int, 1700'.
MSA: 170°350°—3700'; 350°170°—4900'.
NOTE: Radar vectoring.
%IFR departures must comply with Oakland SID's or be radar vectored.
#RVR 18 authorized for Runway 29.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	500	1	494	540	1	534	680	1¼	674	680	2	674

Takeoff. %#400-1, Runway 33; Standard all others. Alternate—Standard.

City, Oakland; State, Calif.; Airport name, Metropolitan Oakland International; Elev., 6'; Fac. Ident., OAK; Procedure No. VOR-A, Amdt. 5; Eff. date, 4 June 70; Sup. Amdt. No. VOR (R-14), Amdt. 4; Dated, 23 Oct. 65

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: OAK VOR.
Mill Valley Int	Commodore Int	Direct	4000	Climb to 4000' direct to Decoto Int and hold.*
Commodore Int	Indian Int	Direct	3000	Supplementary charting information: *Hold SE, 1 minute, right turns, 294° Inbnd. Chart 222' stack 1.6 miles N of airport (37°44' 27"/122°10'45"). Runway 9R, TDZ elevation, 5'.

Procedure turn not authorized.
Approach crs (profile) starts at Indian Int.
Final approach crs, 108°.
Minimum altitude over Indian Int, 3000'; over Broadway Int, 1500' (mandatory altitude).
MSA: 170°-350°—3700'; 350°-170°—4900'.
NOTES: (1) Radar vectoring. (2) Inoperative table does not apply to HIRL Runway 9R.
%IFR departures must comply with Oakland SID's or be radar vectored.
#RVR 18 authorized for Runway 29.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-9R	460	1	455	460	1	455	460	1	455	460	1	455
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	500	1	494	540	1	534	680	1¼	674	680	2	674

Takeoff %#400-1, Runway 33; Standard all other runways. Alternate—Standard.

City, Oakland; State, Calif.; Airport name, Metropolitan Oakland International; Elev., 6'; Fac. Ident., OAK; Procedure No. VOR Runway 9R, Amdt. Orig.; Eff. date, 4 June 70

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE VOR—Continued

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 4.5 miles after passing SSF VOR.
McCoy Int	SSF VOR (NOPT)	Direct	2000	Climbing right turn to 3000' to R 159° SAT VORTAC to Elmendorf Int.
Leming Int	SSF VOR (NOPT)	Direct	2000	
SAT VORTAC	SSF VOR	Direct	2500	Supplementary charting information: Runway 32, TDZ elevation, 569'.

Procedure turn E side of crs, 157° Outbnd, 337° Inbnd, 2300' within 10 miles of SSF VOR.
FAF, SSF VOR. Final approach crs, 337°. Distance FAF to MAP, 4.5 miles.
Minimum altitude over SSF VOR, 2000'.
MSA: 000°-360°—3000'.
NOTE: Use SAT altimeter when control zone not effective.
*Alternate minimums not authorized when control zone is not effective.
#MDA increased 30' when Stinson Municipal altimeter is not received.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D	
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS
S-32#	960	1	391	960	1	391	960	1	391		NA
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA		
C	1040	1	463	1100	1	523	1100	1¼	523		NA

Takeoff Standard. Alternate—Standard.*

City, San Antonio; State, Tex.; Airport name, Stinson Municipal; Elev., 577'; Fac. Ident. SSF; Procedure No. VOR Runway 32, Amdt. 7; Eff. date, 4 June 70; Sup. Amdt. No. VOR 1, Amdt. 6; Dated, 29 Oct. 66

Terminal routes			Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 3.6 miles after passing MIV VORTAC.
				Climbing left turn to 1600' direct to MIV VOR and hold.
				Supplementary charting information: Hold E, 1 minute, right turns, 267° Inbnd. Chart transmission lines around airport. Runway 28, TDZ elevation, 87'.

Procedure turn N side of crs, 087° Outbnd, 267° Inbnd, 1600' within 5 miles of MIV VORTAC.
FAF, MIV VORTAC. Final approach crs, 267°. Distance FAF to MAP, 3.6 miles.
Minimum altitude over MIV VORTAC, 1200'.
MSA: 010°-270°—1600'; 270°-010°—2100'.
NOTES: (1) Use Millville altimeter setting. (2) Radar vectoring.
*Night minimums not authorized.
CAUTION: Transmission lines surrounding the airport.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D	
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS
*S-27	480	1	393		NA			NA			NA
	MDA	VIS	HAA								
C*	480	1	380		NA			NA			NA

Takeoff T 2-eng. or less—Standard; T over 2-eng.—not authorized. Alternate—Not authorized.

City, Vineland; State, N.J.; Airport name, Kroelinger; Elev., 100'; Fac. Ident., MIV; Procedure No. VOR Runway 28, Amdt. 2; Eff. date, 4 June 70; Sup. Amdt. No. VOR-1, Amdt. 1; Dated, 4 Mar. 67

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE VOR—Continued

Terminal routes			Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 4.6 miles after passing MIV VORTAC.
			Climb to 1600', left turn direct to MIV VOR and hold. Supplementary charting information: Hold E, 1 minute, right turns, 293° Inbnd.

Procedure turn N side of crs, 113° Outbnd, 293° Inbnd, 1600' within 5 miles of MIV VORTAC.
FAF, MIV VORTAC. Final approach crs, 293°. Distance FAF to MAP, 4.6 miles.
Minimum altitude over MIV VORTAC, 1600'.
MSA: 010°-270°—1600'; 270°-010°—2100'.
NOTES: (1) Use Millville altimeter setting. (2) Radar vectoring. (3) Runway lights spaced 400' apart.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	500	1	420		NA			NA			NA	

Takeoff. T 2-eng. or less—Standard; T over 2-eng.—Not authorized. Alternate—Not authorized.

City, Vineland; State, N.J.; Airport name, Rudy's; Elev., 10'; Fac. ident. MIV; Procedure No. VOR-1, Amdt. 2; Eff. date, 4 June 70; Sup. Amdt. No. 1; Dated, 4 Mar. 67

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE VOR/DME

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator. Initial approach minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Terminal routes			Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 13.3-mile DME Fix.
			Climbing left turn to 2000' to MCB VORTAC and hold. Supplementary charting information: Hold NE, 1 minute, right turns, 229° Inbnd.

One-minute holding pattern NE of MCB VORTAC, 229° Inbnd, right turns, 2000'.
FAF, 8.3-mile DME. Final approach crs, 229°. Distance FAF to MAP, 5 miles.
Minimum altitude over MCB VORTAC, 2000'; over 8.3-mile DME Fix, 1000'; over 11.5-mile DME Fix, 900.
MSA: 000°-180°—1800'; 180°-360°—1900'.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	780	1	368	880	1	468	880	1¼	468	980	2	568

Takeoff. Standard. Alternate—Standard.

City, McComb; State, Miss.; Airport name, McComb Pike County; Elev., 412'; Fac. Ident., MCB; Procedure No. VOR/DME-1, Amdt. Orig.; Eff. date, 4 June 70

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE VOR/DME—Continued

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: OAK R 093°/1.4-mile DME Fix.
Sunol Int	OAK R 093°/14-mile DME Fix	Direct	3200	Climb to 3000' direct to OAK VORTAC, direct Richmond Int via R 313°. Supplementary charting information: Final approach aligned to 400' S of runway centerline extended at 3000' from runway threshold. Chart 222' stack 1.6 miles N of airport (37°44'27"/122°10'45"). Runway 27L, TDZ elevation, 5'.

Procedure turn not authorized.
Approach crs (profile) starts at OAK R 093°/14-mile DME Fix.
Final approach crs, 273°.
Minimum altitude over OAK R 093°/14-mile DME Fix, 3200', over R 093°/9-mile DME Fix, 2800'; over R 093°/5-mile DME Fix, 1600'; over R 093°/3-mile DME Fix, 800'.
MSA: 170°-350°—3700'; 350°-170°—4900'.
NOTES: (1) Radar vectoring. (2) Inoperative table does not apply to HIRL Runway 27L.
% IFR departures must comply with Oakland SID's or be radar vectored.
# RVR 18 authorized for Runway 29.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-27L	400	1	395	400	1	395	400	1	395	400	1	395
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	500	1	494	540	1	534	680	1¼	674	680	2	674

Takeoff %#400-1, Runway 33; Standard all others. Alternate—Standard.

City, Oakland; State, Calif.; Airport name, Metropolitan Oakland International; Elev., 6'; Fac. Ident., OAK; Procedure No. VOR/DME Runway 27L, Amdt. 4; Eff. date, 4 June 70; Sup. Amdt. No. VOR/DME No. 1, Amdt. 3, Dated, 23 Oct. 65

9. By amending § 97.23 of Subpart C to amend very high frequency omnirange (VOR) and very high frequency-distance measuring equipment (VOR/DME) procedures as follows:

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE VOR

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator. Initial approach minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 7.2 miles after passing REG VORTAC.
				Climb to 3000' to Chattahoochee Int via R 267° REG VORTAC and hold. Supplementary charting information: Hold W, 1 minute, left turns, 087° Inbnd. REIL Runway 3, HIRLS Runways 9R, 9L, 15, 27R, 27L, 33. VASI Runways 27L, 27R. Chart as backup for VOR Runway 27L. Runway 27R, TDZ elevation, 996'.

Procedure turn S side of crs, 090° Outbnd, 270° Inbnd, 2500' within 10 miles of REG VORTAC.
FAF, REG VORTAC. Final approach crs, 270°. Distance FAF to MAP, 7.2 miles.
Minimum altitude over REG VORTAC, 2500'.
MSA: 090°-180°—2500'; 180°-270°—2400'; 270°-090°—3100'.
NOTE: ASR.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-27R	1460	¾	464	1460	¾	464	1460	¾	464	1460	1	464
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	1520	1	496	1520	1	496	1520	1¼	496	1560	2	536

Takeoff RVR 24 Runways 33 and 27L; RVR 18 Runways 9L and 9R; Standard all others. Alternate—Standard.

City, Atlanta; State, Ga.; Airport name, Atlanta; Elev., 1024'; Fac. Ident., REG; Procedure No. VOR Runway 27R, Amdt. 1; Eff. date, 4 June 70; Sup. Amdt. No. Orig. Dated, 7 May 70

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE VOR—Continued

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: GCK VORTAC.
R 270°, GCK VORTAC CW (IAF)	R 353°, GCK VORTAC	9 DME Arc	4300	Climbing left turn to 4300' on R 353° GCK within 10 miles; return to GCK VORTAC.
R 086°, GCK VORTAC CCW (IAF)	R 353°, GCK VORTAC	9 DME Arc	4300	
GCK NDB	GCK VORTAC	Direct	4300	
9 DME Arc	R 353°, GCK/4 DME (NOPT)	R 353°, GCK	3300	Additional flight data: Runway 17, TDZ elevation, 2885'. Final approach crs intercepts runway centerline extended 3600' from threshold.

Procedure turn NW side of crs, 353° Outbnd, 173° Inbnd, 4300' within 10 miles of GCK VORTAC.
Final approach crs, 173°.
Minimum altitude: 4 DME Fix, 3300'.
MSA: 045°–135°—4500'; 135°–315°—4800'; 315°–045°—4200'.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-17	3300	1	415	3300	1	415	3300	1	415	3300	1	415
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
Circling	3300	1	405	3360	1	465	3360	1½	465	3460	2	565
	DME minimums:											
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-17	3240	1	355	3240	1	355	3240	1	355	3240	1	355

Takeoff Standard. Alternate—Standard.

City, Garden City; State, Kans.; Airport name, Municipal; Elev., 2895'; Fac. Ident., GCK; Procedure No. VOR Runway 17, Amdt. 6; Eff. date, 4 June 70; Sup. Amdt. No. 5 Dated, 28 Aug. 69

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: GCK VORTAC.
R 086°, GCK VORTAC CW (IAF)	R 160°, GCK VORTAC	9 DME Arc	4700	Climbing right turn to 4700' on R 160° GCK within 10 miles; return to GCK VORTAC.
R 270°, GCK VORTAC CCW (IAF)	R 160°, GCK VORTAC	9 DME Arc	4700	
GCK NDB	GCK VORTAC	Direct	4700	
9 DME Arc	R 160°, GCK/4 DME (NOPT)	R 160° GCK	3400	Additional flight data: Runway 35, TDZ elevation, 2876'. Final approach crs intercepts runway centerline extended 3600' from threshold.

Procedure turn SE side of crs, 160° Outbnd, 340° Inbnd, 4700' within 10 miles of GCK VORTAC.
Final approach crs, 340°.
Minimum altitude: 4 DME Fix, 3400'.
MSA: 045°–135°—4500'; 135°–315°—4800'; 315°–045°—4200'.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-35	3400	1	524	3400	1	524	3400	1	524	3400	1¼	524
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
Circling	3400	1	505	3400	1	505	3400	1¼	505	3460	2	565
	DME Minimums:											
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-35	3240	1	364	3240	1	364	3240	1	364	3240	1	364
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
Circling	3300	1	405	3360	1	465	3360	1½	465	3460	2	565

Take off Standard. Alternate—Standard.

City, Garden City; State, Kans.; Airport name, Municipal; Elev., 2895'; Fac. Ident., GCK; Procedure No. VOR Runway 35, Amdt. 2; Eff. date, 4 June 70; Sup. Amdt. No. 1; Dated, 28 Aug. 69

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE VOR—Continued

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: GRI VORTAC.
OBH VORTAC	GRI VORTAC	Direct	3700	Climbing left turn to 3200' on R 350° GRI within 10 miles; return to GRI VOR TAC.
R 231°, GRI VORTAC CW (IAF)	R 293° GRI VORTAC	10 DME Arc	3500	
R 074°, GRI VORTAC CCW (IAF)	R 293° GRI VORTAC	10 DME Arc	3500	
10 DME Arc	Evers Int/3 DME (NOPT)	R 293° GRI	2460	Additional flight data: Runway 13, TDZ elevation, 1840'. Final approach crs intercepts runway centerline extended 5000' from threshold.

Procedure turn W side of crs, 293° Outbnd, 113° Inbnd, 3200' within 10 miles of GRI VORTAC.
Final approach crs, 113°.
Minimum altitude: Evers Int/3 DME, 2460'.
MSA: 000°-090°—3100'; 090°-180°—4100'; 180°-270°—3800'; 270°-360°—3300'.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-13	2460	1	620	2460	1	620	2460	1	620	2460	1¼	620
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
Circling	2460	1	614	2460	1	614	2460	1¼	614	2460	2	614
	Dual VOR or VOR/DME Minimums:											
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-13	2200	1	360	2200	1	360	2200	1	360	2200	1	360
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
Circling	2260	1	414	2300	1	454	2300	1¼	454	2400	2	554

Takeoff Standard. Alternate—Standard.

City, Grand Island; State, Nebr.; Airport name, Municipal; Elev., 1846'; Fac. Ident, GRI; Procedure No. VOR Runway 13, Amdt. 8; Eff. date, 4 June 70; Sup. Amdt. No. 7; Dated, 24 July 69

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: GRI VORTAC.
OBH VORTAC	GRI VORTAC	Direct	3700	Climbing left turn to 3200' on R 350° GRI
OBH VORTAC (IAF)	R 350°, GRI/10 DME	R 160° OBH and R 350° GRI	3500	within 10 miles, return to GRI VOR
R 263°, GRI VORTAC CW (IAF)	R 350°, GRI VORTAC	10 DME Arc	3500	TAC.
R 074°, GRI VORTAC CCW (IAF)	R 350°, GRI VORTAC	10 DME Arc	3500	Additional flight data:
10 DME Fix	3 DME Fix (NOPT)	R 350°, GRI	2260	Runway 17, TDZ elevation, 1843'.

Procedure turn NW side of crs, 350° Outbnd, 170° Inbnd, 3200' within 10 miles of GRI VORTAC.
Final approach crs, 170°.
Minimum altitude: 3 DME Fix, 2260'.
MSA: 045°-135°—4100'; 135°-225°—4100'; 225°-315°—3300'; 315°-045°—3300'.
PROCEDURAL DATA/NOTES: (1) Inoperative table does not apply to HIRL Runway 17. (2) Sliding scale not authorized.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-17	2260	1	417	2260	1	417	2260	1	417	2260	1	417
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
Circling	2260	1	414	2300	1	454	2300	1¼	454	2400	2	554
	DME Minimums:											
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-17	2200	1	357	2200	1	357	2200	1	357	2200	1	357

Takeoff Standard. Alternate—Standard.

City, Grand Island; State, Nebr.; Airport name, Municipal; Elev., 1846'; Fac. Ident., GRI; Procedure No. VOR Runway 17, Amdt. 12; Eff. date, 4 June 70; Sup. Amdt. No. 11; Dated, 24 July 69

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE VOR—Continued

Terminal routes			Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 4.4 miles after passing HRO VOR
			Climbing right turn to 3500' direct to HRO VOR and hold. Supplementary charting information: Hold NW on HRO R 313°-133° Inbnd, right turns, 1 minute.

Procedure turn W side of crs, 313° Outbnd, 133° Inbnd, 3500' within 10 miles of HRO VOR.
FAF, HRO VOR. Final approach crs, 133°. Distance FAF to MAP 4.4 miles.
Minimum altitude over HRO VOR, 2700'.
MSA: 090°-270°—3500'; 270°-090°—3000'.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D	
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA		VIS
C	1800	1	436	1820	1	456	1820	1¼	456	NA*	
A	Standard.		T 2-eng. or less—Standard.				T over 2-eng—Standard.				

City, Harrison; State, Ark.; Airport name, Boone County; Elev., 1364'; Fac. ident, HRO; Procedure No. VOR-1, Amdt. 4; Eff. date, 4 June 70; Sup. Amdt. No. 3; Dated, 6 Feb. 69

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: MCN VORTAC.
R 207°, MCN VORTAC (CW)	R 324°, MCN VORTAC	8-mile DME Arc	2000	Climbing right turn to 2000' on R 324° MCN VORTAC within 15 miles or, when directed by ATC, climbing right turn to 2000' via R 190° MCN VORTAC within 15 miles.
R 055°, MCN VORTAC (CCW)	R 324°, MCN VORTAC	8-mile DME Arc	2200	
8-mile DME Arc	MCN VORTAC (NOPT)	MCN R 324°	860	
				Supplementary charting information: Final approach crs intercepts runway centerline 2260' from threshold. TDZ elevation, 353'.

Procedure turn W side of crs, 324° Outbnd, 144° Inbnd, 2000' within 10 miles of MCN VORTAC.
Final approach crs, 144°.
MSA: 000°-090°—2300'; 090°-180°—2600'; 180°-360°—2100'.
NOTE: ASR.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-13	860	1	507	860	1	507	860	1	507	860	1¼	507
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	860	1	506	860	1	506	860	1¼	506	920	2	566
A	Standard.		T 2-eng. or less—RVR 24, Runway 5; Standard all other runways.				T over 2-eng.—RVR 24, Runway 5; Standard all other runways.					

City, Macon; State, Ga.; Airport name, Lewis B. Wilson; Elev., 354'; Facility, MCN; Procedure No. VOR Runway 13, Amdt. 2; Eff. date, 4 June 70; Sup. Amdt. No. 1; Dated, 3 Apr. 69

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE VOR/DME

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator. Initial approach minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 1.6 DME Fix.
OBH VORTAC	GRI VORTAC	Direct	3700	Climb to 3700′ on R 350° GRI within 10 miles; return to GRI VORTAC. Additional flight data: Runway 25, TDZ elevation, 1846′.
GRI VORTAC	R 170°, GRI/7 DME	Direct	3700	
R 074°, GRI VORTAC CW (IAF)	R 170°, GRI VORTAC	12 DME Arc	3700	
R 263°, GRI VORTAC CCW (IAF)	R 170°, GRI VORTAC	12 DME Arc	3700	
HSI VOR (IAF)	R 170°, GRI/12 DME	Direct	3700	
12 DME Arc	R 170°, GRI/7 DME	R 170°, GRI	3500	

Procedure turn SE side of crs, 170° Outbnd, 350° Inbnd, 3700′ within 10 miles of R 170° GRI/7 DME.
Final approach crs, 350°.
Minimum altitude: 7 DME Fix, 3500′.
MSA: 045°–135°—4100′; 135°–225°—4100′; 225°–315°—3300′; 315°–045°—3300′.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-35	2340	½	494	2340	½	494	2340	½	494	2340	1	494
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
Circling	2340	1	494	2340	1	494	2340	1½	494	2400	2	554

Takeoff Standard. Alternate—Standard.

City, Grand Island; State, Nebr.; Airport name, Municipal; Elev., 1846′; Fac. Ident., GRI; Procedure No. VOR/DME Runway 35, Amdt. 5; Eff. date, 4 June 70; Sup. Amdt. No. 4; Dated, 24 July 69

10. By amending § 97.25 of Subpart C to establish localizer (LOC) and localizer-type directional aid (LDA) procedures as follows:

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE LOC (BC)

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator. Initial approach minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 5.6 miles after passing Plaza Int.
Mill Valley Int	Commodore Int	Direct	4000	Climb straight ahead to 2500′ direct to Russell LOM and hold.* Supplementary charting information: *Hold NW, 1 minute, left turns, 113° Inbd. Chart 222′ stack 1.6 miles N of airport (37°44′27″/122°10′45″). Runway 11, TDZ elevation, 6′.
Commodore Int	Alcatraz Int	Direct	3000	

Procedure turn not authorized.
Approach crs (profile) starts at Alcatraz.
FAF, Plaza Int. Final approach crs, 113°. Distance FAF to MAP, 5.6 miles.
Minimum altitude over Alcatraz Int., 3000′; over Plaza Int., 1500′ (mandatory altitude); SFO R 011°, 460′.
MSA: not authorized.
NOTES: (1) Radar vectoring. (2) Air carrier will not reduce landing visibility due to local conditions. (3) Inoperative table does not apply to HIRL Runway 11. (4) Sliding scale not authorized.
% IFR departures must comply with Oakland SID's or be radar vectored.
#RVR 18 authorized for Runway 29.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-11	460	RVR50	454	460	RVR50	454	460	RVR50	454	460	RVR50	454
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	500	1	494	540	1	534	680	1½	674	680	2	674
Dual VOR Minimums:												
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-11	360	RVR50	354	360	RVR50	354	360	RVR50	354	360	RVR50	354

Takeoff %# 400-1, Runway 33; Standard all other runways. Alternate—Standard.

City, Oakland; State, Calif; Airport name, Metropolitan Oakland International; Elev., 6′; Fac. Ident., I-INB; Procedure No. LOC (BC) Runway 11, Amdt. Orig.; Eff. date, 4 June 70

11. By amending § 97.25 of Subpart C to amend localizer (LOC) and localizer-type directional aid (LDA) procedures as follows:

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE LOC

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator. Initial approach minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 5.4 miles after passing Bluff Int.
HSV VOR	CWH NDB	Direct	3000	Climb to 2600′ on N crs HSV LOC to CWH NDB and hold; or, when directed by ATC, climbing left turn to 3000′ direct to DCU VOR and hold W, 1 minute, right turns, 090° Inbnd.
CWH NDB	Bluff Int	Via LOC crs	3000	
Rountree Int	LOC (BC) (NOPT)	075° DR crs	3000	
Fairview Int	LOC (BC) (NOPT)	R 148°, DCU VOR	3000	

Supplementary charting information:
Hold N, 1 minute, right turns, 179° Inbnd.
Deplet R-2104 A and B.
HIRLS Runways 18 L and R/36 L and R.
Runway 36L, TDZ elevation, 624′.

Procedure turn W side of crs, 179° Outbnd, 359° Inbnd, 3000′ within 10 miles of Bluff Int.
FAF, Bluff Int. Final approach crs, 359°. Distance FAF to MAP, 5.4 miles.
Minimum altitude over Bluff Int, 2600′.
NOTE: Inoperative table does not apply to HIRLS Runway 36L.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-36L	1020	1	396	1020	1	396	1020	1	396	1020	1	396
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	1080	1	451	1080	1	451	1080	1½	451	1180	2	551
A	Standard.			T 2-eng. or less—Standard.			T over 2-eng.—Standard.					

City, Huntsville; State, Ala.; Airport name, Huntsville Madison County-Carl T. Jones Field; Elev., 629′; Facility, I-HSV; Procedure No. LOC (BC) Runway 36L, Amdt. 4; Eff. date, 4 June 70; Sup. Amdt. No. 3; Dated, 12 June 69

12. By amending § 97.27 of Subpart C to establish nondirectional beacon (automatic direction finder) (NDB/ADF) procedures as follows:

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE NDB (ADF)

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator. Initial approach minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 1.2 miles after passing BTT NDB.
				Climbing right turn to 3500′ on 187° bearing from BTT NDB within 15 miles.

Supplementary charting information:
1097′ hill 2 miles N of airport.
2000′ terrain 5 miles NE of airport.
High terrain E of airport.

Procedure turn E side of crs, 187° Outbnd, 007° Inbnd, 3100′ within 10 miles of BTT NDB.
FAF, BTT NDB. Final approach crs, 007°. Distance FAF to MAP, 1.2 miles.
Minimum altitude over BTT NDB, 1300′.
MSA: 000°-090°—6000′; 090°-180°—3700′; 180°-270°—5000′; 270°-360°—6000′.
NOTES: (1) Air carrier will not reduce takeoff visibility due to local conditions Runway 1. (2) Night operations not authorized if runway lights inoperative.
%Runway 1, turn left immediately. Northbound (210° through 110°) IFR departures, proceed direct to BTT VOR/NDB, shuttle climb on R 128°/128° bearing, left turns, to cross VOR/NDB at or above 4000′.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	1100	1	457	1100	1	457	1100	1¼	457	1400	2	757

Takeoff %Runway 1, 500-2; Runway 19, Standard. Alternate—Standard.

City, Bettles; State, Alaska; Airport name, Bettles; Elev., 643′; Fac. Ident., BTT; Procedure No. NDB (ADF) Runway 1, Amdt. 4; Eff. date, 4 June 70; Sup. Amdt. No. NDB (ADF) Runway 36; Dated, 14 Oct. 67

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE NDB (ADF)—Continued

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 1.7 miles after passing JCY NDB.
Johnson City Int	JCY NDB	Direct	3300	Climb to 3000' within 10 miles, right turn, return to JCY NDB.
Fredericksburg In	JDY NDB	Direct	3300	Supplementary charting information: UNICOM 122.8. Austin approach control. 1915' steel tower 0.3 mile WNW of N end of Runway 17/35.

Procedure turn E side of crs, 166° outbnd, 346° inbnd, 3000' within 10 miles of JCY NDB.
FAF, JCY NDB. Final approach crs, 346°. Distance FAF to MAP, 1.7 miles.
Minimum altitude over JCY NDB, 2500'.
MSA: 000°-360°—3300'.
NOTES: (1) Radar vectoring. (2) Use Austin altimeter setting when Johnson City altimeter setting not received.
*MDA increased 220' when Johnson City altimeter setting not received.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D	
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS
C*	2220	1	705	2220	1	705	2220	1¼	705		NA

Takeoff 400-1, Runway 35; Standard Runway 17. Alternate—not authorized.

City, Johnson City; State, Tex.; Airport name, Johnson City; Elev., 1515'; Fac. Ident., JCY; Procedure No. NDB (ADF) Runway 35, Amdt. 8; Eff. date, 4 June 70; Sup. Amdt. No. 7; Dated, 13 May 67

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 4.6 miles after passing Russell LOM.
Sunol Int	Irvington Int	Direct	3500	Right-climbing turn to 3000', intercept 308° bearing to Richmond Int.
Mission Int	Irvington Int	Direct	3500	Supplementary charting information: Chart 222' stack 1.6 miles N of airport (37° 44' 27"/122° 10' 45"). Runway 29, TDZ elevation, 6'.

Procedure turn not authorized.
Approach crs (profile) starts at Irvington Int.
FAF, Russell LOM. Final approach crs, 293°. Distance FAF to MAP, 4.6 miles.
Minimum altitude over Irvington Int, 3500'; over OSI R 020°, 2500'; over Russell LOM, 1400'.
MSA: 000°-090°—4900'; 090°-180°—5000'; 180°-270°—3500'; 270°-360°—3700'.
NOTES: (1) Radar vectoring. (2) In vicinity of LOM, heavy VFR traffic in Hayward traffic pattern.
% IFR departures must comply with Oakland SID's or be radar vectored.
# RVR 18 authorized for Runway 29.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-29	460	RVR 40	454	460	RVR 40	454	460	RVR 40	454	460	RVR 50	454
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	500	1	494	540	1	534	680	1¼	674	680	2	674

Takeoff %# 400-1 Runway 33; Standard all other runways. Alternate—Standard.

City, Oakland; State, Calif.; Airport name, Metropolitan Oakland International; Elev., 6'; Fac. Ident. IN; Procedure No. NDB (ADF) Runway 29, Amdt. 6; Eff. date, 4 June 70; Sup. Amdt. No. 5; Dated, 29 July 67

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE NDB (ADF)—Continued

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: RBW NDB,
Owens Int	RBW NDB	Direct	1800	Climb to 1800', right turn direct to RBW NDB and hold.
Stokes Int	RBW NDB	Direct	1800	
St. George Int	RBW NDB	Direct	1800	Supplementary charting information:
Givhans Int	RBW NDB	Direct	1800	Hold NE, 1 minute, right turns, 242° Inbnd. Final approach crs intercepts runway centerline extended 3229' from threshold. Runway 35, threshold displaced 750' N.

Procedure turn N side of crs, 062° Outbnd, 242° Inbnd, 1800' within 10 miles of RBW NDB.
Final approach crs, 242°.
MSA: 000°-360°—1500'.
PROCEDURAL DATA/NOTES: (1) Use Charleston, S.C., altimeter setting. (2) No weather reporting. (3) Night operation not authorized on Runways 9/27 and 17/35.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	
S-23	640	1	547	640	1	547	640	1	547		NA	
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA		VIS	
C	680	1	587	680	1	587	680	1¼	587		NA	

Takeoff Standard. Alternate—Not authorized.

City, Walterboro; State, S.C.; Airport name, Walterboro Municipal; Elev., 93'; Fac. Ident., RBW; Procedure No. NDB (ADF) Runway 23, Amdt, Orig.; Eff. date, 4 June 70

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: ISW NDB.
STE VORTAC	ISW NDB	Direct	2700	Make left-climbing turn to 2600' on 190° bearing within 10 miles, return to NDB.
Junction City Int	ISW NDB	Direct	2800	
Bancroft Int	ISW NDB	Direct	2600	Additional flight data: Final approach crs intercepts runway C/L 2880' from threshold. Runway 2, TDZ elevation 1018'.

Procedure turn side of crs, 190° Outbnd, 010° Inbnd, 2600' within 10 miles of ISW NDB.
Final approach crs, 010°.
MSA: 315°-045°—2900'; 045°-225°—2200'; 225°-315°—2900'.
PROCEDURAL DATA/NOTES: (1) Use Wisconsin Rapids, Wis., altimeter setting through unicom; when not available use Wausau, Wis., altimeter setting. (2) All MDA's are increased 140'. (3) Alternate minimums not authorized.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-2	1560	1	542	1560	1	542	1560	1	542	1560	1¼	542
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAT
Circling	1560	1	541	1560	1	541	1560	1½	541	1580	2	561

Takeoff Standard. Alternate—Not authorized.

City, Wisconsin Rapids; State, Wis.; Airport name, Alexander Field-South Wood County; Elev., 1019'; Fac. Ident., ISW; Procedure No. NDB (ADF) Runway 2, Amdt. 1; Eff. date, 4 June 70; Sup. Amdt. No. Orig.; Dated, 30 Mar. 67

13. By amending § 97.27 of Subpart C to amend nondirectional beacon (automatic direction finder) (NDB/ADF) procedures as follows:

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE NDB (ADF)

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator. Initial approach minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 6.8 miles after passing GCK NDB.
GCK VORTAC	GCK NDB	Direct	4500	Climbing left turn to 4500' on bearing 313 GCK within 10 miles; return to GCK NDB.
				Additional flight data: Runway 12, TDZ elevation, 2888'.

Procedure turn N side of crs, 313° Outbnd, 133° Inbnd, 4500' within 10 miles of GCK NDB.
FAF, GCK NDB. Final approach crs, 133°. Distance FAF to MAP, 6.8 miles.
Minimum altitude: GCK NDB, 4500'.
MSA: 000°-090°—4200'; 090°-270°—4800'; 270°-360°—4400'.
PROCEDURAL DATA/NOTES: (1) *Night minimums not authorized.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-12*	3400	1	512	3400	1	512	3400	1	512	3400	1¼	512
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
Circling	3400	1	505	3400	1	505	3400	1½	505	3460	2	565

Takeoff Standard. Alternate—Standard.

City, Garden City; State, Kans.; Airport name, Municipal; Elev., 2895'; Fac. Ident., GCK; Procedure No. NDB (ADF) Runway 12, Amdt. 5; Eff. date, 4 June 70; Sup. Amdt. No. 4; Dated, 28 Aug. 69

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 7.3 miles after passing CWH NDB.
HSV VOR	CWH NDB	Direct	2600	Climbing right turn to 3000' direct to DCU VOR and hold; or, when directed by ATC, climbing right turn to 2600' direct to CWH NDB and hold N, 1 minute, right turns, 179° Inbnd.
Bluff Int	CWH NDB	Direct	2600	
DCU VOR	CWH NDB	Direct	2600	
Tanner Int	CWH NDB	Direct	2600	
Bethel Int	Toney Int	Direct	2600	
Dellrose Int	CWH NDB (NOPT)	Direct	2600	Supplementary charting information:
Toney Int	CWH NDB (NOPT)	Direct	2600	Hold W, 1 minute, right turns, 090° Inbnd. Depict R-2104 A and B.
				HIRLS Runways 18 L and R/36 L and R. Depict SV LMM 219 KHz on AL chart.
				Runway 18R, TDZ elevation, 629'.

Procedure turn W side of crs, 359° Outbnd, 179° Inbnd, 2600' within 10 miles of CWH NDB.
FAF, CWH NDB. Final approach crs, 179°. Distance FAF to MAP, 7.3 miles.
Minimum altitude over CWH NDB, 2600'; over OM, 1220'.
MSA: 000°-180°—3600'; 180°-360°—2600'.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-18R	1220	¾	591	1220	¾	591	1220	¾	591	1220	1	591
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	1220	1	591	1220	1	591	1220	1½	591	1220	2	591
	NDB/FM Minimums:											
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-18R	1120	¾	491	1120	¾	491	1120	¾	491	1120	1	491
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	1120	1	491	1120	1	491	1120	1½	491	1180	2	551
A	Standard.			T 2-eng. or less—Standard.			T over 2-eng.—Standard.					

City, Huntsville; State, Ala.; Airport name, Huntsville Madison County-Carl T. Jones Field; Elev., 629'; Facility, CWH; Procedure No. NDB (ADF) Runway 18R, Amdt. 5; Eff. date, 4 June 70; Sup. Amdt. No. 4; Dated, 11 Dec. 69

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE NDB (ADF)—Continued

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: 4.6 miles after passing RO LOM.
ROW VORTAC	RO LOM	Direct	5000	Climb to 6000' on crs, 213°, left turn, direct to RO LOM and hold.*
Hagerman Int	RO LOM	Direct	5000	Supplementary charting information:
Ranch Int	RO LOM (NOPT)	Direct	5000	*Hold NE, 1 minute, right turns, 213° Inbnd.
Nelson DME Fix	RO LOM	Direct	5000	Runway 21, TDZ elevation, 3633'.
Dexter DME Fix	RO LOM	Direct	5000	
Hondo DME Fix	RO LOM	Direct	5500	
Dunlap DME Fix	RO LOM	Direct	5500	
Frazier Int	RO LOM (NOPT)	Direct	5000	

Procedure turn N side of crs, 033° Outbnd, 213° Inbnd, 5000' within 10 miles of RO LOM.
FAF, RO LOM. Final approach crs, 213°. Distance FAF to MAP, 4.6 miles.
Minimum altitude over RO LOM, 5000'.
MSA: 000°-180°—5200'; 180°-360°—7000'.
NOTE: Use Roswell FSS altimeter setting when control zone not effective.
*Alternate minimums not authorized when control zone not effective except operators with approved weather reporting service.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-21	3980	¾	347	3980	¾	347	3980	¾	347	3980	1	347
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	4120	1	451	4120	1	451	4120	1¼	451	4220	2	551
A	Standard.*		T 2-eng. or less—Standard.				T over 2-eng.—Standard.					

City, Roswell; State, N. Mex.; Airport name, Roswell Industrial Air Center; Elev., 3669'; Facility, RO; Procedure No. NDB(ADF) Runway 21, Amdt. 4; Eff. date, 4 June 70; Sup. Amdt. No. 3; Dated, 27 Nov. 69

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: VKS NDB.
V-18S	VKS NDB	272° bearing from VKS	2000	Climbing left turn to 2000' to VKS NDB and hold.
V-18S	VKS NDB	011° bearing from VKS	2000	Supplementary charting information:
V-9W	VKS NDB	122° bearing from VKS	2000	Hold S, 1 minute, left turns, 011° Inbnd. Final approach crs intercepts runway centerline 2630' from runway threshold. UNICOM 122.8. Runway 1, TDZ elevation, 103'.

Procedure turn W side of crs, 191° Outbnd, 011° Inbnd, 2000' within 10 miles of VKS NDB.
Final approach crs, 011°.
MSA: 000°-180°—3500'; 180°-360°—1700'.
% Takeoff minimums Runway 1, 500-1.
NOTE: When local altimeter setting not available, use JAN FSS altimeter setting and add 180' to MDA and ¾ mile to Categories B and C straight-in visibility minimums and Category B circling visibility minimums.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D	
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS
S-1	760	1	657	760	1	657	760	1¾	657		NA
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA		
C	760	1	654	760	1	654	760	1¾	654		NA

Takeoff % Standard. Alternate—NA

City, Vicksburg; State, Miss.; Airport name, Vicksburg Municipal; Elev., 106'; Fac. Ident., VKS; Procedure No. NDB (ADF) Runway 1, Amdt. 1; Eff. date, 4 June 70; Sup. Amdt. No. Orig.; Dated, 30 Apr. 70

14. By amending § 97.29 of Subpart C to establish instrument landing system (ILS) procedures as follows:

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE ILS

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator. Initial approach minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: ILS DH, 253'; LOC 4.2 miles after passing OM.
Altamont Int	Hayward NDB/Int	Direct	5000	Climb straight ahead to 400', right turn heading 290° climbing to 3000', intercept OAK R 313° to Richmond Int.
Bay Point Int	Hayward NDB/Int	Direct	5000	
Oak VOR	Hayward NDB/Int	Direct	4000	
Sunol Int	Grove Int (NOPT)	Direct	3500	Supplementary charting information: Chart '222' stack 1.6 miles N of airport (37°44'27"/122°10'45"). Runway 27R, TDZ elevation, 3'. Runway 27L, TDZ elevation, 5'.

Procedure turn N side of crs, 095° Outbnd, 275° Inbnd, 3500' within 10 miles of Hayward NDB/Int.
FAF, OM, Final approach crs, 275°. Distance FAF to MAP 4.2 miles.
Minimum altitude over Grove Int., 3500'; over HWD NDB/Int, 2700'; over OM, 1500'.
Minimum glide slope interception altitude, 3508'. Glide slope altitude at Grove Int, 3500'; HWD NDB/Int, 2655'; OM, 1355'; MM, 229'.
Distance to runway threshold at: HWD NDB/Int, 8.2 miles; OM, 4.2 miles; MM, 0.5 mile.
MSA: 090°-180°—5400'; 180°-270°—3900'; 270°-090°—5100'.
NOTES: (1) Radar vectoring. (2) Inoperative table does not apply to HIRL Runway 27L/R and ALS Runway 27R. (3) Air carrier will not reduce landing visibility due to local conditions. (4) Sliding scale not authorized.
*IFR departures must comply with Oakland SID's or be radar vectored.
#RVR 18 authorized for Runway 29.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
ILS 27R	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT
	253	1	250	253	1	250	253	1	250	253	1	250
LOC 27R	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
	400	1	397	400	1	397	400	1	397	400	1	397
Circling	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
	500	1	494	540	1	534	680	1½	674	680	2	674
LOC-27L	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
	500	1	495	500	1	495	500	1	495	500	1	495

Takeoff 5%# 400-1, Runway 33; Standard all other runways Alternate—Standard.

City, Oakland; State, Calif.; Airport name, Metropolitan Oakland International; Elev., 6'; Fac. Ident., I-OAK; Procedure No. ILS Runway 27R. Amdt. 22; Eff. date, 4 June 70; Sup. Amdt. No. ILS-27R, Amdt. 21; Dated, 20 Aug. 66

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE ILS—Continued

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: ILS DH, 253'; LOC 4.2 miles after passing OM.
				Climb straight ahead to 400', right turn heading 250° climbing to 3000' intercept OAK R 313° to Richmond Int.
				Supplementary charting information:
				Chart 222' stack 1.6 miles N of airport (37°44'27"/122°10'45").
				Parallel procedures, Parallel ILS Runway 27R, and Parallel ILS Runway 29 to be issued on adjoining plates.
				Runway 27R, TDZ elevation, 3'.
				Runway 27L, TDZ elevation, 5'.

Procedure turn not authorized.
Approach crs (profile) starts at Grove Int.
FAF, OM. Final approach crs, 275°. Distance FAF to MAP, 4.2 miles.
Minimum altitude over Grove Int., 3500'; over HWD NDB/Int, 2700'; over OM, 1500'.
Minimum glide slope interception altitude, 3500'. Glide slope altitude at Grove Int, 3500'; HWD NDB/Int, 2655'; OM, 1355'; MM, 223'.
Distance to runway threshold at: HWD NDB/Int, 8.2 miles; OM, 4.2 miles; MM, 0.5 miles.
MSA: Not authorized.
NOTES: (1) Radar required: (A) This procedure mandatory when conducting a parallel ILS approach and is authorized only when airborne 75MHz (or ADF) and localizer receivers are operating simultaneously; (B) notify approach control immediately if any required airborne receiver in Note (A) is malfunctioning or parallel approach is not desired. (2) Inoperative table does not apply to HIRL Runway 27 L/R and ALS Runway 27R.
%IFR departures must comply with Oakland SID's or be radar vectored.
#RVR 18 authorized for Runway 29.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT
S-ILS 27R	253	1	250	253	1	250	253	1	250	253	1	250
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-LOC 27R	400	1	397	400	1	397	400	1	397	400	1	397
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
Circling	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-LOC-27L	500	1	495	500	1	495	500	1	495	500	1	495

Takeoff %#400-1, Runway 33; Standard all other runways. Alternate—Standard.

City, Oakland; State, Calif.; Airport name, Metropolitan Oakland International; Elev., 6'; Fac. Ident., I-OAK; Procedure No. Parallel ILS Runway 27R, Amdt. Orig.; Eff. date, 4 June 70

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE ILS—Continued

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: ILS DH, 206'; LOC 4.6 miles after passing Russell LOM.
Sunol Int	Irvington Int	Direct	3500	Climb straight ahead to 400', turn left heading 260° climbing to 4000', intercept SAU R 110° to SAU VORTAC; or, when directed by ATC, climb straight ahead to 400', turn right, climbing to 3000', intercept OAK R 313° to Richmond Int.
Mission Int	Irvington Int	Direct	3500	

Supplementary charting information:
Chart 222' stack 1.6 miles N of airport (37°44'27"/122°10'45").
Chart Mission Int. SJC R 356° vice SJC R 355°.
Altitude of glide slope at Irvington Int, 4400'.
Runway 29, TDZ elevation, 6'.
Category II special authorization required: S-dn-29, HAT 150, RVR-16, DH 156, RA 1566; S-dn-29, HAT 100, RVR-12, DH 106, RA 106@.

Procedure turn not authorized.
Approach crs (profile) starts at Irvington Int.
FAF, Russell LOM. Final approach crs, 293°. Distance FAF to MAP, 4.6 miles.
Minimum altitude over Irvington Int, 3500'; over Alvarado Int, 2500'; over Russell LOM, 1400'.
Minimum glide slope intercept altitude, 2500'*. Glide slope altitude at Alvarado Int, 2500'; OM, 1308'; MM, 213'; IM, 108'.
Distance to runway threshold at: OM, 4.6 miles; MM, 0.5 mile; IM, 1006'.
MSA: 000°-090°—4900'; 090°-180°—5000'; 180°-270°—3500'; 270°-360°—3700'.
NOTES: (1) Radar vectoring. (2) In vicinity of LOM, heavy VFR traffic in Hayward traffic pattern. (3) Inoperative table does not apply to HIRL Runway 29.
%IFR departures must comply with Oakland SID's or be radar vectored.
#RVR 18 authorized for Runway 29.
*1600 when authorized by ATC.
@ Radar altimeter may vary from minus 2' to plus 6' with changing tide.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT
S-ILS 29	206	RVR 18	200	206	RVR 18	200	206	RVR 18	200	206	RVR 20	200
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-LOC 29	360	RVR 24	354	360	RVR 24	354	360	RVR 24	354	360	RVR 40	354
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
Circling	500	1	494	540	1	534	680	1¼	674	680	2	674

Takeoff %#400-1, Runway 33; Standard all other runways. Alternate—Standard.

City, Oakland; State, Calif.; Airport name, Metropolitan Oakland International; Elev., 6'; Fac. Ident., I-INB; Procedure No. ILS Runway 27, Amdt. 11; Eff. date, 4 June 70; Sup. Amdt. No. 10; Dated, 1 Jan. 70

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE ILS—Continued

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: ILS DH, 206'; LOC 4.6 miles after passing Russell LOM
				Climb straight ahead to 400', turn left heading 260° climbing to 4000', intercept SAU R 110° to SAU VORTAC.
				Supplementary charting information:
				Chart '222' stack 1.6 miles N of airport (37°44'27"/122°10'45").
				Parallel procedures, Parallel ILS Runway 29 and Parallel ILS Runway 27R to be issued on adjoining plates.
				Runway 29, TDZ elevation, 6'.
				Category II special authorization required: S-dn-29, HAT 150, RVR-16, DH 156, RA 156@; S-dn-29, HAT 100, RVR-12, DH 106, RA 106@.

Procedure turn not authorized.
Approach crs (profile) starts at Alvarado Int.
FAF, Russell LOM. Final approach crs, 263°. Distance FAF to MAP, 4.6 miles.
Minimum altitude over Alvarado Int, 2500'; over Russell LOM, 1400'.
Minimum glide slope interception altitude, 2500'*. Glide slope altitude at Alvarado Int, 2500'; OM, 1368'; MM, 213'; IM, 108'.
Distance to runway threshold at; OM, 4.6 miles; MM, 0.5 mile; IM, 1000'.
MSA: 000°–090°—4900'; 090°–180°—5000'; 180°–270°—3500'; 270°–360°—3700'.
NOTES: (1) Radar required: (A) This procedure mandatory when conducting a parallel ILS approach and is authorized only when airborne 75 MHz (or ADF) and localizer receivers are operating simultaneously; (B) notify approach control immediately if any required airborne receiver in Note (A) is malfunctioning or parallel approach is not desired. (2) Inoperative table does not apply to HIRL Runway 29. (3) In vicinity of LOM, heavy VFR traffic in Hayward traffic pattern.
%IFR departures must comply with Oakland SID's or be radar vectored.
#RVR 18 authorized for Runway 29.
*1600 when authorized by ATC.
@@Radar altimeter may vary from minus 2' to plus 6' with changing tide.

DAY AND NIGHT MINIMUMS

Category	A			B			C			D		
	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT
S-ILS 29	206	RVR18	200	206	RVR18	200	206	RVR18	200	206	RVR20	200
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-LOC 29	360	RVR24	354	360	RVR24	354	360	RVR24	354	360	RVR40	354
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
Circling	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Takeoff %#400-1, Runway 33; Standard all other runways. Alternate—Standard.

CITY, Oakland; State, Calif.; Airport name, Metropolitan Oakland International; Elev., 6'; Fac. Ident., I-INB; Procedure No. Parallel ILS Runway 29, Amdt. Orig.; Eff. date 4 June 70

15. By amending § 97.29 of Subpart C to amend instrument landing system (ILS) procedures as follows:

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE ILS

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator. Initial approach minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: ILS DH, 804'; LOC 4.5 miles after passing BH LOM.
BHM VORTAC	BH LOM	Direct	2800	Climb to 3000' direct to ROE NDB and hold; or, when directed by ATC, climbing left turn to 3000' to BHM VORTAC and hold NE, 1 minute, right turns, 225° Inbnd.
Lewis Int	BH LOM	Direct	2800	
Bessemer Int	BH LOM (NOPT)	Direct	2000	
R 332°, BHM VORTAC CCW	BHM LOC	16-mile Arc BHM VORTAC, R 202° lead radial.	2300	
16-mile DME Arc	BH LOM (NOPT)	LOC crs	2000	Supplementary charting information: Hold NE, 1 minute, right turns, 232° Inbnd. Chart 1400' tower 2.2 miles E of airport. HIRLS Runways 5/23. VASI Runway 23. Runway 5, TDZ elevation, 604'.

Procedure turn N side of crs, 232° Outbnd, 052° Inbnd, 2500' within 10 miles of BH LOM.
FAF, BH LOM. Final approach crs, 052°. Distance FAF to MAP, 4.5 miles.
Minimum glide slope interception altitude, 2000'. Glide slope altitude at OM, 2000'; at MM, 815'.
Distance to runway threshold at OM, 4.5 miles; at MM, 0.6 mile.
MSA: 000-360°—2900'.
NOTES: (1) ASR. (2) LOC (BC) unusable below 2800' beyond 15 miles; unusable below 3500' beyond 25 miles.
*Circling not authorized in sector 050° clockwise through 180° from airport.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT
S-5	804	RVR24	200	804	RVR24	200	804	RVR24	200	804	RVR24	200
LOC:	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-5	1000	RVR24	396	1000	RVR24	396	1000	RVR24	396	1000	RVR40	396
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C*	1240	1	597	1240	1	597	1240	1½	597	1240	2	597
A	Standard.			T 2-eng. or less—RVR 50, Runway 5; Standard all others.			T over 2-eng.—RVR 24, Runway 5; Standard all others.					

City, Birmingham; State, Ala; Airport name, Municipal; Elev., 643'; Fac. Ident., I-BHM; Procedure No. ILS Runway 5, Amdt. 25; Eff. date, 4 June 70; Sup. Amdt. No. 24; Dated, 30 Apr. 70

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: ILS DH, 829'; LOC 7.3 miles after passing CWH NDB.
HSV VOR	CWH NDB	Direct	2600	Climb to 3000' on S crs of I-HSV LOC to Bluff Int and hold; or, when directed by ATC, climbing right turn to 3000' direct to DCU VOR and hold W, 1 minute, right turns, 090° Inbnd.
Bluff Int	CWH NDB	Via LOC crs	2600	
DCU VOR	CWH NDB	Direct	2600	
Tanner Int	CWH NDB	Direct	2600	
Bethel Int	Toney Int	Direct	2600	
Toney Int	CWH NDB (NOPT)	Direct	2600	Supplementary charting information: Hold S, 1 minute, left turns, 359° Inbnd. HIRLS Runways 18 L & R/36 L & R. Runway 18R, TDZ elevation, 629'. Depict R-2104 A and B.
Dellrose Int	CWH NDB (NOPT)	Direct	2600	

Procedure turn W side of crs, 359° Outbnd, 179° Inbnd, 2600' within 10 miles of CWH NDB.
FAF, CWH NDB. Final approach crs, 179°. Distance FAF to MAP, 7.3 miles.
Minimum glide slope interception altitude, 2600'. Glide slope altitude at OM, 1935'; at MM, 847'.
Distance to runway threshold at OM, 4.3 miles; at MM, 0.6 mile.
MSA: 000°-180°—3600'; 180°-360°—2600'.
*When ALS inoperative, increase visibility ¼ mile.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT
S-18R	829	½	200	829	½	200	829	½	200	829	½	200
LOC:	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-18R*	1160	¾	531	1160	¾	531	1160	¾	531	1160	¾	531
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	1160	1	531	1160	1	531	1160	1½	531	1180	2	551
	LOC/FM Minimums:											
LOC:	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-18*	1060	¾	431	1060	¾	431	1060	¾	431	1060	¾	431
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	1080	1	451	1080	1	451	1080	1½	451	1180	2	551
A	Standard.			T 2-eng. or less—Standard.			T over 2-eng.—Standard.					

City, Huntsville; State, Ala.; Airport name, Huntsville Madison County-Carl T. Jones Field; Elev., 629'; Fac. Ident., I-HSV; Procedure No. ILS Runway 18R, Amdt. 5; Eff. date, 4 June 70; Sup. Amdt. No. 4; Dated, 6 Nov. 69

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE ILS—Continued

Terminal routes				Missed approach
From—	To—	Via	Minimum altitudes (feet)	MAP: ILS DH, 3833'. LOC 4.6 miles after passing RO LOM.
ROW VORTAC	RO LOM	Direct	5000	Climb to 6000' on crs 213°, right turn, direct to ROW VORTAC and hold.*
Nelson Int	RO LOM	Direct	5000	Supplementary charting information:
Dexter Int	RO LOM	Direct	5000	*Hold W, 1 minute, right turns, 106° Inbnd.
Frazier Int	RO LOM (NOPT)	ROW LOC	5000	Runway 21, TDZ elevation, 3633'.
Ranch Int	RO LOM	Direct	5000	
R 308°, ROW VORTAC CW	ROW LOC	15-mile Arc ROW R 043° lead radial.	5800	
5-mile Arc	RO LOM (NOPT)	ROW LOC	5000	

Procedure turn N side of crs, 033° Outbnd, 213° Inbnd, 5000' within 10 miles of RO LOM.
FAF, RO LOM. Final approach crs, 213°. Distance FAF to MAP, 4.6 miles.
Minimum glide slope interception altitude, 5000'. Glide slope altitude at OM, 4926'; at MM, 3867'.
Distance to runway threshold at OM, 4.6 miles; at MM, 0.6 mile.
MSA: 000°–180°—5200'; 180°–360°—7000'.
NOTE: Use Roswell FSS altimeter setting when control zone not effective.
*Alternate minimums not authorized when control zone not effective except operators with approved weather reporting service.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT
S-21	3833	½	200	3833	½	200	3833	½	200	3833	½	200
LOC:	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-21	3900	½	267	3900	½	267	3900	½	267	3900	¾	267
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	4120	1	451	4120	1	451	4120	1¼	451	4220	2	551
A	Standard.*		T 2-eng. or less—Standard.				T over 2-eng.—Standard.					

City, Roswell; State, N. Mex.; Airport name, Roswell Industrial Air Center; Elev., 3660'; Fac. Ident., I-ROW; Procedure No. ILS Runway 21, Amdt. 3; Eff. date, 4 June 70; Sup. Amdt. No. 2; Dated, 3 Oct. 68

These procedures shall become effective on the dates specified therein.

(Secs. 307(c), 313(a), and 601, Federal Aviation Act of 1958, 49 U.S.C. 1348(c), 1354(a), 1421; 72 Stat. 749, 752, 775)

Issued in Washington, D.C., on May 4, 1970.

R. S. SLIFF,
Acting Director, Flight Standards Service.

[F.R. Doc. 70-5779; Filed, May 21, 1970; 8:45 a.m.]

Title 7—AGRICULTURE

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER C—EXPORT PROGRAMS

PART 1481—RICE

Subpart—Rice Export Program (GR-369) Revision IV

The terms and conditions of the Rice Export Program (GR-369) Revision III (30 F.R. 778 as amended by 31 F.R. 7396, 31 F.R. 11309, 31 F.R. 11449, 32 F.R. 5462 and 34 F.R. 9545) are hereby revised as follows:

GENERAL

Sec.
1481.101 General statement.
1481.102 General conditions of eligibility.
1481.103 Performance security.
1481.104 Announcement of rates and export periods.
1481.105 Definition of terms.

EXPORT PAYMENTS ON RICE (NON-PUBLIC LAW 480)

1481.110 General.
1481.111 Submission of offers.
1481.112 Acceptance of offers.
1481.113 Rice exported prior to submission of offer acceptable to CCC.
1481.114 Contract tolerance.
1481.115 Exportation requirements.

EXPORT PAYMENTS ON RICE (PUBLIC LAW 480)

1481.130 General.
1481.131 Notice of sale.
1481.132 Notice of Registration.
1481.133 Determination of export payment rates.
1481.134 Determination of date and time of sale.
1481.135 Declaration of sale and evidence of sale.
1481.136 Rice exported prior to filing a notice of sale.
1481.137 Contract tolerance.
1481.138 Contract amendments.
1481.139 Exportation requirements.

DOCUMENTS REQUIRED FOR EXPORT PAYMENTS

1481.151 Application for rice export payment.
1481.152 Export payments.
1481.153 Evidence of export.

MISCELLANEOUS PROVISIONS

1481.182 Covenant against contingent fees.
1481.183 Assignments and setoffs.
1481.184 Records and accounts.
1481.185 Place of submission of offers and reports.
1481.186 Additional reports.
1481.187 General Sales Manager and ASCS offices.
1481.188 Officials not to benefit.
1481.189 Amendment and termination.
1481.190 Written approval by CCC.

AUTHORITY: The provisions of this Part 1481 issued under authority of sec. 5, 62 Stat. 1072, sec. 407, 63 Stat. 1055, as amended, sec. 201 (a), 70 Stat. 188; 15 U.S.C. 714c, 7 U.S.C. 1427, 1851.

GENERAL

§ 1481.101 General statement.

(a) This subpart contains the regulations governing the Rice Export Program of Commodity Credit Corporation under which an exporter who exports a quantity of milled or brown rice which is milled in the United States or Puerto Rico from rough rice produced in the United States may obtain an export payment for the exportation. The program is designed to (1) assure that rice produced in the United States is generally competitive in world markets, (2) maintain and expand the market in friendly countries for such rice, (3) aid the price support program by strengthening the domestic market price received by producers of rice, (4) reduce the quantity of rice which would otherwise be taken into CCC's stocks under its price support program, and (5) promote the orderly liquidation of CCC stocks of rice.

(b) This program will be administered in Washington, D.C., by the Export Marketing Service and in the field by the Kansas City ASCS Commodity Office,

U.S. Department of Agriculture. Information pertaining to the program may be obtained from one of the offices listed in § 1481.185 or § 1481.187.

§ 1481.102 General conditions of eligibility.

(a) An exporter who wishes to qualify for an export payment under this subpart shall submit an offer to export milled or brown rice as provided in this subpart. Export payments shall be based on rates announced by CCC. Rates payable by CCC shall be in such amounts as CCC determines will accomplish the objectives of the program described in § 1481.101. The offer submitted by the exporter and its acceptance by CCC shall constitute a contract under which the exporter agrees to export the quantity of rice stated in the offer in consideration of the undertaking of CCC to make an export payment for such exportation, subject to the terms and conditions of this subpart. Payment under this subpart will be made to an exporter on the net quantity of milled or brown rice exported in accordance with his contract with CCC.

(b) An exportation of milled or brown rice otherwise eligible for payment which is, in whole or in part, milled from or commingled with any rice produced outside the United States is not eligible for an export payment under this subpart. However, if the Assistant Sales Manager determines that such eligible and ineligible rice was unintentionally commingled and unintentionally exported under this program, he may authorize an export payment on that portion of the milled or brown rice exported which the exporter establishes to the satisfaction of the Assistant Sales Manager was milled in the United States or Puerto Rico from rough rice produced in the United States.

(c) To be eligible for an export payment under this subpart, the exporter shall submit Form CCC-409, "Application for Rice Export Payment," supported by documentary evidence of export as required in § 1481.153, which has not been used, or will not subsequently be used as evidence of export in connection with (1) any other Form CCC-409, (2) any other export program under which CCC has made or has agreed to make an export allowance, or (3) any other export program which involves the acquisition of rough rice from CCC for export as milled or brown rice at prices which reflect an export allowance. Nothing herein shall be construed as precluding (i) a bill of lading or other documentary evidence of exportation filed under this subpart from being used as evidence in connection with proof of export required in another export program of CCC, including the barter program, or (ii) the exportation of milled or brown rice under this program pursuant to sales under Public Law 480, or (iii) purchases of rough rice from CCC for export in the form of milled or brown rice if CCC determines that the uses described in this paragraph will not result in any duplication of an export payment or allowance. An export of milled or brown rice by or to a United States Government agency as defined in § 1481.105 shall not qualify as an export for the purpose of this subpart.

(d) Export payments shall be made at rates provided in the announcement referred to in § 1481.104. Rates may be announced for each class of whole kernal milled rice (except mixed milled rice) and for the classes second head, screenings, and brewers milled rice. The export payment per net hundredweight of milled or brown rice exported under this subpart shall be made on the basis of factors set forth in an official lot inspection certificate for the rice and shall be determined as follows:

(1) The export payment for the classes long, medium, short grain, and mixed milled rice which grade U.S. No. 6 or better shall be determined by (i) multiplying the percent of whole kernels by the whole kernel rate for the applicable class of milled rice, (ii) multiplying the percent of total broken kernels by the rate for second head, and (iii) adding the results. For mixed milled rice, the official lot inspection certificate must show the percentage of whole kernels of each class of rice in the lot.

(2) The export payment for the classes long, medium, short grain, and mixed milled rice which do not grade U.S. No. 6 or better, and for rice where the official lot inspection certificate does not show the grade of rice, shall be determined by (i) multiplying the percent of whole kernels, second head, screenings, and brewers by the applicable rate for whole kernels, second head, screenings, and brewers and (ii) adding the results. The official lot inspection certificate must show the percentage of whole kernels, second head, screenings, and brewers rice in the lot and for mixed milled rice, the official lot inspection certificate must also show the percentage of whole kernels for each class of rice in the lot.

(3) The export payment for the classes second head, screenings, and brewers shall be determined by (i) multiplying the total of the percentages of whole kernel and second head rice by the rate for second head rice, (ii) multiplying the percentages of screenings and brewers by the applicable rate for screenings and brewers, and (iii) adding the results. The official lot inspection certificate must show the percentage of whole kernel, second head, screening, and brewers rice in the lot.

(4) The export payment for all classes of brown rice which grade U.S. No. 5 or better shall be determined by (i) multiplying the milling yield percent of whole kernels by the rate for the applicable class of whole kernel milled rice, (ii) multiplying the percent of broken kernels by the rate for second head milled rice, and (iii) adding the results. The official lot inspection certificate must show the milling yield of the brown rice and, for mixed brown rice, the official lot inspection certificate must also show the percent of whole kernels for each class of rice in the lot. The "head yield" shown on the official lot inspection certificate shall be multiplied by 96 percent and rounded to the nearest tenth of 1 percent to obtain the percent of whole kernels. The percentage of broken kernels will be obtained by subtracting the percentage of whole kernels from the total milling yield.

(5) The export payment for all classes of brown rice which do not grade U.S. No. 5 or better, and for brown rice where the official lot inspection certificate does not show the grade of rice, shall be determined by (i) multiplying the milling yield percent of whole kernels by the rate for the applicable class of whole kernel milled rice, (ii) multiplying the percent of broken kernels (after deducting the total percentage of any screenings or brewers milled rice) by the rate for second head milled rice, and (iii) adding the results. The official lot inspection certificate must show the milling yield of the brown rice and the percentage of any screenings or brewers milled rice, and for mixed brown rice, the official lot inspection certificate must also show the percentage of whole kernels for each class of rice in the lot. The "head yield" shown on the official lot inspection certificate shall be multiplied by 96 percent and rounded to the nearest tenth of 1 percent to obtain the percent of whole kernels. The percentage of broken kernels will be obtained by subtracting the percentage of whole kernels from the total milling yield.

§ 1481.103 Performance security.

CCC reserves the right to require any exporter to furnish a surety bond acceptable to CCC conditioned upon his faithful performance of all provisions of his contract entered into with CCC under this subpart or in lieu of such bond a certified check, cashier's check, or other acceptable security such as an irrevocable letter of credit in a form approved by CCC against which CCC may draw with a statement that the money is due CCC. Such bond or other security shall be in an amount determined by CCC.

§ 1481.104 Announcement of rates and export periods.

An announcement of export payment rates will be made from Washington, D.C., at approximately 3:31 p.m. on the date the rates are to become effective. Such rates will be effective with respect to offers (including offers consisting of notices of sale) which are submitted after 3:30 p.m. on the day they are announced and before 3:31 p.m. on the expiration date for the acceptance of offers stated in the rate announcement. Different payment rates may be announced for different classes of rice and for different export periods at certain times during the year when "new crop" rice becomes available for export. The rate announcement will also specify the final date of exportation of rice covered by offers and notices of sale which are submitted under the rate announcement. Announcements will be released through the press and ticker service, and will be available at the office specified in § 1481.185 and at the Agricultural Stabilization and Conservation Service Office in Kansas City, Mo., and the Office of the General Sales Manager, Export Marketing Service, located in New York.

§ 1481.105 Definition of terms.

As used in this subpart and in announcements, forms and documents pertaining hereto, the terms defined in this section shall have the following meaning unless the context otherwise requires:

(a) *CCC.* The Commodity Credit Corporation, U.S. Department of Agriculture.

(b) *General Sales Manager.* The General Sales Manager, Export Marketing Service, U.S Department of Agriculture, or his designee.

(c) *Assistant Sales Manager.* The Assistant Sales Manager, Commodity Exports, Export Marketing Service, U.S. Department of Agriculture, or his designee.

(d) *Director.* The Director, Grain Division, Commodity Exports, Export Marketing Service, U.S. Department of Agriculture, or his designee.

(e) *Contracting Officer.* A Contracting Officer, CCC, to whom the Assistant Sales Manager has delegated responsibility under this subpart.

(f) *Day.* Calendar day.

(g) *Eligible country.* Any destination outside the United States, excluding Puerto Rico and also excluding any country or area for which a validated export license is required under regulations issued by the Bureau of International Commerce of the Department of Commerce unless a license for exportation or transshipment to such country or area has been obtained from such bureau. In the case of an export under a Public Law 480 purchase authorization or an export against a sale as described in § 1481.130(b), the eligible country shall mean the designated country to which the export is to be made under the applicable Public Law 480 purchase authorization or the letter of conditional reimbursement.

(h) *Export and exportation.* Except as hereinafter provided, a shipment from the United States or Puerto Rico to an eligible country of milled or brown rice milled from rough rice produced in the United States. The rice shall be deemed to have been exported on the date of the applicable on-board bill of lading and at the time provided in the carrier's lay time statement or other acceptable document, or if shipment to an eligible country is by truck or railcar, on the date the shipment clears the U.S. Customs. If the rice is lost, destroyed, or damaged after loading on board an export carrier, exportation shall be deemed to have been made as of the date of the on-board bill of lading or the latest date appearing on the loading tally sheet or similar document if the loss, destruction, or damage occurs subsequent to loading aboard carrier but prior to issuance of the on-board bill of lading and lay time statement: *Provided, however,* That if the lost or damaged rice remains in the United States or Puerto Rico, it shall be considered reentered rice and shall be subject to the provisions of § 141.115(d). Exportation by or to a U.S. Government agency shall not qualify as an exportation under the provisions of this subpart.

(i) *Exporter.* A person who is engaged in the business of milling or buying and selling rice for export, maintains a bona fide business office for such purpose in the United States or Puerto Rico, and has an agent in such office upon whom service of process may be made.

(j) *Milled rice and brown rice.* Milled rice and brown rice as defined in the Official U.S. Standards for Rough Rice, Brown Rice, and Milled Rice.

(k) *Export carrier.* The ocean vessel on which rice is exported under this program from the United States or Puerto Rico to an eligible country or if export from the United States is by railcar, airplane, or truck, "export carrier" means such railcar, airplane, or truck.

(l) *Person.* An individual, partnership, corporation, association, or other legal entity.

(m) *Sales under Public Law 480 or P. L. 480.* Sales for foreign currencies or sales on credit pursuant to a purchase authorization and the regulations issued under title I of the Agricultural Trade Development and Assistance Act of 1954 (Public Law 480, 83d Congress), as amended.

(n) *United States.* Unless otherwise qualified, means all the 50 states and the District of Columbia.

(o) *U.S. Government agency.* Any corporation, wholly owned by the Federal Government, and any department, bureau, administration, or other unit of the Federal Government excluding the Army and Air Force Exchange Service, Navy Exchange, and the Panama Canal Company. Sales of rice to a foreign buyer, including foreign governments though financed with funds made available by a U.S. agency, such as the Agency for International Development or the Export-Import Bank, are not sales to a U.S. Government agency, provided such rice is not for transfer to a U.S. Government agency.

(p) *"3:30 p.m. and 3:31 p.m.".* "3:30 p.m. and 3:31 p.m." eastern standard time, except that when Washington, D.C., is on daylight time, "3:30 p.m. and 3:31 p.m." mean "3:30 p.m. and 3:31 p.m." eastern daylight time.

(q) *Official lot inspection certificate.* A certificate of inspection issued by or under the supervision of the Grain Division, Consumer and Marketing Service, U.S. Department of Agriculture in accordance with the Official U.S. Standards for Rough Rice, Brown Rice, and Milled Rice.

(r) *Official weight certificate.* A weight certificate issued:

(1) By Chambers of Commerce, Boards of Trade, Grain Exchanges, State Weighing Departments, or other organizations having qualified, independent, impartial paid employees stationed at elevators or warehouses, or

(2) On authority of Chambers of Commerce, Boards of Trade, Grain Exchanges, State Weighing Departments, or other organizations where weighing is performed by elevator or warehouse employees under the supervision of a qualified, independent, impartial weighmaster employed by one of the above organizations, or

(3) On the basis of weights established by a licensed weighmaster whose weight certificates are recognized by common carriers as official in the settlement of claims for losses in transit, weights recognized as weighing bureau agreement weights, or weight certificates furnished by a railroad or weighing bureau, or

(4) On the basis of other weight determinations agreed to in writing by CCC.

EXPORT PAYMENTS ON RICE (NON-PUBLIC LAW 480)

§ 1481.110 General.

An exporter who wishes to receive an export payment under this subpart on an export of milled or brown rice (other than an export made pursuant to a sale under Public Law 480) shall submit an offer to export rice as provided in § 1481.111. Except as provided in § 1481.113, the export payment applicable to the rice exported under the contract resulting from the offer shall be determined in accordance with § 1481.104 on the basis of the applicable announced rates in effect at the time the exporter submits the offer for consideration by CCC. If two export periods and two payment rates for the same class of rice are in effect at the time the exporter submits the offer for consideration by CCC, the payment rate applicable to exports made under the contract resulting from the offer shall be the payment rate applicable to the time of actual export. The rice must be exported to an eligible country and must not be diverted or transshipped or caused to be diverted or transshipped by the exporter to any country other than an eligible country.

§ 1481.111 Submission of offers.

(a) Place and time: An offer for the export of rice described in § 1481.110 should normally be filed in writing, such as by telegram, teletypewriter, or telex although telephone may be used. Offers are to be submitted to the office specified in § 1481.185. Telephoned offers must be confirmed immediately thereafter in writing, such as by telegram, teletypewriter, or telex. Offers will be considered by CCC at the time the offer is received by CCC except that, offers will not be considered for acceptance on a Saturday, Sunday, Holidays, or other Federal nonwork day in Washington, D.C., or any other day specified by CCC in its announcement of export payment rates issued pursuant to § 1481.104 as a day on which offers will not be considered by CCC for acceptance.

(b) Receipt of offers, modifications, and withdrawals:

(1) An offer, modification of an offer, or withdrawal of an offer will not be considered submitted as the term is used in this section and section 1481.110, nor shall it be considered for acceptance by CCC unless received in its entirety by the dispatching telegraph office (if made by telegram) or in the U.S. Department of Agriculture (if otherwise made in writing or by telephone) no later than 3:30 p.m. of the last day for submission of offers under the rate schedule under which the exporter wishes the offer to be considered

by CCC and, in the case of a modification or withdrawal, before the offer has been accepted by CCC, except that offers, modifications, or withdrawals received after 3:30 p.m. may be considered by CCC if:

(i) CCC determines that such offer, modification, or withdrawal was delayed in transmission through no fault of the exporter, or

(ii) The modification is made for the purpose of correcting an error apparent on the face of the offer, or for the purpose of clarification, or the modification is beneficial to CCC.

(2) A request to modify an offer or withdraw an offer should normally be filed in writing such as by telegram, teletypewriter, or telex although telephone may be used. Telephoned requests must be confirmed immediately thereafter in writing, such as by telegram, teletypewriter, or telex.

(c) Form: An offer, including a written confirmation of a telephoned offer, shall be submitted in the name of the exporter, shall be signed by, or in the case of a telephoned offer shall be transmitted by the exporter or a person authorized to make contracts on behalf of the exporter, and shall state the following:

(1) The offer is subject to all applicable terms and conditions of this subpart, including any amendments hereto and supplemental announcements hereunder, which are in effect at the time the offer is submitted for consideration by CCC. The use of the term "GR–369 Revision IV" in the offer shall signify that the offer is submitted subject to all terms and conditions.

(2) Rate Schedule Number under which the offer is submitted for consideration. An offer will be considered for acceptance only if received by or transmitted to CCC, as provided in paragraph (b) of this section, during the time the rate schedule given in the offer is in effect.

(3) The net quantity of rice to be exported expressed in hundredweight (do not include any tolerance).

(4) Full business name and address of the exporter.

(5) Name of the person submitting the offer on behalf of the exporter.

(6) Any other provision required by CCC in its announcement of rates issued pursuant to § 1481.104.

Example: The following represents an offer to export 10,000 cwt. of rice submitted by the Rice Export Co., Inc.

GR–369—Revision IV—for Consideration under Schedule No. 480 10,000 cwt.

By: Rice Export Co., Inc., 400 Blank Street, Houston, Tex.

Signed Richard Doe, President.

(d) An exporter may separately submit more than one offer for consideration under a rate schedule.

(e) Right to accept or reject: CCC reserves the right to accept or reject any or all offers or to waive any informality in connection with such offers. Offers will be considered in their entirety only and offers containing terms or conditions other than those authorized in this subpart or any supplemental announcement hereunder will not be considered. An exporter whose offer is rejected will be notified of such rejection and reason therefor by telegraph.

§ 1481.112 Acceptance of offers.

(a) Upon acceptance of an exporter's offer submitted under § 1481.111 for the export of rice, CCC will attempt to notify the exporter by telegraph on the day the offer is considered and accepted by CCC. By close of business of such day CCC will attempt to forward to the exporter Form CCC–411, "Acceptance of Offer to Export Rice," which shall constitute CCC's written acceptance of the exporter's offer. If an offer is submitted by telephone, Form CCC–411 will not be forwarded to the exporter until the written confirmation of the exporter's offer has been received by CCC. The contract resulting from such acceptance shall consist of the exporter's offer, CCC's written acceptance, the applicable terms and conditions of this subpart, including any amendments hereto and supplemental announcements hereunder (e.g. Rate Schedule Announcements), which are in effect at the time the offer is received by CCC.

(b) An exporter shall notify CCC promptly when he is unable to fulfill his obligations under his contract with CCC because of failure to export, the reentry in any form or product into the United States or Puerto Rico of rice previously exported by him, or his failure to discharge fully any other obligation assumed by him under this subpart.

§ 1481.113 Rice exported prior to submission of offer acceptable to CCC.

(a) An exporter must comply with the requirements of this section if he wishes to qualify for an export payment on rice (other than an export under Public Law 480) which has been exported prior to submission of an offer acceptable to CCC. Such exporter must, in addition to the other requirements of this subpart, establish to the satisfaction of CCC that his failure to submit an offer prior to export of the rice was due to causes without his fault or negligence or that such failure was the result of an honest error made by the exporter. In such case, CCC will waive the requirement for the submission of an offer and its acceptance.

(b) The exporter must report the export promptly by telegram, teletypewriter, telex, or telephone. Reports submitted by telephone must be confirmed immediately thereafter in writing. The report must include the following:

(1) Date of export.

(2) Port of export.

(3) Name of ocean carrier, or if export was by railcar, airplane, or truck, the identification of such railcar, airplane, or truck.

(4) Net quantity of rice exported expressed in hundredweight.

(c) The export payment rate applicable to rice exported prior to the submission of the report described in paragraph (b) of this section shall be determined in accordance with § 1481.104 on the basis of the lowest rate under (1) the rate announcement for offers submitted on the day of export, (2) the rate announcement immediately preceding the rate announcement for offers submitted on the day of export, or (3) the rate announcement in effect at the time of submitting the report to CCC.

(d) The submission of Form CCC–409, "Application for Rice Export Payment," for an export payment on rice exported prior to submission of an offer constitutes the exporter's agreement that if the rice (in any form or product) is exported or transshipped to other than an eligible country, or if the rice is reentered into the United States or Puerto Rico, he shall be liable to CCC as provided in § 1481.115(d).

§ 1481.114 Contract tolerance.

(a) If an exporter exports or causes an export of rice in accordance with the requirements of this subpart of a net quantity of rice which is less than the net quantity provided in the exporter's contract with CCC, as described in § 1481.112, but not less than the contract quantity minus 5 percent, he shall not be required to pay liquidated damages for failure to export the undershipped quantity. If an exporter exports or causes an export of rice in accordance with the requirements of this subpart of a net quantity of rice which is greater than the net quantity provided in the exporter's contract with CCC, but not greater than the contract quantity plus 5 percent, he may include the excess quantity on Form CCC–409, "Application for Rice Export Payment," and receive payment at the same payment rate as provided in his contract with CCC.

(b) Except as provided in paragraph (c) of this section, at such time as CCC has received Form(s) CCC–409 and evidence of export which support the export of a net quantity of rice required by the exporter's contract with CCC, as described in § 1481.112 (taking into account any tolerance provided in paragraph (a) of this section), CCC shall regard the contract as having been completed and will not thereafter accept Form(s) CCC–409 for the application of additional quantities against the same contract (unless approved in writing by CCC for good cause shown by the exporter) even though the additional quantities may be within the tolerance described in paragraph (a) of this section.

(c) CCC shall not regard the contract as having been completed under paragraph (b) of this section and the exporter will be permitted to apply additional quantities up to the contract quantity specified in Form CCC–411, "Acceptance of Offer to Export Rice," if (1) the net quantity applied to the contract with CCC is less than the net quantity specified in Form CCC–411 but is 95 percent or more of such quantity, (2) the exporter furnishes a statement to CCC that he intends to apply additional quantities to the contract, and (3) the statement is furnished with the Form(s) CCC–409 which brings the total quantity applied to the contract within the downward tolerance as described in paragraph (a) of this section.

§ 1481.115 Exportation requirements.

(a) To be eligible for an export payment under this subpart, the exporter shall export or cause export of the rice in accordance with his contract with CCC, as described in § 1481.112, to an eligible country. An extension of the export period in the exporter's contract with CCC will be granted to the exporter to the extent he establishes to the satisfaction of CCC that he had taken the necessary action to enable him to export within the required period but exportation had been delayed due to causes solely without his fault or negligence and that no financial advantage has accrued or will accrue to the exporter as a result of the delay. Such extension may be granted before or after the time when the export should have been made.

(b) The exporter shall promptly furnish to CCC evidence of export as specified in § 1481.153. Failure of the exporter to furnish evidence of an export for application to a contract with CCC not later than 60 calendar days after the final date of the export period in the exporter's contract with CCC, or within any extension of such time as may be granted in writing by CCC under paragraph (a) of this section, shall constitute prima facie evidence of the exporter's failure to export in accordance with his contract with CCC.

(c)(1) Except as provided in § 1481.114, the failure of the exporter to export rice in accordance with the provisions of his contract with CCC shall constitute a default of his obligations to CCC. An export to other than an eligible country shall not entitle the exporter to any payment under this subpart.

(2)(i) If the rice is exported after the last day of the export period specified in the exporter's contract with CCC, or any extension thereof granted under paragraph (a) of this section, the export payment rate shall be reduced at the rate of 3 cents per hundredweight a day on the net hundredweight of rice not exported timely. Beginning on the date when the exporter is no longer entitled to any export payment under this section, liquidated damages shall accrue at the rate of 3 cents per hundredweight for each day of delay on the net hundredweight of rice not exported timely: *Provided, however,* That such accrued liquidated damages for any delay in timely exportation shall not exceed 50 cents per net hundredweight of rice not timely exported. An export which has not been made at the time that there has accrued a total amount of liquidated damages of 50 cents per hundredweight shall be deemed not to have been made at all and the exporter shall not be entitled to any export payment and shall owe CCC, as liquidated damages, a total of 50 cents per hundredweight on the net hundredweight of rice not exported (after taking into consideration the downward tolerance provided in § 1481.114).

(ii) In the case of a delay in export, the export payment shall not be reduced, and the exporter shall not be liable for liquidated damages to the extent he establishes to the satisfaction of CCC that his delay in export was due to causes solely without his fault or negligence, that he had taken the necessary action to enable him to export the rice and that no financial advantage accrued or will accrue to the exporter as a result of such failure.

(iii) In the case of a failure to export, the exporter shall not be entitled to any export payment, but he shall be liable for liquidated damages unless he establishes to the satisfaction of CCC that the failure to export was due to causes solely without his fault or negligence. The failure of the exporter to export in accordance with his contract with CCC will cause serious and substantial losses to CCC, such as damages to CCC's export and price support programs and the incurrence of storage, administrative, and other costs. Inasmuch as it will be difficult, if not impossible, to establish the exact amount of such losses, the exporter, in submitting his offer, agrees that the liquidated damages provided for in this section for failure to comply with his contract with CCC are reasonable estimates of the probable actual damages which may be incurred by CCC in the event of such failure. The exporter further agrees that he will make payment to CCC of any liquidated damages due under this section promptly on demand.

(3) In addition to the foregoing, an exporter who fails to export in accordance with his contract with CCC may be suspended or debarred from participating in this program and in other programs of CCC for such period and subject to such terms and conditions as may be provided by CCC pursuant to the Suspension and Debarment Regulations of CCC (34 F.R. 12659, Aug. 5, 1969, and any amendments thereto or revisions thereof.)

(d) If any quantity of rice exported pursuant to the exporter's contract with CCC is reentered in any form or product into the United States or Puerto Rico, whether or not such reentry is caused by the exporter, or if any quantity of rice exported is transshipped, or caused to be transshipped, in any form or product, by the exporter to any country that is not an eligible country, the exporter shall be in default, shall refund any payment made by CCC with respect to such quantity of rice and shall also pay to CCC with respect to any such rice which is reentered into the United States or Puerto Rico in any form or product, liquidated damages of 50 cents per net hundredweight on such rice. If the rice is reentered in some other form or product, the exporter in submitting an offer to export rice under this subpart agrees that the rice equivalent of such reentered rice shall be determined on such basis as may be specified by CCC. To the extent the exporter establishes that the reentry was due to causes without his fault or negligence, he shall not be in default and shall not be liable for such liquidated damages but shall return to CCC any payment received with respect to such rice. If the reentered rice is subsequently reexported, it shall be eligible for an export payment in accordance with the other provisions of these regulations or other regulations which may provide for an export payment on such an export. To the extent the exporter establishes that (1) any reentered rice was lost, damaged, destroyed, or its physical condition is such that the reentry will not impair CCC's price support program, and no person received or will receive any export payment with respect to any reexport which may occur to the rice, in any form or product, (2) the reentered rice was reexported or an equivalent quantity of the same class and of the same quality was exported in replacement of the reentered rice and no person received any export payment with respect to such exported rice, or (3) the rice was reentered as a result of action taken by the Government of the United States acting for itself or as an agent and such reentry was not caused by any fault or negligence of the exporter, the exporter shall not be in default, shall not be liable for such liquidated damages and shall not be required to return to CCC any payment received with respect to such rice.

EXPORT PAYMENTS ON RICE

(PUBLIC LAW 480)

§ 1481.130 General.

(a) *Sales under purchase authorizations.* An exporter who wishes to receive an export payment under this subpart on an export of milled or brown rice pursuant to a sale under a purchase authorization issued under Public Law 480, must file an offer consisting of a notice of sale as provided in § 1481.131 and, in addition to other applicable provisions of this subpart, must comply with the provisions of §§ 1481.130 to 1481.139. Such notice of sale shall also constitute the exporter's request for approval of the sale, including the price of the rice, for financing under the regulations issued pursuant to Public Law 480.

(b) *Sales under letters of conditional reimbursement procedures.* (1) An exporter who wishes to receive an export payment on an export of milled or brown rice pursuant to a dollar sale for which he had received advice from the foreign buyer, at or before the time of sale, that the importing country later expects to obtain financing from CCC under Public Law 480, must file an offer consisting of a Notice of Sale as provided in § 1481.131 and, in addition to other applicable provisions of this subpart, must comply with the provisions of §§ 1481.130 to 1481.139.

(2) The provisions of this subpart applicable to sales of rice financed under Public Law 480, except where the context otherwise requires, apply to a sale as described in this paragraph even though the importing country does not actually obtain financing under Public Law 480 for such a sale.

(c) *Foreign buyers.* A notice of sale may be filed only with respect to a bona fide sales transaction with the foreign buyer named in the notice of sale. If the foreign buyer is an affiliate of the U.S. exporter, the sale must be a bona fide sales transaction in which the affiliate is acting in its behalf as an independent buyer and not on behalf of the

exporter. The foreign sale shall not be a "wash sale" or any other type of intercompany transaction which does not result in an actual exportation and payment against the specific sale on which the export payment rate was based.

§ 1481.131 Notice of sale.

(a) *Place and method of filing.* The exporter shall file the notice of sale with the office specified in § 1481.185 on the date of the sale or as soon as possible thereafter. The notice of sale should normally be filed by telegram, teletypewriter, or telex although telephone may be used. Telephoned notices must be confirmed immediately thereafter in writing, such as by letter, telegram, teletypewriter, or telex.

(b) *Current rates.* In order for the exporter to receive the current payment rates, the notice of sale must be filed or the telephone call made prior to 3:31 p.m. of the expiration date for such rates as shown in the rate schedule and must otherwise comply with the provisions of this subpart.

(c) *Time for filing.* The time of filing the notice of sale will be considered to be as follows:

(1) In case of a telephone notice, the time transmission of the telephonic message to the Contracting Officer, CCC, begins.

(2) In case the notice of sale is filed by telegram, the time the message is accepted by the dispatching telegraph office, CCC will accept as the time of filing, the time which appears on the telegram.

(3) In case the notice of sale is filed by teletypewriter or telex, the time transmission of the message to CCC begins.

(d) *Time of filing not established.* If the time of filing the notice of sale cannot be established and two or more payment rates which would apply to the sale are in effect on the day of filing, the time of filing the notice of sale will be deemed to be the time the lower of the payment rates was in effect.

(e) *Price.* If the price of the rice is disapproved for financing under Public Law 480, or the notice of sale is otherwise unacceptable, the exporter will be so notified by telegraph and the notice of sale will not be registered. If the price of the rice is disapproved, the exporter shall have 5 calendar days following the date of the notice of sale within which to submit a new price which is acceptable to CCC. During such 5-day period, CCC will not recognize, for the purpose of §§ 1481.130 to 1481.139 and for financing under Public Law 480, any new sale between the same exporter and foreign buyer in substitution of the original transaction. If an acceptable price is not submitted within such 5-day period, the original notice of sale, any subsequent notification of price adjustments made within such period and the related contract between the exporter and the foreign buyer shall, for the purpose of §§ 1481.130 to 1481.139 and for financing under Public Law 480, be considered null and void. Any subsequent negotiations after expiration of such 5-day period which result in a contract between the same exporter and foreign buyer shall be considered as a new sale for the purpose of §§ 1481.130 to 1481.139 and for financing under Public Law 480 and shall be subject to the exporter's filing a new notice of sale and submission of new evidence of sale.

(f) *Information required.* The notice of sale must contain the following:

(1) Date and time of sale.

(2) Name of buyer or buyers. (Brokers or agents of either the seller or foreign buyer shall not be named as the buyer.)

(3) Country to which export is to be made.

(4) Class and grade of rice, maximum percentage of brokens, and any additional commodity specifications in the contract.

(5) Contract quantity, expressed in net hundredweight and the contract loading tolerance, if any, expressed in percentage, but not in excess of 5 percent, more or less.

(6) (i) For bagged rice, the f.a.s. sale price per net metric ton (not including the weight of the bags) including in the price any commission and other charges necessary to the sale.

(ii) For bulk rice, the f.o.b. vessel sale price per net metric ton, including in the price any commission and other charges necessary to the sale.

(iii) If the sale price in the contract is on a different basis than specified in subdivision (i) or (ii) of this subparagraph, specify the basis of the sale price.

(7) Coast of export (such as West coast or Gulf coast).

(8) Delivery period specified in contract.

(9) Complete packaging description and packaging material specifications if exportation of the rice is other than in 100-net pound burlap bags.

(10) Delivery terms (f.o.b. or f.a.s.)

(11) Any options to be exercised by the exporter or foreign buyer.

(12) Any other term of the contract between the exporter and foreign buyer not specifically provided for in this paragraph (f) which would effect the delivery of the rice to be exported.

(13) Public Law 480 Purchase Authorization number, or in the case of export as described in § 1481.130(b), the letter of conditional reimbursement number (LCR No.).

(14) Exporter's sales contract or order number, if any.

(15) Name and address of sales agent, if any.

(16) Such additional information in individual cases as may be requested by the Contracting Officer, CCC.

§ 1481.132 Notice of registration.

(a) Upon receiving a notice of sale complying with the applicable provisions of this subpart and if the sale, including the price of the rice, is approved for financing under Public Law 480, CCC will register the sale and will issue a notice of registration by telegraph which shall constitute written notice that the sale is registered, unless CCC determines that to do so would not be in the best interest of the program. Such registration shall create a contract between the exporter and CCC which shall consist of the exporter's notice of sale, CCC's Notice of Registration, the applicable terms and conditions of this subpart, including any amendments hereto and supplemental announcements hereunder (e.g. rate schedule announcements), which are in effect at the time of filing the notice of sale.

(b) In the telegraph message of registration CCC may utilize the code letters "REP" to signify "Registered as Eligible for Payment" and the code letters "PAF-480" to signify that the sale, including the price of the rice, has been approved for financing under the regulations issued pursuant to Public Law 480. The notice of registration will include a registration number which shall be shown on Form CCC-421, "Declaration of Sale," on Form CCC-409, "Application for Rice Export Payment," and in all correspondence with CCC in reference to the transaction.

(c) An exporter shall notify CCC promptly in every case where he is unable to fulfill his obligations under his contract with CCC because of failure to export in accordance with the provisions of his sale to the foreign buyer, the reentry in any form or product into the United States or Puerto Rico of rice previously exported by him or his failure to discharge fully any other obligation assumed by him under this subpart.

§ 1481.133 Determination of export payment rates.

The export payment applicable to the sale shall be determined in accordance with § 1481.104 on the basis of the rates in effect on the date and time of sale to the foreign buyer as determined under § 1481.134 or on the date and time of filing of the Notice of Sale with CCC as determined under § 1481.131(c), whichever rates are the lower for the export period which covers the delivery period under the exporter's sale to the foreign buyer.

§ 1481.134 Determination of date and time of sale.

A sale shall not be considered as made until the purchase price has been established and the date and time of sale shall be the earliest date and time the exporter had knowledge that a firm contract exists with the foreign buyer under which a firm dollar and cent price has been established. The supporting evidence of sale submitted by the exporter in the form prescribed in § 1481.135 will be the basis for determining the date and time of sale. For the purpose of this subpart, some of the factors which are determinative of the date and time of sale, are as follows:

(a) Date and time of the exporter's filing a cablegram or mailing a written acceptance of a definite offer to purchase received from the foreign buyer.

(b) Date and time of receipt by the exporter of a cablegram or other written acceptance from the foreign buyer of a definite offer by the exporter to sell or the date and time of receipt by the exporter of a cablegram or other written notification from his agent that the foreign buyer has accepted a definite offer by the exporter to sell.

(c) Date and time of filing by the exporter of a cablegram or the date and time of mailing of a written confirmation by the exporter of the booking of a shipment or shipments to be made pursuant to a standing order of the buyer to purchase. It must be clear from the evidence, however, that the exporter has the right under the terms of the standing order to create a firm contract of sale by issuing a confirmation. For example, if he is authorized to confirm the sale at a price which may be established at his option, the evidence must show that such is the understanding between buyer and seller; otherwise, it will be necessary for the buyer also to confirm the price, and receipt of the buyer's confirmation will establish the date and time of sale.

(d) Date and time of a telephone conversation during which the buyer and the exporter agreed verbally to the terms of a contract to purchase and sell. The documents to substantiate the telephone conversation or the contract confirming the verbal agreement signed by both the exporter and foreign buyer must show the date and time at which the exporter and foreign buyer verbally agreed to the terms of the contract.

(e) Any contract provisions which entail provisional or basic or maximum or minimum prices to be adjusted at a future date may affect the date and time of sale for purposes of this subpart.

(f) If the contract would be firm but for the fact that it is conditioned upon receipt of advice of the approval by CCC for financing under Public Law 480, such condition shall be disregarded for the purpose of determining the date and time of sale. On any sale where the price of the rice originally reported by the exporter is disapproved by CCC for financing under Public Law 480, the exporter shall have 5 calendar days following the date of the notice of sale within which to submit a new price which is acceptable by CCC for financing under Public Law 480. If within this period an acceptable price is submitted, the date and time of sale will be regarded as the date and time of the original sale and the export payment applicable to the rice exported under this subpart will be the rates in effect on the date and at the time of the original sale or on the date and at the time of giving the original notice of sale, whichever rates are the lower.

(g) If export is by ocean carrier and the date and time of sale cannot be determined under other provisions of this section, or by any other means, the sale will be deemed to have been made on the date and at the time the rice is considered exported for program purposes, as defined in § 1481.105(h). If export is by truck or rail and the date and time of sale cannot be determined on the basis of the factors set forth in this section or by any other means, the sale will be deemed to have been made on the date and at the time of issuance of the inland bill of lading, or if none is issued, on the date and at the time of clearance through U.S. Customs.

(h) If the time of day at which the sale was made is not established and two payment rates are in effect on the date of sale, the time of sale will be deemed to have occurred at the time the lower of the two rates was in effect.

(i) If a sale is made through an intermediary, for purposes of determination of the applicable export payment rates, no substantially greater lapse of time for concluding the sales transaction may be recognized than would have elapsed had the exporter been dealing directly with the foreign buyer.

(j) In any unusual cases involving factors other than those described in this section, an exporter should make a written request for a determination in writing from the office specified in § 1481.185 in advance of making the sale as to the effect of such factors on the date and time of sale.

§ 1481.135 Declaration of Sale and evidence of sale.

(a) *Place and time of submission of required copies.* (1) The exporter shall prepare Form CCC–421, "Declaration of Sale," and should mail or deliver it to the office specified in § 1481.185 as soon as possible after receiving the notice of registration from CCC. Supplies of Form CCC–421 may be obtained from the Kansas City ASCS Commodity Office

(2) Form CCC–421 must be furnished in an original and four copies. The original must be signed in an original signature by the exporter or his authorized representative. Two copies of Form CCC–421 will be returned to the exporter signed for the General Sales Manager by a Contracting Officer, CCC, confirming approval under this subpart for an export payment and approval of the sale for financing under regulations issued pursuant to Public Law 480.

(3) If more than one set of Form CCC–421 is furnished for a sale, the letters A, B, C, etc., shall be added to the registration number on the respective Form CCC–421.

(b) *Information required.* Enter on Form CCC–421 the following:

(1) Registration number.

(2) Exporter's sales contract or order number, if any.

(3) Public Law 480 Purchase Authorization number, or in the case of an export as described in § 1481.130(b), the letter of conditional reimbursement number (LCR No.).

(4) Date and time of filing notice of sale.

(5) Date and time of sale.

(6) Name and address of buyer or buyers. (Brokers or agents of either the seller or the buyer shall not be named as a buyer.)

(7) Country to which export is to be made.

(8) Contract quantity, expressed in net hundredweight.

(9) The contract loading tolerance, if any, expressed in percentage, but not in excess of 5 percent more or less.

(10) Grade and class of rice, maximum percent of brokens and any additional commodity specifications in the contract.

(11) (i) For bagged rice, the f.a.s. sale price per net metric ton (not including the weight of bags) including in the price any commission and other charges necessary to the sale.

(ii) For bulk rice, the f.o.b. sale price per net metric ton including in the price any commission and other charges necessary to the sale.

(iii) If the sale price in the contract is on a different basis than specified in subdivisions (i) and (ii) of this paragraph, specify the basis of the sale price.

(12) Delivery terms (f.o.b. or f.a.s.).

(13) Delivery period specified in the contract.

(14) Coast of export (such as west coast or gulf coast).

(15) Export rate schedule number(s) that applies to the sale as determined under this subpart.

(16) Name and address of sales agent, if any.

(17) Complete packaging description and packaging material specifications if exportation of the rice is other than in 100 net pound burlap bags.

(18) Any options to be exercised by the exporter or foreign buyer.

(19) Any other term of the contract between the exporter and foreign buyer not specifically provided for in this paragraph (b) which would effect the delivery of the rice to be exported.

(20) Such additional information in individual cases as may be requested by CCC.

(c) *Name in which filed.* Form CCC–421 must be filed in the name of the exporter who sold the rice to the foreign buyer. If the sale is made under a trade name, Form CCC–421 may be filed under the trade name provided the name of the actual exporter and the relationship of the actual exporter and the trade name is clearly established on Form CCC–421 and all related documents, such as:

American Rice Co. (Trade Name).
U.S. Rice Co.

(d) *Evidence of sale.* (1) Suporting evidence of sale, in one copy only, must be filed with Form CCC–421. Such evidence may be in the form of a copy of the signed contract between exporter and buyer or copies of an offer and the acceptance of such offer or other documentary evidence of sale.

(2) For transactions involving an intermediate party, the evidence required shall consist of copies of all documents evidencing sales which are exchanged between the exporter, the intermediate party and the buyer shown on Form CCC–421, provided such evidence includes all information required under paragraph (b) of this section and any additional documentation specifically requested by CCC.

(3) For all transactions the supporting evidence of sale must include, in addition to the documents specified in subparagraphs (1) and (2) of this paragraph, any subsequent amendment to the contract between the exporter and foreign buyer. One copy of each amendment shall be submitted to CCC as soon as it is made.

§ 1481.136 Rice exported prior to filing a notice of sale.

(a) An exporter must comply with the requirements of this section if he wishes to qualify for an export payment on rice which has been exported prior

to filing a notice of sale and which is to be financed under Public Law 480 or which is an export against a sale as described in § 1481.130(b). Such exporter must, in addition to other requirements of this subpart, (1) comply with the requirements of paragraph (b) of this section, and (2) file a notice of sale pursuant to § 1481.131. The exporter must state in the notice of sale that the rice covered by such notice has been exported and must include the time and date of export.

(b) The export payment applicable to rice exported prior to sale shall be determined in accordance with § 1481.104 on the basis of the lower of the applicable export payment rates in effect at the time of export, time of sale, or the time of filing the notice of sale.

§ 1481.137 Contract tolerance.

A contract tolerance of not to exceed 5 percent more or less may be provided in the notice of sale provided such tolerance is specified in the sale between the exporter and foreign buyer, or if no tolerance is specified in the sale a tolerance of 1 percent more or less shall be applicable to payments made under this program but an upward tolerance shall not be applicable for the purpose of financing under Public Law 480 unless otherwise provided for in the sale between the exporter and foreign buyer or by the applicable purchase authorization. Payment shall not be made on any quantity exported which is in excess of the contract quantity as shown on Form CCC–421, "Declaration of Sale," plus the applicable tolerance as provided herein, unless (a) a new notice of sale is filed for such excess quantity meeting the requirements of § 1481.131, (b) a new notice of registration is issued in connection therewith, and (c) the exporter furnishes such other documents as may be required by CCC for such exports. If the contract quantity in Form CCC–421, less the applicable tolerance as specified herein, is not exported, the exporter shall be subject to the provision of § 1481.139 for failure to export in accordance with his contract with CCC.

§ 1481.138 Contract amendments.

(a) (1) Except as provided in this paragraph, an export of rice as to which a notice of registration has been issued under § 1481.132 shall be made only to the eligible country, and buyer who is designated in Form CCC–421, "Declaration of Sale." The exporter shall not export, transship or cause the rice to be transshipped to any other country without the written approval of CCC.

(2) Export to a country other than the eligible country may be made provided (i) the exporter furnishes a certification to CCC that such exportation constitutes delivery against the exporter's sale to the foreign buyer on which the notice of registration was issued and is not in connection with a different sale, and that the exporter knows of no circumstances with respect to such exportation which would impair the integrity of such sale and (ii) the exporter obtains the written approval of CCC to export the rice to a country other than the eligible country shown on Form CCC–421.

(3) Export may be made to a consignee or notify party other than the buyer shown in Form CCC–421 provided the exporter furnishes the certification and obtains written approval of CCC as provided in subparagraph (2) of this paragraph.

(b) The provisions of the exporter's sale to the foreign buyer may be amended if approval in writing is obtained from CCC subject to any decrease in the export payment rate as may be determined by CCC: *Provided, however,* That a change in the export period shall be subject to the provisions of § 1481.139. Any amendment to a sale, including a change of the delivery period in the exporter's sale to the foreign buyer for which a notice of registration has been issued shall subject the terms of the sale as amended to reexamination by CCC for the purpose of financing under Public Law 480. This includes any contract amendment or advice of any informal contract amendment not reduced to writing by the buyer and exporter. Any such amendment made to a sale shall be furnished to CCC as soon as possible after it is made.

§ 1481.139 Exportation requirements.

(a) To be eligible for an export payment, the exporter shall export or cause an export of rice as to which a notice of registration under § 1481.132 was issued to the country specified in § 1481.138 in accordance with his contract with CCC. An extension of the export period will be granted to the exporter to the extent he establishes to the satisfaction of CCC that he had taken the necessary action to enable him to export within the required period but exportation had been delayed due to causes solely without his fault or negligence and that no financial advantage has accrued or will accrue to the exporter as a result of the delay.

(b) The exporter shall promptly furnish to CCC evidence of export as specified in § 1481.153. Failure of the exporter to furnish evidence of export for application to the contract with CCC not later than 60 calendar days after the final date of the export period in the exporter's contract with CCC, or within any extension of such time as may be granted in writing by CCC under paragraph (a) of this section, shall constitute prima facie evidence of the exporter's failure to export in accordance with his contract with CCC.

(c) Except as provided in § 1481.137, the failure of the exporter to export the required quantity of rice in accordance with his contract with CCC, as described in § 1481.132, shall constitute a default of his obligations to CCC. Exportation to the eligible country specified in § 1481.138 is a condition percedent to any right to payment under this subpart. Exportation to other than such eligible country shall not entitle the exporter to any payment under this subpart.

(d) If the rice is exported in a different export period than the export period specified in the exporter's contract with CCC or such extension as may be granted under paragraph (a) of this section, the export payment shall be reduced in such amount as determined by CCC: *Provided, however,* That the export payment due the exporter shall not exceed the payment which would have been received had the exporter's offer been accepted for exportation in the period of actual exportation. If the exporter has failed to export the required quantity of rice and a replacement purchase is made by the importing country under Public Law 480, the exporter shall pay to CCC on demand the actual damages to CCC resulting from such failure, or if a replacement purchase is not made, the exporter shall pay to CCC on demand liquidated damages of 50 cents on the net hundredweight of rice not exported (after taking into consideration the downward tolerance provided in § 1481.137) except to the extent he establishes to the satisfaction of CCC that his failure to export was due to causes solely without his fault or negligence and that no financial advantage has accrued or will accrue to the exporter as a result of such failure. The failure of the exporter to export the required quantity of rice will cause serious and substantial losses to CCC, such as damages to CCC's export and price support programs and the incurrence of storage, administrative or other costs. Inasmuch as it will be difficult if not impossible, to establish the exact amount of such losses, the exporter in submitting his notice of sale agrees that the liquidated damages provided for in this section for failure to comply with his contract with CCC are reasonable estimates of the probable actual damages which may be incurred by CCC in the event of such failure.

(e) In addition to the foregoing, an exporter who fails to export in accordance with his contract with CCC may be suspended or debarred from participating in this program or in any other program of CCC for such period and subject to such terms and conditions as may be provided pursuant to the suspension and debarment regulations of CCC (34 F.R. 12659, August 5, 1969, and any amendments thereto).

(f) If any quantity of rice exported pursuant to the exporter's contract with CCC is reentered in any form or product into the United States or Puerto Rico whether or not such reentry is caused by the exporter, or if any quantity of rice exported is transshipped or caused to be transshipped in any form or product by the exporter to any country that is not an eligible country, the exporter shall be liable to CCC for damages as provided in § 1481.115(d).

DOCUMENTS REQUIRED FOR EXPORT PAYMENTS (BOTH NON-PUBLIC LAW 480 EXPORTS AND PUBLIC LAW 480 EXPORTS)

§ 1481.151 Application for rice export payment.

An exporter who wishes to obtain an export payment under this subpart shall submit an original and two (2) copies of Form CCC–409, "Application for Rice Export Payment," together with the evidence required by § 1481.153 to the

Kansas City ASCS Commodity Office. The exporter should submit the documentation as soon as possible after exportation. Supplies of Form CCC–409 and detailed instructions regarding its preparation and submission may be obtained from the Kansas City ASCS Commodity Office.

§ 1481.152 Export payments.

(a) *Amount and manner of making payments.* All export payments made by CCC on any contract under this subpart shall be in cash. Upon receipt of Form CCC–409 and satisfactory evidence of export, the Kansas City ASCS Commodity Office will determine the amount of payment due the exporter by multiplying the number of net hundredweight of rice exported in accordance with the exporter's contract with CCC by the applicable export payment rate.

(b) *Payee.* Except as provided in § 1481.183, the export payment will be made only to the exporter with whom CCC has a contract to make an export payment and who has complied with the provisions of this subpart.

§ 1481.153 Evidence of export.

With each Form CCC–409, the exporter must furnish the following documentary evidence with respect to an export which complies with the requirements of § 1481.102(c).[1]

(a) *Bills of lading.* If export is by water or air, a nonnegotiable copy or an exact reproduction of the on-board carrier bill of lading issued at point of export signed by an agent of the carrier.

(1) For rice exported in bags, bales, or cases, the bill of lading must show (i) the identification of the export carrier, (ii) the date and place of issuance, (iii) the gross weight of the rice, (iv) the number of bags, bales, or cases, (v) a certification from the exporter giving the weight of the bags, bales, or cases (excluding the weight of the rice), (vi) that the rice is destined for an eligible country, and (vii) the purchase authorization number if export is pursuant to Public Law 480 or in the case of an export against a sale as described in § 1481.130(b), the letter of conditional reimbursement number (LCR No.).

(2) For rice exported in bulk, the bill of lading must show (i) the identification of the ocean carrier, (ii) the date and place of issuance, (iii) the weight of rice, (iv) number or description of the carrier's hold or tank in which the rice was stowed, (v) that the rice is destined for an eligible country, and (vi) the purchase authorization number if export is pursuant to Public Law 480.

(3) For rice exported in marine-type containerized vans, the bill of lading must also show the identification of the van and the number of the seals placed on the van.

(4) If loss, damage, or destruction of the rice occurs subsequent to loading aboard the export carrier but prior to issuance of a bill of lading, a copy of a loading tally sheet or acceptable similar document may be substituted for the bill of lading.

(5) If the export is pursuant to Public Law 480 and the country of destination shown on the bill of lading differs from that shown in Form CCC–421, "Declaration of Sale," there must be furnished a copy of the shipper's export declaration, authenticated by the appropriate U.S. Customs Official, showing that the country of destination is the country to which the rice is required to be exported.

(b) *Export declarations.* If export is by rail or truck, a copy of the shipper's export declaration authenticated by an appropriate U.S. Customs Official which identifies the shipment, date of clearance into the foreign country and the weight of the rice. If the weight of the rice shown on the shipper's export declaration includes the weight of any bags, bales, or cases, a certification by the exporter giving the weight of the bags, bales, or cases (excluding the weight of the rice).

(c) *Official weight certificates.* (1) Except as otherwise provided in this paragraph (c), for rice exported in bulk by ocean carrier, a copy of an official weight certificate issued on the basis of weights obtained at the time of loading the rice to the ocean carrier showing (i) the weight of the rice, (ii) date and place of issuance, (iii) identification of the ocean carrier, and (iv) description of the hold or tank of the carrier in which the rice was stowed.

(2) For an export of bulk rice which was transferred directly from a railcar to an ocean vessel, a copy of an official weight certificate issued on the basis of heavy and light weights of the railcar obtained at the place of export showing (i) the heavy and light weights of the railcar, (ii) the date and place of issuance, and (iii) identification of the railcar, may be furnished in lieu of the certificate required in subparagraph (1) of this paragraph. The exporter must also furnish an acceptable statement from an inspector that the inspector witnessed the transfer of the rice from the railcar to the ocean vessel. The statement must identify each railcar.

(3) For rice exported in bulk which was transferred from a barge to an ocean carrier, a copy of an official weight certificate issued on the basis of weights obtained at the time of loading the rice to the barge showing (i) the weight of the rice, (ii) the date and place of issuance, and (iii) identification of the barge, may be furnished in lieu of the certificate required in subparagraph (1) of this paragraph. If a weight certificate is furnished under this subparagraph (3), the weight shown on the certificate shall be adjusted downward by the weight of any rice remaining in the barge after transferring the other rice to the ocean vessel. The exporter must furnish an acceptable statement from an inspector(s) showing the inspector(s) witnessed the loading of the rice to the barge and the transfer of the rice to the ocean vessel, the sealing of the barge after loading, the unsealing of the barge at the time the rice was transferred to the ocean vessel and the weight, if any, of the rice which remained in the barge.

(4) For rice exported in bulk by railcar or truck, (i) a copy of an official weight certificate issued on the basis of weights obtained at the time of loading the rice to the railcar or truck showing the weight of the rice, the date and place of issuance and identification and seal numbers of the railcar or truck, or (ii) a copy of a weight certificate issued on the basis of light and heavy weights of a railcar or truck at the point of loading for export showing the light and heavy weights of the railcar or truck, the date and place of issuance, and identification and seal numbers of the railcar or truck.

(5) For rice exported in bulk in a marine-type containerized van by ocean vessel, (i) a copy of an official weight certificate issued on the basis of weights obtained at the time of loading the rice to the van showing the weight of the rice, the date and place of issuance, identification of the van, and the numbers of the seals placed on the van, or (ii) a copy of a weight certificate issued on the basis of light and heavy weights of the van and conveyance, showing the light and heavy weights of the van and conveyance, the date and place of issuance, and identification and seal numbers of the van. The weight certificate obtained in the manner prescribed by this subparagraph (5) may be furnished in lieu of the certificate required in subparagraph (1) of this paragraph.

(d) *Official checkweight certificates.* (1) For rice exported in bags, bales, or cases (i) a copy of a checkweight certificate issued under the supervision of the Consumer and Marketing Service showing the rice was checkweighed at the time of loading the rice for shipment to the port of export or (ii) a copy of a checkweight certificate showing the rice was checkweighed at the port of export prior to the time of loading the rice to the ocean carrier.

(2) If the checkweight certificate furnished under this paragraph (d) was issued on the basis of checkweighing at the time of loading the rice for shipment to the port of export, the exporter must establish to the satisfaction of the Kansas City ASCS Commodity Office that the rice covered by each certificate is properly identified by evidence of continuity of movement from the point of loading of the rice for shipment to the port of export to on board the ocean carrier. The exporter must furnish a statement that an over, short, or damaged report was not filed with the inland carrier or if such a report was filed, a copy is furnished to CCC.

(3) A certification by the exporter that the checkweight certificate and the official inspection certificate required by paragraph (e)(1) of this section represent the same rice covered by the export bill of lading or other evidence of export. Each such document must show agreeing marks.

[1] Exports must also conform to the requirements in the regulations and purchase authorizations issued under Public Law 480 (83d Congress), as amended, in order to be eligible for Public Law 480 financing.

(4) For rice exported in bags, bales, or cases in a marine-type containerized van by ocean vessel, a checkweight certificate showing the identification of the van, the seal numbers placed on the van, and that the inspector witnessed the rice being placed into the van and sealing of the van.

(e) *Official inspection certificates.* (1) For rice exported in bags, bales, or cases, a copy of an official inspection certificate showing (i) the grade and class of rice and (ii) percentages of whole kernels, second head, screenings, and brewers rice and (iii) the quantity of rice to which the certificate relates. The certificate may be issued on the basis of an inspection at the time of shipment to port or at the place of export. If the inspection is made at the time of shipment to port, the inspection must have been made not earlier than 30 days before the date of export. If the inspection is made at the place of export, the inspection must have been made not earlier than 15 days before the date of export. The inspection certificate, the checkweight certificate required by paragraph (d) (1) of this section and the export bill of lading, or other evidence of export, must have agreeing marks.

(2) Except as provided in subparagraph (3) of this paragraph, for milled or brown rice exported in bulk by ocean carrier, a copy of an official inspection certificate issued on the basis of an inspection made at the time and place of loading the milled rice to the ocean carrier showing (i) the grade and class of rice, (ii) percentage of whole kernels, second head, screenings, and brewers rice in the case of milled rice, (iii) the milling yield in the case of brown rice, (iv) the quantity of rice to which the certificates relates, (v) date and place of issuance, and (vi) identification of the ocean carrier.

(3) For milled or brown rice exported in bulk, bags, bales, or cases in marine-type containerized vans by ocean vessel, a copy of an official inspection certificate issued on the basis of an inspection made at the time of loading the rice for shipment to port showing (i) the grade and class of rice, (ii) the percentages of whole kernels, second head, screenings, and brewers rice in the case of milled rice, (iii) the milling yield in the case of brown rice, (iv) the quantity of rice to which the certificate relates, (v) date and place of issuance, (vi) identification of the van, (vii) the seal numbers of the van, and (viii) a statement by the inspector that he witnessed the loading of the rice to the van and the sealing of the van.

(4) For milled or brown rice exported in bulk by railcar or truck, a copy of an official inspection certificate showing (i) the grade and class of rice, (ii) percentages of whole kernels, second head, screenings, and brewers rice in the case of milled rice, (iii) the milling yield in the case of brown rice, (iv) the quantity of rice to which the certificate relates, (v) date and place of issuance, and (vi) identification of the railcar or truck. The official inspection certificate covering the milled or brown rice must be issued on the basis of an inspection made by an inspector at the place and time of loading the rice to the railcar or truck. The inspector must state on the certificate covering the milled or brown rice that he witnessed the loading of the rice to the railcar or truck and the sealing of the railcar or truck.

(5) If the official inspection certificate obtained under this paragraph (e) is for mixed rice, the certificate must also show the approximate percentage of each class of rice that constitutes more than 10 percent of the mixture.

(6) Except for exports made pursuant to Public Law 480, if the exporter is unable to supply an official inspection certificate covering the rice exported, he may apply to CCC pursuant to paragraph (j) of this section to submit other acceptable evidence in lieu of such certificate.

(f) *Waiver.* If the shipper or consignor named in the evidence of export is other than the exporter, a waiver by such shipper or consignor in favor of the exporter of any interest in the application for payment. Such waiver must clearly identify the documents submitted as evidence of export.

(g) *License identification.* Where export of rice has been made by anyone to one or more countries or areas to which a validated license is required by the Bureau of International Commerce, U.S. Department of Commerce, the bill of lading or other pertinent evidence required to be furnished to CCC shall identify the validated license number.

(h) *Identification of multiple contracts.* If a single bill of lading or other evidence of export covers more than the net quantity of rice which is to be applied against the exporter's contract with CCC, and the excess quantity covered by the evidence is to be used as evidence of export in connection with a different contract with CCC under this subpart or under any other export program of CCC under which CCC has paid or agreed to pay an export allowance or sold rough rice for export as milled or brown rice, each copy of the evidence of export shall be accompanied by a certification identifying all contracts with CCC to which the evidence of export has been or will be applied and the quantity to be applied to each contract.

(i) *Miscellaneous certificates.* (1) If export is made by vessel, plane, truck, or other carrier operated by a U.S. Government agency, then in lieu of the bill of lading or Shipper's Export Declaration provided for in paragraphs (a) and (b) of this section, a certificate issued by an authorized official or employee of such agency showing the date of shipment(s), type of export carrier, description of the rice, net quantity of rice, and destination. In addition, a certification by the exporter that exportation is not by or to a U.S. Government agency (unless it is to the Army and Air Force Exchange Service, Navy Exchange, or the Panama Canal Company) and such other information required in paragraph (a) of this section as may be applicable.

(2) If export is to the Army and Air Force Exchange Service and Navy Exchanges, a certificate of exportation. If export is to the Army and Air Force Exchange Service, the certificate shall be signed by the Chief or Assistant Chief, Transportation Division, AAFES. The certificate for exports to Navy Exchanges is obtainable from the U.S. Navy Ship's Store Office, Third Avenue and 29th Street, Brooklyn, N.Y., and must be signed, as appropriate, by one of the following authorized officials:

(i) Director, Water Freight Division, U.S. Naval Supply Center, Oakland, Calif.

(ii) Director, Traffic Branch Division, U.S. Naval Supply Center, Bayonne, N.J.

(iii) Director, Land-Air Freight Division, U.S. Naval Supply Center, Norfolk, Va.

(3) If export is to the Army and Air Force Exchange Service, Navy Exchanges, or the Panama Canal Company, a certified statement by an authorized official or employee of such Service, Exchange, or Company, that such Service, Exchange, or Company has received in its purchase price paid or to be paid for the rice exported, the benefit of the export allowance under this subpart.

(j) *Good cause.* Where for good cause, the exporter establishes that he is unable to supply documentary evidence of export as specified in this section, CCC may accept such other evidence of export as will establish to the satisfaction of CCC that the exporter has fully complied with his obligations under his contract with CCC.

(k) *Additional evidence.* Such additional evidence representing export as CCC may require to determine that the exporter has complied with his contract with CCC.

Miscellaneous Provisions

§ 1481.182 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure a contract under this subpart upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees, or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this warranty CCC shall have the right to annul any such contract without liability or in its discretion to deduct from the export payment or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

§ 1481.183 Assignments and setoffs.

(a) No assignment shall be made by an exporter of any contract with CCC under this subpart or of any rights thereunder, except that the exporter may assign the payments due him under a Form CCC–409, "Application for Rice Export Payment," to any bank, trust company, Federal lending agency, or other financing institution, and subject to the approval of the Contracting Officer, CCC,

assignment may be made to any other person: *Provided*, That such assignment shall be recognized only if and when the assignee thereof files written notice of the assignment together with a signed copy of the instrument of assignment, in accordance with the instructions of Form CCC–251, "Notice of Assignment," which must be used in giving notice of assignment to CCC: *And provided further*, That any such assignment shall cover all amounts payable and not already paid under the Form CCC–409 and shall not be made to more than one party and shall not be subject to further assignment except that any such assignment may be made to one party as agent or trustee for two or more parties, participating in such financing. The Form CCC–252, "Instrument of Assignment," may be executed or the assignee may use his own form of assignment. Form CCC–252 may be obtained from the Contracting Officer, CCC, or the Kansas City ASCS Commodity Office.

(b) If the exporter is indebted to CCC or any other agency of the United States, the amount of such indebtedness may be set off against the amount of the payment due him under a Form CCC–409, "Application for Rice Export Payment." In the case of an assignment and notwithstanding such assignment, CCC may set off (1) any amount due CCC under this subpart and (2) any amounts for which the exporter is indebted to the United States for taxes, with respect to which a notice of lien was filed in accordance with the provisions of the Internal Revenue Code of 1954 (26 U.S.C. 6323) or any amendments or modifications thereof, prior to acknowledgment by CCC of receipt of the notice of assignment and (3) any amounts, other than the amounts specified in subparagraphs (1) and (2) of this paragraph, due CCC or any other agency of the United States, if the assignee was advised of such amounts at the time of acknowledgment by CCC of receipt of the notice of assignment.

(c) In the case of an assignment pursuant to paragraph (a) of this section, any indebtedness of the exporter to any agency of the United States which may not be set off pursuant to this paragraph may be set off against any amount due and payable under this subpart which remains after the deduction of amounts (including interest and other charges) due the assignee under the assignment. Set off as provided in this section shall not deprive the exporter of the right to contest the justness of the indebtedness involved either by administrative appeal or by legal action.

§ 1481.184 Records and accounts.

Each exporter of rice under this subpart shall maintain accurate records showing sales and deliveries of rice exported or to be exported in connection with this subpart. Such records, accounts, and other documents relating to any contract in connection with this subpart shall be preserved for 3 years after final payment under the contract and shall be available during business hours for inspection and audit by authorized employees of the U.S. Department of Agriculture.

§ 1481.185 Place of submission of offers and reports.

(a) Offers to export rice including offers consisting of Notices of Sale under Public Law 480 and related reports required to be submitted under this subpart unless otherwise specified in these regulations should be addressed as follows:

Chief, Contract Services Branch, Grain Division, Commodity Exports, Export Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

(b) Delivery to the above office of telegraphic offers to export and offers consisting of notices of sale under Public Law 480 will be expedited if addressed as follows:

Substaff, USDA (AG) Washington, D.C., TWX 710 822 9424 or 710 822 9425, Telex 089 491.

(c) Exporters calling the office in paragraph (a) of this section by long distance telephone may do so by direct dialing. The long distance area number for Washington, D.C., is 202. The telephone numbers of the office are DU8–7305, DU8–7306, DU8–3363 or DU8–3364.

§ 1481.186 Additional reports.

The exporter shall file such additional reports as may be required from time to time by CCC.

§ 1481.187 General Sales Manager and ASCS offices.

Information concerning this program may also be obtained from one of the following offices:

(a) Representative of General Sales Manager, Federal Building, Room 1759, 26 Federal Plaza, New York, N.Y. 10007. Telephone: Area Code 212, 264–8439, 8440, 8441.

(b) Kansas City ASCS Commodity Office, 8930 Ward Parkway (Post Office Box 205), Kansas City, Mo. 64141. Telephone: Area Code 816, 361–0860.

§ 1481.188 Officials not to benefit.

No member of or delegate to Congress or resident commissioner shall be admitted to share any part of the contract or to any benefit that may arise therefrom but this provision shall not be construed to extend to any payment made to a corporation for its general benefit.

§ 1481.189 Amendment and termination.

This subpart may be amended or terminated by filing of such amendment or termination with the Office of the Federal Register for publication. Any such amendment or termination shall not be applicable to export payment contracts made before the effective date and time of such amendment or termination.

§ 1481.190 Written approval by CCC.

Where this subpart specifies certain requirements which are to be approved in writing by CCC, and the exporter wishes to obtain such approval, a request should be filed in writing with the office specified in § 1481.185 sufficiently in advance of expiration of the period for performance of the requirement in order for the exporter to ascertain before said period expires whether his request will be approved. Approval may also be granted after the time specified for performance of the requirement where the exporter has established good cause therefor.

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

Effective date. This Revision IV shall become effective at 3:31 p.m., e.d.t., on June 2, 1970.

Signed at Washington, D.C. on May 15, 1970.

CLIFFORD G. PULVERMACHER,
Vice President, Commodity Credit Corporation, and General Sales Manager, Export Marketing Service.

NOTICE TO EXPORTERS

Exports to certain countries are regulated under the Export Control Act of 1949. Countries and commodities are specifically listed in the U.S. Department of Commerce Comprehensive Export Schedule. Additional information is available from the Bureau of International Commerce of the Department of Commerce or from the field offices of the Department of Commerce.

[F.R. Doc. 70–6325; Filed, May 21, 1970; 8:45 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 70–123]

PART 12—SPECIAL CLASSES OF MERCHANDISE

Mail Importations

Certain procedural changes have been established in connection with mail importations due to the consolidation of customs mail offices. Customs Form 3511 has been thereby obviated. To reflect the regulatory changes thereby necessitated in the handling of absolute quota merchandise imported by mail and to delete the reference in the Customs Regulations to Customs Form 3511 which has been abolished, the Customs Regulations are amended as follows:

Paragraph (a) of § 12.51 is amended to read:

§ 12.51 Mail importations of merchandise for which an absolute quota has been established.

* * * * *

(a) In the absence of other arrangements, when the addressee is located at another port of entry, the importation, if the value thereof does not exceed $250, shall be processed at the port of entry where initially received in accordance with § 9.3 of this chapter, and then returned to the postmaster for delivery to the importer. If the value of the merchandise exceeds $250 in value, it shall, without processing at the port of entry where initially received, be returned to

the postmaster for dispatch to the district director of customs in care of the postmaster at the port of destination where the merchandise shall be processed in accordance with § 9.4 of this chapter.

* * * * *

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

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

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

Approved: May 8, 1970.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[F.R. Doc. 70-6334; Filed, May 21, 1970; 8:46 a.m.]

[T.D. 70-122]

PART 16—LIQUIDATION OF DUTIES

Differences of Less Than $3 in Liquidation and Reliquidation of Entries

Section 16.2(c) prescribes the circumstances under which differences of less than $3 between the total amount of duties or taxes estimated and the total amount of duties or taxes actually accruing on imports may be waived under section 321 of the Tariff Act of 1930, as amended (19 U.S.C. 1321). The procedure prescribing the application of this provision to differences in amounts of duties or taxes accruing on reliquidation is incomplete. To incorporate in the regulations all procedures under this provision applicable on reliquidation, § 16.2(c) is amended by substituting the following for the last sentence:

§ 16.2 **Procedure; notice of liquidation.**

* * * * *

(c) * * * Upon the reliquidation of an entry following allowance by a district director of customs of a protest under section 514 of the Tariff Act of 1930 or a petition or protest under section 520(c) of the Tariff Act of 1930, as amended, the reliquidated duties and any internal-revenue taxes shall be exactly assessed and any refund determined to be due shall be refunded even if the net difference between the liquidated and reliquidated amounts is less than $3. When an entry is reliquidated voluntarily, a net difference of less than $3 between the liquidated duties and any taxes and the duties and taxes determined to be due on reliquidation shall be disregarded. However, in the event of a reliquidation of a mail or baggage entry for any reason, the reliquidated duties and any internal-revenue taxes shall be exactly assessed, if the importer so requests. Any refund or increase determined to be due as the result of the reliquidation of an entry in accordance with a court decision and judgment order shall be refunded or collected as the case may be.

* * * * *

(Sec. 7, 52 Stat. 1081, as amended, secs. 505, 624, 46 Stat. 732, 759; 19 U.S.C. 1321, 1505, 1624)

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

Approved: May 12, 1970.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[F.R. Doc. 70-6333; Filed, May 21, 1970; 8:46 a.m.]

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Regs. No. 22]

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—General Procedures

FEE SCHEDULE FOR FURNISHING EARNINGS RECORD INFORMATION

Regulations No. 22 of the Social Security Administration, as amended (20 CFR 422.1 et seq.), are amended as set forth below.

Section 422.125 is amended by revising paragraph (e)(2) to read as follows:

§ 422.125 **Statements of earnings; resolving earnings discrepancies.**

* * * * *

(e) *Detailed earnings statements.* * * *

(2) If the more detailed statement of earnings is requested for a purpose not related to title II of the Social Security Act, there will be a charge according to the following schedule of fees:

Type I—Earnings, period of employment of self-employment, and the names and addresses of reporting employers:	
First calendar year or any part thereof requested	$3.25
Each additional calendar year or any part thereof requested	2.25
Type II—Yearly totals only:	
First calendar year requested	2.50
Each additional year requested	.25
Type III—Calendar quarters of employment:	
Calendar quarter of first employment with a specified employer	3.25
Calendar quarter of last employment with a specified employer	3.25
Calendar quarter of first and last employment with a specified employer	6.50

If the individual requests that the information be certified by the custodian of the records there will be an additional charge of $5.

* * * * *

(Secs. 205, 1102, 1871, 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 79 Stat. 331; sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 405, 1302, 1395hh)

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

Dated: April 27, 1970.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: May 18, 1970.

ROBERT H. FINCH,
Secretary of Health, Education, and Welfare.

[F.R. Doc. 70-6363; Filed, May 21, 1970; 8:48 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER J—BRIDGES

[CGFR 70-6a]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Atlantic Intracoastal Waterway, Little River, S.C.

1. The South Carolina State Highway Department by letter dated June 10, 1969, requested the Commander, Seventh Coast Guard District to revise the operation regulations for the U.S. 17 Highway drawbridge across the Atlantic Intracoastal Waterway near Little River, Horry County, S.C. A public notice dated November 7, 1969, setting forth the proposed revision of the regulations governing this drawbridge was issued by the Commander, Seventh Coast Guard District and was made available to all persons known to have an interest in this subject. The Commandant also published these proposals in the FEDERAL REGISTER of April 4, 1970 (35 F.R. 5593).

2. After consideration of all known factors in this case, the proposed special operation regulations are accepted. Accordingly, 33 CFR 117.360 shall be added and will read as follows:

§ 117.360 **U.S. 17 Bridge across Atlantic Intracoastal Waterway near Little River, S.C.**

The draw shall be opened promptly on signal except that from the hours of 11 a.m. to 5 p.m. on Sundays during June, July, and August the draw need be opened only on the hour to all vessels waiting to pass. This restriction shall not apply to tugs or public vessels of the United States which shall be passed on signal at any time.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5))

Effective date. This revision shall become effective 30 days following the date of publication in the FEDERAL REGISTER.

Dated: May 18, 1970.

W. J. SMITH,
Admiral, U.S. Coast Guard, Commandant.

[F.R. Doc. 70-6369; Filed, May 21, 1970; 8:49 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 5B—Public Buildings Service, General Services Administration

PART 5B–16—PROCUREMENT FORMS

Illustrations of Forms

The table of contents of Part 5B–16 is amended to indicate the current edition date of the following forms:

Subpart 5B–16.9—Illustrations of Forms

Sec.

5B–16.950–1015	GSA Form 1015: Instructions to Contractors (Construction Contracts). Data Required to Substantiate Equitable Adjustments of Time and Time Extension (August 1969).
5B–16.950–1137	GSA Form 1137: Request, Proposal, and Acceptance Covering Construction Contract Modification (July 1969).
5B–16.950–2402	GSA Form 2402: Form letter for notifying contractor of action taken on shop drawing submittals (December 1968).

NOTE: Copies of the forms are filed with the original document and are available from the Business Service Center in any regional office of the General Services Administration.

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

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

Dated: May 13, 1970.

A. F. SAMPSON,
Commissioner,
Public Buildings Service.

[F.R. Doc. 70–6338; Filed, May 21, 1970; 8:50 a.m.]

Title 45—PUBLIC WELFARE

Chapter I—Office of Education, Department of Health, Education, and Welfare

PART 107—FEDERAL FINANCIAL ASSISTANCE FOR PLANNING AND EVALUATION

The regulations set forth below are applicable to grants awarded pursuant to section 402 (20 U.S.C. 1222), title IV, of the Elementary and Secondary Education Amendments of 1967 (Public Law 90–247). Federal financial assistance given pursuant to these regulations is subject to the regulations in 45 CFR Part 80, issued by the Secretary of Health, Education, and Welfare, and approved by the President, to effectuate the provisions of section 601 (42 U.S.C. 2000d) of the Civil Rights Act of 1964 (Public Law 88–352).

Part 107 reads as follows:

Sec.

AUTHORITY: The provisions of this Part 107 issued under 20 U.S.C. 1222. Interpret or apply 20 U.S.C. 1221–1222.

§ 107.1 Definitions.

As used in this part:

(a) "Act" means the Elementary and Secondary Education Amendments of 1967 (Public Law 90–247).

(b) "Commissioner" means the U.S. Commissioner of Education.

(c) "Elementary and secondary education" means elementary and secondary education as determined under State law.

(d) "Evaluation" means determining the extent to which management and program objectives are being achieved, using measures of efficiency and effectiveness to compare results with predetermined standards.

(e) "Grant period" means that period of time for which grant funds are made available for expenditure by the grantee.

(f) "Planning" means a series of activities involving assessing needs, defining objectives, identifying problems, establishing priorities, examining alternative solutions, selecting possible approaches, and formulating action programs, including strategies for their evaluation, to achieve specified goals.

(g) "Project period" means the total amount of time for which a project is approved in principle for support under section 402 of the Act.

(h) "State" means, in addition to the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(i) "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(20 U.S.C. 1222)

§ 107.2 Purpose.

It is the purpose of the regulations in this part to cover grants authorized in section 402 of the Act to be made by the Commissioner to State educational agencies for expenses for planning for the succeeding year programs or projects for elementary and secondary education, including, where appropriate, preschool programs or projects, under programs for which the Commissioner has responsibility for administration, either by statute or by delegation pursuant to statute, and for evaluation of such programs or projects. Grants in equal amounts will be made, consistent with applications approved pursuant to § 107.3, for each State of the Union; in lesser equal amounts for the District of Columbia and the Commonwealth of Puerto Rico; and in yet lesser equal amounts for Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. It is not the purpose of the regulations in this part to cover grants, contracts, or other payments to be made to other organizations or individuals.

(20 U.S.C. 1221, 1222)

§ 107.3 Applications.

An application for a grant shall be submitted to the Commissioner. The application shall be made in the form and detail and in accordance with such procedures as the Commissioner may prescribe. An application shall contain (a) a statement of the purpose of the project, (b) a description of the nature and scope of the activities to be undertaken and the methods and arrangements for working toward project objectives, (c) a proposed budget, (d) an assurance that the applicant will comply with the requirements of the regulations in this part, and with such other conditions and procedures as the Commissioner may prescribe in awarding the grant, and (e) any other documents and information which the Commissioner may require.

(20 U.S.C. 1222)

§ 107.4 Revisions.

An amendment to an approved application shall be submitted in writing to the Commissioner for approval whenever necessary to reflect any substantial change that may be proposed in the scope or nature of the project or in its conduct or administration.

(20 U.S.C. 1222)

§ 107.5 Project and grant periods.

The project period shall begin on the date, and shall remain in effect for the period, specified in the notice of award. A grant of Federal funds will normally be made for only 1 year but need not coincide with a fiscal year. The grantee must make separate application for continuation support beyond a grant period.

(31 U.S.C. 200)

§ 107.6 Expenditures by grantee.

For the purposes of determining whether funds are expended during the grant period, Federal funds will be considered to be expended by a grantee on the basis of documentary evidence of binding commitments by the grantee for the acquisition of goods or property or for the performance of work, except that the expenditure of funds for personal services, for services performed by public utilities, for travel, and for rental of equipment and facilities shall be determined on the basis of the time such services were rendered, such travel was performed, and such rented equipment and facilities were used, respectively.

(31 U.S.C. 200)

§ 107.7 Liquidation of obligations.

Obligations entered into by a grantee and payable from funds under section 402 of the Act shall be liquidated within 12 months following the end of the grant period unless prior to the end of that 12-month period the grantee reports to the Commissioner the reasons why such obligations cannot be timely liquidated and, on the basis thereof, the Commissioner extends the time for so liquidating obligations.

(31 U.S.C. 200)

§ 107.8 Records.

(a) The grantee shall maintain and keep intact and accessible to the Secretary of Health, Education, and Welfare and the Comptroller General of the United States all records supporting claims for Federal funds or relating to the accountability for expenditure of such funds for 3 years after the end of the period for which such funds were made available for expenditure unless, by that time an audit by or on behalf of the Department of Health, Education, and Welfare has not occurred, in which case the records must be retained until audit or until 5 years following the end of the budget period, whichever is earlier.

(b) The grantee shall maintain inventories of all equipment acquired under section 402 of the Act and costing $100 or more per unit for the expected useful life of the equipment or until its disposition, whichever is earlier. The records of such inventories shall be kept for 3 years following the period for which such inventories are required to be made, unless by that time an audit by or on behalf of the Department has not occurred, in which case the records must be retained until audit or until 5 years following the end of the budget period, whichever is earlier.

(20 U.S.C. 1222; 42 U.S.C. 4212)

§ 107.9 Reports.

The application shall provide that the grantee will consult periodically with the Commissioner and will make an annual report and such other reports to him, at such time, in such form, and containing such information as he may consider reasonably necessary to perform his duties under the Act and to comply with such provisions as he may find necessary to assure the correctness and verification of such reports.

(42 U.S.C. 4212)

Effective date. These regulations shall become effective 30 days after publication in the FEDERAL REGISTER.

Dated: March 25, 1970.

JAMES E. ALLEN, Jr.,
U.S. Commissioner of Education.

Approved: May 18, 1970.

ROBERT H. FINCH,
Secretary of Health, Education, and Welfare.

[F.R. Doc. 70-6364; Filed, May 21, 1970; 8:48 a.m.]

Chapter X—Office of Economic Opportunity

PART 1026—CONTRACTS AND ADMINISTRATION

Chapter X of Title 45 of the Code of Federal Regulations is amended by adding a new Part 1026 reading as set forth above, and a new subpart reading as follows:

Subpart—Reporting and Review Procedures for Preventing Conflicts of Interest in Contracts and Grants

Sec.
1026.1-1 Purpose.
1026.1-2 General.
1026.1-3 Definitions.
1026.1-4 Limitation on award of noncompetitive contracts.
1026.1-5 Approval of competitive procurements.
1026.1-6 Reporting information.

AUTHORITY: The provisions of this Part 1026 issued under sec. 602(n) of the Economic Opportunity Act of 1964, as amended; 78 Stat. 530; 42 U.S.C. 2942.

§ 1026.1-1 Purpose.

To establish reporting and review procedures for preventing conflicts of interest in contracts and grants executed in Headquarters, Office of Economic Opportunity.

§ 1026.1-2 General.

Because many Agency employees develop a unique expertise in the poverty field, they are in demand for employment by organizations that contract with or receive grants from the Office of Economic Opportunity. Even though a Federal law may not be violated by employment in such organizations, it creates the possibility of, or at least the appearance of, misuse by such employees of their influence with their former colleagues.

§ 1026.1-3 Definitions.

A special Government employee is an employee appointed to serve not more than 130 days during the 365 days following his appointment. Special Government employees are so designated by the Personnel Division at the time of their appointment. For the purposes of §§ 1026.1-4 and 1026.1-5, a former regular or special Government employee shall be considered to be in a senior management position if he reports directly to an officer or director of the organization in which he is employed or if he is paid a salary or receives other remuneration from the employing organization which, as annualized, exceeds $18,000 per year.

§ 1026.1-4 Limitation on award of noncompetitive contracts.

For a period of 1 year from the date of termination of employment with the Office of Economic Opportunity, no contract shall be awarded without competition to any organization which employs in the capacity of officer, director, or other senior management position a former Office of Economic Opportunity regular employee or a special Government employee who served the Office of Economic Opportunity for a total of more than 60 days during the 365 days prior to the termination of his Office of Economic Opportunity employment. An exception to this requirement may be granted only by the Director.

§ 1026.1-5 Approval of competitive procurements.

The Deputy Director shall approve in writing any proposed contract award resulting from a competitive procurement to an organization employing in any of the capacities listed in § 1026.1-4 a former regular or special Government employee of the Agency to whom the restriction set forth in that section applies. The fact that a contractor employs or contemplates employing a former Office of Economic Opportunity employee shall not prejudice that contractor's competitive standing provided that the employment or proposed employment is consistent with Federal law and the Office of Economic Opportunity conflicts of interest regulations.

§ 1026.1-6 Reporting information.

This provision is designed to insure that no contract is awarded to an organization that employs a former regular or special Government employee of the Agency in violation of the Federal law or the Office of Economic Opportunity conflicts of interest regulations. The reporting procedures set forth below will also give the Agency early notice of situations in which there is the appearance of conflict or the possibility of favoritism in the award of contracts. In such situations, the Agency will institute appropriate administrative steps in its proposal-review and selection process to insure that contracts are awarded entirely on the basis of the merits of the contractor's proposal, and not on any other basis.

(a) *Exit clearance reporting.* (1) In order to maintain current information on former employees employed by Agency contractors, the Personnel Division shall include in the Exit Clearance Form (OEO Form No. 73) a requirement that the departing employee reveal the name of his next employer, if known, and his position with that employer. The Personnel Division shall then submit this information to the Procurement Division, which will be responsible for establishing an index of firms employing former Agency employees. This index shall be expanded by periodic inputs from other staff offices, such as the Office of General Counsel, as to the current employment status of former employees.

(2) Contract negotiators shall check this index before entering into negotiations and shall secure the advice of the General Counsel as to whether a potential conflict of interest exists if a former employee is employed as officer, director, or other senior management position by a contractor being considered for a contract award.

(b) *Contract reporting.* The following shall be inserted in all Office of Economic Opportunity solicitations of $2,500 or more:

Offerors shall state as part of the proposal: (1) Whether or not it is now negotiating with a regular or special OEO employee for employment; and, if so, specify the name of

the individual(s) and the position(s) for which considered:

(2) Whether or not it now employs as a regular employee or consultant a former regular or special OEO employee whose employment with OEO terminated within the past 365 days; and if so, specify the name of the individual(s) and the position(s) held:

(3) Specify the names of any present OEO employees or their spouses or minor children known to have a substantial financial interest in the offeror's organization. A financial interest shall be considered insubstantial if it amounts to less than $5,000 in the market value and less than one (1) percent of the organization's outstanding stock or other securities, and the OEO employee or spouse or minor child is not active in the management of the organization.

(4) If either (1) or (2) is answered in the affirmative, specify whether any such individual(s) shall participate in the performance of any contract that may result from this solicitation and the extent of such participation.

Contractors are advised that the foregoing disclosure request is for informational purposes in order to protect former employees against potential conflict of interest situations.

The fact that a contractor employs or contemplates employing a former OEO employee shall not prejudice that contractor's competitive standing, provided that the employment or proposed employment is consistent with Federal law and OEO conflicts of interest regulations.

The Director of the Procurement Division shall instruct his negotiators and contracting officers to report to the General Counsel any affirmative responses to the above disclosure requests.

(c) *Grant reporting.* Because the conflicts of interest problem is not restricted to the procurement field, but also is found in the employment of former regular and special employees of the Agency by grantees, delegate agencies, and subcontractors to such organizations, each grant application form shall include a form containing the following clause:

The Grantee, as part of its application for a new grant or for a refunding, shall identify any former regular or special OEO employee whose employment with OEO terminated within 365 days prior to the date of grant application, who (1) is employed by the grantee, its delegate agency, or a subcontractor who performs work for the grantee or delegate agency under a subcontract of $25,000 or more; or (2) who owns or has a financial interest in the grantee or its delegate agency; or (3) who is in any other way involved with the grantee or its delegate agency in his private capacity. The grantee shall specify as an attachment to its application the names of such individuals and their position, degree of financial interest, or other relationship with the grantee or delegate agency. The grantee shall also identify any present or former employee of the Office of Economic Opportunity who is negotiating for employment with the grantee, any delegate agency or subcontractor to any such organization.

Agency personnel receiving grant applications shall forward any information received as a result of this paragraph to the General Counsel for consideration.

Effective date. The effective date of this subpart is April 7, 1970.

WESLEY L. HJORNEVIK,
Deputy Director.

[F.R. Doc. 70-6322; Filed, May 21, 1970; 8:45 a.m.]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND OPERATORS

[General Order 24, 3d Rev., Amdt. 2]

PART 284—VALUATION OF VESSELS FOR DETERMINING CAPITAL EMPLOYED AND NET EARNINGS UNDER OPERATING-DIFFERENTIAL SUBSIDY AGREEMENTS

Residual Value of Vessels; Adjustments for Depreciation

In accordance with the Secretary of Commerce's Order and his instruction to the Maritime Subsidy Board, as of April 11, 1970, § 284.2(f)1(ii) is hereby amended, effective January 1, 1969, to read as follows:

§ 284.2 Basis of valuation.

* * * * *

(f) *Adjustments for depreciation.* (1) * * *

(ii) On and after January 1, 1969, in computing depreciation on a 25-year statutory economic life vessel, the residual value (meaning the salvage (resale) value of the vessel) shall be deemed to be 17 percent of the original construction cost (meaning the full domestic shipyard construction cost in so far as vessels constructed under title V or title VII of the Merchant Marine Act, 1936, are concerned): *Provided*, That the residual value policy be reviewed not less than each 5 years to determine that it is still appropriate in the light of interim events.

* * * * *

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114; sec. 607, 66 Stat. 764, as amended; 46 U.S.C. 1177)

Dated: May 19, 1970.

By order of the Maritime Administrator and the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 70-6370; Filed, May 21, 1970; 8:49 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 18426; FCC 70-506]

PART 2—FREQUENCY ALLOCATION AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Sale, Import, or Shipment for Sale of Devices Which Cause Harmful Interference to Radio Communications

Report and order. 1. On January 15, 1969, the Commission adopted a notice of proposed rule making in the above-entitled matter, FCC 69-53 (34 F.R. 1057), designed to implement section 302 of the Communications Act of 1934, as amended. Rules were proposed in this notice which would prohibit the sale, or lease, or offer for sale or lease, or import, shipment, or distribution for the purpose of sale or lease of devices capable of causing harmful interference to radio communications, unless such devices complied with the applicable type approval, type acceptance, or certification requirements specified by the Commission, or in the absence of such requirements, the device complied with the pertinent technical standards specified by the Commission's rules. The purpose of the proposed regulations was to enable the Commission to now direct its equipment standards to manufacturers, importers, and distributors of such devices, as well as users. The proposed regulations would apply to many persons and companies not now directly subject to Commission regulation.

2. Section 302, entitled "Devices Which Interfere with Radio Reception", was added to the Communications Act on July 5, 1968, by Public Law 90-379, 82 Stat. 290. This section authorizes the Commission to "make reasonable regulations governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications." The new law further provides that such regulations shall be applicable to the manufacture, import, sale, offer for sale, shipment, or use of such devices and prohibits any person from engaging in such activities with respect to devices which fail to comply with regulations promulgated by the Commission pursuant to section 302. The primary objective of § 302 and the rules promulgated thereunder is a reduction in the probable levels of harmful interference.

3. The aggregate of individual radiofrequency devices subject to the Commission's statutory authority is large, since all devices capable of emitting energy by radiation, conduction, or other means in sufficient degree to cause harmful interference are embraced. They range from the many kinds of radio transmitters used in the broadcasting, common carrier, marine, aviation, and land mobile services to restricted radiation devices,[1] such as radio receivers, CATV Systems, low power communication devices, including wireless microphones, phonograph oscillators, radio-controlled garage door openers, radio-controlled

[1] See Part 15 of the Commission's rules, 47 CFR 15.1, et seq. A restricted radiation device is defined as "a device in which the generation of radiofrequency energy is intentionally incorporated into the design and in which the radiofrequency energy is conducted along wires or is radiated, exclusive of transmitters which require licensing under other parts of this chapter and exclusive of devices in which the radiofrequency energy is used to produce physical, chemical, or biological effects in materials, and which are regulated under the provisions of Part 18 of this chapter." 47 CFR 15.4(d).

models and toys, etc., and to the various types of industrial, scientific and medical equipment such as ultrasonic, industrial heating, medical diathermy, radiofrequency-stabilized arc welders and miscellaneous equipment. Included also are the tremendous number of incidental radiation devices[3] such as electric motors, automobile ignition systems, neon signs, etc.

4. However, the law exempts from its operation, and hence the regulations herein adopted do not apply to, carriers transporting such devices without trading in them; devices manufactured solely for export; the manufacture, assembly or installation of devices for its own use by a public utility engaged in providing electric service; and devices for use by the Government of the United States or any agency thereof. In addition to these statutory exemptions, and although the Commission is authorized to restrict the manufacture of RF devices it has concluded that to impose restrictions against the manufacture of devices could hinder product development, basic research, etc. and could result in curtailment of technological progress. Accordingly, no prohibition against manufacture is imposed.[3] Similarly the prohibition against shipment should not prevent shipment to our own or any other laboratory for testing purposes, or for other purposes such as research, development, experimentation or testing; only shipment for purposes of selling or leasing or offering for sale or lease is proscribed.

5. Prior to the enactment of section 302 the Commission's role in this area has been to prohibit the use or operation of any apparatus for the transmission of energy or communications by radio except in accordance with a Commission authorization therefor. As a concomitant of this authority, the Commission has for many years prescribed allowable levels of emission of RF energy and related technical standards for various types of radiofrequency devices, the use of which by any person or company has been authorized by the Commission by individual license or general rule. Although the prescription of such allowable levels of emission and technical standards has been of material assistance in the Commission's efforts to restrict or eliminate harmful interference, the identifiable detection of specific unlawful uses and users has proven to be most difficult. Despite many manhours devoted to tracing and eliminating interference of all types, the amount of spectrum pollution and harmful interference appears to be on the increase. Another very practical impediment in the system heretofore in effect was that it was directed to persons who may have purchased a radiofrequency device in good faith in an open legal market and with no knowledge of its interference potential. In such a situation, it has been difficult to obtain the substantial voluntary cooperation of the user upon which the success of such a program must depend.

6. The rules herein adopted are designed to achieve a lessening of the harmful interference problem by control measures applied at the source of the offending devices. Reaching into the source of such devices—to the manufacturers and importers, and in turn to the sellers and shippers of radiofrequency devices—should permit corrective action, when necessary, before offending devices have reached prospective users in epidemic proportions. Technical standards have already been prescribed by the Commission for all radiofrequency devices used under Commission license or authorization except for those in the incidental radiation category. The rules herein adopted, in effect, require compliance with these standards prior to the sale of such devices, or their importation or shipment for purposes of sale. Technical standards for the many kinds of incidental radiation devices have not as yet been prescribed, and therefore the basic control over the interference potential of such devices will continue to be the present prohibition against their use if the radiation therefrom causes harmful interference.

7. Notwithstanding the establishment of technical standards for radiofrequency devices, it long ago became clear that many users were substantially unaware of the interference potential of such devices. One of the approaches taken by the Commission to meet this problem was the establishment of a review and analysis procedure under which many kinds of radiofrequency devices could be cleared by the Commission, after appropriate testing by either the manufacturer or the Commission, prior to use by the purchaser. Under this procedure, the Commission has developed three methods for verifying equipment performance. One method—type approval—is based upon appropriate testing by the Commission and attaches to all units subsequently manufactured by the same person which are identical to the one tested. Another kind of review and approval, known as "type acceptance", is based upon appropriate testing by the manufacturer and similarly attaches to all units subsequently manufactured by the same person which are substantially identical to the one tested. The Commission has also established a procedure known as "certification", for other types of radiation devices, such as TV receivers, under which the manufacturer tests his products in terms of applicable technical standards and is permitted to certificate the device as being in compliance with such technical standards after notification to and the acceptance by the Commission of the proposed certificate.

8. These procedures have enabled manufacturers and other interested persons, on a voluntary basis, to secure Commission determination that their radiofrequency devices are capable of meeting applicable technical standards prior to shipment and sale to prospective users. Also, they have been widely accepted by manufacturers of radiofrequency equipment because most manufacturers are keenly interested in the elimination of spectrum pollution as one step toward meeting the enhanced demand for usable radiofrequency devices.[4] Thus, most manufacturers are well acquainted with our existing technical standards as they apply to their products and have been voluntarily utilizing our equipment clearance procedure for some time. The rules adopted in this proceeding do not change our existing technical standards,[5] which apply to all radiofrequency devices operated under authorization by the Commission for the particular service or purpose involved. What is accomplished here is simply the institution of a requirement that manufacturers apply existing technical standards to such devices and obtain such type approval, type acceptance, or certification as may be required prior to shipment or distribution of such devices for sale.

9. Comments were filed by a variety of persons including industry associations, trade representatives, and individual manufacturers.[6] Generally, the comments supported the objectives of the proposed regulations: That any radiofrequency device having an interference potential be manufactured to comply with the Commission's technical standards and thus give the purchaser of the device reasonable assurance that such device can be operated without causing harmful interference. However, the comments do raise a number of questions concerning the effect of the proposed rules on existing industry practices.

10. A number of comments object to the inclusion of "offer for sale" within the prohibited activities. G.E. alleges that this term may be interpreted to prohibit the offering for sale of proposed production items which have not been fully developed and standardized for

[3] An incidental radiation device, as defined in § 15.4(c) of the rules, is a device that radiates radiofrequency energy during the course of operation although the device is not intentionally designed to generate radiofrequency energy.

[3] We construe the second sentence of section 302(a) as permissive rather than mandatory and thus key the proposed regulations to the most practical points of control. In light of the fact that prohibitions against use are already set forth in section 301 and in various parts of our rules, it would appear that the controls imposed would, for the present, be adequate to achieve the basic objective.

[4] As a result of this procedure, the Commission has been able to maintain and publish, for the benefit of both the manufacturer and prospective user, radio equipment lists describing the various devices which have been found capable of meeting applicable technical standards.

[5] Certain RF devices need not at present be type approved, type accepted or certificated notwithstanding that technical standards have been established for such devices. In those instances, e.g., crystal controlled Class D citizens band transmitters, amateur transmitters, industrial radio-location devices, carrier current systems, CATV, and campus radio systems, etc., the basic requirement will be compliance with the applicable technical standards.

[6] See Appendix A for list of persons that filed comments and the short names used in this report.

production. Collins argues that the prohibition against "offer for sale" does not allow for preproduction marketing of new products while still in the design and developmental stages. EIA-Land Mobile and others point out that manufacturers pursuing established marketing practices would violate the "offer for sale" proscription although the device in question when finally produced and sold would readily comply in all respects with the technical specifications in the Commission's rules as well as with the prescribed equipment approval procedure. Collins augments this argument by pointing out that within the manufacturing-through-distribution cycle, marketing efforts must commence as soon as the design concept is finalized, and that marketing efforts or "offers for sale" to potential customers cannot be deferred until the device in question is manufactured and tested. The "offer for sale" proscription is also questioned by EIA-Microwave and others who state that such a proscription precludes soliciting and bidding on procurement contracts. EIA-Microwave maintains that it is not feasible to obtain approval of all possible devices prior to offering them for sale, particularly when an unique communications problem is involved. EIA-Land Mobile argues that, in an established marketing and manufacturing cycle, "offers for sale or lease" are typically preliminary proposals offered in response to specific customer requirements. Mobile Electronics contends that, since advertisement of a capability to develop and produce custom devices may be construed as an "offer for sale," this term in the proposed rules would appear to prohibit soliciting orders to build custom devices before full scale production models have been manufactured and tested for compliance.

11. As a possible solution to the marketing difficulties which would confront manufacturers of radiofrequency devices under the proposed proscription against "offer for sale," EIA-Land Mobile advocates the adoption of a rule permitting compliance with equipment procedures at the time of distribution rather than at the time the offer is made. This recommendation is supported by EIA-Microwave which alleges that such a relaxation is necessary to permit continued orderly growth of the microwave industry.

12. It would appear that most of the comments stem from a misunderstanding of the term "offer for sale" as used in the proposed regulation and this misunderstanding has led to the fears expressed in the comments of adverse impact on preproduction marketing of products which are still in the design and development stages. The term "offer for sale" is included in our proposal because it is presently included in the language of section 302 of the Act. We wish to make it clear, however, that the prohibition against offering for sale would not preclude the proposal or execution of agreements to manufacture or produce in the future new products in the design or development stages or products which are to be manufactured in accordance with designated specifications. Thus, in terms of the comments of EIA-Land Mobile and Mobile Electronics, preliminary proposals offered in response to specific customers' requirements or the advertisement of a capability to develop and produce custom devices would not be encompassed by the proposed rule. The inclusion of this term would, however, prohibit the advertising for sale of existing radiofrequency devices prior to the date that it has been determined that such devices comply with the Commission's requirements. In this day of mass marketing where the overwhelming proportion of goods sold are introduced to the public by printed or broadcast advertising, it would be self-defeating to expect to regulate trade in noncomplying RF devices if dealers remained able to call attention to and create a market for products they could not ship or sell and which the public could not lawfully use.

13. Collins brings to our attention the fact that before type acceptance is granted a broadcast permittee is presently allowed to install and test a transmitter to be operated in any of the radio broadcast services. EIA-Broadcast comments that, for most transmitting equipment licensed under Parts 73 and 74, the tests necessary to show compliance with our requirements for type acceptance are more effective and representative when conducted at a typical broadcasting site under actual installation conditions, particularly in the case of custom combinations of equipment which may require special measurement techniques. Both argue that promulgation of rules to require type acceptance prior to the sale and shipment of a transmitter intended for licensing in one of the Radio Broadcast Services is inconsistent with Part 73 and recommend that the proposed rules be modified to exempt broadcast transmitters from such a requirement.[1] In addition, both believe such modification would not cause increased spectrum pollution problems, but, to the contrary, would encourage the development of better communications equipment, and that achievement of the overall goals of section 302 would be easier, since availability of equipment with reduced interference potential furthers those goals. Recognizing the merit of this argument and being satisfied that the established licensing procedure provides adequate control with respect to transmitters operated under Part 73, Radio Broadcast Services, the Commission is exempting such equipment from the constraints of § 2.511. For the same reasons, transmitters employed in the Instructional Television Fixed Service regulated under Part 74 are also exempted. Although we have exempted such equipment from the prohibition against sale and shipment prior to obtaining type acceptance, attention is directed to the requirement that type acceptance must be obtained before a station license will be issued.

14. Collins and EIA-Consumer Products urge that a proviso be added to the rules to allow shipment and distribution of equipment if it is designed to conform, and does in fact conform, to the Commission's requirements, as soon as an application has been filed for the appropriate equipment approval. EIA-Consumer Products argues in this connection, that the proposed rules impose an intolerable hardship on manufacturers fabricating high-production items because the completion of the certification process to show compliance with the Commission's technical standards prior to the shipment of products will introduce additional delays in the manufacturing-through-distribution cycle. However, this proposal to permit sale or shipment simply on the basis of the filing of an application for equipment approval flies in the face of the purpose of section 302 to keep noncomplying equipment out of the hands of the public by requiring completion of the approval process before such sale or shipment. Insofar as the comment expresses fears of delay in the manufacturing-through-distribution cycle, delays can be minimized by the filing of applications for equipment approval based on tests of the preproduction model or prototype before production actually starts, in order to provide additional time prior to shipment. The Commission is presently reexamining its procedures for equipment approval and will include this provision in its revised rules.

15. Mann-Russell, SPI, TOCCO, Ajax, and IEEE-Subcommittee all protest the requirement for certification of industrial heating equipment (one category of ISM equipment regulated under Part 18) prior to shipment from the factory. While none of these parties oppose the objectives of section 302, each urge that the Commission not adopt rules which, in effect, would prohibit on-site certification, and impose unnecessarily burdensome restrictions on both the manufacturer and the user. Mann-Russell argues that factory pre-certification of such equipment is, in many cases, neither workable nor meaningful because much of this equipment is designed for assembly at the customer's premises where all factors affecting the emission of interfering RF energy can be taken into account. Mann-Russell maintains that not only is such onsite testing more feasible, but in addition, measurements made at the customer's premises are more meaningful with respect to compliance with FCC requirements. SPI argues, that many of the industrial heaters used in the plastics industry are designed to be operated in a screened enclosure. To be significantly useful, SPI states further, measurements to demonstrate that such an equipment complies with FCC rules must be made with the enclosure in which the heater will be operated. Self-shielding of such machines, according to SPI, is not only impracticable but in

[1] Part 73 permits the issuance of a construction permit to install a transmitter that has not been type accepted provided adequate preliminary descriptive information concerning the transmitter has been filed. A station license, however, will not be granted until such transmitter has in fact been type accepted.

many cases seriously impedes operation, since the shielding interferes with feeding materials to the machine. TOCCO comments that under the present certification system both the manufacturer and the user of ISM equipment are fully aware of their responsibilities, adding that the present system provides a quick and easy reference for supplying information about the location and type of certificated ISM equipment when interference is reported in a particular area. Ajax and IEEE-Subcommittee argue individually that the present rules provide adequate control, since ISM equipment constructed in accordance with the Commission's standards causes a minimal amount of interference. In addition, Ajax maintains that in those few instances of harmful interference, caused by spurious radiation from industrial heating equipment, both user and manufacturer have been prompt in taking corrective action. Both of these proponents for the continuation of onsite certification for industrial heating equipment argue further that the proposed rules, if strictly interpreted, would have an adverse effect on existing industry practice without materially reducing the amount of spectrum pollution and harmful interference.

16. The Commission recognizes the problem described by these comments. The technical standards in our Part 18 rules which are intended to control the interference effects of an industrial heating installation may not, in all cases, be directly suitable to industrial heating equipment at the point of manufacture. Obviously, where compliance with the Part 18 technical standards is achieved by use of an accessory external to the equipment—such as a screened enclosure in which the equipment is installed—compliance with such standards could not reasonably be required at the point of manufacture. Further, the establishment of requirements on the manufacturer of the equipment to meet the applicable technical standards by shielding or suppression devices which are part of the unit should be done through separate rule making. For this reason the Commission is considering the initiation, in the near future, of rule making proceedings concerning appropriate changes in these existing technical standards, including a suppression requirement of harmonic emissions for all equipment operating on a frequency of 5 MHz or higher.

17. Therefore, pending the adoption of revised technical standards for industrial heating equipment, the Commission is exempting certain ISM equipment from compliance with provisions of §§ 2.803 and 2.805. It should be noted, that this exemption extends to the vendor of the equipment—and not to the user who still will be required to meet the certification or type approval requirement of Part 18 prior to use of such equipment. However, the basic problem of interference from such industrial heaters—and the alleged ignorance on the part of users of the applicable technical standards who have legally purchased such equipment from reputable manufacturers still remains. Therefore, while not now requiring manufacturers' compliance with such technical standards prior to distribution for sale, the Commission will require that the vendor or lessor of such industrial heating equipment:

(a) Notify the purchaser or lessee in writing either that the equipment as delivered does comply with the technical standards in Part 18, or that the equipment must be installed in an adequately screened enclosure before it may be operated in accordance with Part 18, as the case may be; and

(b) Furnish a copy of such notification to the Federal Communications Commission, Washington, D.C. 20554, Attention: Field Engineering Bureau, within 30 days of such sale or lease. This notification shall include information as to the—

Name and Address of purchaser/lessee.
Name of manufacturer and type or model of the equipment delivered.
Nominal operating frequency.
Nominal operating power.

This exemption applies only to equipment specifically listed in § 2.809. Other equipment regulated by Part 18, such as medical diathermy, low-power ultrasonic equipment, and microwave ovens, which are normally sold as self contained packages will be subject to the rules adopted herein, and it will be incumbent on the manufacturer to certificate or to obtain type approval for such equipment before they may be shipped or sold/leased.

18. We note the comments of Low Power Broadcast, SPI, and TOCCO concerning lack of provision in the proposed rules to relieve the manufacturer of responsibility for the acts of users who intentionally or unintentionally modify or misuse equipment in such a manner as to create a source of harmful interference. It is obvious, in our view, that a manufacturer cannot be held responsible for the act of a user who chooses to misuse or modify equipment. There is no condition or requirement in our rules that can reasonably be construed to hold the manufacturer responsible for unauthorized modification or misuse of equipment by the operator or user. The instant proceeding in no way relieves the ultimate user and operator of responsibility for harmful interference caused by unauthorized modification, misuse, or improper operation of equipment. Moreover, attention is invited to the fact that existing restrictions, which stem from authority contained in section 301 of the Communications Act and are directed to the use and operation of radiofrequency equipment, remain in effect over and above the new authority granted by section 302. In short, the new section 302 complements the strictures of section 301.

19. GE and others express concern about when the rules will be made effective, arguing that the effective date should be coordinated with industry so as to allow sufficient lead time for manufacturers and distributors to avoid losses due to equipment which can no longer be shipped or sold under the rules. The Commission recognizes of course that the immediate application of the prohibition against shipment or sale of equipment which has already been manufactured or is now in the manufacturing process, could produce hardship if only by reason of the delay occasioned by the necessity of securing type-approval, type-acceptance or certification prior to shipment. However, it should be noted that the technical standards, compliance with which will now have to be demonstrated prior to sale or shipment, are not new but have been in effect for some time and compliance therewith by the user has long been required. Thus, for the many manufacturers of RF devices who have viewed the interference potential characteristics of their products with concerned awareness and who are already voluntarily meeting the technical standards prescribed in our rules, the new responsibilities reflected by the rules adopted herein should present no substantial problem. On the other hand, the Commission is aware that some manufacturers in the past have chosen not to recognize the interference problems created by their inadequately designed and constructed equipment and it is with respect to such equipment that the present regulations must be made effective as soon as reasonably possible. Moreover, the adoption of section 302 in July 1968 put industry on notice that regulations to control the distribution of devices capable of causing harmful interference would be forthcoming, and our notice of proposed rule making issued on January 15, 1969, gave notice of the form these regulations were intended to take. We feel therefore that industry has had ample time to make the necessary changes and adjustments in manufacturing techniques that may be required. However, we recognize that changes are desirable in our procedural rules governing applications for equipment approval. To accomplish this, we are making the regulations adopted herein effective as of October 1, 1970. This should also allow sufficient time for manufacturers to acquire such equipment approvals as may be required prior to shipment. Accordingly industry is put on notice that, regardless of the date of manufacture, no device subject to these rules, may be legally shipped, sold, etc., after October 1, 1970, unless compliance with our requirements has been demonstrated prior to such shipment, sale, etc.

20. The rules herein adopted are the initial step in implementation of section 302, and simply make it mandatory that manufacturers, vendors and shippers of radio frequency devices comply with our regulations. No changes have been made in existing type acceptance, type approval and certification procedures, or compliance requirements. However, as indicated above, we are presently reviewing our regulations to determine what changes* are necessary and appropriate in light of this new authority and the rules herein adopted. A further

*In this connection, it should be noted that a proposed revision of our type acceptance procedures is presently outstanding in Docket 17869, and we contemplate a further proceeding to conform it as necessitated by the rules herein adopted.

rule making proceeding will be instituted to amplify the procedural rules for equipment approval.

21. In summary, the Commission finds that it is in the public interest to adopt the rules contained in the attached Appendix which require that before equipment or apparatus which emits electromagnetic energy capable of causing harmful interference to radio communications is put on the market, it must meet the technical standards enumerated in the rules and, where required, it must be type approved, type accepted, or certificated. These rules are intended to impose upon the manufacturer, vendor and shipper the initial responsibility for minimizing interference to radio communications. The equipment user will continue to be held responsible for interference that arises due to improper operation or unauthorized changes which he has made.

22. In view of the foregoing and pursuant to the authority contained in sections 4(i), 302, and 303(r) of the Communications Act of 1934, as amended: *It is ordered*, That, effective October 1, 1970, Part 2, is amended in the manner set forth in Appendix B, and this proceeding is terminated.

Adopted: May 13, 1970.

Released: May 18, 1970.

FEDERAL COMMUNICATIONS COMMISSION,*

[SEAL] BEN F. WAPLE, *Secretary.*

APPENDIX A

Comments in this proceeding were received from:

INDUSTRY ASSOCIATIONS

Aerospace and Flight Test Radio Coordinating Council (AFTRCC).
Automobile Manufacturers Association, Inc. (AMA).
Consumer Products Division of Electronic Industries Association (EIA-Consumer Products).
Industrial Electronics Division of Electronic Industries Association.
Filings were submitted individually by the following sections:
- Broadcast Equipment (EIA-Broadcast).
- Citizens Band Radio (EIA-Citizens Radio).
- Closed-Circuit TV.
- Land Mobile Communications (EIA-Land Mobile).
- Microwave Communications (EIA-Microwave).

Society of the Plastics Industry, Inc. (SPI).
Central Station Electrical Protection Association, jointly with the Controlled Companies of American District Telegraph Co. and Baker Industries, Inc.

INDIVIDUAL MANUFACTURERS

Ajax Magnethermic Corp. (Ajax).
Collins Radio Co. (Collins).
General Electric Co. (GE).
Low Power Broadcast Co.
Mann-Russell Electronics, Inc. (Mann-Russell).
Mobil Electronics, Inc.
National Electric Interference Control Co.
Racal Communications, Inc. (RACAL).
TOCCO Division, Park-Ohio, Industries, Inc. (TOCCO).
Varian Associates.
Xerox Corp.

Comments were also filed by:

Bureau of Home Appliances of San Diego County, Interference Committee.
Cincinnati Gas and Electric Co.
Induction and Dielectric Heating Sub-Committee of the Electric Process Heating Committee of the Industry and General Applications Group of the Institute of Electrical and Electronics Engineers (IEEE-Subcommittee).
Prince, Schoenberg & Fisher, Attorneys and Counselors.
Underwriter's Laboratories, Inc.
The American Manufacturers Association, Inc., filed a reply comment, and Aeronautical Radio, Inc., and Air Transportation Association joined in a reply comment.

APPENDIX B

In Part 2 of Chapter I of Title 47 CFR, Subpart I is added to read as follows:

Subpart I—Marketing of Radiofrequency Devices

AUTHORITY: The provisions of this Subpart I issued under secs. 4, 303, 48 Stat., as amended, 1066, 1082, sec. 302, 82 Stat. 290; 47 U.S.C. 154, 303, 302.

Subpart I—Marketing of Radiofrequency Devices

§ 2.801 Radiofrequency device defined.

As used in this part, a radiofrequency device is any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means. Radiofrequency devices include, but are not limited to

(a) The various types of radio communication transmitting devices described throughout this chapter.

(b) The incidental and restricted radiation devices described in Part 15 of this chapter.

(c) The industrial, scientific, and medical equipment described in Part 18 of this chapter.

(d) Any part or component thereof which in use emits radiofrequency energy by radiation, conduction, or other means.

§ 2.803 Equipment requiring Commission approval.

In the case of a radiofrequency device, which, in accordance with the rules in this chapter must be type approved, type accepted, or certificated prior to use, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease) or import, ship or distribute for the purposes of selling or leasing or offering for sale or lease, any such radiofrequency device, unless, prior thereto, such device shall have been type approved, type accepted or certificated as the case may be.

§ 2.805 Equipment that does not require Commission approval.

In the case of a radiofrequency device which, in accordance with the rules in this chapter must comply with specified technical standards prior to use, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease) or import, ship or distribute for the purposes of selling or leasing or offering for sale or lease, any such radiofrequency device, unless prior thereto such device complies with the applicable technical standards specified in the Commission's rules.

§ 2.807 Statutory exceptions.

As provided by section 302(c) of the Communications Act of 1934, as amended §§ 2.803 and 2.805 shall not be applicable to:

(a) Carriers transporting radiofrequency devices without trading in them.

(b) Radiofrequency devices manufactured solely for export.

(c) The manufacture, assembly, or installation of radiofrequency devices for its own use by a public utility engaged in providing electric service: *Provided, however*, That no such device shall be operated if it causes harmful interference to radio communications.

(d) Radiofrequency devices for use by the Government of the United States or any agency thereof: *Provided, however*, That this exception shall not be applicable to any device after it has been disposed of by such Government or agency.

§ 2.809 Exception for ISM equipment.

(a) Sections 2.803 and 2.805 shall not apply to the following ISM equipments:

(1) Ultrasonic equipment as defined in § 18.3(e) of this chapter which generates 2 kW. or more of radiofrequency energy.

(2) Particle accelerators, e.g., cyclotrons, and other similar scientific equipment.

(3) Electro-erosion equipment.

(4) Sputtering equipment using RF energy.

(5) RF stabilized arc welders.

(6) Industrial heating equipment as defined in § 18.3(c), of this chapter which generates 10 kW. or more of RF energy.

(b) Sections 2.803 and 2.805 shall not apply to industrial heating equipment as defined in § 18.3(c) of this chapter which generates less than 10 kW. of RF energy: *Provided, however:*

(1) The vendor of such equipment has notified the purchaser/lessee in writing whether the equipment as delivered will meet the technical standards in Part 18 of this chapter, or whether the equipment must be installed in a screened enclosure before it may be operated.

(2) A copy of the notification shall be furnished to the Federal Communications Commission, Washington, D.C. 20554, Attention: Field Engineering Bureau.

(3) The copy of the notification furnished to the Commission shall include:

Name and address of purchaser/lessee.
Name of manufacturer,

* Commissioner Wells dissenting.

Type or model of the equipment delivered, and
Nominal operating frequency and power.

(c) The equipment listed in paragraphs (a) and (b) of this section must meet the applicable certification or type approval requirement of Part 18 of this chapter before such equipment is operated.

§ 2.811 Transmitters operated under Part 73.

Sections 2.803 and 2.805 shall not be applicable to a transmitter operated in any of the Radio Broadcast Services regulated under Part 73 of this chapter, provided the conditions set out in Part 73 of this chapter for the acceptability of such transmitter for use under licensing are met.

§ 2.813 Transmitters operated in the Instructional Television Fixed Service.

Sections 2.803 and 2.805 shall not be applicable to a transmitter operated in the Instructional Television Fixed Service regulated under Part 74 of this chapter provided the conditions in § 74.952 of this chapter for the acceptability of such transmitter for licensing are met.

[F.R. Doc. 70-6358; Filed, May 21, 1970; 8:48 a.m.]

[FCC 70-512]

PART 73—RADIO BROADCAST SERVICES

Fraudulent Billing Practices

Memorandum opinion and order. 1. The Commission has before it the petition for rule making (RM-1013) filed by the Star Stations of Indiana, Inc. (licensee of WIFE(AM) and WIFE-FM, Indianapolis, Ind.) on August 10, 1966. The petition proposes to amend §§ 73.124 (AM), 73.299 (FM) and 73.678 (TV) of our rules in order to prohibit the issuance of "bills" by licensees which misrepresent "(a) the time or the day on which spot announcements were broadcast or (b) the number of announcements which were broadcast."[1] No pleadings have been filed in respect to the petition.

2. At the present time, the provisions of § 73.124 (which are identical in pertinent part to §§ 73.299 and 73.678) of our rules read as follows:

Fraudulent billing practices. No licensee of a standard broadcast station shall knowingly issue to any local, regional, or national advertiser, advertising agency, station representative, manufacturer, distributor, jobber or any other party, any bill, invoice, affidavit or other document which contains false information concerning the amount actually charged by the licensee for the broadcast advertising for which such bill, invoice, affidavit or other document is issued, or which misrepresents the nature, content or quantity of such advertising. Licensees shall exercise reasonable diligence to see that their agents and employees do not issue any documents which would violate this section if issued by the licensee.

3. In sum, petitioner asserts that it is necessary to insert in the above rule a phrase which specifically bans the issuance of any "fraudulent bill" by licensees which misrepresents the time or the date or the number of times that advertising was broadcast. While emphasizing its view that the existing rules do not cover such situations and that it would be unfair for the Commission under its present rules to take action against any licensee for any such misrepresentations (see footnote 1, above), it also asserts the public interest in prohibiting such fraudulent acts by licensees.

4. We agree with petitioner in respect to the strong public interest factors supporting the prohibition of misrepresentations by licensees in any and all billing practices. Any such misrepresentation certainly reflects adversely on the qualifications of a licensee and, to a degree, on the industry as a whole. The public interest, convenience and necessity clearly require reasonale ethical business practices in the industry—specifically on the part of individual broadcasters. It is within the Commission's authority, and is its responsibility to take whatever action is appropriate to check these practices, which essentially amount to the use of broadcast facilities for fraudulent purposes. We took such action in this area in 1965, in adopting rules concerning double billing and other types of deceptive billing practices. See the Report and Order in Docket 15396, FCC 65-951, 1 FCC 2d 1068, 6 R.R. 2d 1540, paras. 5-7.

5. Therefore, it is clear that the practices mentioned in the petition—which are some of the practices in which the Hearing Examiner and the Commission found that the WIFE stations had engaged—are now and should be prohibited, and licensees found to have engaged in them subjected to substantial sanctions. The only question raised by the present petition is whether the practices are covered by the present rule (adopted in October 1965 later than the occurrences at WIFE involved in the hearing), or whether an amendment of the fraudulent billing rules is required.

6. We conclude, initially, that the present language of the rule does cover these practices. As noted above, the rule states that no licensee shall knowingly issue any bill, etc., which "misrepresents the nature, content or quality of such advertising * * *." Certainly the time of day or the day of the week are core matters of importance in respect to the nature of an advertisement. In contracting with a licensee for commercial announcements, advertisers are paying for the size of audience they hope to reach, which is dependent, in large part, on the time of day or the day of the week their commercial copy is broadcast. Therefore the nature of the advertisement is clearly misrepresented if it is represented to be broadcast at a different time of the day or a different day of the week than actually presented. Moreover, the rule bans misrepresentations in respect to quantity of announcements. Considering the crucial importance which time of broadcast often has, the fact that *X* commercials were broadcast between 6 and 9 a.m., and *Y* commercials between midnight and 5 a.m., is just as much a part of quantity as is the fact that *X* plus *Y* commercials were broadcast during a particular week.

7. However, it is also true, as petitioner urges, that the rule making which led to the 1965 rules, the report and order adopting them and to a large extent the rules and examples themselves, read in terms of the specific, rather widespread practice which they were designed to prevent, i.e., double billing, in which, essentially, the station acts in collusion with a local advertiser, billing him a larger amount than that actually due or paid so that he can claim greater reimbursement from a cooperating manufacturer who is paying part of the cost of the local store's advertising. Therefore we believe it appropriate to add language to the rule to make completely clear its prohibition against outright false billing, the knowing rendition of any bill or other document which misrepresents the number of announcements run, their character, their length, or the date and time of their broadcast. While less common than double billing was prior to the 1965 decision, such practices, where they occur, are certainly no less fraudulent and contrary to the public interest, and we agree with petitioner that licensees should be specifically enjoined against them.[2]

8. Accordingly, we are adding to the fraudulent billing rule the following language, which is much the same as that suggested by petitioner:

* * * or which misrepresents the quantity of advertising broadcast (number or length of advertising messages) or the time of day or date at which it was broadcast.

9. It is also appropriate to add examples to the 1965 public notice entitled "Applicability of Fraudulent Billing Rule" (FCC 65-952, 30 F.R. 13642, 1 FCC 2d 1075), since, as mentioned above, the examples now largely deal with the "double billing" practice or variations of

[1] The Commission adopted (Apr. 28, 1966, released May 4, 1966) an order in Docket 16612, designating for hearing petitioner's applications for renewal for the licenses of WIFE(AM) and WIFE-FM. The renewal hearing was based, inter alia, on alleged fraudulent billing practices similar to those that the petitioner in the instant petition asserts are not covered but should be covered in the existing rules. In view of the identity of the questions presented in the renewal hearing and the instant petition our action on the instant petition has been delayed until this date so as to avoid any action in the rule making process which would prejudge the renewal hearing. On Sept. 17, 1969, the Commission adopted (released Oct. 3, 1969, FCC 69-992) its final decision in Docket 16612, which considered the problem of fraudulent billing practices by petitioner and gave petitioner a short term renewal of its licenses for WIFE(AM) and FM.

[2] We so held in the Star Stations of Indiana, Inc., decision mentioned in footnote 1, above, 19 FCC 2d 991, 17 R.R. 2d 491 (1969), where the conduct involved occurred before adoption of the rule. See also WBZB Broadcasting Service, Inc., 10 FCC 2d 321, 11 R.R. 2d 254 (1967); Robert D. and Martha M. Rapp, 12 FCC 2d 703, 13 R.R. 2d 32 (1968); Lawrence Broadcasters, Inc., 14 FCC 2d 384, 14 R.R. 2d 1 (1968); Perry Radio, 18 FCC 2d 175, 16 R.R. 525 (1969).

it. Accordingly, examples 9 and 10 are added to that public notice, as follows:

9. A licensee knowingly issues a bill or invoice to a local or national advertiser which shows broadcast of commercial announcements 1 minute in length, whereas in fact some of the announcements were only 30 seconds in length.

Interpretation. This is fraudulent billing, since it misrepresents the length of the commercials, a highly important element of the price charged for them.

10. A licensee knowingly issues a bill or invoice to a local or national advertiser which sets forth the time of day or date on which commercial announcements were broadcast, whereas in fact they were presented at a different time or on a different day, or were not broadcast at all.

Interpretation. This is fraudulent billing, since time of broadcast is often highly important in its value and the price charged for it. Charging for advertising not broadcast is clearly fraudulent.

10. *Form of the rule.* Recently, the Commission has begun an effort to simplify the structure of Part 73 of our rules, that governing the broadcast services, by combining in one subpart those rules common to all or most of the broadcast services. This was done in connection with the new station identification rules adopted in December 1969, the text of which is set forth in § 73.1201, with brief cross references thereto in the rules specifically applying to each service. We are adopting the same technique here, and the fraudulent billing rule, as amended herein, is set forth in new § 73.1205, which is the appropriate section in the planned structure of the new Subpart H. Present §§ 73.124 (AM), 73.299 (FM), and 73.678 (TV) are amended herein to simply refer to the new section.

11. *Authority.* Authority for amendment of the fraudulent billing rules is contained in sections 4(i), 303(r), 307, 308, and 309 of the Communications Act of 1934, as amended. We are taking this rule-making action without the prior public proceedings contemplated as a general matter by section 553 of the Administrative Procedure Act. This is permissible and appropriate because, as noted above, the practices mentioned by petitioner are really included within the present language of the rule, forbidding misrepresentation as to the nature and quantity of advertising. The present action is merely interpretative, expressing the application of the rule in particular circumstances, and thus prior proceedings are not required, under section 553(b)(3)(A). In any event, prior proceedings may be dispensed with as unnecessary, under section 553(b)(3)(B). This is true because the conduct specifically proscribed by the new language is clearly fraudulent and contrary to the public interest, at least to the same degree as were the "double billing" practices to which our 1965 action and rules were primarily addressed. Action to prohibit such practices, by more specific language, is clearly warranted and appropriate.

12. In view of the foregoing: *It is ordered*, That: (a) effective June 26, 1970, §§ 73.124, 73.299 and 73.678 of the Commission's rules are amended, and new § 73.1205 is adopted, as set forth below.

(b) The public notice entitled "Applicability of Fraudulent Billing Rule", FCC 65-952, 30 F.R. 13642, 1 FCC 2d 1075, is superseded by public notice (FCC 70-513), which is the same as the earlier document except for new Examples 9 and 10 and the third paragraph in the preliminary text referring to them.

(Secs. 4, 303, 307, 308, 309, 48 Stat., as amended, 1066, 1082, 1083, 1084, 1085; 47 U.S.C. 154, 303, 307, 308, 309)

Adopted: May 13, 1970.

Released: May 18, 1970.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

1. The present text of §§ 73.124, 73.299, 73.678 of the Commission's rules is deleted and these sections are amended, to read as follows:

§ 73.124 Fraudulent billing practices.

See § 73.1205, which is applicable to all standard broadcast stations.

§ 73.299 Fraudulent billing practices.

See § 73.1205, which is applicable to all FM broadcast stations.

§ 73.678 Fraudulent billing practices.

See § 73.1205, which is applicable to all television broadcast stations.

2. In Subpart H of Part 73, new § 73.1205 is added, as follows:

§ 73.1205 Fraudulent billing practices.

No licensee of a standard, FM, or television broadcast station shall knowingly issue to any local, regional or national advertiser, advertising agency, station representative, manufacturer, distributor, jobber, or any other party, any bill, invoice, affidavit or other document which contains false information concerning the amount actually charged by the licensee for the broadcast advertising for which such bill, invoice, affidavit or other document is issued, or which misrepresents the nature or content of such advertising, or which misrepresents the quantity of advertising actually broadcast (number or length of advertising messages) or the time of day or date at which it was broadcast. Licensees shall exercise reasonable diligence to see that their agents and employees do not issue any documents which would violate this section if issued by the licensee.

NOTE: Commission interpretations in connection with this Rule may be found in a separate Public Notice issued May 18, 1970, entitled "Applicability of Fraudulent Billing Rule" (FCC 70-513, 35 F.R. 7906).

[F.R. Doc. 70-6359; Filed, May 21, 1970; 8:48 a.m.]

Title 49—TRANSPORTATION

Chapter V—National Highway Safety Bureau, Department of Transportation

[Docket No. 70-5]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Hydraulic Service Brake, Emergency Brake and Parking Brake Systems; Passenger Cars

On February 19, 1970, a proposal to amend section S4.1 of Motor Vehicle Safety Standard No. 105 was published in the FEDERAL REGISTER (35 F.R. 3177).

Under present S4.1 a service brake system, after exposure to water, must recover "within +20%, —40% of check stop pedal force by stop 15. (Based on the average of initial pedal force of the three check stops)." The option to recover "within +20%, —40% of check stop pedal force by stop 15 or within +20 lbs., —40% of check stop pedal face by stop 10" was proposed. Interested persons have been afforded an opportunity to comment. All comments favored the proposal; there were no objections.

It is therefore determined that the option will encourage the development of better balanced braking systems, thus reducing the tendency for early front or rear wheel lock up. For this reason, there is good cause for finding that an earlier effective date than 180 days after issuance of this amendment is in the public interest. Therefore, the amendment is effective May 23, 1970.

In consideration of the foregoing, section S4.1 of Standard No. 105 is amended to read as follows:

S4.1 *Service brake system.* The performance ability of the fully operational service brake system for passenger cars shall be not less than that described in Section D of Society of Automotive Engineers Recommended Practice J937, "Service Brake System Performance Requirements—Passenger Cars", June 1966, and tested in accordance with SAE Recommended Practice J843a, "Brake System Road Test Code—Passenger Cars", June 1966, except that the following is substituted for section (D)(7)(a) of SAE Recommended Practice J937:

"Brakes to recover within +20%, —40% of check stop pedal force by stop 15 or within +20 lbs., —40% of check stop pedal force by stop 10. (Based on the average of initial pedal force of the three check stops)."

(Secs. 103 and 119, National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1392, 1407; delegation of authority from Secretary of Transportation to Director of National Highway Safety Bureau, 49 CFR Part 1, 35 F.R. 4955)

Issued on May 18, 1970.

ROBERT BRENNER,
Deputy Director,
National Highway Safety Bureau.

[F.R. Doc. 70-6342; Filed, May 21, 1970; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 78]

MICROWAVE OVENS

Proposed Performance Standard

Pursuant to the authority contained in section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f) and under authority delegated to the Commissioner of the Environmental Control Administration, it is proposed to amend Subpart C of Part 78 of Title 42, Code of Federal Regulations by prescribing a performance standard applicable to the emission of microwave radiation from microwave ovens manufactured for use in homes, restaurants, food vending or service establishments, on interstate carriers, and in similar locations.

The necessity for a standard to protect the public health and safety became apparent after surveys by State health departments and studies by the Bureau of Radiological Health revealed that these ovens could emit excessive levels of microwave radiation. Evaluation of currently available information on the health hazards of microwave radiation and consultation with the manufacturers of microwave ovens as well as reviews by State health departments and other agencies have resulted in this proposed performance standard.

In the process of developing the proposed standard, it became evident that it should contain provisions which give consideration to wear due to normal use of the ovens. The proposed standard provides for a microwave power density limit which allows a gradual change in the microwave radiation leakage over a long period of oven use.

The majority of microwave ovens can be satisfactorily tested according to the procedures in the proposed standard. In the event some oven designs are not susceptible to the proposed test procedures, comments, together with alternative methods of measurement, justifying rationale and data to support such methods, are solicited pursuant to § 78.203 of this part.

The provisions of this standard shall become effective as noted therein after republication in the FEDERAL REGISTER.

Inquiries may be addressed to, and data, views, and arguments may be submitted in writing to, the Director, Bureau of Radiological Health, 5600 Fishers Lane, Rockville, Md. 20852. All relevant material received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered. Comments received after that period will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed within the period specified.

The amendment to Subpart C of Part 78 would read as follows:

§ 78.212 Performance standard for microwave ovens.

(a) *Applicability.* The provisions of this standard, unless otherwise indicated herein, are applicable to microwave ovens manufactured after July 1, 1971.

(b) *Definitions.* (1) "Microwave oven" means a device designed to heat, cook, or dry food through the application of electromagnetic energy at frequencies assigned by the Federal Communications Commission in the normal ISM heating bands ranging from 890 megahertz to 6,000 megahertz. As defined in this standard, "microwave ovens" are limited to those manufactured for use in homes, restaurants, food vending or service establishments, on interstate carriers, and in similar locations.

(2) "Cavity" means that portion of the microwave oven in which food may be heated, cooked, or dried.

(3) "Door" means the movable barrier which prevents access to the cavity during operation and whose function is to prevent leakage of microwave energy from the passage or opening which provides access to the cavity.

(4) "Safety interlock" means a device or system of devices which is intended to prevent generation of microwave energy when access to the cavity is possible.

(5) "Service adjustments or service procedures" mean those servicing methods prescribed by the manufacturer for a specific product model.

(6) "Stirrer" means that feature of a microwave oven used to constantly change the standing wave pattern within the cavity.

(7) "External surface" means the outside surface of the cabinet or enclosure provided by the manufacturer as part of the microwave oven, including doors, but excluding door handles, latches, and control knobs.

(c) *Requirements*—(1) *Power density limit.* The power density of the microwave radiation emitted by a microwave oven shall not exceed one (1) milliwatt per square centimeter at any point 5 centimeters or more from the external surface of the oven, measured prior to sale to a purchaser, and thereafter, 5 milliwatts per square centimeter at any point 5 centimeters or more from the external surface of the oven.

(2) *Measurements and test conditions.* (i) Compliance with the power density limit in this paragraph shall be determined by measurements of microwave power density made with an instrument system which (*a*) reaches 90 percent of its steady-state reading within 3 seconds when the system is subjected to a stepped input signal and which (*b*) has a radiation detector with an aperture of 25 square centimeters or less, said aperture having no dimension exceeding 10 centimeters. This aperture shall be determined at the fundamental frequency of the oven being tested for compliance. The instrument system shall be capable of measuring a power density of 1 milliwatt per square centimeter with an accuracy of plus 25 percent and minus 20 percent (plus or minus 1 decibel).

(ii) Microwave ovens shall be in compliance with the power density limit if the maximum reading obtained at the location of greatest microwave leakage does not exceed the limit specified in subparagraph (1) of this paragraph when the leakage is measured through at least one stirrer cycle. Pursuant to § 78.203, manufacturers may request alternative test procedures if, as a result of the stirrer characteristics of a microwave oven, such oven is not susceptible to testing by the procedures described in this subdivision.

(iii) Measurements shall be made with the microwave oven operating at its maximum output and containing a load of 275±15 milliliters of tap water initially at 20°±5° centigrade placed within the cavity at the center of the load-carrying surface provided by the manufacturer. The water container should be a low form 600 milliliter beaker having an inside diameter of approximately 8.5 centimeters and made of an electrically nonconductive material such as glass or plastic.

(iv) Measurements shall be made with the door fully closed as well as with the door fixed in any other position which allows the oven to operate.

(3) *Door and safety interlocks.* (i) Microwave ovens shall have a minimum of two concealed safety interlocks that are mechanically and electrically independent. A concealed safety interlock on a fully assembled microwave oven must not be operable by (*a*) any part of the body, or (*b*) a rod 3 millimeters or greater in diameter and with a useful length of 10 centimeters. A magnetically operated interlock is considered to be concealed only if a test magnet external to the oven, held in place by gravity or its own attraction, cannot operate the safety interlock. The test magnet shall have a pull at zero air gap of at least 4.5 kilograms and a pull at 1 centimeter air gap of at least 450 grams when the face of the magnet which is toward the interlock switch when the magnet is in the test position is pulling against one of the large faces of a mild steel armature having dimensions of 80 millimeters by 50 millimeters by 8 millimeters.

(ii) Failure of any single component of the microwave oven shall not cause more than one safety interlock to be inoperative.

(iii) Service adjustments or service procedures on the microwave oven shall not cause the safety interlocks to become inoperative or the microwave radiation leakage to exceed the power density limits of this section as a result of such service adjustments or procedures.

(iv) Insertion of an object into the oven cavity through any opening while the door is closed shall not cause microwave radiation leakage from the oven to exceed the applicable power density limits specified in this section.

(4) *Instructions.* Manufacturers of microwave ovens to which this section is applicable shall provide or cause to be provided:

(i) For each oven, adequate instructions for service adjustments and service procedures including clear warnings of precautions to be taken to avoid possible exposure to microwave radiation;

(ii) With each oven, adequate instructions for its safe use including clear warnings of precautions to be taken to avoid possible exposure to microwave radiation.

Dated: May 19, 1970.

RAYMOND T. MOORE,
Acting Commissioner, Environmental Control Administration.

[F.R. Doc. 70-6324; Filed, May 21, 1970; 8:45 a.m.]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 110]

[CGFR 70-69]

NEW LONDON HARBOR, CONN.

Anchorage Grounds

1. Notice is hereby given that the Commandant, U.S. Coast Guard under authority of section 1, 63 Stat. 503 (14 U.S.C. 91), section 7, 38 Stat. 1053 (33 U.S.C. 471), section 6(g)(1)(A) of the Department of Transportation Act (80 Stat. 937, 49 U.S.C. 1655(g)(1)(A)) and 49 CFR 1.46(b) and (c)(1) is considering the addition of paragraphs (a)(5) and (b)(3) to § 110.147 of Part 110, Subpart B, of Title 33, Code of Federal Regulations.

2. The proposed new paragraphs would establish, describe and promulgate regulations for a Submarine Anchorage Grounds in Long Island Sound approximately 2½ miles south-southeast of New London Ledge Light. These anchorage grounds may be used only for the anchoring of U.S. Navy submarines. No other vessel may fish or anchor in these anchorage grounds. When a U.S. Navy submarine is anchored in these anchorage grounds, no other vessel may enter or remain therein.

3. It is proposed to amend § 110.147 by adding paragraphs (a)(5) and (b)(3) to read as follows:

§ 110.147 New London Harbor, Conn.

(a) *The anchorage grounds.* * * *

(5) *Anchorage E.* In Long Island Sound approximately 2½ miles south-southeast of New London Ledge Light; a circular area with a radius of 500 yards centered at latitude 41°16'05.8" N. longitude 72°03'05.8" W.

(b) *The regulations.* * * *

(3) Anchorage E is for emergency use by submarine vessels of the U.S. Navy. No other vessel may fish or anchor in these anchorage grounds. When a U.S. Navy submarine is anchored in these anchorage grounds, no other vessel may enter or remain therein.

4. Interested persons may participate in this proposed rule making by submitting written data, views, arguments, or comments as they may desire on or before June 15, 1970. All submissions should be made in writing to the Commander, Third Coast Guard District, Governors Island, New York, N.Y. 10004.

5. To expedite the handling of submissions regarding this proposal, it is requested that each submission be submitted in triplicate and state the subject to which it is directed; the specific wording recommended; the reason for the recommended change; and the name, address and firm or organization, if any, of the person making the submission.

6. Each communication received within the time specified will be fully considered and evaluated before final action is taken on the proposal in this document. This proposal may be changed in light of the comments received. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Third Coast Guard District, Governors Island, New York, N.Y. 10004.

7. After all interested persons have expressed their views, the Commander, Third Coast Guard District will forward the record, including the original of all written submissions, and his recommendations with respect to the proposals and submissions received to the Commandant (OLE), U.S. Coast Guard, Washington, D.C. 20591. The Commandant will thereafter make a final determination with respect to this proposal.

Dated: May 15, 1970.

P. E. TRIMBLE,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

[F.R. Doc. 70-6326; Filed, May 21, 1970; 8:45 a.m.]

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 70-CE-29]

FEDERAL AIRWAY SEGMENTS

Proposed Alteration

The Federal Aviation Administration (FAA) is considering amendments to Part 71 of the Federal Aviation Regulations that would alter segments of VOR Federal airway Nos. V-216, V-337, and V-450.

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20590. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The FAA proposes the following airspace actions:

1. On V-216 a south alternate would be designated between the Saginaw, Mich., VORTAC and Peck, Mich., VORTAC via the intersection of the Saginaw 131° T (134° M) and Peck 270° T (274° M) radials.

2. V-337 would be extended from the Saginaw VORTAC to the White Cloud, Mich., VOR via the Mount Pleasant, Mich., VOR.

3. The portion of V-450 east of the Muskegon, Mich., VORTAC would be realigned and extended as follows: From the intersection of the Peck 237° T (241° M) and Flint, Mich., VORTAC 088° T (091° M) radials to Flint, from Flint via the intersection of the Flint 280° T (283° M) and Muskegon, Mich., VORTAC 094° T (095° M) radials to Muskegon.

The proposed airway changes would facilitate the handling of air traffic by the Cleveland Air Route Traffic Control Center. The changes would allow more direct routing between Flint, Muskegon, and Grand Rapids. Arrivals into Saginaw from the east would be facilitated. Also, a northern bypass via Saginaw and White Cloud would be provided.

These amendments are proposed under the authority of section 307(a), of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on May 4, 1970.

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

[F.R. Doc. 70-6348; Filed, May 21, 1970; 8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 31, 33]

[Docket No. 18828]

UNIFORM SYSTEM OF ACCOUNTS FOR TELEPHONE COMPANIES

Notice of Extension of Time for Filing Comments

Order. In the matter of amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, and Part 33, Uniform System of Accounts for Class C Telephone Companies, of the Commission's rules to provide for deferral accounting for income tax differentials occasioned by the use of accelerated depreciation for income tax purposes; also to make related changes in Annual Report Form M and to provide for interim reporting on Monthly Report Form 901; Docket No. 18828.

1. The Commission has received a telegram on May 7, 1970, followed by a letter dated May 7, 1970, from the Public Service Commission of Wisconsin requesting that the time for filing comments in the docket be extended for 30 days from May 8, 1970, the date set in this notice of proposed rule making for filing comments.

2. The Wisconsin Public Service Commission states that, due to pressures of its existing work load, its comments in this docket could not be completed and filed on May 8, 1970.

3. It appears that it is in the public interest to allow additional time for comments. However, it is believed desirable that any rule changes to be made in this proceeding should be made effective as soon as possible. Because of the 6 months notice requirement specified in section 220(g) of the Communications Act of 1934, as amended, before an accounting rule change can be made effective and the desirability of making accounting rules changes effective at the beginning of a year, we are endeavoring to finalize any amendments in this matter prior to June 30, 1970, in order that they may become effective January 1, 1971. An extension of 30 days plus an extension of the date for filing reply comments would leave the Commission too little time to act in this matter before June 30, 1970. We are, therefore, of the view that the extension of time for filing comments should be limited to 20 days.

4. *Accordingly, it is ordered,* That, pursuant to authority delegated by § 0.303(c) of the Commission's rules, that the time for filing comments in the above-captioned proceeding is hereby extended to May 28, 1970, and the time for filing reply comments is hereby extended to June 8, 1970.

Adopted: May 14, 1970.

Released: May 18, 1970.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BERNARD STRASSBURG,
Chief, Common Carrier Bureau.

[F.R. Doc. 70-6360; Filed, May 21, 1970; 8:48 a.m.]

[47 CFR Part 97]

[Docket No. 18803]

AMATEUR RADIO SERVICE

Licensing and Operation of Repeater Stations; Extension of Time for Filing Comments

Order. In the matter of amendment of Part 97 of the Commission's rules concerning the licensing and operation of repeater stations in the Amateur Radio Service; Docket No. 18803; RM-388, RM-1087, RM-1209.

1. Petitions filed by the American Radio Relay League, Inc. (ARRL) and Neil W. Murphy request the Commission to extend the time for filing comments and reply comments in the above-captioned matter (FCC 70-206, released on Mar. 2, 1970). Mr. Murphy requests a 60-day extension of time and the ARRL requests that the time for filing comments be extended from May 15 to June 15, 1970, and reply comments from June 1 to July 7, 1970.

2. The ARRL bases its request for extension of time on (1) the scope and complexity of the subject matter and (2) delay in considering the proposal caused by internal procedures. The ARRL also alleges that the 17-day period in which to file reply comments is inadequate. Mr. Murphy states that the additional time is needed "because of the complexity involved in preparing a proper commentary."

3. For these reasons and because the direct views and reply comments of the ARRL and others may be useful to the Commission, some additional time to furnish comments and reply comments appears reasonable. However, an additional 60 days does not appear necessary.

4. *Accordingly, it is ordered,* Pursuant to § 0.331(b)(4) of the Commission's rules, that the time for filing comments in the above-captioned proceeding is extended to June 15, 1970, and the time for filing reply comments is extended to July 7, 1970.

Adopted: May 15, 1970.

Released: May 18, 1970.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] JAMES E. BARR,
Chief, Safety and Special Radio Services Bureau.

[F.R. Doc. 70-6361; Filed, May 21, 1970; 8:48 a.m.]

FEDERAL TRADE COMMISSION

[16 CFR Parts 500, 503]

LABELS OF CONSUMER COMMODITIES

Statement of Quantity on Multiunit Packages

Notice is given that the National Conference on Weights and Measures, Committee on Liaison with the National Government, Washington, D.C. 20234, has filed a petition requesting that the regulations for the enforcement of the Fair Packaging and Labeling Act (16 CFR Part 500) be amended to provide for a statement of total quantity of contents on multiunit packages as well as the count and the quantity of an individual unit as is already required by the Part 500 regulations.

Grounds given in the petition in support of the requested amendment are that the current labeling requirement of the Commission's regulations is insufficient to provide adequate information to consumers in order to facilitate value comparison; the present Commission requirement may present unfair competitive advantage to those manufacturers putting up multiunit packages which compete directly with packages on which total quantity is required to be declared; the Commission's present regulation requires the consumer to make additional calculations to determine the best value among competing brands of multiunit commodities and, finally, the current practice in the marketplace is not uniform.

The Commission, having evaluated the petition has concluded that the regulations should be amended to provide appropriate rules for expressing the total content of multiunit packages. In addition, the Commission proposes to amend other regulations to coincide with its proposed rule for multiunit packages. The additional proposals involve a redesignation of § 500.24 to place that section, which expresses policy, in Part 503 which consists of Statements of General Policy. Section 500.25 would be deleted, having served its purpose. Other changes proposed include the deletion of an example cited in § 500.7 which example is in part obsolete and in part cited elsewhere. Finally the language in § 500.6 is amended to relate to the new multiunit packages which are proposed for regulation.

Accordingly, pursuant to the provisions of the Fair Packaging and Labeling Act (sections 4, 6, 80 Stat. 1297, 1300; 15 U.S.C. 1453, 1455), the following redesignation, deletion, and amendments are proposed:

§ 503.1 [Redesignated]

1. Section 500.24 of Part 500 is redesignated as § 503.1 of Part 503.

§ 500.25 [Deleted]

2. Section 500.25 of Part 500 is deleted.

§ 500.7 [Amended]

3. Section 500.7 of Part 500 is amended by deleting the parenthetical example contained in the first sentence of the section.

4. Section 500.6 of Part 500 is amended by rewriting the second proviso to read:

§ 500.6 **Net quantity of contents declaration, location.**

* * * * *

(b) * * *

(2) The requirements as to separation, location, and type size, specified in this part are waived with respect to variety and combination packages as defined in this part.

* * * *

5. A new § 500.24, *Multiunit packages,* is added:

§ 500.24 Multiunit packages.

(a) A multiunit package is a package intended for retail sale, containing two or more individual packaged or labeled units of an identical commodity in the same quantity. The declaration of net quantity of contents of a multiunit package shall be expressed as follows:

(1) The number of individual packaged or labeled units;

(2) The quantity of each individual packaged or labeled unit including dual declarations when applicable; and

(3) The total quantity of the multiunit package which may omit the parenthetical quantity statement of a dual quantity representation.

EXAMPLES: Soap bars: "6 Bars, Net Wt. 3.4 ozs. each; Total Net Wt. 20.4 ozs." Facial Tissues: "10 Packs, each 25 two-ply tissues, 9.7 in. x 8.2 in., Total 250 Tissues."

(b) The individual packages or labeled units of a multiunit package, when intended for individual sale separate from the multiunit package, shall be labeled in compliance with the regulations under this Part 500 applicable to that package.

(c) A multiunit package containing unlabeled individual packages which are not intended for retail sale separate from the multiunit package may contain in lieu of the requirements of Paragraph (a) of this section, a declaration of quantity of contents expressing the total quantity of the multiunit package without regard for inner packaging. For such multiunit packages it shall be optional to include a statement of the number of individual packages when such a statement is not otherwise required by the regulations.

EXAMPLES: Deodorant Cakes: "5 Cakes, Net Wt. 4 ozs. each, Total Net Wt. 20 ozs." or "5 Cakes, Total Net Wt. 20 ozs. (1 lb. 4 ozs.)";

Soap Packets: "10 Packets, Net Wt. 2 ozs. each, Total Net Wt. 20 ozs.", or "Net Wt. 20 ozs. (1 lb. 4 oz.)" or "10 Packets, Total Net Wt. 20 ozs. (1 lb. 4 ozs.)."

6. A new § 500.25 *Variety packages*, is added:

§ 500.25 Variety packages.

(a) A variety package is a package intended for retail sale, containing two or more individual packages or units of similar but not identical commodities. Commodities which are generically the same but which differ in weight, measure, volume, appearance or quality are considered similar but not identical. The declaration of net quantity for a variety package will be expressed as follows:

(1) The number of units for each identical commodity followed by the weight, volume or measure of that commodity including dual declarations when applicable; and

(2) The total quantity by weight, volume, measure, and count, as appropriate, of the variety package. Dual declarations may be omitted from the total quantity statement.

The statement of total quantity shall appear as the last item in the declaration of net quantity and shall not be of greater prominence than other terms used.

EXAMPLES:

(i) "2 sponges 4½ ins. X 4 ins. X ⅜ in.
1 sponge 4½ ins. X 8 ins. X ¾ in.
4 sponges 2¼ ins. X 4 ins. X ½ in.

Total 7 sponges"

(ii) "2 soap bars Net Wt. 3.2 ozs. each
1 soap bar Net Wt. 5.0 ozs.

Total 3 bars Net Wt. 11.4 ozs."

(iii) Liquid Shoe Polish: "1 Brown 3 fl. ozs.
1 Black 3 fl. ozs.
1 White 5 fl. ozs.

Total 11 fl. ozs."

(iv) Picnic Ware: "34 spoons
33 forks
33 knives

Total 100 pieces"

(b) When the individual units in a variety package are either packaged or labeled and are intended for retail sale as individual units, each unit shall be labeled in compliance with the applicable regulations under this Part 500.

7. A new § 500.26, *Combination packages*, is added:

§ 500.26 Combination packages.

(a) A combination package is a package intended for retail sale, containing two or more individual packages or units of dissimilar commodities. The declaration of net quantity for a combination package will contain an expression of weight, volume, measure or count or a combination thereof, as appropriate for each individual package or unit; provided, that the quantity statements for identical packages or units shall be combined. Dual declarations will be included where applicable.

EXAMPLES:

(1) Lighter fluid and flints: "2 cans—each 8 fl. ozs.; 1 package—8 flints."

(2) Sponges & Cleaner: "2 sponges each 4 in. X 6 in. X 1 in.; 1 box cleaner—Net Wt. 6 ozs."

(3) Picnic Pack: "20 spoons, 10 knives and 10 forks, 10 2-ply napkins 10 ins. X 10 ins. 10 cups—6 fl. ozs."

(b) When the individual units in a combination package are either packaged or labeled and are intended for retail sale as individual units, each unit shall be in compliance with the applicable regulations under this Part 500.

Any interested person may, within 60 days from the date of this publication in the FEDERAL REGISTER, file with the Secretary, Federal Trade Commission, Washington, D.C. 20580, written views on this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Issued: May 19, 1970.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 70-6332; Filed, May 21, 1970; 8:46 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Wyoming 22721]

WYOMING

Opening Lands to Small Tract Application

MAY 11, 1970.

1. Pursuant to Small Tract Classification Wyoming 22721 dated May 11, 1970, the following described land will be opened to small tract application as set out below, for lease only for business site purposes under the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U.S.C. 682a–e), as amended:

SIXTH PRINCIPAL MERIDIAN

T. 39 N., R. 94 W.,
Sec. 2, W½NE¼NW¼SW¼, containing 5 acres.

The lands are located in Fremont County approximately 20 miles southeast of Thermopolis, Wyo.

2. At 10 a.m. on May 21, 1970, the land will be open to applications for a business site lease under the Small Tract Act. All valid applications received at or prior to 10 a.m. on May 21, 1970 will be considered as simultaneously filed at that time. All applications filed after that time will be considered in the order of filing.

3. Applicants must file, in duplicate, with the Land Office Manager, Bureau of Land Management, Post Office Box 1828, 2120 Capitol Avenue, Cheyenne, Wyo. 82001, application form 2233–1 filled out in compliance with instructions on the form and accompanied by any showings or documents required by those instructions. Copies of the application form can be secured from the above-named official. The application must be accompanied by a filing fee of $100 advance rental for 1 year. Failure to transmit these payments with application will render the application invalid. Advance rentals will be returned to unsuccessful applicants. All filing fees will be retained by the United States.

4. The lease will be issued for a term of 10 years. To maintain rights under this lease, the lessee will be required to place substantial improvements on the land. Minimum requirements will be made a part of the terms and requirements of the lease. Failure to adhere to the terms and requirements will result in nonrenewal of the lease. The lease will be renewable at the discretion of the Bureau of Land Management and the renewal lease will be subject to such terms and conditions as are deemed necessary in the light of the circumstances existing at the time of renewal.

DANIEL P. BAKER,
State Director.

[F.R. Doc. 70-6349; Filed, May 21, 1970; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

PESTICIDES ALDRIN AND DIELDRIN

Request for Submission of Views With Respect to Uses

Aldrin and dieldrin have been used quite extensively as insecticides. Also aldrin has been shown to convert to dieldrin in the environment after application.

The relatively slow dissipation of dieldrin residues have resulted in contamination of the environment with low levels of dieldrin. Trace residues can often be detected in areas far removed from sites of application. This was recognized by the President's Science Advisory Committee (PSAC) in its report of May 15, 1963, entitled, "Use of Pesticides." The report recommended an orderly reduction in the use of persistent pesticides with their elimination being the goal. The report of the Environmental Pollution Panel of the PSAC entitled, "Restoring the Quality of our Environment" also expressed concern over the persistence of pesticides in the environment, and recommended more stringent controls.

In November of 1966, the Department of Agriculture requested that a committee be appointed by the National Research Council to appraise the significance of residues from the standpoint of their effects on the environment. The committee submitted its report in May of 1969, and recommended that immediate attention be given to the problem of buildup of persistent pesticides in the total environment. The Commission on Pesticides and Their Relationship to Environmental Health, appointed by the Secretary of Health, Education, and Welfare, recommended in its report of November 1969 that uses of several pesticides, including aldrin and dieldrin, be restricted to essential purposes and replaced by safer alternatives whenever possible.

The Department is requesting comments on the need for aldrin and dieldrin in order to determine if certain uses are essential and if there are no effective and safe substitutes. This notice is to afford interested persons an opportunity for a period of 90 days to submit views and comments in response to this request.

In preparing and submitting views and comments, the items listed below should be considered and covered in the submission.

A. Use pattern involved:
1. Crops, animals or site to be treated.
2. Formulations of aldrin and dieldrin employed.
3. Rate of application.
B. Pests to be controlled:
1. Name of pests.
2. Statement of damage or injury expected without the use of aldrin and dieldrin.
C. Data on environmental pollution:
1. Any available test results showing the extent of environmental contamination expected from the use pattern involved.
D. Possible substitutes for aldrin and dieldrin:
1. Substitutes now available.
2. Substitutes being tested.
3. A statement of efforts to find a suitable substitute.

All persons who desire to submit written data, views, or arguments in connection with this matter should file the same in triplicate with the Director, Pesticides Regulation Division, Agricultural Research Service, U.S. Department of Agriculture, Washington, D.C. 20250, within 90 days after the date of publication of this notice in the FEDERAL REGISTER. Please make reference in any submissions to "F.R. Aldrin-Dieldrin Notice."

All written submissions made pursuant to this notice will be made available for public inspection at such time and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Done at Washington, D.C., this 19th day of May 1970.

HARRY W. HAYS,
Director,
Pesticides Regulation Division.

[F.R. Doc. 70-6367; Filed, May 21, 1970; 8:48 a.m.]

Commodity Credit Corporation

LIVESTOCK FEED PROGRAM

Notice of Designation of Emergency Areas

Notice is hereby given that, pursuant to the provisions of section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1472, 63 Stat. 1055), and the Act of September 21, 1959, as amended (sections 1–4, 73 Stat. 574), the Secretary of Agriculture has designated the counties specified in this notice as emergency areas for purposes of the Livestock Feed Program (7 CFR Part 1475, as amended). Feed grains will be made available for sale to livestock owners in such counties in accordance with the terms and conditions in the regulations for such program. The designated counties are as follows:

FLORIDA

Charlotte.	Lee.
Collier.	Martin.
Hendry.	

Signed at Washington, D.C., on May 13, 1970.

GEORGE V. HANSEN,
Deputy Vice President,
Commodity Credit Corporation.

[F.R. Doc. 70-6368; Filed, May 21, 1970; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

CIBA AGROCHEMICAL CO. AND NOR-AM AGRICULTURAL PRODUCTS, INC.

Notice of Withdrawal of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), CIBA Agrochemical Co., Division of CIBA Corp., Post Office Box 1105, Vero Beach, Fla. 32960, and NOR-AM Agricultural Products, Inc., 11710 Lake Avenue, Woodstock, Ill. 60098, have withdrawn their petition (FAP 0H2457), notice of which was published in the FEDERAL REGISTER of October 14, 1969 (34 F.R. 15817), proposing the establishment of a food additive tolerance (21 CFR Part 121) of 10 parts per million for residues of the insecticide *N'*-(4-chloro-*o*-tolyl)-*N,N*-dimethylformamidine in or on dried prunes from application of the insecticide to the growing raw agricultural commodity plums.

Dated: May 14, 1970.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-6343; Filed, May 21, 1970; 8:46 a.m.]

[Docket No. FDC-D-174; NADA No. 11-633V]

E. R. SQUIBB & SONS, INC.

Amex; Notice of Withdrawal of Approval of New Animal Drug Application

An announcement of intent to initiate proceedings to withdraw approval of the new animal drug application for Amex was published in the FEDERAL REGISTER of February 20, 1970 (35 F.R. 3247).

E. R. Squibb & Sons, Inc., Three Bridges, N.J. 08887, the present holder of new animal drug application No. 11-633V covering the drug Amex, has requested that the Commissioner of Food and Drugs enter a final order withdrawing the application's approval. The application was formerly held by the Gland-O-Lac Co., 1818 Leavenworth, Omaha, Nebr. 68102. The Commissioner received no response to said announcement from any other interested person.

The Commissioner finds on the basis of new information before him with respect to said drug, evaluated together with the evidence available to him when the application was approved, that there is lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Based on the foregoing request and findings, the Commissioner concludes that approval of new animal drug application No. 11-633V should be withdrawn. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-46; 21 U.S.C. 360b(e)) and under authority delegated to the Commissioner (21 CFR 2.120), approval of new animal drug application No. 11-633V, including all amendments and supplements thereto, is hereby withdrawn effective on the date of signature of this document.

Dated: May 13, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-6344; Filed, May 21, 1970; 8:46 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-351]

GULF GENERAL ATOMIC, INC.

Notice of Issuance of Facility and Export License

Please take notice that no request for a formal hearing having been filed following publication of notice of proposed action in the FEDERAL REGISTER on March 24, 1970 (35 F.R. 5018), the Atomic Energy Commission has issued License No. XR-73 to Gulf General Atomic, Inc., San Diego, Calif., authorizing the export of a 2 megawatt thermal TRIGA Mark III nuclear research reactor to the Office of Supply, Government of the Republic of Korea, for installation at the Atomic Energy Institute, Seoul, Korea. The export of this reactor to Korea is within the purview of the present Agreement for Cooperation Between the Governments of the United States and Korea.

Dated at Bethesda, Md., this 11th day of May 1970.

For the Atomic Energy Commission.

EBER R. PRICE,
Director, Division of State and Licensee Relations.

[F.R. Doc. 70-6321; Filed, May 21, 1970; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 20291; Order 70-5-71]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Fare Matters

Issued under delegated authority May 18, 1970.

An agreement has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's economic regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Traffic Conference 1 of the International Air Transport Association (IATA), and adopted by mail vote. The agreement has been assigned the above-designated CAB agreement number.

The agreement proposes to establish 7-21-day group inclusive tour (GIT) fares for 15 or more passengers traveling between Kingston/Montego Bay and Los Angeles/San Diego/San Francisco. These fares would be established at a level which is about 60 percent of the round-trip economy-class fare.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found, on a tentative basis, that the subject agreement is adverse to the public interest or in violation of the Act.

Accordingly, it is ordered, That:

Action on Agreement CAB 21724 be and hereby is deferred with a view toward eventual approval.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may, within 10 days after the date of service of this order, file such petitions in support of or in opposition to our proposed action herein.

This order will be published in the FEDERAL REGISTER.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[F.R. Doc. 70-6352; Filed, May 21, 1970; 8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 70-513]

APPLICABILITY OF FRAUDULENT BILLING RULE

MAY 15, 1970.

The fraudulent billing practice prohibited by §§ 73.124, 73.299, 73.678, and 73.1205 of the Commission's rules and regulations include all practices commonly referred to as "double billing." Most "double billing" as practiced in the past has been designed to deceive and defraud manufacturers into paying a larger share of a local dealer's cooperative advertising expenditure than was stipulated in their agreements with such local dealers. However, there may have been other cases in which the manufacturers reimbursed a dealer on the basis of a bill for cooperative advertising which the manufacturer knew to be inflated or fictitious, because the manufacturer wished to use this scheme to violate the Clayton and Robinson-Patman Acts (15 U.S.C. 13) which make it unlawful for a manufacturer or distributor engaged in commerce to give discriminatory discounts, rebates or advertising allowances to its dealers. Any information coming to the Commission's attention indicating possible violations of these statutes will be considered by this Commission and referred to the Federal Trade Commission for appropriate action by that agency. As previously stated by this Commission,

participation by a licensee in a scheme to violate a Federal statute reflects seriously upon his qualifications.

Since fraudulent billing practices may take many forms, the following list of examples should not be considered as all-inclusive. It is provided merely to supply illustrations of certain fraudulent practices with which the Commission already is familiar. It should be remembered that the essential element in "double billing" is the furnishing of false information to any party contributing to the payment of broadcast advertising as to the amount actually charged by the licensee for such advertising or as to the nature, quantity, or content of such advertising.

Since the first issuance of the "Applicability of Fraudulent Billing Rule" public notice in 1965, other instances of fraudulent billing practices have arisen, not involving "double billing" but simply outright misrepresentation, to the advertiser who placed the advertising, of the quantity or time of advertising broadcast. These are covered by Examples 9 and 10 below, and are strictly prohibited by the fraudulent billing rule.

The above-mentioned rules state, and the Commission wishes to emphasize, that licensees shall use reasonable diligence to see that their employees do not engage in fraudulent billing practices.

EXAMPLES

1. A licensee issues a bill or invoice to a local dealer for 50 commercial spots at a rate of $5 each for a total of $250. In connection with the same 50 commercial spots, the station also supplies the local dealer or an advertising agency, jobber, distributor, or manufacturer of products sold by the local dealer, another affidavit, memorandum, bill, or invoice which indicates that the amount charged the local dealer for the 50 spots was greater than $5 per spot.

Interpretation: This is fraudulent billing, since it tends to deceive the manufacturer, jobber, distributor, or advertising agency to which the inflated bill eventually is sent, as to the amount actually charged and received by the station for the advertising.

2. A licensee issues a bill or invoice to a local dealer for 50 commercial spots at $5 each and the bill, invoice or accompanying affidavit indicates that the 50 spots were broadcast on behalf of certain cooperatively advertised products, whereas some of the spots did not advertise the specified products, but were used by the local dealer solely to advertise his store or other products for which cooperative sponsorship could not be obtained.

Interpretation: This is fraudulent billing, even though the station actually received $5 each for the 50 spots, because, by falsely representing that the spots advertised certain products, the licensee has enabled the local dealer to obtain reimbursement from the manufacturer, distributor, jobber, or advertising agency for advertising on behalf of its product which was not actually broadcast.

3. A licensee sends, or permits its employees to send, blank bills or invoices bearing the name of licensee or his call letters to a local dealer or other party.

Interpretation: A presumption exists that licensee is tacitly participating in a fraudulent scheme whereby a local dealer, advertising agency or other party is enabled to deceive a third party as to the rate actually charged by licensee for advertising, and thereby to collect reimbursement for such advertising in an amount greater than that specified by the agreement between the third party and the local dealer. It is the licensee's responsibility to maintain control over the issuance of bills and invoices in the licensee's name, to make sure that fraud is not practiced.

4. A licensee submits bills or invoices to an advertising agency, station representative, or other party indicating that licensee's rate per spot is $50, whereas the licensee actually receives only $5 or $10 per spot in actual payment from the agency, representative or other party. Licensee claims that the remaining 80 or 90 percent of its original invoice has been deducted by the agency as "commission" and therefore no "double billing" is involved.

Interpretation: This is fraudulent billing. The agency discount does not customarily exceed 15 percent and the supplying of bills and invoices by the licensee to agencies which indicate that the licensee is charging several times as much for advertising as he actually receives constitutes participation in a fraudulent scheme.

5. A licensee submits a bill or invoice to a local dealer or other party for 50 commercial spots at $5 each for a total of $250. However, the bottom of the bill or invocie carries an addendum, so placed that it may be cut off of the bill or invoice without leaving any indication that the invoice originally carried such an addendum. The addendum specifies a "discount" to the advertiser based on volume, frequency or other consideration, so that the amount actually billed at the bottom of the page is less than $5 for each spot.

Interpretation: The preparation of bills or invoices in a manner which seems designed primarily to enable the dealer to deceive a cooperative advertiser as to the amount actually charged for cooperative advertising raises a presumption that the licensee is participating in a "double billing" scheme.

6. A licensee submits a bill or invoice to a local dealer for 50 spots involving cooperative advertising of a certain product or products at a rate of $5 each, and actually collects this amount from the dealer. However, as a "bonus" the licensee "gives" the dealer 50 additional spots in which the product or products named on the original invoice are not advertised, so that the dealer actually obtains the benefit of 100 spots in return for payment to the station of the $250 billed for the 50 cooperative spots.

Interpretation: If the 50 "bonus" spots were broadcast as the result of any agreement or understanding, expressed or implied, that the dealer would receive such additional advertising in return for contracting for the first 50 spots at $5 each, the so-called "bonus" spots were, in fact, a part of the same deal, and the licensee, by his actions, is participating in a scheme to deceive and defraud a manufacturer, jobber, distributor, or advertising agency.

7. A local appliance dealer agrees to purchase 1,000 spots per year from a station and thereby earns a discount which reduces his rate per spot from $10 to $5. During the course of the year, the dealer purchases 100 spots from the station which advertise both the dealer and "Appliance A" and for which the dealer pays $5 per spot. Since the station's rate per spot for 100 spots is $10, the dealer asks the station to supply him with an invoice for the 100 spots on behalf of "Appliance A" at $10 per spot, claiming that if the manufacturer of the appliance had purchased the 100 spots, or if the dealer himself had purchased only these 100 spots within the course of a year, the $10 rate would apply, and that, therefore, the manufacturer should be required to reimburse the dealer at the $10 rate.

Interpretation: This practice constitutes fraudulent billing unless the dealer can provide satisfactory evidence that the manufacturer of "Appliance A" is aware that the dealer actually paid only $5 per spot because of the volume discount.

8. A licensee issues a bill or invoice to a dealer for commercial spots which were never broadcast.

Interpretation: This practice, prima facie, involves fraud, either against the dealer or against a third party which the dealer expects to provide partial reimbursement for the nonexistent advertising.

9. A licensee knowingly issues a bill or invoice to a local or national advertiser which shows broadcast of commercial announcements 1 minute in length, whereas in fact some of the announcements were only 30 seconds in length.

Interpretation: This is fraudulent billing, since it misrepresents the length of the commercials, a highly important element of the price charged for them.

10. A licensee knowingly issues a bill or invoice to a local or national advertiser which sets forth the time of day or date on which commercial announcements were broadcast, whereas in fact they were presented at a different time or on a different day, or were not broadcast at all.

Interpretation: This is fraudulent billing, since time of broadcast is often highly important in its value and the price charged for it. Charging for advertising not broadcast is clearly fraudulent.

Action by the Commission May 13, 1970. Commissioners Burch (Chairman), Bartley, Robert E. Lee, Cox, Johnson, H. Rex Lee, and Wells.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 70-6355; Filed, May 21, 1970; 8:47 a.m.]

STANDARD BROADCAST APPLICATION READY AND AVAILABLE FOR PROCESSING

Notice is hereby given, pursuant to § 1.571(c) of the Commission's rules, that on June 24, 1970, the following application for increase in daytime power of Class IV standard broadcast station WWSF, will be considered as ready and available for processing.

BP-18753 WWSF, Loretto, Pa.
St. Francis College of Loretto.
Has: 1400 kc., 250 w, U, Class IV.
Req: 1400 kc., 250 w, 1 kw.-LS, U, Class IV.

The purpose of this notice is not to invite applications which may conflict with the listed application, but to apprise any party in interest who desires to file pleadings concerning the application pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, of the necessity of complying with § 1.580(i) of the Commission's rules governing the time of filing and other requirements relating to such pleadings.

Adopted: May 18, 1970.

Released: May 19, 1970.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 70-6353; Filed, May 21, 1970; 8:47 a.m.]

STANDARD BROADCAST APPLICATION READY AND AVAILABLE FOR PROCESSING

Notice is hereby given, pursuant to § 1.571(c) of the Commission's rules, that on June 24, 1970, the following standard broadcast application will be considered as ready and available for processing:

BMP-12844 WISS, Berlin, Wis.
Kingsley H. Murphy, Jr.
Has: 1090 kc., 500 w, DA-Day.
Req: 1090 kc., 250 w, Day.

Pursuant to § 1.227(b), § 1.591(b) and Note 2 to § 1.571 of the Commission's rules,[1] an application, in order to be considered with the above application must be in direct conflict with said application, substantially complete and tendered for filing at the offices of the Commission by the close of business on June 23, 1970.

The attention of any party in interest desiring to file pleadings concerning the application pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for provisions governing the time of filing and other requirements relating to such pleadings.

[1] See report and order released July 18, 1968, FCC 68-739, Interim Criteria to Govern Acceptance of Standard Broadcast Applications, 33 F.R. 10343, 13 RR 2d 1667.

Adopted: May 18, 1970.

Released: May 19, 1970.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 70-6354; Filed, May 21, 1970; 8:47 a.m.]

[FCC 70-517]

COMMUNITY SURVEY

Interim Procedure

MAY 18, 1970.

Revision of interim procedure relating to submission of Community Survey showings in connection with radio and television applications.

In the public notice, FCC 70-312, released March 26, 1970, the Commission set forth an interim procedure for hearing proceedings involving community survey issues. The interim procedure was intended to conserve the expenditure of funds, time, and effort for all concerned and provided for a stay of hearings on the community survey issue until the announcement of the Commission's determination of the pending primer inquiry proceeding (Docket No. 18774). Since that time, various applicants have filed requests for waiver of the interim procedure, stated that they are willing to proceed with their hearings on this issue prior to resolution of the primer inquiry proceeding.

The interim procedure was adopted to protect the rights of applicants faced with a Community survey issue. Thus, where applicants are willing to make an all out, inclusive showing sufficient to satisfy any requirements for this issue, with the knowledge that they are acting at their peril, that any final determination in their respective cases will be with prejudice, and that no further opportunity to amend their showings will be afforded even if the Community survey requirements should prove to be different after the final determination of the primer inquiry proceeding, there is no necessity to hold their hearings in abeyance. Accordingly, if the applicant or applicants faced with a Community survey issue expressly state for the record that they are willing to proceed with their hearings subject to the above understanding, the proceedings may go forward without regard to the previously announced interim procedure.

Action by the Commission May 15, 1970. Commissioners Burch (Chairman), Robert E. Lee, Cox, Johnson, H. Rex Lee, and Wells, with Commissioner Bartley concurring in the result.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 70-6356; Filed, May 21, 1970; 8:47 a.m.]

[FCC 70-509]

SATELLITE FACILITIES FOR HANDLING OF TRANSITING TRAFFIC

Memorandum Opinion and Statement of Policy

In the matter of establishment of regulatory policies relating to the authorization under section 214 of the Communications Act of 1934 of satellite facilities for the handling of transiting traffic.

Preliminary statement. 1. The Commission has under consideration a number of applications[1] and related pleadings, filed pursuant to section 214 of the Communications Act, involving requests for authority to acquire and operate communications satellite earth station facilities at overseas points, both foreign and domestic, for the intermediate—or transit—handling of traffic between the United States and either foreign countries or United States points beyond the intermediate transit points. Applicants include the Communications Satellite Corp. (Comsat), American Telephone and Telegraph Co. (A.T. & T.), Cable & Wireless/Western Union International, Inc. (C&W/WUI), ITT World Communications Inc. (ITT), RCA Global Communications, Inc. (RCA Globcom), and Western Union International, Inc. (WUI).

2. The authorizations sought by the carriers, other than Comsat, follow existing practice, whereby a U.S. carrier and its correspondent at an oveseas point each provides half of the circuitry (cable, satellite, or high-frequency radio). This approach is usually also applied to a through circuit which transits an intermediate point (e.g., in which a cable lands), with the two corresponding carriers each providing half the link from point of origin to the transit country or point, and each providing half of the remaining link (or links) to the point of destination. The instant applications all involve the acquisition by a U.S. carrier of a satellite half-circuit at a transit point to be connected with a complementary half-circuit to an ultimate point of communication. This circuit and another connection similarly furnished between the transit country and the other ultimate point form the entire circuit between the two points involved.

3. The several circumstances in which such applications have been filed, including those now pending, include:

(a) Acquisition by a U.S. carrier of satellite facilities at an intermediate foreign point for communication between that point and another foreign point as a link in a circuit between the United States and the ultimate point;

(b) Acquisition by a U.S. carrier of a satellite half-circuit at an intermediate foreign point for communication between two United States points;

(c) Acquisition by a U.S. carrier of a satellite half-circuit at an intermediate foreign point for communication between

[1] See appendix for list of applications.

the United States and such intermediate foreign point as a link to an ultimate foreign point;

(d) Acquisition by a foreign entity of satellite facilities at an intermediate United States point for communication with another United States point as a link to the foreign point.

There are, of course, other configurations of circuitry using transit satellite links for traffic between the United States and overseas points. Additionally, as may be seen, any policy adopted with respect to acquisition of satellite circuitry at foreign transit points can provide a precedent for acquisition by foreign entities of satellite circuitry at United States points for traffic between two foreign points.

4. In view of the common questions raised by the applications, and implications extending beyond such applications, it appears desirable to establish policy guidelines to govern the instant, as well as any future applications involving the acquisition and operation of transit satellite circuits.

5. The several applications and related pleadings point to marked differences of view between Comsat and the other carriers as to the manner in which the Commission should exercise its licensing power under section 214 of the Communications Act in authorizing the acquisition of transit satellite circuits. Comsat has taken the position that U.S. carriers desiring to use satellite circuitry at foreign points for the transit handling of traffic between the United States and more distant foreign points should be required, both as a matter of law and as a matter of policy, to obtain all the necessary earth station and satellite facilities from it. Comsat's argument takes a two-fold approach. First, it argues that, insofar as the U.S. carriers need satellite facilities for circuits between a foreign country and a satellite (one-half of the entire satellite circuit), they should apply to Comsat, not the foreign entity, for the use of the necessary space segment capacity (to be used with earth station facilities to form the half-circuit). This is based on Comsat's view that the end-countries on a circuit, rather than the transiting country, should be responsible for obtaining from the Intelsat Consortium the units of satellite utilization required for a satellite circuit, and its further view that, where the United States is such an end-country, no carrier in the United States except Comsat may, under the terms of the Interim Arrangements[3] obtain such capacity from the consortium. Secondly, Comsat also argues that it, rather than another U.S. carrier, should arrange for the desired earth station capacity at the foreign point, and so be in a position to offer to the U.S. carriers serving the public the entire satellite half-circuit between the foreign earth station and the satellite. Comsat states that it would publish a tariff charge for such half-circuit between, say, a European earth station and an appropriate satellite, which would be the same as that published for a half-circuit between a U.S. earth station and an Atlantic satellite for service to Europe. Conversely, where the transit point is in the United States (e.g., Puerto Rico), the foreign carrier, not Comsat, would obtain the use of the space segment from the Intelsat Consortium, and separately arrange with the U.S. earth station licensee for its services, rather than taking the entire half-circuit (earth station and space segment) pursuant to tariffs on file with the Commission.

6. The terrestrial carriers oppose the Comsat proposal. They argue that there is no legal or policy basis for the Comsat position; that Comsat would perform no useful function, technically, operationally, or otherwise; that they can acquire the needed facilities directly from the overseas entities at a lower charge than that proposed by Comsat; and that even if the Comsat position were adopted, they would still have to negotiate directly with the overseas carriers with respect to other matters relating to the circuit. They contend that there is no showing of benefit to the public from the approach urged by Comsat, which would be a departure from the present pattern of arrangements between them and their overseas correspondents for handling transit traffic.

Legal issues. 7. In support of its legal position, Comsat, after alleging that it was established primarily to participate in the development of a global satellite system, and to provide satellite communications services for use by entities in the United States, contends that, since it is specifically and exclusively authorized by section 305(a)(2) of the Communications Satellite Act to "furnish for hire, channels of communications to United States communications common carriers and to other authorized entities, foreign and domestic * * *", as a matter of law U.S. carriers have no choice but to come to it when they want to use the satellite system for transmission of United States originating or terminating traffic. It argues that, in view of the Communications Satellite Act, traditional concepts may require modification whenever satellite services and facilities are involved because of its rights and obligations under that statute, or because of the new organizational structure which has been developed by virtue of its creation and Commission decisions relating thereto. Comsat cites the following language from the Commission's authorized user decision as being in recognition of this position:

> There is another basic tenet of the Satellite Act which would be violated by unrestricted dealings between Comsat and noncarriers. At least insofar as international common carrier communication services are concerned, Comsat is given a virtual statutory monopoly position with respect to the operation of the space segment of the commercial communication satellite system. See sections 102(d) and 305(a)(1) of the Act. The Commission is not given authority to license any other U.S. carrier to operate the space segment of a satellite system to provide international communications service; instead, such carriers must procure the space segment facilities from Comsat. 4 F.C.C. 2d 421, 428 (1966).

8. Section 305 of the Communications Satellite Act confers certain powers to Comsat so that it may achieve the objectives and carry out the purposes of the Act. However, there are no specific words in section 305 which indicate exclusivity as to any of the powers set out therein. There is no doubt that the Act provides that Comsat is the chosen instrument to provide space segment facilities to licensees of earth stations in the United States, and it was to this that our authorized user decision referred. That conclusion follows from a reading of section 305 with other sections of the Act. Likewise, any interpretation of section 305 with respect to a similar exclusivity in Comsat to obtain, for use of other U.S. common carriers, space segment and earth station facilities abroad must rest on the Act as a whole. We are unable, however, to conclude that such exclusivity is intended. Certainly it cannot be claimed that Congress provided that Comsat be the entity in the United States through which other carriers must obtain foreign earth station facilities, since this would be going further than intended with respect to the operation of earth stations in the United States itself. The consideration which impelled Congress to construct a statutory scheme pivoting on a chosen instrument ran only to the space segment, and not to the complementary earth stations.[4] Even with respect to the space segment, though, we can discern no support in the Congressional scheme for the proposition that the other U.S. carriers deal through Comsat for space segment facilities to be used with foreign earth station facilities, since such a result cannot be said to be necessary to the effectuation of the purposes of the Act. We think, rather, that Congress left to the Commission the authority to determine whether, in the light of subsequent developments in a new and rapidly developing technology, the public interest would be served by adoption of a policy under which Comsat would be the U.S. entity to make arrangements for transit satellite circuits.

Policy considerations. 10. Aside from its position on the law, Comsat argues that we adopt its position as a matter of policy. It points out that it is restricted to the furnishing of satellite facilities; that it is limited to a primary role as a carrier's carrier; that satellite facilities

[3] U.S. TIAS 5646; 15 UST 1705 (Aug. 20, 1964).

[4] Section 201(c)(7) provides that "the Federal Communications Commission, in its administration of the provisions of the Communications Act of 1934, as amended, and as supplemented by this Act, shall—grant appropriate authorizations for the construction and operation of each satellite terminal station, either to the corporation or to one or more authorized carriers jointly, as will best serve the public interest, convenience, and necessity. In determining the public interest, convenience, and necessity the Commission shall authorize the construction and operation of such stations by communications common carriers or the corporation, without preference to either."

are in direct competition with cable facilities; and that it is inequitable to permit carriers having cable interests to bypass it in obtaining transit satellite facilities with an accompanying adverse effect on the economics of satellite service and the passing on of benefits to the public. It argues that any cost savings that may be realized by the conventional carriers in particular instances through direct dealings with foreign entities are de minimis, and, in any event, that the difference between such costs and the higher charges proposed by Comsat will increase its revenues and so tend to enable it to reduce its charges for all services it provides. Comsat also argues that two-hop satellite circuits will produce favorable economic benefits to the public if favorable earth station agreements can be negotiated with foreign earth station owners, and that it, rather than the other U.S. carriers, is in the better position to negotiate such agreements. In addition, it suggests that to allow each carrier serving the public to negotiate its own transit arrangements could result in a number of different arrangements being proposed each time a new transit service is required. Such a result, it believes, could cause confusion which would be eliminated were it alone responsible for negotiating transiting arrangements. Finally, Comsat points out that the U.S. Government, in the present Intelsat Conference to arrive at definitive international agreements covering the space segment ownership and operation, has taken the position that ownership by a signatory should follow its use of the space segment. Comsat argues that any deviation from this concept by the Commission, particularly in authorizing U.S. carriers to make separate arrangements with foreign carriers, would have a detrimental effect on the position of the United States. In this connection, Comsat points out that it is proposing an interim measure whereby a signatory to the interim agreements will obtain the use of the space segment where its country requires such use for the transit handling of traffic originating and terminating in its territory.[4] Finally, with respect to earth station services, Comsat offers to negotiate arrangements for use of such services either on behalf of itself or on behalf of the joint owners of the U.S. earth stations.

11. Before proceeding to a discussion of the relative merits of the controversy, we must observe that the touchstone for decision is, of course, the public interest criterion of section 214—that is, the relative effects of any decision on the public interest in lower rates, higher efficiency, better service, etc.—rather than benefit to a particular carrier or carriers.

12. Our basic problem with the Comsat policy arguments is that we do not discern what public benefits, if any, would result from the adoption of the policy it advocates. First, Comsat would not be performing any function of a technical or operational nature. It would merely make arrangements with foreign entities, on behalf of and for the benefit of other carriers, to procure for them such satellite circuits as they would advise are required. The negotiations involved in securing such circuitry would be in addition to those usually required between the carriers and their foreign correspondents. In essence, the Comsat position involves the intervention of an additional entity without any substantive function, into an already complex situation. We further do not understand how allowing the carriers to deal directly with the transit earth station owners can adversely affect the use of satellite facilities. Since Comsat is proposing to act only for the terrestrial carriers to procure the circuits they require, we do not understand why there should be an adverse effect if the terrestrial carriers arrange for the circuits themselves. If anything, the opposite would appear to be the case. To the extent that the terrestrial carriers have interests in respective foreign earth station facilities for the handling of transit traffic, it would appear to us that self-interest would drive them to a greater use of this medium. Reliance upon Comsat as their intermediary would not provide the same impetus to greater use of satellite facilities at their transit points, as the carriers would only be lessees of the facilities supplied indirectly by Comsat.

13. Although Comsat argues that the adoption of the carrier position would have an adverse effect on the economics of satellite service and on any resulting benefits to the public, it does not clearly explain the basis for its conclusion. It may be that it refers to the possibility of its receiving a profit to the extent that its proposed charge for transit circuitry exceeds the cost to it of such circuitry, whether earth station facilities are acquired by lease or by the more economical indefeasible right of user.[5] Such profits can be applied, as it correctly states, to its overall revenue requirements and so tend to reduce its average revenue requirement per circuit. However, any putative savings to the public could be offset by any expense that would be involved in its negotiations. Moreover, its negotiations would be in addition to those between the conventional carriers and foreign entities. Therefore, looking at the industry as a whole, the net effect could be an increase in overall costs. While another source of savings is suggested by Comsat in that it may be able to acquire transit facilities on more favorable terms than other U.S. carriers, it has not demonstrated how it would achieve this, or that it is possible. Furthermore, this seems unlikely in view of present assertions that foreign entities will offer the same terms to any U.S. carrier, including Comsat. Moreover, as a practical matter, we must observe that Comsat itself has argued, in another proceeding involving the reasonableness of its rates, that it will not, in the near future, earn a return approaching a degree high enough to be considered unreasonable. It does not appear, therefore, that a grant of the Comsat applications would result in any rate reductions in the foreseeable future. A further immediate effect, so far as we can see, would be an overall increase in costs chargeable to the public, representing the difference between the proposed Comsat charge and the cost figures given by the carriers.

14. There is one other factor that must not be overlooked. We note that Comsat has not in its proposal referred to the provision of telegraph-grade transiting circuits, and therefore presumably it would have no interest in acting for the other carriers on such circuitry. To this extent, then, there would be a dichotomy in approach with voice-grade circuits, particularly where such are acquired for telegraph uses.

15. While Comsat suggests that its approach may result in more uniformity than would be achieved through individual negotiations by the several carriers, it is difficult to see that there is a need for this. Industry practice to date has been for the several carriers to agree with their ultimate correspondents on circuit routing and then to negotiate with overseas transit points on the necessary transit arrangements. Unless Comsat were, in effect, to determine circuit routing—a course which no one has suggested—it would commence negotiations with a transit entity only after the two end carriers had informed it of the desired transit points, that satellite circuitry was required, and the number of circuits that would be needed. Though we recognize that the several carriers could, through Comsat, coordinate their requirements for such circuitry, we are not aware of any benefits from such an approach sufficient enough to justify the interposition of Comsat into the negotiations between the carriers and the respective foreign entities.

16. Comsat, in its pleadings, notes that in the current negotiations of the Definitive Arrangements for Intelsat, the United States has been advocating the

[4] Comsat therefore requests that the Commission prohibit arrangements being made by the other U.S. carriers under which traffic would be switched at the transit country in lieu of the use of transit satellite facilities at such country, since such an arrangement would not tend to maximize U.S. space segment use and thereby adversely affect its position in Intelsat.

[5] The carriers point out that adoption of the Comsat proposals will increase the cost of the services that will be provided. For example, RCA Globcom notes that Comsat's proposed charge for providing transiting facilities between the United States and Bahrain via the Goonhilly, United Kingdom earth station would be $3,800 a month per voice grade channel, although RCA Globcom can obtain identical services directly from the British Post Office (BPO) for $3,667 per month. (See RCA Globcom's application, File No. T-C-2200, p. 5.) Similarly, A.T. & T. notes that its cost for obtaining similar services from Comsat would be $45,600 per year for one channel, while it can obtain the same facilities directly from BPO for $38,000. (See A.T. & T.'s opposition, Oct. 28, 1960, File No. P-C-7604, p. 3.) In another situation, obtaining transiting facilities in Spain from Compania Telefonica Nacional de Espana (CTNE) for through traffic to South Africa, Comsat would charge the carriers $3,800 per voice grade channel per month, while RCA Globcom can obtain the same facilities from CTNE for $3,167 per month (RCA Globcom's opposition, Nov. 4, 1969, File No. P-C-7605, p. 5).

principle that ownership of the space segment should be related to, and be a function of, the use made thereof by a signatory. It is anticipated that usage would be measured in terms of the origination and termination of traffic routed via satellite, rather than by ownership of particular earth station facilities used in the transmission of such traffic. Under this principle Comsat feels that, insofar as use of the space segment for transiting circuits is concerned, it should be the responsibility of the end-user countries to obtain the necessary allotment of units of satellite utilization required to establish the satellite channels, with those countries receiving credit for the utilization. We believe the above principle to be meritorious and look forward to its adoption. However, the ultimate decisions will be made at the conference and if the principle is adopted a decision will also have to be taken as to how it is to be implemented. It may be, as Comsat suggests, that the most efficient manner would be for the respective signatories of the end-user countries to apply directly to Intelsat for the space segment to the extent that Intelsat practice or policy does not contemplate that the transit country and the acquiring carriers may contract for the use of an entire half-circuit between the earth station and the satellite as a single unit. Such an eventuality would not affect our policy decision herein. Comsat would, in conformity with the Definitive Arrangements, apply to Intelsat for the necessary space segment capacity on behalf of the other U.S. carriers. In this regard, however, Comsat would act as an agent for the other U.S. carriers, performing a ministerial function, including the filing of applications for such space segment capacity as may be needed and authorized by the Commission. In such instances, Comsat would function as the U.S. signatory to Intelsat without becoming involved in negotiations between the using carriers and the respective foreign entities. In this activity, it would incur minimal costs, if any, and would not, therefore, be in a position to impose any meaningful charge for its ministerial function. It is, of course, possible that Intelsat will determine that the carriers within the jurisdiction of a member, even though not themselves signatories, may apply directly to Intelsat for the capacity needed to handle the transit traffic, with full credit being given to the signatory for investment and related purposes. Such a course would also fully protect the legitimate interests of signatories.

17. Before closing, we should note that, under the above approaches, where a U.S. ground station is used as a transit point for traffic between the foreign points or, under certain circumstances, between a foreign point and a U.S. point, the foreign end country could, where it does not desire to lease the entire half-circuit as a unit, similarly obtain earth station facilities from the earth station owners, and would, if it is decided that end-users are the ones to acquire the space segment, obtain the associated space segment capacity directly from Intelsat. Of course, insofar as this occurs, we would expect that appropriate authorizations would be sought from, and that the charges made for the earth station service would be reviewed by the Commission.

18. We therefore conclude that the public interest would best be served by applying a policy whereby the terrestrial carriers would be authorized, as set forth above, to obtain by lease, or indefeasible right of user, facilities for handling their traffic via satellite directly from the earth station owners at transit points, rather than obtaining them from Comsat.

19. *Accordingly, it is ordered,* That the statement of policy set forth in this memorandum opinion is adopted, and that action on applications for authority to acquire foreign transit facilities will be taken consistent with such policy, provided the carrier involved in each case has otherwise made the required showing.

Adopted: May 13, 1970.

Released: May 18, 1970.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

APPENDIX

(Pending Applications)

1. American Telephone & Telegraph Co., Files Nos. P-C-7443 and 7443-A, filed April 10, 1969, amended June 25, 1969. (TA-5/1/69—10/16/69)

To acquire on an indefeasible right of user (IRU) basis 10 percent of the communication capacity of the Buitrago, Spain, earth station and to acquire from Comsat the necessary units of satellite utilization in an appropriate Indian Ocean satellite for service between the United States and countries reached via the Buitrago earth station and an Indian Ocean satellite and beyond.

2. Western Union International, Inc., File No. T-C-2242, filed April 21, 1969. (TA-5/1/69—4/16/70)

To acquire on IRU basis 5 percent of capacity of Buitrago earth station and necessary units of satellite utilization from Intelsat via an appropriate Indian Ocean satellite.

3. IT World Communications Inc., File No. T-C-2244, filed April 24, 1969. (TA-5/1/69—4/16/70)

(Same as T-C-2242.)

4. RCA Global Communications, Inc., File No. T-C-2246, filed April 30, 1969. (TA 5/1/69—10/16/69)

(Same as T-C-2242 above.)

5. American Telephone & Telegraph Co., File No. P-C-7508, filed June 25, 1969.

To acquire on IRU basis 10 percent of the communication capacity of the Fucino, Italy, earth station and to acquire from Comsat the necessary units of utilization on an appropriate basis in the Indian Ocean satellite for service between the United States and countries reached via such satellite.

6. ITT World Communications Inc., File No. T-C-2264, filed July 3, 1969.

To acquire an unspecified interest in communication capacity in Fucino, Italy, earth station for use with Indian Ocean satellite, and to acquire from Comsat necessary units of satellite utilization, for traffic between United States and such areas as are served by Indian Ocean satellite.

7. RCA Global Communications, Inc., File No. T-C-2265, filed July 7, 1969.

To acquire a 5 percent interest in communications capacity of Fucino, Italy, earth station, and acquire necessary units of satellite utilization in Indian Ocean satellite for service between United States and countries reached via the Fucino earth station and Indian Ocean satellite and beyond.

8. Western Union International, Inc., File No. T-C-2268, filed July 16, 1969.

(Same as T-C-2265 above.)

9. ITT World Communications Inc., File No. T-C-2272, filed August 27, 1969. (TA 9/22/69—3/22/70)

To acquire and operate six 50 baud telegraph circuits between Goonhilly, United Kingdom, and an Indian Ocean satellite, and necessary connecting facilities in the United Kingdom for service to Indonesia.

10. RCA Global Communications Inc., File No. T-C-2280, filed September 17, 1969. (TA 9/22/69—3/22/70)

(Same as T-C-2272 above.)

11. Communications Satellite Corp., File No. P-C-7604, filed October 3, 1969.

To establish channels of communication between Goonhilly, United Kingdom, earth station and an appropriate Indian Ocean satellite for service between the United States and Bahrain.

12. Communications Satellite Corp., File No. P-C-7605, filed October 8, 1969.

To establish channels of communication between an appropriate earth station located on the east coast of the United States and the Buitrago, Spain, earth station for service between the United States and South Africa.

13. Western Union International, Inc., File No. T-C-2284, filed October 16, 1969. (TA 10/1/69—4/17/70)

(Same as T-C-2272 above.)

14. American Telephone & Telegraph Co., File No. P-C-6019-16, filed October 29, 1969.

For authority to lease from Comsat four voice-grade circuits between appropriate North American earth station and Atlantic satellite; to lease from Compania Telefonica Nacional de Espana (CTNE) four voice-grade circuits between Atlantic satellite and Buitrago, Spain, earth station, and associated terrestrial facilities for service between the United States and South Africa.

15. American Telephone & Telegraph Co., Files Nos. P-C-6019-18 and P-C-6290-3, filed November 24, 1969.

(TA-10/10/69—12/1/69 for A.T. & T. to acquire and operate three whole satellite voice circuits between the Mainland and Puerto Rico, the cost of which to be shared with Cable & Wireless, Ltd. (C&W), certain connecting facilities, and to make certain facilities available to C&W.)

To acquire and operate 23 whole satellite voice circuits between the Mainland and Puerto Rico, the costs of which are to be shared with correspondents in Bermuda, eastern Caribbean points, Dominican Republic and Haiti; a half interest in 23 voice circuits between the Cayey earth station and San Juan, P.R.; and a one-half interest in 15 voice circuits between St. Thomas and Tertola, and to make certain facilities available to the foreign correspondents listed above.

[F.R. Doc. 70-6357; Filed, May 21, 1970; 8:48 a.m.]

FEDERAL MARITIME COMMISSION

HOWARD TERMINAL

Notice of Petition for Waiver of Free Time Rules

Notice is hereby given that the following petition has been filed with the Commission for approval.

Interested parties may inspect and obtain a copy of the petition at the

Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the petition at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such petition, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed petition shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the petition (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of petition filed for approval by:

Mr. Harmon K. Howard, Howard Terminal, 95 Market Street, Oakland, Calif. 94604.

Howard Terminal (Howard) has petitioned the Commission to modify its order in Docket No. 555, Practices, Etc., of San Francisco Bay Area Terminals, 2 USMC 588 (1941), and 2 USMC 709 (1944), to permit Howard to institute an assembly time, in addition to free time, not to exceed 20 calendar days for the assembly of single consignments of not less than 3,000 tons. A proposed tariff rule designed to accomplish this is as follows:

When space conditions permit, assembling time up to twenty (20) calendar days beyond the regular free time allowance shall be granted for assembling lots of 3,000 tons or more from a single shipper for one vessel or shipment.

In Docket No. 555, the Commission prescribed free time rules and regulations applicable at San Francisco Bay area terminals which includes Howard Terminal. The rules establish, inter alia, 10 days free time on outbound cargo moving in the U.S. foreign commerce. The Commission concluded that the free time rules and regulations in effect up to that time were unduly prejudicial and preferential in violation of section 16, and unreasonable in violation of section 17 of the Shipping Act, 1916, as amended. The Commission prescribed and ordered enforced the free time provisions with the exception that a free time period not in excess of 21 days, including Sundays and holidays, could be established on petroleum products when destined to trans-Pacific ports.

Although the proposed rule for assembly time appears, on its face, to be contrary to the order in Docket No. 555, Howard feels that there is justification for a waiver of the rules. According to Howard, the provision was placed in the tariff to apply to a specific movement of steel of approximately 50,000 tons for shipment from Oakland to India. Within the limits of vessel capacity and steel production capacity, it will require at a minimum, 17 working days to deliver 6,000 tons to the pier for loading to a vessel lifting that amount of tonnage. However, additional time is required to allow the steel company to use its plant for other production during the same period as well as for normal contingencies, which will prevent the steel company, the trucking company, or Howard Terminal from operating at peak performance. As further justification Howard states that this is a special movement of cargo that does not normally move through the port and the tariff has not been adjusted to meet these circumstances. The movement within a 6 month period of 50,000 tons of steel over a specific pier, received from one shipper, provides adequate dockage and wharfage revenue to produce a reasonable return from these facilities without the assessment of demurrage.

Dated: May 20, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-6429; Filed, May 21, 1970; 8:49 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP70-104]

FLORIDA GAS TRANSMISSION CO.

Notice of Extension of Time and Postponement of Hearing

MAY 19, 1970.

On May 15, 1970, Florida Gas Transmission Co. filed a request for an extension of time within which to file and serve rebuttal evidence, and for a postponement of the hearing, now scheduled to commence on June 2, 1970. Counsel states that other participants have no objection to the request.

Upon consideration, notice is hereby given that the time is extended to and including June 9, 1970, within which Florida Gas Transmission Co. shall file and serve rebuttal evidence. The hearing is postponed, to commence at 10 a.m., e.d.t., on June 23, 1970, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C. 20426. Paragraphs (B) and (C) of the order issued on February 3, 1970, are amended accordingly.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-6340; Filed, May 21, 1970; 8:46 a.m.]

FEDERAL RESERVE SYSTEM

FIDELITY AMERICAN BANKSHARES, INC.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)), by Fidelity American Bankshares, Inc., which is a bank holding company located in Lynchburg, Va., for prior approval by the Board of Governors of the acquisition by applicant of 80 percent or more of the voting shares of The Bank of Natural Bridge, Natural Bridge Station, Va.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Richmond.

By order of the Board of Governors, May 15, 1970.

[SEAL] NORMAND BERNARD,
Assistant Secretary.

[F.R. Doc. 70-6335; Filed, May 21, 1970; 8:46 a.m.]

FIDELITY AMERICAN BANKSHARES, INC.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)), by Fidelity American Bankshares, Inc., which is a bank holding company located in Lynchburg, Va., for prior approval by the Board of Governors of the acquisition by applicant of 100 percent of the voting shares of the successor by merger to Bank of Hampton Roads, Newport News, Va.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be

in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Richmond.

By order of the Board of Governors, May 15, 1970.

[SEAL] NORMAND BERNARD,
Assistant Secretary.

[F.R. Doc. 70-6336; Filed, May 21, 1970; 8:46 a.m.]

UNITED JERSEY BANKS

Notice of Application for Approval of Acquisition of Shares of Banks

Notice is hereby given that application has been made to the Board of Governors of the Federal Reserve System, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842 (a)(1)), by United Jersey Banks, Hackensack, N.J., for prior approval of the Board of action whereby applicant would become a bank holding company through the acquisition of 100 percent of the voting shares of Peoples Trust of New Jersey, Hackensack, and Central Home Trust Co., Elizabeth; and 100 percent of the voting shares (less directors' qualifying shares) of Peoples National Bank of Monmouth County, Hazlet, The Third National Bank & Trust Co. of Camden, Camden, and The Cumberland National Bank of Bridgeton, Bridgeton, all in New Jersey.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisitions may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of New York.

By order of the Board of Governors, May 15, 1970.

[SEAL] NORMAND BERNARD,
Assistant Secretary.

[F.R. Doc. 70-6337; Filed, May 21, 1970; 8:46 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[70-4884]

NEW ENGLAND POWER CO. AND NEW ENGLAND ELECTRIC SYSTEM

Notice of Proposed Issue and Sale of Notes to Banks, to Holding Company, and to Dealers in Commercial Paper and Exception From Competitive Bidding

MAY 18, 1970.

Notice is hereby given that New England Electric System ("NEES"), a registered holding company, and its public-utility subsidiary company New England Power Co. (NEPCO), 20 Turnpike Road, Westboro, Mass. 01581, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 7, 9(a), 10, and 12 of the Act and Rules 42(a), 43, and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

NEPCO proposes to issue and sell short-term promissory notes to The First National Bank of Boston (First National), to NEES, and/or to dealers in commercial paper during the period through December 31, 1971, up to a maximum aggregate principal amount to be outstanding at any one time of $75 million. The notes to a bank and/or NEES will mature in less than 1 year from the date of issuance and in any event on or prior to March 31, 1972, will provide for prior payment in whole or in part without premium, and will bear interest at not in excess of the prime rate in effect at the time borrowings are made. The aggregate of all loans by NEES outstanding at any one time to all subsidiary companies, including loans to NEPCO, will not exceed $35 million.

NEPCO may prepay its notes to NEES, in whole or in part, with bank borrowings or from the sale of commercial paper, and its bank borrowings may be prepaid, in whole or in part, with borrowings from NEES or from the sale of commercial paper. In the event of bank borrowings at a higher interest rate, or the sale of commercial paper at a higher effective interest cost, to prepay notes to NEES, NEES will reimburse NEPCO for any excess interest cost from the date of prepayment to the normal maturity date of the notes to NEES being prepaid. Conversely, in the event of borrowing from NEES to prepay bank notes, the interest rate of the new notes issued to NEES will be the lower of (1) the interest rate on the notes being prepaid or (2) the prime interest rate then in effect for borrowings from the First National, but with respect to (1) only to the maturity date of the notes so prepaid, and thereafter at the prime interest rate in effect at the time the new notes are issued.

The commercial paper, in the form of short-term unsecured promissory notes, will be sold to Lehman Commercial Paper Inc. (Lehman) and/or A. G. Becker & Co., Inc. (Becker), dealers in commercial paper. The commercial paper notes will be issued during the period through December 31, 1971, will have varying maturities of not more than 270 days after the date of issue (and in any event will mature on or prior to March 31, 1972), will be sold in varying denominations of not less than $50,000 and not more than $1 million, and will not by their terms be prepayable prior to maturity. Such notes will be issued and sold by NEPCO directly to Lehman and/or Becker at a discount which will not exceed the discount rate prevailing at the date of issuance for commercial paper of comparable quality and like maturity as sold by public-utility issuers to commercial paper dealers. The effective interest cost will not exceed the effective interest cost prevailing at the date of issue for borrowings from the First National, except that, in order to obtain maximum flexibility, commercial paper may be issued with a maturity of not more than 90 days from the date of issue with an effective cost in excess of such effective interest cost.

Lehman and Becker, as principals, will reoffer the commercial paper at a discount rate not more than one-eighth of 1 percent per annum less than the prevailing discount rate to NEPCO. The

notes will be reoffered by Lehman and Becker to not more than 100 of their respective customers whose names appear on nonpublic lists prepared in advance by Lehman and Becker. No additions will be made to such lists of customers which are composed of institutional investors. It is expected that such commercial paper will be held to maturity by the purchasers from the dealers, but, if any such purchaser wishes to resell prior to maturity, Lehman or Becker, as the case may be, pursuant to an oral repurchase agreement will repurchase the paper for resale to others on said lists of customers.

NEPCO requests exception of the sale of its commercial paper notes from the competitive bidding requirement of Rule 50 pursuant to section (a)(5) thereof, because: (a) The commercial paper to be issued will have maturities of not more than 9 months; (b) the effective interest cost thereon will not exceed the prime rate for borrowings from the First National (with the exception above stated); (c) the current rates for commercial paper for prime borrowers such as NEPCO are readily ascertainable by reference to daily financial publications and do not require competitive bidding in order to determine the reasonableness thereof; and (d) it is not practical to publish invitations for bids for commercial paper.

NEPCO proposes to use the proceeds from the issue and sale of all of the notes to be sold to meet anticipated cash requirements for capitalizable expenditures pending permanent financing and for temporary investment in subordinated indebtedness of Vermont Yankee Nuclear Power Corp. and Maine Yankee Atomic Power Co. However, the maximum permitted amount hereunder is not to be reduced by the amounts of the proceeds of any permanent financing. Capital expenditures for NEPCO are estimated at $63,400,000 for 1970 and $44,600,000 for 1971. NEPCO and NEES propose to file within 10 days after the end of each calendar quarter a certificate of notification pursuant to Rule 24 under the Act covering all transactions effected pursuant to the application-declaration during such quarter.

It is stated that no fees or commissions are to be paid in connection with any of the proposed transactions. Incidental services will be performed, at cost, by New England Power Service Co., an affiliated service company of NEES. The cost of such services is estimated not to exceed $1,000 for each of the companies to this notice, an aggregate of $2,000. It is further stated that both the New Hampshire Public Utilities Commission and the Vermont Public Service Board have jurisdiction over the proposed issuance of short-term unsecured promissory notes by NEPCO and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than June 12, 1970, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-6350; Filed, May 21, 1970; 8:47 a.m.]

[File No. 24B-1667]

SIMULATED MATERIALS, INC.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

MAY 18, 1970.

I. Simulated Materials, Inc. (Simulated), a Massachusetts corporation located at 12 East Main Street, Merrimac, Mass., filed with the Commission on October 22, 1969, a notification on Form 1-A and an offering circular relating to a proposed offering of 300,000 of its $0.01 par value common stock at $1 per share to be sold by the company's treasurer and one of its principal shareholders. The offering commenced February 13, 1970. On February 18, 1970, a post-effective amendment indicated that Albert Yanow & Co. (a registered broker-dealer) of 200 Boylston Street, Newton, Mass., had agreed to sell up to 150,000 shares for a commission of $0.05 per share. The offering circular stated that "the company will deposit all proceeds of the offering in an escrow account until the amount deposited in such fund equals $300,000. If such sum is not attained prior to March 30, 1970, the company will return the full purchase price to each investor and the offering will be terminated." On April 3, 1970, Edward Z. Pollock, clerk and director of the company filed a copy of a proposed tombstone advertisement indicating that all shares had been sold.

The Commission has reasonable cause to believe from information reported to it by the staff that:

A. The offering circular contains untrue statements of material facts and omits to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made not misleading in the following respects:

1. Failure to disclose that a purchase order described therein was a contingent order.

2. Failure to disclose that products shipped pursuant to described purchase orders had been returned to company as unacceptable.

3. Falsely stated that if $300,000 was not deposited in the escrow by March 30, 1970, that the full purchase price would be returned to investors and the offering terminated.

4. Falsely stated that if members of the NASD were paid commissions for assisting in the sale of the shares that a posteffective amendment would be filed before any shares were offered by such persons.

5. Failure to disclose that William G. Marsh, Inc., was employed as an underwriter for the offering.

6. Failure to disclose compensation paid to a broker-dealer in the sale of shares.

7. Failure to disclose that Kasten and Manshel acted as an underwriter for the offering.

B. In the offer and sale of Simulated stock untrue statements of material facts were made and there were omissions to state material facts necessary to make the statements in the light of the circumstances under which they were made not misleading concerning:

1. The profits to be derived from the sales of the companies product;

2. The production capacity of the company;

3. Marketing arrangements made with leading casket companies;

4. That a market would be made in the stock after completion of the offering.

C. The use of the offering circular by the issuer operated as a fraud and deceit upon purchasers of the securities in violation of section 17(a) of the Securities Act of 1933.

III. It appearing of the Commission that it is in the public interest and for the protection of investors that the exemption of the issuer under Regulation A be temporarily suspended:

It is ordered, Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption of the issuer under Regulation A be, and it hereby is, temporarily suspended.

It is further ordered, Pursuant to Rule 7 of the Commission's rules of practice, that the issuer file an answer to the allegations contained in the order within 30 days of the entry thereof.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission

a written request for a hearing within 30 days after the entry of this order; that within 20 days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purposes of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters of the hearing; and that notice of the time and place for said hearing will be promptly given by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the 30th day after its entry and shall remain in effect unless it is modified or vacated by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-6351; Filed, May 21, 1970; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

MAY 19, 1970.

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

LONG-AND-SHORT HAUL

FSA No. 41964—*Commodity rates—Texas Central Railroad Co.* Filed by Southwestern Freight Bureau, agent (No. B-167), for interested rail carriers. Rates on property moving on commodity rates, from and to Texas Central stations in Texas, on the one hand, to and from points in the United States and Canada, on the other.

Grounds for relief—Addition of new stations on the Texas Central Railroad Co.

By the Commission.

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

[F.R. Doc. 70-6365; Filed, May 21, 1970; 8:48 a.m.]

[Notice 80]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MAY 19, 1970.

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

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

MOTOR CARRIERS OF PROPERTY

No. MC 16672 (Sub-No. 10 TA), filed May 14, 1970. Applicant: McGUIRE LUMBER AND SUPPLY, INC., Wyllieburg, Va. 23976. Applicant's representative: Francis J. Ortman, Suite 770 Mills Building, 1700 Pennsylvania Avenue NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Boards or sheets*, flat, made from wood chips, wood shavings, sawdust or ground wood compressed with added resin binder not exceeding 14 percent by weight; or from wood particle core, faced with wood flakes, edge banded with wood or not edge banded, from the plantsite of U.S. Plywood-Champion Papers, Inc., near South Boston, Va., to points in Virginia, West Virginia, the District of Columbia, Maryland, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine, for 180 days. Supporting shipper: U.S. Plywood-Champion Papers, Inc., Knightsbridge Drive, Hamilton, Ohio 45011. Send protests to: Clatin M. Harmon, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 215 Campbell Avenue SW., Roanoke, Va. 24011.

No. MC 35628 (Sub-No. 309 TA), filed May 11, 1970. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, 134 Grandville Avenue SW., Grand Rapids, Mich. 49502. Applicant's representative: Leonard D. Verdier, 1 Vandenberg Center, Grand Rapids, Mich. 49502. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (excepting classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in Erie County, Pa., for 180 days. NOTE: Carrier intends to tack this authority with its existing authority or interline with other carriers. Supporting shippers: There are approximately 12 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission, in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 225 Federal Building, Lansing, Mich. 48933.

No. MC 44128 (Sub-No. 35 TA), filed May 11, 1970. Applicant: EPES TRANSPORT SYSTEM, INCORPORATED, 830 South Main Street, Blackstone, Va. 23824. Applicant's representative: Harvie A. Carter (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), to serve the plantsite of J. L. Clark Co., at or near Havre de Grace, Md., as an intermediate or off-route point in connection with applicant's existing regular route general commodity authority, in MC 44128, between Philadelphia, Pa. and Richmond, Va., for 180 days. Supporting shippers: J. L. Clark Manufacturing Co., Charles & Barre Streets, Baltimore, Md. 21202; R. J. Reynolds Tobacco Co., Winston-Salem, N.C. 27102. Send protests to: Robert W. Waldron, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 10-502 Federal Building, Richmond, Va. 23240.

No. MC 71459 (Sub-No. 20 TA), filed May 7, 1970. Applicant: HOPPER TRUCK LINES, 2800 West Bayshore Road, Palo Alto, Calif. 94303. Applicant's representative: Clifford J. Boddington (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, dangerous articles, household goods, commodities in bulk, commodities requiring special equipment, commodities injurious or contaminating to other lading, over the regular routes and appurtenant off-route territory described below, serving all intermediate points and return over the same route, with the right to tack with other authority of applicant under certificate MC-71459 and subs, and to interline with other carriers at Phoenix, Ariz.: (1) Between Wickenburg, Ariz., and Flagstaff, Ariz., as follows: From Wickenburg, Ariz., over U.S. Highway 89 to Flagstaff, Ariz., serving all intermediate points and return over the same route; (2) between Phoenix, Ariz., and Flagstaff, Ariz., as follows: From Phoenix, Ariz., to Flagstaff, Ariz., over Arizona State Highway 69 to Cordes Junction, Ariz., thence over Arizona State Highway 79 to Flagstaff, Ariz., serving all intermediate points and return over the same route; (3) between Cordes Junction, Ariz., and Prescott, Ariz., as follows: From Cordes Junction, Ariz., over Arizona State Highway 69 to Prescott, Ariz., serving all intermediate points and return over the same route;

(4) Between Prescott, Ariz., and Flagstaff, Ariz., as follows: From Prescott, Ariz., over U.S. Highway 89 Alternate to Flagstaff, Ariz., serving all intermediate points and return over the same route. (5) between Camp Verde, Ariz., and

Clarkdale, Ariz., as follows: From Camp Verde, Ariz., and Clarkdale, Ariz., serving all intermediate points and return over the same route. (6) between Winslow, Ariz., and Flagstaff, Ariz., as follows: From Winslow, Ariz., over U.S. Highway 66 to Flagstaff, Ariz., serving all intermediate points and return over the same route. (7) between Sedona, Ariz., and the junction of Arizona State Highways 179 and 79 approximately 5 miles north of McGuierville, Ariz., as follows: From Sedona, Ariz., over Arizona State Highway 179 to its junction with Arizona State Highway 79 approximately 5 miles north of McGuierville, Ariz., serving all intermediate points and return over the same route. (8) between Flagstaff, Ariz., and Page, Ariz., as follows: From Flagstaff, Ariz., over U.S. Highway 89 to Page, Ariz., serving all intermediate points and return over the same route. (9) between Bitter Springs, Ariz., and Fredonia, Ariz., as follows: From Bitter Springs, Ariz., over U.S. Highway 89 Alternate to Fredonia, Ariz., serving all intermediate points and return over the same route. (10) between Camp Verde, Ariz., and Strawberry, Ariz., as follows: From Camp Verde, Ariz., to Strawberry, Ariz., over unnumbered Arizona County Road over Hackberry, Ariz., serving all intermediate points and return over the same route; (11) Between Flagstaff, Ariz., and the junction of U.S. Highway 70 and Arizona State Highway 88 near Claypool, Ariz., as follows: From Flagstaff, Ariz., over unnumbered Arizona County Road to Clints Well, Ariz., thence over Arizona State Highway 87 to its junction with Arizona State Highway 188 south of Rye, Ariz., thence over Arizona State Highway 188 to its junction with Arizona State Highway 88 near Roosevelt, Ariz., thence over Arizona State Highway 88 to its junction with U.S. Highway 70 near Claypool, Ariz., serving all intermediate points and return over the same route. (12) between Apache Junction, Ariz., and Roosevelt, Ariz., as follows: From Apache Junction, Ariz., to Roosevelt, Ariz., over Arizona State Highway 88 serving all intermediate points and return over the same route. (13) between the junction of U.S. Highway 70 and Arizona State Highway 88 near Claypool, Ariz., and the Salt River Bridge, approximately 7 miles north of Seneca, Ariz., as follows: From the junction of U.S. Highway 70 and Arizona State Highway 70 to Globe, Ariz., thence over U.S. Highway 60 to Salt River Bridge, approximately 7 miles north of Seneca, Ariz., serving all intermediate points and return over the same route. (14) between the junction of Arizona Highways 88 and 288 north of Claypool and Holbrook as follows: From the junction of Arizona Highways 88 and 288 over Arizona State Highway 288 to its junction with Arizona State Highway 160, thence over Arizona Highway 160 to its junction with Arizona State Highway 277 near Heber, Ariz., thence over Arizona State Highway 277 to its junction with Arizona State Highway 77 near Snowflake, Ariz., thence over Arizona State Highway 77 to Holbrook, Ariz., serving all intermediate points and return over the same route, for 180 days.

NOTE: Applicant states it does intend to tack with MC-71459 and subs; interline at Phoenix, Ariz. Supporting shippers: There are approximately (108) statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Claud W. Reeves, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

No. MC 106760 (Sub-No. 129 TA), filed May 11, 1970. Applicant: WHITE-HOUSE TRUCKING, INC., 1925 National Plaza, Tulsa, Okla. 74151. Applicant's representative: Irvin Tull (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bituminized fibre conduit, sewer and drainage pipe and connections, fittings, and accessories therefor*, from the plansite of McGraw-Edison Co., Grayson County, Tex., to points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, South Carolina, and Tennessee, for 180 days. Supporting shipper: W. Kyle Avery, Marketing Supervisor, Fibre Products Division, McGraw-Edison Co., Sherman, Tex. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, Okla. 73102.

No. MC 107496 (Sub-No. 780 TA), filed May 14, 1970. Applicant: RUAN TRANSPORT CORPORATION, Third and Keosauqua Way, Post Office Box 855—Zip 50304, Des Moines, Iowa 50309. Applicant's representative: H. L. Fabritz (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulfur trioxide*, in bulk, in tank vehicles, from East St. Louis, Ill., to Mauldin and Greenville, S.C., for 150 days. Supporting shipper: Allied Chemical Corp., Morris Township Center, Post Office Box 70, Morristown, N.J. 07960. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 112304 (Sub-No. 39 TA), filed May 14, 1970. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, Ohio 45223. Applicant's representative: A. Charles Tell, 100 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular route, transporting: *Building materials and supplies and materials* used in the manufacture thereof (except commodities in bulk), from Springfield, Ky., to points in Alabama, Arkansas, California, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin, for 180 days. Supporting shipper: Tech-Panel Corp., 3901 Atkinson Drive, Louisville, Ky. 40218. Send protests to: Emil P. Schwab, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5514B Federal Building, 550 Main Street, Cincinnati, Ohio 45202.

No. MC 113158 (Sub-No. 11 TA), filed May 14, 1970. Applicant: TODD TRANSPORT COMPANY, INC., Secretary, Md. 21664. Applicant's representative: Harry Harrington Todd (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from Lee Center, N.Y., to Camp Hill, Harrisburg, Philadelphia, Scranton, and Wilkes-Barre, Pa.; Baltimore and Landover, Md., and the District of Columbia, for 180 days. Supporting shipper: Perfection Foods, Inc., Newark, N.Y. 14513, Arthur J. Dailor, Traffic Manager. Send protests to: Paul J. Lowry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 206 Old Post Office Building, 129 East Main Street, Salisbury, Md. 21801.

No. MC 113828 (Sub-No. 178 TA), filed May 14, 1970. Applicant: O'BOYLE TANK LINES, INCORPORATED, 4848 Cordell Avenue NW., Washington, D.C. 20014. Applicant's representative: John F. Grimm (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Helium and Government-owned trailers*, between Washington, D.C., and Hightstown, N.J., for 180 days. Supporting shipper: Department of Army, Washington, D.C. Send protests to: Robert D. Caldwell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th and Constitution Avenue NW., Washington, D.C. 20423.

No. MC 114004 (Sub-No. 85 TA), filed May 11, 1970. Applicant: CHANDLER TRAILER CONVOY, INC., 8828 New Benton Highway, Post Office Box 1715, Little Rock, Ark. 72203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *PVC (polyvinylchloride) pipe and styrene plastic pipe, pipe fittings and materials, and supplies necessary for the manufacture of these products*, between points in Saline County, Ark., on the one hand, and, on the other, points in Louisiana, Texas, Oklahoma, Missouri, Illinois, Indiana, Kentucky, Tennessee, and Mississippi, for 180 days. Supporting shipper: Pyramid South, Inc., Post Office Box 848, Benton, Ark. 72015. Send protests to: District Supervisor William H. Land, Jr., Interstate Commerce Commission, Bureau of Operations, 2519 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 117344 (Sub-No. 203 TA), filed May 14, 1970. Applicant: THE MAXWELL CO., 10380 Evendale Drive, Post Office Box 15010, Cincinnati, Ohio 45215. Applicant's representative: John C. Spencer, 10380 Evendale Drive, Cincinnati, Ohio 45215. Authority sought to operate as a *common carrier*, by motor

vehicle, over irregular routes, transporting: *Lacquers*, in bulk, in tank vehicles, from Dayton, Ohio, to Maysville, Ky., for 180 days. Supporting shipper: The Lowe Brothers Co., Division of Sherwin Williams Co., Dayton, Ohio 45402. Send protests to: Emil P. Schwab, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5514B Federal Building, 550 Main Street, Cincinnati, Ohio 45202.

No. MC 119160 (Sub-No. 3 TA), filed May 14, 1970. Applicant: H. E. SPANN AND COMPANY, INC., Post Office Box 1111, Highway 49 East, Mount Pleasant, Tex. 75455. Applicant's representative: H. E. Spann (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gravel, sand, rock, caliche, shell, iron ore, ready-mix asphalt, rip rap, aggregate, dirt, bulk cement mixed with sand, crushed limestone, flexible base, and sand mixed with stone, gravel, and crushed stone or rock*, in bulk, in dump trucks or trailers with dump bodies, from the plantsites of Gifford-Hill & Co., Inc., located in Miller and Lafayette Counties, Ark., to points in Arkansas, Louisiana, Oklahoma, and Texas, for 180 days. NOTE: Carrier does not intend to tack authority. Supporting shipper: Gifford-Hill & Co., Inc., 2949 Stemmons Freeway, Post Office Box 47127. Send protests to: E. K. Willis, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 513 Thomas Building, 1314 Wood Street, Dallas, Tex. 75202.

No. MC 119767 (Sub-No. 244 TA), filed May 14, 1970. Applicant: BEAVER TRANSPORT CO., a corporation, 100 South Calumet Street, Burlington, Wis. 53104. Applicant's representative: Fred H. Figge (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *nonalcoholic beverages*, from Danville, Ill., to Evansville, Ind.; Bowling Green, Elizabethtown, Hopkinsville, Louisville, and Owensboro, Ky., for 180 days. Supporting shipper: Pepsi-Cola General Bottlers, Inc., 1745 North Kolmar Avenue, Chicago, Ill. (A. J. Croce, Transportation Manager). Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 123048 (Sub-No. 172 TA), filed May 14, 1970. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 1919 Hamilton Avenue, Racine, Wis. 53401. Applicant's representative: Paul L. Martinson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Snowmobiles, attachments, and parts and accessories for snowmobiles*, from Des Moines, Iowa; Clearfield, Utah; and Detroit, Mich., to points in the United States except Alaska and Hawaii, for 180 days. Supporting shipper: Massey-Ferguson Inc., 1901 Bell Avenue, Des Moines, Iowa 50315 (Terrence J. Miller, Manager, Traffic Services). Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 123502 (Sub-No. 32 TA) (Correction), filed April 28, 1970, published in the FEDERAL REGISTER issue of May 12, 1970, and republished as part corrected, this issue. Applicant: FREE STATE TRUCK SERVICE, INC., 10 Vernon Avenue, Glen Burnie, Md. 21061. Applicant's representative: William C. Nolte (same address as above). NOTE: The purpose of this partial republication is to show West Virginia as a destination State. The rest of the application remains as previously published.

No. MC 124947 (Sub-No. 9 TA), filed May 14, 1970. Applicant: MACHINERY TRANSPORTS, INC., 617 Chicago Street, East Peoria, Ill. 61611. Applicant's representative: J. G. Dail, Jr., 1111 E Street NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bituminous fiber pipe and conduit and attachments and tools for the installation thereof*, from the plantsite of McGraw-Edison Co. near Sherman, Tex., to points in Arizona, Arkansas, California, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, Tennessee, and Wyoming, for 180 days. Supporting shipper: McGraw-Edison Co., Fibre Products Division, Post Office Box 238, West Bend, Wis. 53095. Send protests to: Raymond E. Mauk, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1086 U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Ill. 60604.

No. MC 125915 (Sub-No. 4 TA) (Correction), filed May 1, 1970, published in the FEDERAL REGISTER issue of May 12, 1970, and republished as part corrected, this issue. Applicant: WAYNE INGERSOLL, doing business as INGERSOLL TRANSFER, Rural Route 1, Waverly, Iowa 50677. Applicant's representative: William B. Monney, First National Bank Building, Waverly, Iowa 50677. NOTE: The purpose of this partial republication is to include, "Carnation Co., 5045 Wilshire Boulevard, Los Angeles, Calif. 90036", as a supporting shipper, which was inadvertently ommitted in previous publication. The rest of the application remains as previously published.

No. MC 126025 (Sub-No. 3 TA), filed May 11, 1970. Applicant: BALLARD TRANSFER OF WASHINGTON, INC., doing business as BALLARD TRANSFER CO., 2417 Northwest Market Street, Seattle, Wash. 98107. Applicant's representative: George R. LaBissoniere, 1424 Washington Building, Seattle, Wash. 98101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles which because of size and weight require special equipment; scrap metal*, from Seattle, Wash., to points in Oregon, Idaho, and Montana; and *scrap metal*, from these States to Kent, Wash., for 180 days. Supporting shipper: Northwest Steel Rolling Mills, Inc., 4315 Ninth Avenue NW., Seattle, Wash. 98107. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 126555 (Sub-No. 12 TA), filed May 14, 1970. Applicant: UNIVERSAL TRANSPORT, INC., Post Office Box 268, Rapid City, S. Dak. 57701. Applicant's representative: Truman Stockton, 1650 Grant Street Building, Denver, Colo. 30203. Authority sought to operate as a *common carrier*, motor vehicle, over irregular routes, transporting: *Lime and limestone products*, from points in Custer County, S. Dak., to points in Montana, Wyoming, Colorado, Nebraska, Kansas, and North Dakota, for 180 days. Supporting shipper: Hills Materials Co., Post Office Box 1392, Rapid City, S. Dak.; John Materi, Engineer. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 127651 (Sub-No. 7 TA), filed May 11, 1970. Applicant: EVERETT G. ROEHL, 201 West Upham Street, Marshfield, Wis. 54449. Applicant's representative: Nancy J. Johnson, 111 South Fairchild Street, Madison, Wis. 53603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber*, from the town of Bass Lake, Sawyer County, Wis., to Moline, Ill.; (2) *wood slabs*, from Black River Falls, Rockland, and Spring Green, Wis., to Kellogg, Minn.; (3) *lumber*, from Black River Falls, Rockland, and Spring Green, Wis., to points in the Minneapolis-St. Paul commercial zone, Minn., and (4) *lumber*, from Trempealeau, Wis., to Foreston, St. Cloud, Lake Elmo, and points in the Minneapolis-St. Paul commercial zone, Minn., for 150 days. Supporting shippers: Hart Tie & Lumber Co., Inc., 230 Tamarac Street, Black River Falls, Wis. 54615; Brunkow Hardwood Corp., Trempealeau, Wis. 54661; R. V. Doehr Lumber Co., Hayward, Wis. 54843. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 444 West Main Street, Room 11, Madison, Wis. 53703.

No. MC 128761 (Sub-No. 2 TA) (Correction), filed April 22, 1970, published in the FEDERAL REGISTER, issue of May 2, 1970, and republished as part corrected, this issue. Applicant: RICHARD M. GODFREY, 1358 East 6400 South Street, Salt Lake City, Utah 84121. Applicant's representative: William S. Richards, 900 Walker Bank Building, Salt Lake City, Utah 84111. NOTE: The purpose of this partial republication is to show Livingston, Mont., as a destination point. And also to show Lewistown in lieu of Lewiston. The rest of the application remains as previously published.

No. MC 129267 (Sub-No. 2 TA), filed May 14, 1970. Applicant: H & S TRANSFER COMPANY, INC., 1238-40 Gordon Park Road, Augusta, Ga. 30901. Applicant's representative: Paul F. Sullivan, Washington Building, 15th and New York Avenue NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used*

household goods, between points in Lincoln, Burke, Richmond, McDuffie, Emanuel, Glascock, Screven, Taliaferro, Warren, and Wilkes Counties, Ga., and Allendale, Barnwell, Hampton, and McCormick Counties, S.C., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic, for 180 days. NOTE: Applicant intends to tack with its Sub-1 certificate at common points in Richmond and Burke Counties. Supporting shippers: Interstate System, 134 Grandville Avenue SW., Grand Rapids, Mich. 49502; Door to Door International, Inc., 308 Northeast 72d Street, Seattle, Wash. 98115; Swift Home-Wrap, Inc., 105 Leonard Street, New York, N.Y. 10013; Garrett Forwarding Co., Post Office Box 4048, Pocatello, Idaho 83201; Continental Forwarders, Inc., 105 Leonard Street, New York, N.Y. 10013; Perfect Pak Co., 1001 Westlake Avenue North, Seattle, Wash. 98109.

No. MC 129615 (Sub-No. 2 TA), filed May 14, 1970. Applicant: AMERICAN INTERNATIONAL DRIVE-AWAY, Post Office Box 3789, San Francisco, Calif. 94119. Applicant's representative: B. Silver, 140 Montgomery Street, San Francisco, Calif. 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used automobiles, and small boats, campers and camper-type trailers* (not mobile homes), when towed by shipper-owned vehicles, in secondary movements, in driveaway service, between points in Hawaii and points in the United States, for 180 days. NOTE: Applicant states it does not intend to tack, but if authority given as in MC-129615 R-2 will tack with existing authority. Supporting shippers: There are approximately (11) statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below.

No. MC 133065 (Sub-No. 11 TA), filed May 11, 1970. Applicant: ECKLEY TRUCKING AND LEASING, INC., Mead, Nebr. 68041. Applicant's representative: Frederick J. Coffman, Post Office Box 806, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Salvage rail track, salvage switches, salvage plates, salvage ties, salvage spikes, and related salvage materials* (except pieces of machinery not attached to a railroad roadbed), (A) between points in Alabama, Arkansas, Louisiana, Mississippi, Connecticut, Massachusetts, Rhode Island, Delaware, Maryland, Virginia, West Virginia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Tennessee, Maine, New Hampshire, Vermont, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Wisconsin, and the District of Columbia; and (B) between points in (A) above on the one hand, and, on the other, points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Oregon, Washington, and Wyoming, for 180 days. Supporting shipper: A & K Railroad Materials, Inc., 621 Sandalwood Isle, Alameda, Calif. Send protests to: District Supervisor Johnston, Bureau of Operations, Interstate Commerce Commission, 315 Post Office Building, Lincoln, Nebr. 68508.

No. MC 134022 (Sub-No. 3 TA), filed May 14, 1970. Applicant: CONTRACT TRANSPORTATION, INC., 4008 Schuster Drive, Post Office Box 115, West Bend, Wis. 53095. Applicant's representative: William E. McCarty, 211 West Wisconsin Avenue, Milwaukee, Wis. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages, soda, and metal containers*, from Chicago and Belleville, Ill.; Kingsbury, Ind.; and St. Paul, Minn., to Winneconne, Stevens Point, township of Barton, Horicon, and West Bend, Wis., as a return movement, *salt in bags*, from St. Clair, Mich., township of Leroy, Wis., for 180 days. Supporting shippers: Frank Podraza, Heights Distributing Co., Horicon, Wis.; Alfred C. Voight, Oak Drive, Rural Route No. 1, Kewaskum, Wis.; Jay's Distributing Co., Inc., Stevens Point, Wis.; Gene Dilldine, Dilldine Wholesale Co., West Bend, Wis.; Floyd Henning, Henning Distributing Co., Waupun, Wis.; Tom Brinkman, Grande Cheese Co., Fond du Lac, Wis.; Fritz Johnson, Johnston Distributing Co. Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 807, 135 West Wells Street, Milwaukee, Wis. 53202.

No. MC 134524 TA (Correction), filed April 22, 1970, published in the FEDERAL REGISTER of May 1, 1970, and republished as part corrected, this issue. Applicant: DUDDEN ELEVATOR, INC., Post Office Box 60, Ogallala, Nebr. 69153. Applicant's representative: Richard A. Dudden, 121 East Second Street, Ogallala, Nebr. 69153. NOTE: The purpose of this partial republication is to show Origin point as "Grant" instead of "Grand". The rest of the application remains as previously published.

No. MC 134533 TA (Correction), filed April 27, 1970, published in the FEDERAL REGISTER issue of May 12, 1970, and republished as corrected, this issue. Applicant: MIDNORTH FURNITURE TRANSPORT, INC., 1175 South Cleveland, St. Paul, Minn. 55116. Applicant's representative: Mark Hertz (same address as above). NOTE: The purpose of this partial republication is to show "contract" carrier instead of "common" carrier. The rest of this application remains as previously published.

No. MC 134555 (Sub-No. 1 TA), filed May 14, 1970. Applicant: EXPERT TANK TRANSPORT, INC., 281 Northeast 185th Street, Miami, Fla. 33169. Applicant's representative: Theodore Polydoroff, 1140 Connecticut Avenue NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Citrus products*, in bulk, in tank vehicles, from Orlando and Brooksville, Fla., to Boston, Mass.; Canton, Mass.; Yonkers, N.Y.; New York City, N.Y.; Flemington, N.J.; Meridian, Conn.; and Cuyahoga Falls, Ohio, for 180 days. Supporting shippers: Dairy Service Corp., Post Office Box 607, Brooksville, Fla. 33512; Southern Gold Citrus Products, Inc., Post Office Box 7538, Orlando, Fla. 32804. Send protests to District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, 5720 Southwest 17th Street, Room 105, Miami, Fla. 33155.

No. MC 134566 (Sub-No. 1 TA), filed May 13, 1970. Applicant: SANFORD & WEBB, INC., 1525 Southeast Pleasantview, Des Moines, Iowa 50320. Applicant's representative: Russell H. Wilson, Suite 200, 3839 Merle Hay Road, Des Moines, Iowa 50310. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Modular homes, component parts, building materials, and supplies including appliances for installation therein*, from Des Moines, Iowa, to points in an area of Illinois bounded by Illinois Highway 116 from the western border of Illinois, east to Illinois Highway 88, thence north on Illinois Highway 88 to its junction with U.S. Highway 52, and thence west on Highway 52 to the western Illinois border; all points in an area of Wisconsin bounded by Wisconsin Highway 60 commencing on the western border of Wisconsin, easterly to the junction of Wisconsin Highway 60 and U.S. Highway 12, thence north on U.S. Highway 12 to the junction of U.S. Highway 10 and U.S. Highway 12, thence west on U.S. Highway 10 to the western Wisconsin border; all points in Minnesota on or south of Minnesota Highway 19; and points in South Dakota on or east of U.S. Highway 281, for 180 days. Supporting shipper: Frank Paxton Lumber Co., Post Office Box 683, Des Moines, Iowa 50303. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 134583 TA, filed May 11, 1970. Applicant: AAA TRANSFER & STORAGE, INC., 5 Jefferson Place NW., Post Office Drawer AA, Et. Walton Beach, Fla. 32548. Applicant's representative: Alan F. Wohlstetter, 1 Farragut Square South, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Escambia, Santa Rosa, and Okaloosa Counties, Fla.; Baldwin, Escambia, and Covington Counties, Ala.; including the city of Mobile, Ala., restricted to shipments having a prior or subsequent movement beyond said points in containers, and further restricted to pickup and delivery services incidental to and in connection

with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such shipments, over irregular routes, for 180 days. Supporting shippers: Columbia Export Packers, Inc., 19000 South Vermont Avenue, Torrance, Calif. 90502; Imperial Household Shipping Co., Inc., 9675 Fourth Street North., Post Office Box 20124, St. Petersburg, Fla. 33702. Send protests to: District Supervisor, G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 134586 TA, filed May 11, 1970. Applicant: RAITAN MOTOR EXPRESS, INC., 129 Lincoln Boulevard, Middlesex, N.J. 08846. Applicant's representative: Bert Collins, 140 Cedar Street, New York, N.Y. 10006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale (except commodities in bulk), and in connection therewith, *equipment, materials, and supplies* (except commodities in bulk), used in the conduct of such business, between Linden, N.J., on the one hand, and, on the other, points in New York, N.Y., Nassau, Suffolk, Westchester, Rockland, Putnam, Orange, Dutchess, Sullivan, Ulster, Delaware, Greene, Columbia, Albany, Rensselaer, Schoharie, Montgomery, Fulton, Saratoga, Washington, Warren, Onondaga, and Monroe Counties, N.Y.; Philadelphia, Pa.; New Jersey, Connecticut, Massachusetts, Rhode Island; Hillsborough and Rockingham Counties, N.H. Restriction: The proposed service to be under contract with Food Fair Stores, Inc., for 180 days. Supporting shipper: Food Fair Stores, Food Fair Building, 3175 John F. Kennedy Boulevard, Philadelphia, Pa. 19101. Send protests to: District Supervisor Robert S. H. Vance, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, N.J. 07102.

No. MC 134595 TA, filed May 13, 1970. Applicant: CLAYTON A. PETERS, doing business as DE PERE—GREEN BAY TRANSFER LINE, Post Office Box 135, Highway 32, Rural Route 2, De Pere, Wis. 54115. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, lumber pallets, and home building materials*, between points in Brown County, Wis., and the Upper Peninsula of Michigan, for 180 days. Supporting shipper: Koltz Pallet Service, Post Office Box 163, West De Pere, Wis. 54178 (Frank Koltz). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 134597 TA, filed May 13, 1970. Applicant: JOSEPH D. SNIPES, doing business as CRESCENT MOVING & STORAGE, Highway 101 South, Post Office Box 4886, Eureka, Calif. 95501. Applicant's representative: Edward J. Hegarty, 100 Bush Street, San Francisco, Calif. 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic, between, points in Del Norte and Humboldt Counties, Calif., for 180 days. Supporting shipper: Interstate System, 134 Grandville Avenue SW., Grand Rapids, Mich. 49502. Send protests to: District Supervisor Wm. E. Murphy, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94012.

No. MC 134602 TA, filed May 14, 1970. Applicant: J. T. TRUCKING COMPANY, 812 Main Avenue North, Post Office Box 647, Twin Falls, Idaho 83301. Applicant's representative: Kenneth G. Bergquist, Post Office Box 1775, Boise, Idaho 83701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel water pipe, water well casing, and drive shoes*, between points in Idaho, California, Oregon, Washington, Nevada, Montana, Wyoming, Colorado, Nebraska, Kansas, Oklahoma, Utah, Texas, and ports of entry on international boundary line between United States and Canada, at or near Raymond, Mont.; Sweetgrass, Mont.; and Blaine, Wash., for 180 days. Supporting shipper: Southwest Pipe of Idaho, Inc., Post Office Box 1301, Twin Falls, Idaho 83301. Send protests to: C. W. Campbell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 455 Federal Building and U.S. Courthouse, 550 West Fort Street, Boise, Idaho 83702.

MOTOR CARRIER OF PASSENGERS

No. MC 29948 (Sub-No. 6 TA), filed May 11, 1970. Applicant: EMPIRE LINES, INC., 1125 West Sprague Avenue, Post Office Box 2205, Spokane, Wash. 99210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers, express, mail, newspapers, and/or baggage of passengers*, from Coeur d'Alene, Idaho, to international boundary between the United States and Canada at Eastport, Idaho, and return, over U.S. Highway 95, for 180 days. NOTE: Applicant will tack authority granted with its regular-route authority at Coeur d'Alene, Idaho, and will interline with other carriers at Eastport, Idaho. Supporting shippers: Kyle M. Walker, Manager, Coeur d'Alene Chamber of Commerce, Coeur d' Alene, Idaho 83814; J. A. Robideaux, Robideaux Motors, Coeur d'Alene, Idaho 83814; C. Patrick King, The Coeur d'Alene Press, Coeur d'Alene, Idaho 83814. Send protests to: L. C. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 401 U.S. Post Office, Spokane, Wash. 99201.

No. MC 134474 TA (Correction), filed April 6, 1970, published FEDERAL REGISTER, issue of April 18, 1970, and republished as corrected this issue. Applicant: R & E TRANSPORTATION CORP., 315 South Plumer Avenue, Tucson, Ariz. 85717. Applicant's representative: Gregory M. Rebman, 1230 Boatmen's Bank Building, St. Louis, Mo. 63102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers*, from Tucson, Ariz., to the port of entry on the international boundary line between the United States and Mexico, at Nogales, Ariz., and the free port area within 2 miles of the border crossing, and return, under contract with the Gulf American Corp. of Arizona, for 180 days. NOTE: The purpose of this republication is to show that applicant will also return the passengers. Supporting shipper: Gulf American Corp. of Arizona, Post Office Box 5664, Tucson, Ariz. 85703. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 3427 Federal Building, Phoenix, Ariz. 85025.

By the Commission.

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

[F.R. Doc. 70-6366; Filed, May 21, 1970; 8:48 a.m.]

[No. 35203 [1]]

INTRASTATE FREIGHT RATES AND CHARGES IN SOUTHERN STATES, 1969

Present: Laurence K. Walrath, Commissioner, to whom the matters which are the subject of this order have been referred for action thereon.

It appearing, That by orders dated April 13, 1970, in No. 35203 (Sub-Nos. 1, 2, and 3); April 15, 1970, in No. 35203 (Sub-Nos. 4, 5, and 6); and April 16, 1970, in No. 35203 (Sub-Nos. 7, 8, and 9), the Commission directed special procedure to be followed in the handling of these proceedings and scheduled hearings to be held in the capital cities of each of the nine Southern States involved before a hearing examiner to be later designated;

It further appearing, that by letter dated April 28, 1970, counsel for the railroad respondents request the Commission to cancel the special procedure schedule for the filing and serving of the prepared material required by the orders dated April 13, 15, and 16, 1970, except that portion of the order dated April 13, 1970, referring to No. 35203 (Sub-No. 1), (North Carolina) and that the scheduled hearings in No. 35203 (Sub-Nos. 2, 3, 4, 5, 6, 7, 8, and 9) be postponed

[1] This order also embraces Docket No. 35203 (Sub-No. 1), Intrastate Freight Rates and Charges in Southern States, 1969 (North Carolina); No. 35203 (Sub-No. 2), same title (South Carolina); No. 35203 (Sub-No. 3), same title (Georgia); No. 35203 (Sub-No. 4), same title (Florida); No. 35203 Sub-No. 5), same title (Alabama); No. 35203 (Sub-No. 6), same title (Mississippi); No. 35203 (Sub-No. 7), same title (Kentucky); No. 35203 (Sub-No. 8), same title (Tennessee); and No. 35203 (Sub-No. 9), same title (Virginia).

indefinitely to permit the railroad respondents to petition the individual States for their consideration of the involved matters;

And it further appearing, that upon consideration of the records in the above-entitled proceedings; that sufficient grounds have been submitted which warrant the granting of the request; and for good cause shown:

It is ordered, That the request of the railroad respondents in the above-entitled proceedings be, and it is hereby, granted; that the orders of the Commission dated April 13, 15, and 16, 1970, with respect to No. 35203 (Sub-Nos. 2, 3, 4, 5, 6, 7, 8, and 9) be, and they are hereby, canceled with respect to the special procedure designated in said orders; and that the hearings now scheduled at the following times and places in No. 35203 (Sub-Nos. 2, 3, 4, 5, 6, 7, 8, and 9) be, and they are hereby, postponed indefinitely:

No. 35203 (Sub-No. 2)—June 22, 1970, Columbia, S.C.
No. 35203 (Sub-No. 3)—June 29, 1970, Atlanta, Ga.
No. 35203 (Sub-No. 4)—July 7, 1970, Tallahassee, Fla.
No. 35203 (Sub-No. 5)—July 13, 1970, Montgomery, Ala.
No. 35203 (Sub-No. 6)—July 20, 1970, Jackson, Miss.
No. 35203 (Sub-No. 7)—July 20, 1970, Frankfort, Ky.
No. 35203 (Sub-No. 8)—July 27, 1970, Nashville, Tenn.
No. 35203 (Sub-No. 9)—August 3, 1970, Richmond, Va.

It is further ordered, That the order dated April 13, 1970, insofar as it applies to No. 35203 (Sub-No. 1), Intrastate Freight Rates and Charges in Southern States, 1969 (North Carolina), remains in full force and effect.

And it is further ordered, That a copy of this order be served upon the respondents and protestants; that the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Kentucky, Tennessee, and Virginia be notified by sending a copy of this order by certified mail to the Governors of North Carolina, Raleigh, N.C.; South Carolina, Columbia, S.C.; Georgia, Atlanta, Ga.; Florida, Tallahassee, Fla.; Alabama, Montgomery, Ala.; Mississippi, Jackson, Miss.; Kentucky, Frankfort, Ky.; Tennessee, Nashville, Tenn.; and Virginia, Richmond, Va.; and that further notice be given to the public by depositing a copy of this order in the Office of the Secretary of this Commission, Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, Washington, D.C., for publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 29th day of April 1970.

By the Commission, Commissioner Walrath.

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

[F.R. Doc. 70-6310; Filed, May 20, 1970; 8:51 a.m.]

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FEDERAL REGISTER

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Friday, May 22, 1970 • Washington, D.C.

PART II

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

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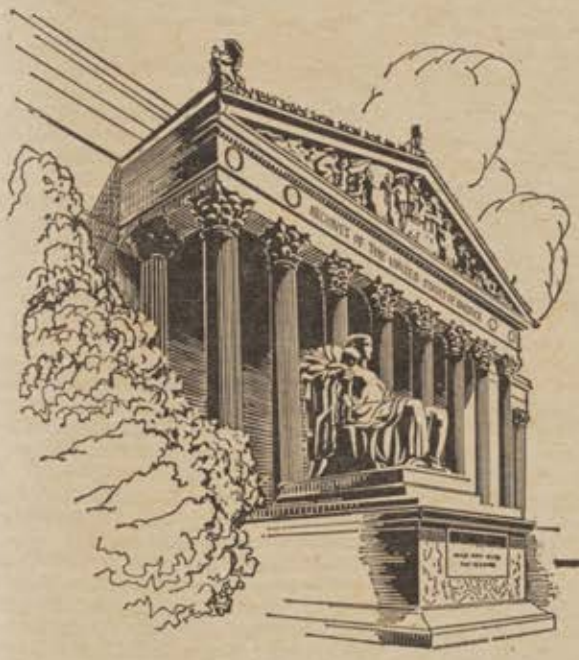
Milk in Washington, D.C., Delaware Valley, and Upper Chesapeake Bay Marketing Areas



Decision on Proposed Amendments to Marketing Agreements and to Orders

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1003, 1004, 1016]

[Docket No. AO-293-A23, etc.]

MILK IN WASHINGTON, D.C., DELAWARE VALLEY, AND UPPER CHESAPEAKE BAY MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreements and to Orders

7 CFR Part	Market	Docket No.
1003	Washington, D.C.	AO-293-A23. AO-293-A23-RO1.
1004	Delaware Valley	AO-160-A43. AO-160-A43-RO1.
1016	Upper Chesapeake Bay	AO-312-A20. AO-312-A20-RO1.

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid specified marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Baltimore, Md., on August 4–15, 1969, and at King of Prussia, Pa., on August 18–22, 1969, pursuant to notice thereof issued on July 3, 1969 (34 F.R. 11364), and at a reopened hearing which was conducted at Friendship International Airport, Md., on October 30, 1969, pursuant to a notice which was issued on October 22, 1969 (34 F.R. 17298).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on March 16, 1970, filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

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

1. The fifth paragraph preceding the subheading "Handler" is changed.

2. Under the subheading "Producer" the fourth and fifth paragraphs are changed.

3. Under the subheading "(b) Classification and allocation" the 16th paragraph (beginning with the words "Inventories of fluid milk products * * *") is changed.

4. Under the subheading "(d) Seasonal incentive payment plan" six paragraphs are substituted for the 24th paragraph.

5. The second paragraph following the changes described in item 4 above is changed.

6. Under the subheading "(g) Payments to individual producers and to cooperative associations" the fourth paragraph is changed and three new paragraphs are added at the end of the discussion under such subheading.

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

1. Merger of two or more of the marketing areas (Delaware Valley, Upper Chesapeake Bay [Maryland], and Washington, D.C.) in any combination thereof, including also redefinition of the marketing area for any separate or combined order to encompass part or all of the areas presently defined in the respective orders, and in addition, the remaining unregulated territory within the State of Delaware and Loudoun County, Va.

2. If an order is issued for one milk marketing area in the manner proposed, what its provisions should be with respect to:

(a) Milk to be priced and pooled.

(b) Classification.

(c) Class prices, butterfat differentials and location differentials.

(d) Seasonal incentive plan (base-excess plan, Louisville plan).

(e) Marketing service provision.

(f) Cooperative payment provisions.

(g) Payments to producers and cooperative associations.

(h) Miscellaneous administrative and conforming changes.

3. Bracketing of the Class I price to provide price movements only in specified increments and announcement of the Class I price prior to the beginning of the pricing period.

A partial decision was issued by the Assistant Secretary (35 F.R. 1017) on January 20, 1970, with respect to Issue No. 3 in which the matter of bracketing of the Class I price was denied at this time. In denying bracketing, the Assistant Secretary concluded: "If bracketing is a desirable pricing feature it appropriately should be considered, and is included as an issue, in connection with the hearing covering all Federal orders scheduled to convene at St. Louis, Mo., on January 20, 1970" (34 F.R. 19078 and 35 F.R. 435). Official notice is taken of the fact that a session of the hearing was held in St. Louis on January 20–23, 1970, and a further session was held in New York City on February 17–18, 1970, pursuant to notice thereof issued on January 29, 1970 (35 F.R. 2527), and that with respect to the issues there considered, such hearing constituted a further reopening of the hearing on which this decision is based. The findings and conclusions hereinafter set forth with respect to the matter of Class I price are based solely on the record of the originally scheduled hearing held in Baltimore, Md., and King of Prussia, Pa. The matters considered at the second reopening of the hearing are reserved for later decision.

Findings and Conclusions

The following findings and conclusions on the material issues (except Issue No. 3) are based on the evidence presented at the hearing and the record thereof:

1. *Merger of the three orders and expansion of the marketing area.* The marketing orders regulating the handling of milk in the Washington, D.C. (Order 3), Delaware Valley (Order 4) and Upper Chesapeake Bay (Order 16) should be merged into a single regulation. The combined marketing area should be extended to include, in addition to all of the territory now contained in the three respective marketing areas, the remaining unregulated territory in the State of Delaware and the county of Loudoun in the Commonwealth of Virginia. The combined area of regulation should be designated the "Middle Atlantic marketing area."

A proposal for order consolidation and extension of the area of regulation in the identical manner herein adopted was made by Pennmarva Dairymen's Cooperative Federation, Inc. Three cooperative associations, the principal cooperative in terms of producer membership under each of the three respective marketing orders, constitute the membership of Pennmarva.

There was no opposition to the proposed order consolidation. To the contrary, the merger was actively supported through testimony by other cooperative associations with membership among producers in the three respective markets and by the Mid-Atlantic Federal Order Committee representing handlers distributing in excess of 70 percent of the total fluid sales on routes under the three respective orders.

The immediate situation prompting the request for order merger is a rapidly proceeding integration of the marketing structure among the three markets and the impact of changing supply sources for particular sales outlets as a result of intermarket plant consolidations.

The area here being considered has been variously regulated since September 1936 when an order was initially promulgated covering the "District of Columbia" market. That order was operative but a short time and another order for the "Washington, D.C.", market was effected February 1, 1940, which order continued until March 1947 when it was terminated at the request of producers producing more than 50 percent of the milk supplying said market. A new order was promulgated effective July 1, 1959.

An order covering the Philadelphia market was effected April 1, 1942, and in June 1956 an order was effectuated covering the Wilmington, Del., market. These two orders were merged and extended to cover the New Jersey portion of the current marketing area effective December 1, 1963.

An order covering the Upper Chesapeake Bay marketing area was initially effected February 1, 1960.

Over the years, the number of distributors and the number of processing plants in these respective markets have steadily declined. Of the 15 plants which were initially regulated under the Wilmington order in June 1956, only five remain in operation today. Of the 68 plants which were regulated under the Philadelphia order in June of 1956 only 17 (including replacements) remain today. Included in the 51 plant closings under that order were 29 receiving stations. More recent trends show that since December 1963, when Order 4 was extended to southern New Jersey, 18 of the 28 plants in the

New Jersey area of the market have closed operations. Also, since 1961, 15 of 27 regulated plants initially regulated under Order 16 have discontinued operations.

The fluid milk distribution previously made from the now discontinued operations has been absorbed through expanded plant facilities and routes of the remaining handlers. As a result, the distribution area of some of the larger plants has been substantially extended. For example, the A&P grocery chain, whose stores in the respective markets were until recently served by local handlers in those markets, now operates its own milk processing plant at Fort Washington, Pa. This plant generally serves its store outlets throughout the marketing areas of Orders 3, 4, and 16, except in the Commonwealth of Virginia and the cities of Washington, D.C., and Baltimore, Md.

Official notice is taken of the fact that Sealtest Foods has recently closed its processing operations in the Washington, D.C., market and is now serving both its Upper Chesapeake Bay and Washington, D.C., marketing area accounts from its Baltimore plant. Official notice is also taken of the fact that Giant Foods has recently started operation of a processing plant at Lanham, Md., in the Washington, D.C., marketing area serving its accounts in both that market and the Upper Chesapeake Bay market (except Baltimore City).

The H. E. Koontz Creamery Co. operates a processing plant in Baltimore, Md., from which it serves its accounts in all three of the areas here being merged. Many other handlers also serve more than one of these areas from a single plant. For example, as of April 1969 nine Order 3 handlers had sales in the Order 16 marketing area.

The three markets historically have drawn milk supplies from a broadly overlapping supply area. In large measure, the Washington, D.C., and the Upper Chesapeake Bay market supply areas completely overlap and this common supply area overlaps, to a considerable degree, the Delaware Valley supply area, particularly on the eastern shore of Maryland, in central Maryland, south-central Pennsylvania, and in Virginia and West Virginia.

Continuing plant consolidations have substantially altered the relative volumes of Class I sales originating from the three respective markets and this situation is likely to continue. As Class I sales shift among these markets, the Class I utilization percentages of the respective markets change, and as a result the relationship of producer returns as among these markets also changes. Because producers in the three respective markets are primarily members of different cooperative associations, the constantly changing relationship of blended prices as a result of Class I sales shifts has tended to promote confusion and discontent among producers. While the three principal cooperatives (all members of Pennmarva) are cooperating in an effort to shift supplies in response to Class I sales shifts among the three markets, such supply changes have not necessarily been economic and are not always understood by affected producers.

Official notice is taken of the market administrators' monthly statistics for the months of August through December 1969. While the Washington, D.C., blend price during the first half of the year averaged 13 cents above the Upper Chesapeake Bay blend price, it declined precipitously from a plus 15 cents in May to a minus 28 cents in July and has averaged 11 cents below for the last 6 months of the year.

Although the effect of shifts in sales as between Delaware Valley and Upper Chesapeake Bay or Washington, D.C., is not as apparent as shifts between the latter two markets, the impact of such shifts on producer returns may, in fact, be no less substantial.

The situation is further complicated by the fact that a gain or loss of accounts on the part of any handler operating in two or more of these markets can result in a shift of regulation of the plant as among the orders. Such shifts are not only disconcerting to the handler involved, but also affect his producer supplies, since such shifting can result in substantial changes in returns to the producers involved. Since the three markets compete actively for milk supplies as well as for sales outlets, any significant changes (temporary or otherwise) in blend price relationships tends to be disruptive to handlers' procurement programs and causes much dissatisfaction among producers.

The primary responsibility for balancing supplies in the respective markets here being considered has fallen on the individual cooperative associations constituting the membership of Pennmarva Federation. However, only Maryland and Virginia Milk Producers Association operates plant facilities. Its Laurel, Md., manufacturing plant handles much of the reserve milk supply under the three respective orders. One other manufacturing plant operated by a proprietary handler processes reserve milk from at least two of the orders. Other facilities are primarily associated with a single order.

While the present individual orders are constructed to implement the orderly disposition of the several markets' reserve supplies, the separate regulations, and hence interests of the handlers (including the individual members of Pennmarva), are not now necessarily encouraging or implementing the most efficient handling of such milk.

While each of the three cooperative members of Pennmarva will apparently continue to maintain its individual identity and market the milk of its members, the Federation provides a means for coordinating the activities of the three cooperative members. The Pennmarva Federation as an organization therefore has interests throughout the combined market. The adoption of a single merged order will implement to the fullest extent possible flexibility in the handling of the combined market's milk supply, including disposition of necessary market reserves. It also will promote more orderly marketing by eliminating the continuously changing relationship in returns among producers which now result from changing handler operations among the three areas.

Loudoun County, now an unregulated area, is located in the north-central section of Virginia bounded by Fairfax County on the east; Fauquier and Prince William Counties on the south; Clarke County and the West Virginia State line on the west; and Frederick County, Md., on the north.

These boundaries enclose an area of 517 square miles and a currently estimated population of 39,000 as contrasted with the 1960 Census of Population figure of 24,549.

Loudoun County is 38 miles to the west of Washington, D.C., and is fast becoming a member community of the Washington Metropolitan area. In recent years, its largest populated center, the Leesburg district, has grown rapidly both from an industrial and residential standpoint. The Dulles International Airport, and the Sterling Park and Reston developments, both self-contained housing and shopping areas, are recent evidence of the trend towards the urbanization of this once generally rural area.

For many years, Loudoun County, because of its rural character, has been a major supplier of raw milk to the Washington, D.C., market. In November 1968 its 107 producers furnished 5,422,000 pounds, or about 6.3 percent of the total milk in the Order 3 market. Producers residing in the county also supply milk to the Upper Chesapeake Bay market.

At the present time, five handlers regulated under Order 3 are serving consumers in the Loudoun County area.

There are currently no processing plants located within the county. However, in addition to regulated handlers, the area is served by two unregulated dealers. One such dealer, located at Marshall (Fauquier County), Va., procures his milk supply (about 300 to 350 gallons per day) from the Maryland and Virginia Milk Producers Association. The second unregulated dealer is located at Winchester (Frederick County), Va. This operation is owned by the Valley of Virginia Milk Producers Association, whose member producers are substantial suppliers of milk to Order 3 through its subsidiary, Alexandria Dairy, one of the principal distributors in the Virginia portion of the marketing area. The milk supplied to the Winchester operation by the Association, however, is not presently pooled under the order.

Less than 10 percent of the Winchester plant's sales are presently made in Loudoun County. Approximately 10 percent of the total fluid milk sales in the county originate from the two unregulated dealers. The remaining sales are by handlers presently regulated under Order 3.

The extension of the combined marketing area to include Loudoun County at this time is desirable to insure continuing orderly marketing in this contiguous area which is rapidly changing to an area of urban and industrial character.

By virtue of the extension at this time, all producers, handlers and other seg-

ments of the industry doing business therein, or contemplating such, will have full assurance that all milk sold therein is being fully accounted for under the terms of the order at not less than the prices specified under the order.

There was no opposition to this proposed extension and such extension was generally supported by the dairy farmer suppliers of all the milk presently distributed in the county. In view of these considerations, it is concluded that this county should be included in the defined marketing area of the merged order.

That remaining portion of the State of Delaware, herein included in the combined and expanded marketing area, encompasses the counties of Kent and Sussex and that portion of New Castle County south of the Chesapeake and Delaware Canal. This area at its northern boundary abuts the southern boundary of the present Delaware Valley marketing area. Its western and southern boundaries abut the present Upper Chesapeake Bay marketing area and its eastern boundary is the Delaware Bay and/or Atlantic Ocean.

The extension of regulation to include this Delaware area was proposed by Pennmarva, the proponent of order merger, and was supported by the Mid-Atlantic Federal Order Committee representing handlers distributing in excess of 70 percent of the milk sold in the present three marketing areas.

This area is presently served by a number of fully regulated handlers, including one local dairy (Lewes) and by three other local (unregulated) dealers. These are the Diamond State Dairies, Inc., Kenton, Del.; Hi-Grade Dairy, Harrington, Del., and Larimore Dairy, Inc., Seaford, Del. The latter three dairies opposed regulation and attempted to establish that this portion of Delaware is a marketing area essentially rural in character, separate and distinct from the surrounding territory which is not involved with the marketing problems of the adjacent urban markets.

Contrary to the contentions of local dealers, this area is inextricably involved in competition in both procurement and sales with the immediately adjacent regulated area. In December 1968, approximately 175 dairy farmers in this New Castle, Kent, and Sussex County area shipped milk as producer milk to handlers fully regulated under the Delaware Valley milk order. Based on the average size of dairy farms for the State as a whole, these producers shipped in excess of 5 million pounds of milk per month to Order 4 handlers in 1968. An additional volume of milk from this area is regularly sold as producer milk to Upper Chesapeake Bay order handlers. The three presently unregulated local dealers receive milk from fewer than 45 dairy farmer patrons whose farms are interspersed with those shipping to the Delaware Valley market.

Such distributors also attach significance to the fact that in considering previous requests to regulate this area, the Department declined to institute regulation.

The area in question is a peninsula jutting from the outermost boundaries of a larger area in which the presently regulated handlers selling there, by virtue of the order merger, will be subject to identical terms of regulation. The current marketing situation in the area may be characterized as being substantially different from that existing when the matter was previously considered. In the years since the initial promulgation of the Upper Chesapeake Bay order, at least six local, unregulated Delaware dealers who formerly distributed milk in this area of southern Delaware have gone out of business, primarily through sale to one handler or another who is regulated under either the Upper Chesapeake Bay or Delaware Valley milk order. Although regulated handlers initially had limited sales in this area, this situation has changed greatly since 1963 when the matter of regulating this area was first considered for inclusion in Order 4.

While the sales of individual handlers in this area cannot be specifically determined on the basis of this record, Order 16 handlers unquestionably have the largest volume of sales, and the current total sales by all regulated handlers constitute between one-half and 75 percent of the total fluid sales in this area.

At the present time the three unregulated handlers remaining in this area do not purchase milk from dairy farmers on a classified pricing plan. Rather, they purchase milk either directly from producers or from cooperative associations on the basis of a differential over the announced Federal Order No. 4 blend price. All of these handlers, however, have essentially a Class I utilization. Hence, there is currently a lack of uniformity in the minimum prices prevailing among competing dealers for their purchases for Class I use in an area where a majority of the distribution is made by the regulated handlers.

The local, unregulated distributors contend that resale prices in this area are lower than those in the presently regulated areas. That resale prices prevailing in the area to be added may be below those of the surrounding regulated areas could well be manifestation of current market instability, at least for those selling the majority of the milk who are paying the higher prices for their milk supplies, and is therefore substantiating evidence of the need for regulation at this time.

The Middle Atlantic marketing area as herein adopted includes the State of Delaware, the State of Maryland (except Washington, Garrett and Allegany Counties), northern Virginia, southeastern Pennsylvania, southern New Jersey and the District of Columbia. As previously stated, handlers and distributors throughout the area compete with each other for Class I sales and in procurement of milk. Approximately 8,900 producers variously located in the States of Delaware, Maryland, Pennsylvania, New Jersey, Virginia and West Virginia regularly supply milk for the entire market to be regulated. Milk moves throughout the market daily in interstate commerce, or in a manner which burdens, obstructs or affects interstate commerce in milk or its products.

In view of the above considerations, all remaining unregulated territory in the State of Delaware should be added to the defined marketing area of the merged order.

A uniform price plan applicable to all handlers buying milk for sale in the expanded area will stabilize and improve marketing conditions in such area. Regulation will effectuate the declared policy of the Act by providing for:

(1) The establishment of uniform prices to handlers for milk received from producers according to a classified price plan based upon the utilization made of the milk;

(2) An impartial audit of handlers' records to verify the payments of required prices; and

(3) A system for verifying the accuracy of weights and butterfat content of the milk purchases; and

(4) Uniform returns to producers supplying the market based upon an equitable sharing among all producers supplying the expanded market of the lower returns for the sale of reserve milk which cannot be marketed as Class I milk.

2. *Terms and provisions of the order.* The terms and provisions of the existing Delaware Valley, Upper Chesapeake Bay, and Washington, D.C., orders are essentially similar and, in large part, identical. Because the Delaware Valley order was most recently reviewed (April 1967) in its entirely (33 F.R. 5876), the CFR Part 1004 of Title 7 is retained for the consolidated order and the several order provisions are set forth in the format of that order. When the merger is effected, Parts 1003 and 1016 of Title 7 Washington, D.C. Order No. 3 and Upper Chesapeake Bay Order No. 16), respectively, will be superseded.

From a careful review of the evidence of the hearing, it is concluded that order provisions which are substantially identical in the three respective orders and for which no proposed changes were offered are equally suitable for the combined order covering the merged and extended marketing area and they are adopted for the identical reasons advanced in the decisions adopting such provisions in the respective orders.

All Federal milk orders, including the three here being considered, were amended January 1, 1970 (34 F.R. 18603), with respect to matters relating to the classification and pricing of filled milk pursuant to a decision of the Assistant Secretary issued October 13, 1969 (34 F.R. 16881).

The findings and conclusions of that decision which were officially noticed at the hearing as they relate to the three separate orders are equally pertinent and applicable to the merged and extended order. Such findings and conclusions are adopted as a part of this decision as if set forth in full herein.

2(a). *Milk to be priced and pooled.* Some revision is necessary to certain definitions, essentially common to the three orders, which specify what milk and

which persons would be subject to full regulation. The definitions involved described the categories of persons, plants, and milk products to which the applicable provisions of the order relate.

It is essential to the operation of a market pool that minimum plant performance requirements be established to distinguish between those plants substantially associated with the fluid market and those which do not serve the market in a way, or to a degree, that warrants their sharing (by being included in the market pool) in the market utilization of Class I milk. Such standards also facilitate an equitable application of regulation on handlers who have only a minor proportion of their distribution in the regulated market.

The several plant definitions included in the order prescribe the minimum performance standards for pooling and categorize plants which do not meet these standards. Any plant, wherever located, may become a pool plant by meeting the prescribed market performance standards. The dairy farmers regularly delivering thereto will be accorded producer status and share in the distribution of proceeds from the milk sales of all handlers.

Plant definition. Each of the orders now contains an essentially identical "plant" definition although the respective definitions are structured somewhat differently. Fundamentally, a facility, to qualify as a plant, must in one way or another actually process and/or package milk or milk products. Each of the orders make clear that a facility used only for transfer of milk from one vehicle to another is not a plant. The Delaware Valley order, in addition, specifically excludes a separate facility used only as a distribution depot for fluid milk products in transit for route disposition.

The plant definition under the Delaware Valley order, because of its greater specificity and hence clarity, is concluded to be most appropriate for the merged order. Proponents generally supported this definition but in addition proposed a modification which would include, as a plant, a transfer station if such station had actual storage facilities.

It is not apparent what advantage would accrue from such a modification. The mere existence of storage facilities could have no pertinence to a plant definition if such facilities are not actually utilized. Any handler operating a transfer station with storage facilities could, if he did not wish it to acquire plant status, simply remove such storage facilities, or in the alternative, establish a different transfer point. Either procedure would be equally effective in defeating the intent of proponent's proposed modification. Since the modification could serve no useful purpose, the proposal is denied.

Pool plant. As a condition for pooling, a plant with route disposition in the marketing area (a distributing plant) should be required to have not less than 50 percent of its dairy farmer receipts, including milk diverted to other plants and milk received from a cooperative association acting as a handler on farm bulk tank milk, disposed of as Class I milk during the month and at least 10 percent of such receipts disposed of as route disposition in the marketing area.

A plant which has no direct dairy farmer receipts should be provided pooling status if it meets such minimum performance standards with respect to overall fluid milk product receipts.

In its initial proposal, proponent for the merged order proposed that a distributing plant be qualified as a pool plant during the months of September through February only if at least 60 percent of the receipts associated therewith were disposed of as Class I milk, and during the months of March through August only if at least 55 percent of its receipts were so disposed of, with the additional condition in any month that at least 10 percent of such receipts must have been disposed of on routes in the marketing area.

In its posthearing brief, proponent modified its proposal with respect to the seasonal percentage requirements, requesting that such standards be set at 55 and 50 percent, respectively, in lieu of the 60 and 55 percent figures initially proposed.

Presently, a plant to qualify as a pool distributing plant under Order 4 must dispose of at least 50 percent of its dairy farmer receipts (45 percent in the months of March through August) during the month as fluid milk on routes and have 10 percent of such receipts disposed of on routes in the marketing area.

Both orders Nos. 3 and 16 require that at least 50 percent of a distributing plant's receipts be disposed of as Class I milk during the month and this applies for each month of the year. Also, at least 10 percent of the distributing plant's receipts must be disposed of as Class I sales on routes within the marketing area.

Proponent indicated that its proposed higher performance standards (55 percent and 50 percent) would insure the continued pooling of the milk supply which has historically been associated with the respective markets and at the same time would be effective in maintaining the combined market's overall Class I utilization percentage.

The 50 percent overall Class I utilization standard has accommodated the pooling of all distributing plants associated with the Washington, D.C., and Upper Chesapeake Bay markets. While it is slightly higher than that currently provided under the Delaware Valley order (45 percent March through August and 50 percent September through February) the fact that the percentage is expressed in terms of Class I utilization rather than route disposition minimizes the possible impact of such change. Accordingly, such performance standard is concluded to be appropriate for the merged order. Any plant which had at least 50 percent of its dairy farmer receipts disposed of as Class I milk is primarily involved in the fluid milk business and if at least 10 percent of such receipts is disposed of on routes in the marketing area, the plant is sufficiently identified with the market to require participation in the marketwide pool.

For reasons later set forth in this decision, a cooperative association is provided handler status with respect to milk of member producers which it causes to be diverted to a nonpool plant for its account. Milk so diverted is deemed to have been received by the cooperative at a pool plant at the location of the pool plant from which such milk was diverted but is priced on the basis of the prices applicable at the location of the plant of physical receipt. It is intended for purpose of determining the pool status of any plant, that milk so diverted, as well as milk diverted for the account of the plant operator, shall be considered as a receipt from dairy farmers at the plant from which diverted. Unless this is done, it would be possible for a cooperative to work in consort with a proprietary handler and associate with the pool, milk intended solely for the handler's unregulated manufacturing operations, while at the same time insuring the pool plant status of the handler's distributing plant by acting as the responsible handler on diverted milk.

The pooling provisions should also provide pool plant status for any distributing plant which receives no milk from dairy farmers or through a cooperative association as a handler on bulk tank milk but which meets the prescribed performance standards with respect to its overall receipts of fluid milk products from other plants.

The situation supporting this procedure was reviewed at a public hearing held for the Delaware Valley milk order November 7–9, 1968. The findings and conclusions of the Deputy Administrator, Regulatory Programs, relating to this and other matters were set forth in his recommended decision of April 18, 1969 (34 F.R. 6788), official notice of which is taken.

The findings and conclusions concerning this matter as set forth in that decision are equally pertinent with respect to the current marketing situation in the combined market, and are adopted as a part of these findings as follows:

> * * * a distributing plant which receives all its milk supply through a supply plant may not acquire pooling status under the terms of the present order even though such distributing plant may be the means by which the supply plant acquires its pooling status. Transfers from such a nonpool distributing plant, either in bulk or packaged form, to a pool distributing plant, are assigned pro rata to classes of use as an other source receipt as such pool distributing plant. Proponent pointed out the possibility that under the present provisions such milk assigned to Class I could be subjected to a pool payment at the difference between the Class I price and the market blended price regardless of the fact that such milk might have been fully accounted for at the originating supply plant as Class I milk.
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> Proponent pointed out that such accounting with respect to receipts from a nonpool plant which receives all its milk from pool supply plants can reduce the amount of supply plant milk which is assigned to Class I, and hence the amount of milk on which the cooperative can recover hauling costs. Proponent suggested, also, that because custom bottling is becoming an ever-increasing marketing practice, a pool distributing plant having an increasing custom bottling operation might at some stage be forced into

nonpool status even though as much as 99 percent of its milk might be packaged for distribution as Class I milk in the marketing area. This could occur simply because the plant met neither the 50 percent present route disposition requirement for distributing plants nor the 50 percent shipping requirement for supply plants.

To insure continuing equitable treatment of its supply plant milk, the cooperative, in certain instances where it is the sole supplier, is moving one load of producer milk directly from the farm to a bottling plant on at least 1 day during the month to maintain such plant's continuing status as a pool distributing plant. This procedure, proponent contended, is uneconomic and the consequence of the inadvertent missing of a shipment in any month could be such as to impose an unreasonable penalty * * *

Under many Federal orders, a distributing plant is pooled on the basis of meeting specified Class I disposition percentages with respect to its total milk receipts. However, in an effort to avoid certain problems which can result from interdependent pooling requirements, the pooling standards under this order were adopted in terms of specified disposition percentages with respect to receipts from dairy farmers only. Since the order contains provisions intended to assure the appropriate pricing of all milk disposed of for fluid use in the regulated market it was not considered necessary to provide pooling status for a distributing plant receiving all its milk from other plants.

Under the terms of the order [Delaware Valley] a distributing plant receiving all milk from other plants is treated as a partially regulated plant and as such is charged only for its Class I route sales in the marketing area. A transfer from such a plant to a pool plant is treated as a receipt of other source milk and is allocated pro rata to the utilization at the transferee plant. On any such milk allocated to Class I the operator of the pool plant is required to make a pool payment of the difference between the Class I and market uniform prices.

Such treatment would be appropriate under usual circumstances since partially regulated distributing plants normally have the preponderance of their disposition outside the regulated market and receive their milk directly from dairy farmers in competition with the producers supplying fully regulated handlers.

The situation here confronting us is uniquely different in that a distribution plant is receiving essentially its entire milk supply from a pool supply plant and almost its entire output of milk is disposed of in the regulated market either directly on routes or through other plants.

Proponent's basic objectives are to insure the continued pooling of its supply plant milk and at the same time to recover to the fullest extent possible, through a Class I classification, transportation cost involved in moving its milk to the central market.

There are clearly advantages in the application of regulation to have any distributing plant substantially associated with the local fluid market fully regulated even though such plant has no direct dairy farmer receipts. In the case of a partially regulated plant buying milk only from pool supply plants operated by cooperative associations, there is no effective means of insuring payment to such cooperative association of the prescribed minimum order prices. Consequently, the cooperative could be the unfortunate victim of underpayment on the part of the operator of the partially regulated plant.

In the case at issue the cooperative has acted to insure full regulation of its buyer handler. Under the circumstances, there is no apparent reason why the proposal should not be implemented * * *

It is concluded that an additional alternative pooling standard for distributing plants should be adopted in the combined order which will reflect the same overall utilization and performance requirements with respect to the plant's total fluid milk product receipts from other plants as are required with respect to those of plants which receive milk directly from dairy farmers.

Provision is made in each of the three orders and should likewise be adopted for the combined order for the application of "partial" regulation to plants having a lesser association than that required for pooling. Limited quantities of Class I milk may be sold within the regulated marketing area from plants not under any Federal order. There is, of course, no way to treat such unregulated milk uniformly with regulated milk other than to regulate it fully. Nevertheless, it is concluded that in present circumstances such provision for partial regulation will not jeopardize marketing conditions within the regulated marketing area.

Offical notice was taken at the hearing of the Assistant Secretary's June 19, 1964, decision (29 F.R. 9002) supporting the amendments to 76 orders, in which the matter of partial regulation was discussed. The decision, as it relates to an unregulated plant having some Class I distribution in the marketing area, is appropriate under current conditions in the proposed marketing area and is adopted as a part of this decision as if set forth in full herein.

The operator of any partially regulated distributing plant would be afforded the options of: (1) Paying an amount equal to the difference between the Class I price and the uniform price with respect to all Class I sales made in the marketing area; (2) purchasing at the Class I price under any Federal order sufficient Class I milk to cover his limited disposition within the marketing area; or (3) paying his dairy farmers not less than the value of all their milk computed on the basis of the classification and pricing provisions of the order (the latter representing an amount equal to the order obligation for milk which is imposed on fully regulated handlers).

While all fluid sales of the partially regulated plant would not necessarily be priced on the same basis as fully regulated milk, the provisions described are, however, adequate under most circumstances to prevent sales of milk not fully regulated (pooled) from adversely affecting the operation of the order. They should be adopted in this order to complement the pooling requirements on fully regulated plants adopted herein.

"Supply" plants are the second category of plants for which standards for pooling must be provided. While the preponderance of handlers on the Middle Atlantic market receive all their milk directly from producers, there are a number of supply plants which have been supplying milk to distributing plants in the Delaware Valley area in particular. In addition, from time to time, supplemental supplies are secured from plants not regularly associated with the market.

A supply plant should be fully regulated in any month during the period of September through February in which at least 50 percent and in any month during the period of March through August in which at least 40 percent of its dairy farmer receipts are moved as fluid milk products to a plant(s) which meets the pool distributing plant standards with respect to its total milk receipts.

The lower percentage standard for the March–August period appropriately recognizes that the demand for the supply plant milk is less during the months of generally flush production than during the other months of the year.

A supply plant meeting these shipping requirements nevertheless should not qualify as a pool plant in any month in which a greater proportion of its qualifying shipments are made to a plant regulated under another Federal order than to a plant(s) regulated under the order here adopted.

A supply plant, the milk supply from which is needed in the short production months, is an integral part of the marketing supply. To avoid uneconomic movement of milk, therefore, provision is made whereby a supply plant that was a pool plant under this part (or under any of the currently separate Orders No. 3, No. 4 or No. 16) each of the immediately preceding months of September through February will retain such pooling status during each of the following months of March through August. This will provide producer status for dairy farmers shipping to plants which are thus recognized as regular suppliers of the market.

A plant should be permitted to withdraw from pool status, however, at the operator's option in any of the months of March through August in which it does not meet the current shipping requirements for a pool supply plant. In such case, it could again acquire pooling status only by meeting the current shipping requirements.

To protect the integrity of regulation, a plant eligible for automatic pooling status during the flush months of March through August should be canceled effective the first day of any month in which another supply plant is qualified for pooling through shipments of fluid milk products to the same distributing plant(s) through which such automatic pooling status was accomplished.

The provisions described above relating to the qualification standards for supply pool plant status are currently provided for under the Delaware Valley order and their adoption under the combined order is equally appropriate.

There are presently four reserve processing plants in the combined market which have been pooled under one or the other of the separate orders under special provisions adopted to insure their continued pooling. In each case, the plant in question historically has been an intricate part of the regulated market, primarily as an outlet for the market's reserve supplies. None of these plants, however, could now be expected to meet even minimal shipping standards.

Each of two such plants associated with the Delaware Valley market have been pooled in conjunction with the operator's (handler's) distributing plant under a system pooling arrangement in which the combined operation of the reserve plant and the distributing plant has qualified both plants under the pooling standards for distributing plants. A reserve processing plant under the Upper Chesapeake Bay order and a similar plant associated with the Washington, D.C., order each have held pooling status under its respective order through a provision which prescribed the minimum association for such a plant for such status, adopted to cover that particular operation. Such provision, of course, also would have pooled any other plant meeting the prescribed requirements.

While it is not essential that a reserve processing plant, per se, hold pool plant status under this order for the purpose of handling the market's reserve supply, more orderly marketing and efficiency of handling will prevail if continuing pool status is provided for these plants which have long held such status under the several orders.

For three of these plants a provision (partial system pooling) essentially similar to that presently contained in the Delaware Valley order would reasonably accommodate the situation. However, certain safeguards must be taken to insure that handlers are not encouraged to develop additional milk supplies solely for manufacturing uses. Thus, such pooling procedures should be made available to a multiple-plant handler only with respect to his reserve processing plant operation which was a qualified pool plant under the Delaware Valley, Upper Chesapeake Bay or Washington, D.C., order in each of the 12 months immediately preceding the effective date of the combined order adopted herein and only if the handler files with the market administrator prior to such effective date, his written request for continued pool plant status for such plant.

Under the provision herein adopted, the reserve processing plant would continue to hold pool plant status in each consecutive succeeding month in which it, in combination with a pool distributing plant, operated by the same handler meets the performance standards of a pool distributing plant as set forth in § 1004.8(a).

A handler operating a reserve processing plant, which has been system pooled with such handler's distributing plant located in Philadelphia, also operates a distributing plant located in Baltimore. If the system pooling were extended to cover the three plants (the manufacturing plant and the two distributing plants) the handler conceivably could substantially expand his manufacturing operation and still have assurance of continuing pooling status for such plant. The plant is being provided pool status to insure its availability to assist in handling the reserve milk supply of the market. If the handler were able by virtue of system pooling to further expand his milk supply for such plant, the facility might not be available to handle reserve milk from other handlers. It would be inappropriate therefore to further extend the system pooling beyond a two-plant system.

As previously noted, the accommodation for pooling manufacturing plants as herein provided is designed to cover the several reserve milk processing operations which have had long-standing association with the fluid milk market. However, if a handler should fail to qualify such an operation in any month, he appropriately should forfeit his right for system pooling such plant thereafter. In that event, the plant could again acquire and maintain pool plant status under the combined order only if it were to meet the individual plant performance standards for pooling.

The opportunity for system pooling also should not be available to any reserve processing plant if the operator operates any other plant which is used to qualify a supply plant for pooling, or if the reserve processing plant meets the pooling requirements of another Federal order.

Because the plants here being considered, as well as a reserve processing plant operated by a cooperative association as discussed immediately following, would not ordinarily ship milk to other pool plants, it is possible that milk could be received at such plant(s) from dairy farmers which does not meet the quality requirements for disposition in the marketing area as fluid milk. As a further condition of pooling, therefore, it is necessary that the handler, in filing his reports pursuant to § 1004.30, be required to notify the market administrator each month of any such receipts. Such milk should not acquire pooling status, but should be considered as milk received from a "dairy farmer for other markets" and assigned to Class II disposition for reasons later set forth in these findings.

Provision also should be made whereby pool plant status is accorded any reserve processing plant which is operated by a cooperative association if at least 70 percent of its member milk is received throughout the month at other pool plants, including the milk of such producers which is delivered to the pool plants by the cooperative association acting as a handler on bulk tank milk. A similar provision in the Washington, D.C., order presently is the basis for the pooling of a plant located in Laurel, Md., and operated by the Maryland and Virginia Milk Producers Association, the only member cooperative of the Pennmarva Federation which owns plant facilities.

A substantial volume of the milk on the combined market is moved by cooperatives from the farms of member producers directly to their buyers in amounts required for Class I use. Much of the milk on the market not so needed, and for which there is no other Class I outlet available, is moved to the Laurel plant for processing. Other cooperatives, as well as proprietary handlers, also utilize the Laurel facilities as an outlet for their reserve milk supplies.

The nature of the operations of this plant, which performs a necessary balancing function in the market, would not result in pool status under the standards here provided for the pooling of distributing or supply plants, or for the system pooling of certain other reserve processing plants. It is appropriate, therefore, that the Laurel plant, or any other such cooperative-operated plant which meets the performance requirements herein set forth for such a plant be accorded pooling status under the combined order. Such performance standards describe a particular operation in the combined market and will implement orderly marketing by accommodating the pooling of all of the milk regularly associated with the market.

The pooling standards herein adopted covering the various plant operations are reasonable and appropriate under current conditions in the combined marketing area. Generally, they are similar to those included in the three current orders and will provide for the regulation of all of the plants presently regulated under one or the other of the three orders. In conjunction with other provisions of the order, such standards will enable the dairy farmers associated with qualified plants to share in the equalization pool throughout the year and thus will help to insure orderly and stable marketing conditions throughout the area.

The order proponent proposed an additional pooling standard for supply plants and certain additional provisions to the "dairy farmer for other markets" definition, principally for the purpose of deterring the shifting of plants and/or dairy farmers in and out of the market for the purpose of exploiting the "base-excess" payment plan. Under their proposal, a supply plant which was a nonpool plant in any of the months of August through November could not acquire pooling status in any of the subsequent months of March through June in which it was owned by the same handler, an affiliate of the handler, or by any person who controls or is controlled by the handler.

Similarly, a dairy farmer whose milk was received as other than producer milk during any of the months of September through February by a handler, affiliate, or person controlling or controlled by such handler could not acquire producer status in the following months of March through August in which his milk was received by the handler at a pool plant, unless such handler could substantiate that not less than 120 days of the dairy farmer's production was received as producer milk during the preceding September–February period, or that all of the handler's receipts from such dairy farmer as other than producer milk during the September through February period was neither approved for fluid disposition nor disposed of for fluid consumption.

The present incentive for a handler to shift regulation of his plant seasonally and for producers to shift between Delaware Valley and New York-New Jersey stems chiefly from the flexibility provided in the order for acquiring and transferring bases.

Producer proponents recognized this problem in the structuring of the base plan provisions which they proposed for incorporation in the combined order. The proponent witness stated on the record that if their proposed base plan was adopted, the problem they sought to alleviate would largely be eliminated.

In large part, the provisions of proponent's proposed base plan are adopted for the combined order. Under such provisions, a base may be transferred only in its entirety to another dairy farmer upon the discontinuance of milk production of such baseholder because of military service. Provision also is made whereby the name of the baseholder can be changed to that of another member of the immediate family if such base continues to be applicable to the dairy operation on the same farm.

This procedure should minimize the incentive for a plant to shift regulation seasonally from Order 2 (or from the New England order markets, which employ the "Louisville" plan) to the combined order and vice versa.

It is concluded in light of the considerations set forth herein that the additional provisions in the "dairy farmer for other markets" definition proposed are not necessary. Neither is there need for a provision denying pooling status to a supply plant during flush months of production if the plant was a nonpool plant in any of the preceding short production months. The terms of the combined order here adopted will insure an equitable sharing among those producers associated with the market of the total proceeds from the sale of their milk and, accordingly, additional conditions for pooling are not needed.

Each of the respective orders contains a "dairy farmer for other markets" definition to distinguish those dairy farmers whose milk, under certain conditions, may be received at pool plants, but which are not associated with the market to a sufficient degree to be considered a part of the regular milk supply and, hence, to acquire producer status.

Under the terms of the base plan herein adopted, each producer's base will reflect his degree of association with the fluid market. Hence, there is no need for a "dairy farmer for other markets" definition, except to designate those dairy farmers whose milk may be received at reserve processing pool plants but is not qualified for disposition as fluid milk in the marketing area.

Handler—The impact of regulation under an order is primarily on handlers. The handler definition identifies those persons from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value.

The handler definitions under the respective orders are essentially similar. However, to implement regulation to the fullest extent possible, the definition under the combined order should be sufficiently broad to include all the persons to whom handler status is presently accorded under any of the individual orders. These include the following persons which are common to the three orders: (1) The operator of a pool plant; (2) the operator of a partially regulated distributing plant; (3) the operator of another order plant; (4) a cooperative association with respect to milk which it causes to be diverted to a nonpool plant; (5) a cooperative association with respect to milk which it causes to be delivered to a pool plant in a bulk tank truck owned or operated by, or under contract to, the association, unless both the cooperative and the operator of pool plant have given prior notice to the market administrator that the plant operator intends to be the handler for such milk and is purchasing the milk on the basis of farm weights determined by farm tank bulk calibrations and butterfat tests based on samples taken at the farm; and (6) a producer-handler. In addition, the handler definition should include the operator of an unregulated supply plant, a governmental agency in its capacity as an operator of a plant disposing of fluid milk products on routes in the marketing area and any other person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a pool plant.

The handler who receives milk from producers is held responsible under the terms of the order for reporting receipts and utilization of such milk and for proper payment to producers and to the pool. To implement administration of the order and to better insure payments to producers, financial responsibility for producer milk under the order is placed on the operator of the pool plant where such milk is received or determined to have been received, and under specified circumstances, on cooperative associations. The financial status of such persons in the market is such as to minimize the possibility of nonpayment. In addition, in the event of nonpayment, there is reasonable assurance of the existence of assets from which monies may be recovered through appropriate legal processes.

An other order plant which enters the orbit of regulation under this order either through route disposition or by shipment of packaged or bulk milk is partially subject to regulation under this order. It is necessary that the operator of such a plant have handler status in order that the market administrator may require the necessary reports to determine such plant's status and the operator's obligation, if any, under this order.

Inclusion in the handler definition of any person operating a partially regulated distributing plant or an unregulated supply plant, as well as a producer-handler, is necessary in order that the market administrator may require the necessary reports to determine the continuing status of such individuals and in the case of distributing plants, the extent of the obligations, if any, to the producer-settlement fund.

Under the marketwide pool arrangement herein provided, it is intended that all milk which has established a substantial and bona fide association with the local market shall participate in the equalization pool. The handler definition, therefore, should be sufficiently broad as to include a cooperative association with respect to producer milk diverted to a nonpool plant for the account of the association.

Milk not needed by local handlers can generally be most economically handled by movements directly from the farm to the ultimate destination. Unless the cooperative is permitted to be the handler on such milk it is likely that cooperative members would bear the entire burden of carrying the market's reserve supply since handlers could continue to receive only that volume of milk needed to meet their immediate requirements and cooperatives would be forced to handle the remaining milk as other than pool milk. Providing handler status to a cooperative association with respect to milk which it diverts to nonpool plants not only will better insure orderly marketing but also will promote efficient utilization of producer milk in the highest available use class. This will result because a cooperative association can divert milk for Class I use to an unregulated nonpool plant which otherwise might be used or disposed of by a proprietary handler in Class II.

The second role of a cooperative as a handler without a plant is the delivery of farm bulk tank milk of producer members directly from farms to pool plants. Under the current arrangement for marketing the milk of producers using farm bulk tanks, the amount of milk delivered by any such producer, and the butterfat test thereof, can be determined only by measurement at the farm and from butterfat samples taken at the farm. After the milk has been pumped into tank trucks and commingled with the milk of other producers, there is simply no opportunity to measure, sample, or reject the milk of an individual producer. It is essential, however, that the producer be paid on the basis of such weights and tests.

Since the pickup is controlled by a cooperative association or by a person under contract to, or under the control of, such association, only the association can determine the individual producer weights and tests. Accordingly, the association should assume the role of responsible handler unless through agreement between the association and the operator of the plant where the milk is received, noticed to the market administrator, the plant operator assumes the role of responsible handler and agrees to purchase the milk on the basis of farm weights and tests. When the cooperative association is the responsible handler, the milk is treated as a receipt of producer milk by the cooperative association at a pool plant at the same location as the pool plant at which the milk was physically received. The milk is then treated as a transfer by the cooperative association to the pool plant operator.

The order specifies that handlers shall pay a cooperative association which is a handler pursuant to § 1004.10(c) at the uniform price for the milk received directly from producer's farms. This will simplify order accounting procedure. It

also will facilitate any audit adjustments necessary.

Payments into and out of the producer-settlement fund will be made directly between each proprietary handler and the market administrator. This will establish accounting and payment responsibility. When settlement is made through a cooperative association handler at class prices and the cooperative pays into or receives from the producer-settlement fund on bulk tank milk delivered to another handler, a third party unnecessarily enters into the transaction. By eliminating the cooperative as an intermediary between the regulated proprietary handler and the market administrator, problems of financial responsibility, enforcement, and subsequently audit adjustments are greatly reduced.

Both the Washington, D.C., and Upper Chesapeake Bay orders presently exempt from pooling under specified conditions, the plant of a government agency distributing fluid milk products in the marketing area. Similar provisions appropriately must be incorporated into the merged order. In order that the market administrator may have the necessary information to confirm the status of such an agency and as an aid to confirmation of movements of milk between such an agency and pool handlers, it is necessary that the government agency be accorded handler status.

Any sales to such a government agency would be classified as Class I. Any receipts at pool plants from such an agency would be assigned to Class II. Since such agencies do not share their Class I sales with other producers they should not be permitted to share in the Class I use of any milk in excess of their own needs which may be disposed of to pool handlers.

Finally, for the purposes of reporting and verification only, it is necessary that handler status be accorded any other person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant. In the Delaware Valley sector of the market, it is not uncommon for brokers and dealers with no plant facilities to contract with cooperative associations for a milk supply, and then to arrange with proprietary handlers in the market to supply their requirements. Sometimes the broker or dealer takes title to the milk and sometimes not. While in such situations that order has held, and under the terms here adopted will continue to hold, the proprietary handler responsible for payments to producers, nevertheless there are obvious circumstances in which he has little, if any, specific knowledge with respect to the pickup and movement of the milk and payments to producers. In such case, the market administrator may find it necessary to review promptly the books and records of persons other than the proprietary handler to verify receipts, utilization, and payments.

Producer-handler. Each of the orders here being merged exempt from pricing and pooling any person (1) who operates both a dairy farm and a distributing plant with route disposition in the marketing area, (2) who purchases no milk from other dairy farmers and (3) whose source of supply of fluid milk products is essentially his own farm production and purchases from pool plants. The Washington, D.C., and Delaware Valley orders have not limited, in any way, the volume of Class I milk that such an individual might purchase from pool plants. The Upper Chesapeake Bay order on the other hand has limited such purchases to not more than 10,000 pounds a month.

There are no known operations of this kind under the present Washington, D.C., order, only one such operation under the Upper Chesapeake Bay order and no such operations in the area of extension, i.e., the remainder of the State of Delaware and Loudoun County, Va. Until recently producer-handler operations in the Delaware Valley market were also of little consequence.

The situation in the Delaware Valley market changed significantly in September 1968 when a handler with own farm production, who customarily had bought the remainder of his milk supply directly from members of a major cooperative (a bargaining cooperative), decided to acquire producer-handler status by purchasing plant milk rather than buying milk directly from dairy farmers and thus avoiding pooling his own production. In so doing, he terminated purchases from producer members of the bargaining cooperative, closing out a supply arrangement of more than 20 years. The change in status of this operation prompted a proposal to modify the producer-handler definition under Order 4 which was considered at the hearing held in Philadelphia, Pa., on November 7–9, 1968 (33 F.R. 16004). The Deputy Administrator's recommended decision in this matter (34 F.R. 6798) was officially noticed at the hearing on the record of which this decision is based. The findings with respect to that issue were adopted by proponents' witness as the current facts relating to the situation in the Delaware Valley market.

It is concluded that a 10,000-pound limit should be placed on the quantity of fluid milk products that a producer-handler may receive from pool plants during any month and still retain his exemption from pooling. Such limit on the quantity of a producer-handler's supplies of fluid milk products other than his own farm production is necessary at this time in this combined market to insure continuing orderly marketing and an equitable sharing among producers of the proceeds from the sale of their milk.

The Deputy Administrator's findings and conclusions (34 F.R. 6798) in support of this limitation with respect to the Delaware Valley market, are equally applicable to the combined market and are adopted and incorporated as a part of the findings and conclusions of this decision as follows:

> * * * The handler's new supply source is a pool plant of an operating cooperative association whose primary membership is among producers in the adjacent New York-New Jersey market. This cooperative is selling the handler, in his new role as a producer-handler, plant milk delivered to his plant at the order Class I price for that location. Hence the handler is getting his supplemental milk at the same price which he would have been required to account for Class I milk received directly at his plant from dairy farmers while not incurring the additional costs of receiving, payrolling, and related services necessarily experienced by a handler on direct receipt milk.
>
> Under usual circumstances a handler buying plant milk from another handler would have to pay for such milk a price reflecting the minimum class prices prescribed by the order plus the selling handler's costs for services performed and for extra plant handling and, in addition, a reasonable profit. It is questionable under such circumstances and the conditions of this market whether any handler with own farm production could advantageously give up his regular producers for the purpose of acquiring producer-handler status except under circumstances where his own production represented a preponderance of his needs.
>
> The handler in question produces close to 200,000 pounds of milk per month, better than five times the market average. His own production represents nearly half of his Class I sales. It seems most improbable that this handler would have seriously considered giving up his regular producers except for the fact that instead of realizing the blend price for his own farm production he could now realize the order Class I price for such production without incurring the cost of maintaining the reserve supplies associated with his Class I sales.
>
> Without appropriate amendatory action it is now clearly prospective that any handler in this market with own farm production can readily assume producer-handler status solely for the purpose of avoiding pooling of his own production.
>
> * * * Experience under Federal orders generally has demonstrated that effective regulation of the market can be insured without direct involvement of individuals who produce, process and distribute essentially milk of their own production and who buy no milk from other dairy farmers. Individuals who assume a dual role of producer and handler and who must carry their own balancing supplies seemingly have no demonstrable advantage either as a producer or a handler.
>
> * * * Clearly in the immediate situation the handler at issue is purchasing far above normal balancing supplies. His operation bears essentially no resemblance to that of producer-handlers in the traditional view.
>
> In view of the foregoing, a substantial handler buying more than an incidental amount of supplemental supplies should not have status as a producer-handler. To the contrary, as has been previously stated, to hold such status an individual should handle preponderantly only his own farm production.
>
> For the subject handler 5 percent of his own production represents approximately 10,000 pounds which is about 2½ percent of his total Class I sales. A limitation of 10,000 pounds obviously would deny this handler continuing producer-handler status. Since no other problem with producer-handlers was cited, it is concluded that such limitation on a producer-handler's purchases will best insure against the unintentional involvement in regulation of producer-handlers as a group. At the same time it should be effective in deterring larger handlers with own farm production from evading the pooling of such production by seeking producer-handler status.

Producer. The term "producer" defines those dairy farmers who constitute the regular source of supply for the regulated

market, and to whom the minimum prices specified under the order must be paid. Milk eligible to be received at a pool plant must meet quality standards for fluid disposition in the marketing area. Such milk appropriately should share in the equalization pool unless it falls in the category of milk received from a "dairy farmer for other markets", from a producer-handler, under any Federal order, a Government agency as a handler pursuant to § 1004.10(e) or from persons defined as producers under another Federal order.

For reasons previously stated in this decision relating to "dairy farmer for other markets," milk from such source should not share in the equalization pool of this market. Similarly, since producer-handlers and any governmental agency acting as a handler pursuant to § 1004.10 (e), do not share their Class I sales with other producers, they too should not share in the blend price as to any of their excess milk disposed of to a pool plant.

The concept of providing producer status for any dairy farmer with respect to his qualified milk physically received at a pool plant is common to Federal orders generally. Even though producer status is established on the basis of receipt of milk at a pool plant (with specified exceptions) it is recognized that the orderly and efficient handling of reserve milk may require the occasional diversion of the milk of individual producers from a pool plant to another plant. The direct movement of the milk from the producer's farm to the plant of ultimate disposition avoids the expense and handling which would be involved if the milk were required to be first delivered to the pool plant where normally received and then transferred to the other plant.

There is no need to provide for diversions between pool distributing plants since the milk would retain producer status regardless of the plant of physical receipt. Administration of the order will be implemented if the operator of the plant of physical receipt is held the responsible handler. There also is no need to provide for diversion by a cooperative association to a pool reserve milk plant. Possible problems which might otherwise arise because milk from a particular farm was received at more than one pool plant during the month will be minimized since cooperative associations acquire the role of responsible handler on milk which they cause to be picked up from a farm bulk tank and delivered to a pool plant.

There may be situations where the milk can most efficiently be disposed of by a proprietary handler by diversion to one of the reserve milk plants having pool plant status. The order should provide therefore that milk may be diverted by a proprietary handler from a pool distributing plant to a reserve processing pool plant.

In addition, in the interest of the orderly and efficient handling of reserve milk under this combined order, provision should be made for diversions to "other order" plants for Class II use. By requiring an agreement between the diverting handler and receiver on Class II use when milk is diverted to an other order plant, the possibility of any portion of the milk being assigned to Class I will be minimized. However, in the event that the receiving handler does not have sufficient Class II utilization to cover the requested Class II assignment, a portion of the milk so moved would necessarily be assigned to Class I. In such a situation, it would not be reasonable to presume that the diverted milk continues in fact to be a part of the Middle Atlantic reserve supply. When part or all of the milk so moved is used for fluid purposes in the receiving plant, the milk obviously is needed for fluid use in the receiving market and appropriately should be considered a part of that market's fluid supply.

It is possible that other order milk may be received (as diverted producer milk) at a plant under this order for manufacturing uses. Such milk, as part of the other order's regular milk supply appropriately should be permitted to retain producer milk status under such other order.

Provision for diversions to nonpool plants also is desirable to facilitate the orderly and efficient disposition of the necessary market reserve. There should be some safeguard, however, against association of an excessive supply of milk with the pool through the diversion process.

During the months of September through February, when milk production is generally lowest, it is necessary to provide diversion privileges to nonpool plants only to cover weekend receipts and nominal reserves resulting from day-to-day variations in Class I sales. Diversions to nonpool plants (including an other order plant if the diversion is for Class II use), other than a producer-handler, during any month of this period therefore are limited to 10 days' production of any producer. In addition, as an alternative to the 10-day limit during the months of September through February and to permit maximum efficiency in handling reserve milk, diversion on a percentage basis should be provided. A cooperative association should be able to divert to a nonpool plant up to 15 percent of the milk of its producer members during any such month, and a proprietary handler should be permitted to so divert up to 15 percent of the total nonmember producer receipts at his pool plant during any such month.

There is little possibility in this market that a handler may take on unneeded milk during the March–August period for the purpose of having milk for Class II use. Hence, there is no need to limit diversions during this period when the problem of economic handling of the market's reserve supply is greatest. Handlers, including cooperative associations, therefore should have unlimited diversion privileges during this period.

While diverted milk is included as producer milk by virtue of being deemed to have been received by the diverting handler at a pool plant at the location of the plant from which diverted, nevertheless, for purposes of applying location adjustments or the direct delivery differential, milk diverted in the following manner should be treated as though received at the location of the plant to which diverted:

(1) Diverted from a pool plant at which no location adjustment credit is applicable, to a plant at which a location adjustment credit is applicable.

(2) Diverted from a pool plant at which a location adjustment credit is applicable, to a plant at which a greater location adjustment credit is applicable.

(3) Diverted from a pool plant in the direct-delivery zone to a plant outside such direct-delivery zone.

Unless this procedure is followed there is incentive for any handler operating a manufacturing plant to associate an excessive quantity of milk with his distributing plant(s) and then regularly receive the milk at his manufacturing plant as diverted milk up to the limits allowed. Distant producers thus could receive the city blended price when in fact, their milk was moving regularly to a nearby manufacturing plant. Pricing diverted milk in the manner here adopted will insure that the pool will not subsidize transportation costs which, in fact, are not incurred.

The direct delivery differential compensates producers in part for the added costs involved in moving milk directly to city plants. However, when milk is diverted from city plants to a nearby manufacturing plant in the production area, these additional costs are not incurred. In such circumstances where the milk is not physically received in the direct delivery zone, there is no justification for assessing such differential on the responsible (diverting) handler.

Milk of producers which is received at pool plants directly from the farm where produced, or by a cooperative association in its capacity as a handler in farm bulk tank milk, or that which is diverted in accordance with conditions set forth in the producer definition, is considered to be "producer milk".

Other source milk. Other source milk is defined as all skim milk and butterfat utilized by a handler in his operation, except producer milk, fluid milk products received from pool plants, milk received from a cooperative in its capacity as a handler on farm bulk tank milk, and inventory of fluid milk products on hand at the beginning of the month. It would include all skim milk and butterfat represented by fluid milk products received from plants other than pool plants and all manufactured milk products from any source received during the same or prior months, including those from the plant's own manufacturing operation which are reprocessed or reconverted into another product during the month. Also included as other source milk are receipts in a form other than a fluid milk product for which the handler fails to establish a disposition.

In order to verify the actual utilization of milk received from producers, it is necessary that the market administrator be in a position to reconcile all receipts of milk and dairy products with the disposition records of the plant. If such records cannot be reconciled, the handler

must be held responsible for the shrinkage or the overrun which occurs as a result of the discrepancy between receipts and disposition. Otherwise, the handler with improper records would be in a position to gain an advantage over his competitors who properly account for all milk and dairy products received. It is equally necessary that the handler be required to account for all nonfluid dairy products in a form other than a fluid milk product for which the handler fails to establish a disposition. Otherwise, a handler, by failing to keep records of the nonfat dry milk and similar products which can be reconstituted into skim milk or other fluid products, could gain a competitive advantage over other handlers in the market.

Certified milk. The definition of certified milk as now contained in the Delaware Valley order should be included also in the combined order without change. This definition identifies the milk disposed of in the marketing area either on routes or through other handlers which originates from a certified milk operation located in New Jersey. This is the only source of certified milk known to be disposed of in the marketing area. The volume of sales is not substantial, and such milk, over a long period, has been disposed of in the market.

Order proponent proposed, and there was no opposition, that the manner of handling certified milk under the Delaware Valley order be continued under the combined order.

(b) *Classification and allocation.* Under the classified use plan currently provided in the three respective orders and herein adopted for the merged order, it is necessary to insure that all milk and milk products are fully accounted for by the handler who is responsible for accounting and reporting to the market administrator and for making payments to producers. Accounting for milk and milk products on a skim milk and butterfat basis at each individual plant and pricing in accordance with the form in which or the purpose for which such milk and butterfat is used or disposed of as either Class I milk or Class II milk is the most appropriate means of securing complete accounting on all milk involved in market transactions.

Milk is disposed of in the market in a wide variety of forms, representing different proportions of skim milk and butterfat components of milk which may be greatly changed from the proportions of skim milk and butterfat in milk as it is first received from producers. Uniformity in accounting may best be accomplished by using the skim milk and butterfat accounting procedure.

The classification provisions of Orders 3, 4, and 16 are essentially similar except with respect to the classification of products in fluid form with a butterfat content above the range of milk. Under Order 3, essentially all products in fluid form intended for fluid consumption have been classified in Class I. Under Order 16, cream (18 percent or more butterfat content) has been Class II and half-and-half (butterfat content of at least 12 percent but less than 18 percent) has been classified 50 percent Class I and 50 percent Class II, by weight. Under Order 4 cream (18 percent or more of butterfat) has been classified in Class II and half-and-half (except sour) has been classified as Class I. Inventories of fluid milk products on hand at the end of the month have been classified in Class II under each of the orders, except that under Order 4 packaged inventories have been classified in Class I. Except also for variations in the application of the classification provisions with respect to sterilized products in hermetically sealed containers, classification has otherwise been identical.

Official notice is taken of the actions taken by the Assistant Secretary on January 20 and 22, 1970, respectively, suspending certain of the classification provisions under Order 16 and certain provisions of the fluid milk product definition under Order 3 (35 F.R. 1044). As a result of these actions only milk and other fluid milk products with a butterfat content within the range of milk and below are now classified in Class I under Order 3.

The record evidence with respect to classification matters was fundamentally directed to resolving the differences in classification of particular products among the orders rather than to consideration of any basic principles of classification. This decision, therefore, is necessarily directed to the resolving of the present differences in classification. There is, however, obvious need for a full exploration of the entire classification structure at an early hearing.

Under the classification scheme here adopted, Class I milk includes all milk and skim milk (including concentrated milk and reconstituted milk and skim milk), buttermilk, cultured buttermilk, flavored milk, milk drinks (plain or flavored), filled milk, and mixtures in fluid form of cream and milk or skim milk containing less than 10 percent butterfat, except: Ice cream, ice cream mixes, ice milk mixes, milkshake mixes, eggnog, yogurt, condensed and evaporated milk, and any product which contains 6 percent or more nonmilk fat (or oil).

Under some circumstances, nonfat milk solids may be utilized through reconstitution or fortification in the preparation of fluid milk products. For the purposes of accounting for the skim milk required to produce such products, the added nonfat milk solids should include the normal quantity of water originally associated with the solids. The volume of the reconstituted or fortified fluid milk product classified in Class I should be the quantity equivalent to the volume of the same product made without the addition of nonfat milk solids. The remaining volume of the product, which represents the skim milk equivalent of added nonfat milk solids, is classified as Class II.

As a convenience in drafting the order, the products to be classified as Class I are defined as "fluid milk products." All skim milk and butterfat used to produce products other than fluid milk products as set forth above should be Class II.

As previously indicated, cream has been a Class II product under Orders 4 and 16 and since the suspension action of January 22 also under Order 3. The reclassification of cream as Class I under Order 4 was most recently considered and denied by the Deputy Administrator in his recommended decision of April 18, 1969 (34 F.R. 6788), official notice of which is taken. In consideration of this matter the Deputy Administrator found as follows:

> The matter at issue does not appear to be one of substantial proportion. During the past 5 years, sales of cream for fluid use by Delaware Valley handlers have declined approximately 30 percent while total Class I sales of fluid milk products have increased about 20 percent with the result that the volume of fluid cream sales is less than 1 percent of the volume of total fluid milk product sales. Obviously, under such circumstances, a change in the classification of cream could have little overall effect on producer returns. A Class I classification would, however, increase handlers' cost for cream and thus further deteriorate an already unfavorable competitive price relationship between cream and vegetable fat substitutes and thus likely reduce even further the volume of cream disposed of for fluid consumption.

The situation in the Upper Chesapeake Bay and Washington, D.C., markets is substantially identical to that found to exist in the Delaware Valley area. For example, the Class I utilization (product pounds) of cream and cream mixtures in the Order 3 market declined 14 percent since 1964. During 1968, about 2 percent of total producer receipts classified as Class I was sold as cream and cream mixtures for fluid use.

Proponents for order merger concluded that a Class II classification for cream, as compared to a Class I classification, would result in no significant difference in returns to producers if a single butterfat differential, as herein adopted, were applicable.

The principal product in the "mixture" category sold in the market here being considered is commonly referred to as (and generally is labeled) "half-and-half". This product is a mixture of cream and milk or skim milk with a butterfat content in excess of 10 percent (12 percent in some segments of the market) but less than 18 percent, usually approximating the lower of the range. This product is sold in the market in a variety of containers ranging from half-ounce (individual servings of the product for use as coffee whitener and referred to as "creamers") to half-pints and in some cases larger containers. However, as in the case of cream, the sale of half-and-half does not represent a significant percentage of the market's total fluid disposition. By far the larger outlet for the product is with hotels and restaurants. Such businesses can, as an alternative to purchasing the finished product, purchase nonfat dry milk and cream and reconstitute the product. In such circumstance, producers would receive no more than the Class II price.

It is concluded that milk and cream mixtures containing 10 percent or more

butterfat should be Class II. Such classification will have no significant effect on producer returns but will implement the disposition of the excess butterfat in producer milk.

Certain other mixtures historically have been classified as Class II under the respective orders either by specific designation or on the basis of being "sterilized" and "in hermetically sealed" containers. These latter terms were specifically incorporated in the respective orders to make clear that canned evaporated and condensed milk were not intended to be classified as other than Class II. Continuing technological advancements in both processing and packaging have created considerable difficulty in the administration of the orders, particularly with respect to the classification of products in various types of plastic, paper and foil-lined containers which some processors argue fall in the category of "hermetically sealed" containers.

Neither sterilization nor packaging necessarily changes "the form in which or the purpose for which" milk or a particular milk product is used and, accordingly, cannot appropriately be relied upon for classification purposes. The fluid milk product definition adopted (except as herein specifically discussed) will provide a Class I classification for the same products contemplated under the present classification provisions of the respective orders.

Inventories of fluid milk products in packaged form on hand at the end of the month should be classified as Class I. Inventories in bulk should continue to be Class II. This procedure for handling ending inventories conforms with that proposed by proponents and is identical with that provided under the present Delaware Valley order. Orders 3 and 16 now provide that end-of-the-month inventories in both bulk and packaged form will be classified as Class II.

This treatment of inventories will tend to minimize any possible differences in classification which might otherwise result from varying internal accounting procedures as among handlers. In addition, it will tend to minimize month-to-month fluctuations in the pool obligations of high utilization handlers.

In the first month in which this provision is in effect, it is provided that a reclassification charge will be applicable in the identical manner as in the past with respect to those handlers who have been regulated under Orders 3 or 16. In subsequent months, a reclassification charge will be applicable only on bulk inventory which is assigned to Class I. However, to insure that all handlers pay the current month's Class I price for producer milk disposed of during the month, it is provided that if the Class I price increases, the handler will be charged the difference between the Class I price for the current month and the Class I price for the preceding month on the quantity of ending inventory assigned to Class I in the preceding month. Likewise, if the Class I price decreases, the handler will receive a corresponding credit.

To accommodate this procedure, the allocation section of the order provides that packaged fluid milk products on hand at the beginning of the month shall be subtracted from Class I utilization as one of the first steps in the allocation procedure. However, an exception is made with respect to the first month of operation for those handlers who have been regulated under Orders 3 or 16 and for any plant in the month in which it first becomes regulated. Opening inventory of packaged fluid milk products in these circumstances are allocated to available Class II utilization in the plant during the month. This procedure will preserve the priority of assignment of current producer receipts and minimizes the application of any compensatory charge. Inventories of fluid milk products in bulk form, in all circumstances, will continue to be handled under the identical procedures currently provided in the respective orders.

The transfer provisions of the combined order are essentially those of the three respective orders with one exception. Orders 3 and 16 now provide that movements of any fluid milk product to a nonpool plant (except an other order plant, a producer-handler plant, or a plant of a government agency in its capacity as a handler as defined thereunder) may be classified as other than Class I only if the transferee plant is located within specified distances from the market. The provisions of Order 4 provide no such condition and order proponents proposed that the Order 4 provisions be adopted. This procedure is concluded to be appropriate and, accordingly, the order provides that transfers or diversions to nonpool plants shall be classified in accordance with the specified procedure without regard to location of the transferor plant.

(c) *Class prices, butterfat differentials and location differentials.* The price per hundredweight for Class I milk under the combined order should be a specified price of $7.11 to which should be added any amount by which the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the U.S. Department of Agriculture for the preceding month on a 3.5 percent butterfat basis, exceeds $4.33. The Class II price should be established at the same level and through the same pricing formula presently provided in the Washington, D.C., and Upper Chesapeake Bay orders. A direct-delivery differential of 6 cents per hundredweight should be applicable to all producer milk received at plants located 55 miles or less from the city hall in Philadelphia. Finally, the Class I and blended prices applicable at all plant locations more than 55 miles from the city hall in Philadelphia and also more than 75 miles from the nearer of the city hall in Baltimore, Md., or the zero milestone in Washington, D.C., should be reduced 1.5 cents for each 10-mile distance or fraction thereof that such plant location is from the nearest of such basing points.

Under the present provisions of the several orders, the Delaware Valley Class I price is $7.17, plus any amount by which the Minnesota-Wisconsin price exceeds $4.33 and the Class I price under both the Upper Chesapeake Bay and Washington, D.C., orders, is the Delaware Valley price less 10 cents. Location differentials applicable to both Class I and blend prices are computed at the rate of 1.5 cents per 10-mile zone and under the Delaware Valley order are applicable at plants located in excess of 45 miles from the nearer of specified basing points in Philadelphia, Trenton, and Atlantic City. Under Order 3 (Washington, D.C.) such differentials are applicable at plants in excess of 75 miles distance from Washington, D.C., and under Order 16 (Upper Chesapeake Bay) they are applicable at plants in excess of 75 miles distance from the nearer of Baltimore and Salisbury, Md.

The Class II price under the three orders is established under identical pricing formulae. However, the Class II price applicable at city plants under the Delaware Valley order is 6 cents above the price under the other two orders. Such order also provides Class II location differential of 5 cents applicable at plants located from 45 to 70 miles from the nearer of the basing points and such differential is increased an additional cent for each additional 70 miles distance or fraction thereof. Through such location adjustments, appropriate Class II price alignment has been maintained between plants regulated under Delaware Valley and plants regulated under adjacent orders. Neither Washington, D.C., or Upper Chesapeake Bay order provides Class II location differentials.

Pennmarva, at the hearing, supported a Class I price level of $7.17 with an additional 20 cents to be applicable whenever the Minnesota-Wisconsin pay price exceeds $4.33 by 15 cents or more. Such price was intended to apply at plant locations outside the States of New Jersey and Pennsylvania and within 75 miles of Washington, D.C., Baltimore or Salisbury, Md., or within the States of Pennsylvania, Delaware, and New Jersey and less than 55 miles from the nearer of Philadelphia, Trenton, or Atlantic City. Under their proposal, plants subject to location differentials would be zoned from the nearest of Philadelphia, Trenton, or Atlantic City. Pennmarva's Class II price proposal was identical with the existing provisions of the Delaware Valley order, with location differentials applicable at all plants in excess of 55 miles of the nearest of Philadelphia, Trenton, and Atlantic City. However, in its brief Pennmarva supported a pricing scheme essentially identical to that herein adopted both with respect to Class I milk and Class II milk.

The Mid-Atlantic Federal Order Committee generally held that there should be no change in the price levels (Class I or Class II) applicable at various plant locations under the several orders. It did, however, support a bracketing scheme for pricing Class I milk.

The matter of bracketing of the Class I price, as has been previously indicated in this decision, was further considered at a reopened session of the hearing and

was denied by the Assistant Secretary in his decision of January 20, 1970 (35 F.R. 1017). A national hearing was held in St. Louis, Mo., January 20–23, 1970, and in New York City, on February 17–18, 1970, pursuant to notice thereof published in the FEDERAL REGISTER of December 2, 1969 (34 F.R. 19078), and a supplemental notice published in the FEDERAL REGISTER of January 13, 1970 (35 F.R. 435), for the purpose of considering proposals for an appropriate economic formula for pricing Class I milk under all Federal milk orders.

The Class II pricing formula and Class II price level under each of the orders here being considered was reviewed in depth at a hearing held in New York City during the period from June 19 through August 4, 1967, and the present pricing was adopted by the Assistant Secretary in his decision of May 9, 1968 (33 F.R. 7184), official notice of which is taken. There is no basis on the record of this hearing for any change in the procedure for pricing or the level of Class II pricing.

The immediate and primary problem to be resolved on this record is the integration of three separate but closely correlated orders into a single regulation which will retain insofar as possible the same interplant price relationships which have existed under the separate regulations.

The Delaware Valley area is by far the largest segment of the combined market, both in terms of producer receipts and Class I sales. This area has historically drawn milk from a much broader supply area than either the Washington, D.C., or Baltimore segment of the market and a substantial part of the supply area for Delaware Valley overlaps the primary portion of the common supply area of Baltimore and Washington, D.C. For much of the area the distance therefrom to Philadelphia and New Jersey is significantly greater than to Washington and/or Baltimore.

If identical pricing were applicable at all plant locations in Philadelphia, New Jersey, Washington, D.C., and Baltimore under the merged order, handlers in the latter two locations would undoubtedly have priority of call on a greater than necessary milk supply while Philadelphia and New Jersey-based handlers might be in need of milk. In such circumstances the members of Pennmarva would undoubtedly direct supplies among handlers as needed. This situation could not, however, promote continued orderly marketing over time since producers delivering from the common supply area to plants in the New Jersey and Philadelphia area would net a lesser return because of the longer haul and hence higher hauling costs.

For the above reasons, it is concluded that there must continue to be some price differential between Philadelphia and Washington, D.C., and/or Baltimore. This conclusion is further supported by the fact that, because of the greater distance involved, the cost to a Philadelphia or New Jersey handler of supplemental milk obtained from midwestern supply sources would be greater than that for a Washington, D.C., or Baltimore-based handler.

In order that the order merger may be accomplished without undue disruption of interplant price relationships, particularly in the major areas of competition, the basic Class I and Class II prices should be established at a level 6 cents below these presently applicable under the Delaware Valley order.

As an adjunct to the pricing scheme and to preserve the interplant price relationships which have prevailed under the several orders, provision should be made for the payment by each handler of a direct-delivery differential of 6 cents per hundredweight on all milk received from producers by such handler at plants located within 55 miles of the city hall at Philadelphia. The payment of such differential in this manner will, with respect to all handlers in the base zone surrounding the Philadelphia area, result in a total obligation for both Class I milk and Class II milk identical with that presently applicable under the Delaware Valley order. It will also preserve the present pattern of returns among most of the present Delaware Valley producers.

Handler costs for Class I milk at plants within 75 miles of either Washington or Baltimore will be increased by 4 cents while their costs for Class II milk will be unchanged. The 6-cent Class I price difference (in lieu of the present 10 cents) as between Philadelphia and Baltimore or Washington will more appropriately accommodate the growing competition among handlers in the three segments of the market and will also substantially implement price alignment at plant locations where location differentials are applicable. The 4-cent Class I price adjustment applicable to handlers in the Washington-Baltimore area will apply on 45 percent of the combined market Class I sales and will result in an estimated 1-cent increase in average producer returns.

As has been previously indicated, the Delaware Valley market has a much larger milkshed than the other two markets and traditionally was supplied largely through supply plants. As a result, established pool reserve processing facilities have been maintained in the supply area and it is not necessary to move milk to the city except for Class I uses. Two such manufacturing plants have long been associated with the Delaware Valley market and under the pooling provisions hereinbefore adopted have been provided continuing pool status. In addition, processing facilities at Westminster and Laurel, Md., have also been provided continuing pool status and such facilities should provide economical outlets for reserve milk in the nearby Maryland and southern Pennsylvania areas from which present Delaware handlers draw a substantial part of their milk supply.

The additional 6 cents which producers will receive through the direct-delivery differential for milk delivered to the Philadelphia area will appropriately compensate them for the additional transportation costs involved in moving milk to that location. This will tend to insure Philadelphia handlers equal access to the market's total milk supply in competition with Baltimore and Washington-based handlers. The order herein adopted will facilitate the movement of any reserve milk supplies directly to milk product processing plants in the production area. Hence, milk not required by Philadelphia area handlers need not be moved to the city. In such event there would be a transportation saving to the producers whose milk was involved and, accordingly, a handler would not be obligated for the direct-delivery differential on milk so moved.

While the Delaware Valley order presently provides three basing points (Philadelphia, Trenton, and Atlantic City) from which location differentials are computed, it does not appear that discontinuing of the use of Trenton and Atlantic City as basing points would change the applicable price at any plant associated with the combined market. For this reason, and also to facilitate administration of the order, the two basing points have been dropped in the merged order.

The Upper Chesapeake Bay order provides both Baltimore and Salisbury, Md., as basing points for pricing purposes. The use of Salisbury as a basing point at this time could reasonably affect the price only at certain plant locations in the southern Delaware area herein being added to the marketing area. The dropping of Salisbury as a basing point was proposed by the currently regulated local southern Delaware handler and was supported by Pennmarva in its post-hearing brief.

As has been previously indicated, most of the milk producers in this southern Delaware area deliver their milk to Delaware Valley and Upper Chesapeake Bay handlers and most of such producers must deliver their milk direct to city plants. The hauling cost for delivery of that milk is significantly greater than the hauling cost experienced by the limited number of producers who market their milk with local southern Delaware handlers. More equitable distribution of returns among producers will prevail, therefore, if Salisbury is eliminated as a basing point.

The Delaware Valley order has provided location differential pricing at plants located 45 miles or more from the specified basing points while under the other two orders location differential pricing is applicable with respect to plants located in excess of 75 miles from basing points. This difference in pricing structure reflects the difference in basic structure of the respective markets. The Delaware Valley market traditionally was supplied through supply plants while the other two markets, being more compact, were direct-delivery markets. The different mileage distances which have been employed in computing location differentials under these orders have implemented appropriate interorder price relationships at country plants and this has been effective in directing an appropriate division of supplies as among the markets.

Pennmarva proposed that the nearby zone, wherein the basic price level is applicable with respect to the Delaware Valley plants, be extended from 45 miles to 55 miles. Such an adjustment would prospectively affect only the Allentown plant of Lehigh Valley, a cooperative association operating not only manufacturing facilities, but also substantial fluid milk packaging and distributing facilities.

The direct effect of an extension of the basic zone from 45 miles to 55 miles is to increase the one affected handler's (a cooperative) costs of both Class I and Class II milk 9 cents and 6 cents respectively. This will provide greater equity among handlers competing in a common segment of the market. An indirect result will be that such cooperative's member producers will receive a slightly greater share of the total pool proceeds. However, this zone adjustment was proposed and supported by Pennmarva representing the majority of producers on the combined market.

Butterfat differentials. The present butterfat differential provisions of the three orders here being considered were adopted by the Acting Secretary in his decision of August 20, 1969 (34 F.R. 13601), on the basis of the record of a regional hearing held in New York City on June 16–17, 1969. Such provisions are identical as among the three orders and are equally appropriate under the combined order for the identical reasons set forth in that decision. Since the same butterfat differential now applies with respect to both Class I and Class II, handler costs for differential butterfat above or below the basic test at which milk is priced are the same, regardless of use. It is unnecessary, therefore, to "clear" the differential butterfat through the equalization pool. In order that returns to each producer will reflect the value of his milk at the butterfat test at which such milk is received, it is provided that each handler, in making payment to each producer, shall adjust the uniform price(s) by the application of the butterfat differential. This procedure will facilitate handler accounting under the order and administration thereof.

Application of location differentials. The application of location differentials under the separate orders is essentially similar, except that the Delaware Valley order assigns receipts from other pool plants to Class I utilization in excess of 95 percent of receipts from producers, cooperative associations and certain other specified receipts, while the other two orders assign 100 percent of these latter receipts first to Class I. The provisions of the Delaware Valley order are adopted for the merged order.

This assignment procedure was initially adopted in recognition of the fact that a handler operating only a fluid milk business must necessarily have available at his bottling plant some milk in excess of his actual Class I utilization. Such reserve is needed to meet unanticipated fluctuations in day-to-day requirements, route returns and normal plant shrinkage. The situation in the market has significantly changed over the years in that handlers now generally receive at their bottling plant all necessary fluid requirements directly from the farm. Accordingly, under most circumstances, the assignment procedure being prescribed for applying handler location differentials will not result in a Class I assignment on interplant movements. Nevertheless, in circumstances where such assignment does result, any resulting location credits are appropriate.

In light of the pooling standards hereinbefore adopted, some safeguard appropriately must be provided to deter the operator of a pool supply plant from circumventing the intent of the location differential provisions by moving milk from such supply plant through an intermediate pool plant in the base zone as a means of transferring such milk to other pool handlers and acquiring Class I location credits which could not be acquired by direct movements to the plant of ultimate receipt. It is provided, therefore, that in the computation of location differential credits to handlers, transfers from a pool plant to a second pool plant which are in turn transferred to a third pool plant, shall be treated as though the transfer was direct from the originating plant to the plant of ultimate receipt.

(d) *Seasonal incentive payment plan.* The merged order should provide for the payment of producers under a "base and excess" plan as a means of encouraging a continuing uniform level of production throughout the year.

Each of the respective orders presently provides a base-excess payment plan whereby bases are computed on deliveries in the months of July through December and are applicable for the months of March through June, except Washington, D.C., under which bases are applicable only for the three months of April through June. Each of the orders provides very liberal base transfer rules and, in addition, dairy farmers delivering milk to any plant which first enters the market after the beginning of any base-forming period may acquire bases computed as though such plant had been a pool plant throughout the base-forming period.

Because of the ease with which transfers can be accomplished under the current orders and because dairy farmers can earn full bases, even though the plant to which their milk is delivered is pooled as little as a single month, there has been considerable abuse of the base-excess plan, particularly under the Delaware Valley order.

Plants normally associated with the New York-New Jersey market (Order 2), and even the Massachusetts-Rhode Island-New Hampshire market (Order 1), have shifted regulation to the Delaware Valley order (in some instances for a single month) for the obvious purpose of acquiring bases for the dairy farmer patrons. Bases so acquired are then transferred to other producers in the Delaware Valley market. In other circumstances, deliveries from farms have been split so that only base milk is delivered to the Delaware Valley market, and what would otherwise have been excess milk is delivered as producer milk under another order. In still other circumstances, plants have shifted regulation to the Delaware Valley order during the base-operating period, which is the "take out" period under the Louisville seasonal pricing plan under Order 2, and have then been returned to regulation under Order 2 to participate in the "pay back" under the Louisville plan during the fall months.

These numerous abuses of the base plan, which in many situations were also abuses of the Louisville plan under either Order 1 or 2, have resulted in considerable discontent on the part of many producers in the Delaware Valley market.

A proposal for a Louisville payment plan was made on behalf of the Dairymen's League Cooperative Association, Inc. (now DairyLea Cooperative, Inc.) and Northeast Dairy Cooperative Federation, Inc. Both of these organizations are major cooperatives under Order 2 and DairyLea also has substantial membership among Order 4 producers.

Proponents' fundamental purpose in making this proposal was essentially identical with that of proponents for a 12-month base plan; i.e., to encourage a continuing even pattern of production throughout the year and to eliminate interorder shifts of plants and producers for the sole purpose of exploiting the different seasonal pricing plans. In addition, however, proponents for a Louisville plan contended that such a plan was necessary to promote more uniformity of regulation and greater price equity among producers throughout the region.

Both the base-excess plan and the Louisville seasonal incentive pricing plan obviously can be effective in promoting a desirable seasonality of production in any particular market. Although both plans have wide acceptance, the plan provided in any particular market should be one which has the approval of a substantial majority of producers in such market. The cooperatives representing such a majority of the producers in the markets here being merged support a base-excess plan.

A 12-month base plan, with transfers limited to circumstances of death or discontinuance of the dairy enterprise, and with provision whereby new producers may acquire bases reflecting an equitable percentage of their monthly deliveries, was proposed by Pennmarva as the most appropriate means of insuring continuing even production.

The base and excess plan herein adopted would establish a base for each producer by dividing his total deliveries to pool plants in the preceding months of August through December by 153 (154 in the case of a producer on every-other-day delivery and who delivered on August 1) less the number of days, if any, for which such producer's production was not received by pool handlers, but under no circumstances by less than 120. Producers would establish new bases each year. Such bases would be computed by the market administrator to be effective for the 12-month period of March 1 through February of the following year.

By February 25 of each year the market administrator would notify each cooperative association with respect to the established base of each producer member and each nonmember producer with respect to his established base.

Normally, new supply plants would be expected to enter the market only because additional milk supplies are required. Thus, there could be no need for such plants to enter the market initially in the months of flush production. Appropriately, dairy farmers associated with any supply plant entering the market should acquire bases in the identical manner as regular producers; i.e., based on their deliveries to pool plants during the base-forming months or in the alternative acquire a base in the manner hereinafter prescribed for new producers.

For distributing plants, the situation is somewhat different. A change in the respective volumes of Class I route sales between markets, either by virtue of additional business or by loss of sales, can result in an unintentional shift in regulation of a plant from one order to another. It would be unreasonable, in establishing bases, to discriminate against producers delivering to such a plant. Accordingly, the order provides that when a distributing plant first becomes regulated, the market administrator shall compute bases for the producers shipping to such plant on the identical basis used in the computation of bases generally, considering the deliveries of such producers to the plant in its nonpool status as though it had been a pool plant.

Special consideration was proposed to accommodate bona fide shifting of producers between this order and Order 2. In light of limited base transfer provisions, the opportunity for exploiting the plan to the detriment of other producers is substantially reduced. It is possible, therefore, to adopt in this order with respect to Order 2 a provision which has been applicable only among the three orders here being merged. Because there is a close interrelationship between the Order 4 and Order 2 markets and they do draw to a considerable extent upon a common supply area, producers should not be unduly inhibited from shifting between the markets.

Milk would most logically be needed in this market during the short production months. It is provided, therefore, that for any farm from which the entire production was moved as producer milk under Order 2 during all or part of the August–September period, and thereafter was moved as producer milk under this order through December, a base shall be computed on the basis of the deliveries under both orders. Requiring that the milk all be delivered to this order during the last 3 months of the base-forming period will assure that the milk has been associated with the market when supplies are most needed.

Under the transfer rules hereinafter discussed, there will be but limited opportunity for new producers to acquire bases by transfer. Appropriately, therefore, some provision should be made whereby new producers can acquire bases reflecting their performance in the market. Otherwise, new producers might be deterred from entering the market.

Pennmarva initially proposed that a new producer might acquire a base equal to 50 percent of his deliveries each month until such time as he had delivered four months during the next following base-forming period. In its posthearing brief, however, proponent suggested that the 50 percent apply only to the months of March through June, that 60 percent apply in the months of January, February, July, and December and that 70 percent apply in the remaining 4 months of August through November.

It is concluded that the latter percentages will provide reasonable treatment for new producers and that no further provision is needed for the purpose of providing interim bases. Bases computed on these percentages would not appear to be so high as to encourage new producers to come on the market at a time when their milk is not needed for Class I purposes. At the same time, they would not be so low as to discourage any producer who intends to become permanently associated with the market.

To insure equity between established producers and new producers, provision must be made whereby a producer with an established base can give up such base by notification to the market administrator and have a new base computed each month on the same percentage as is applicable to new producers. Once a producer relinquishes his established base, he must have his base computed each month on a percentage basis until the following March when new bases become applicable.

Under the terms of the order, "base milk" will be that milk received during the month which is not in excess of the producer's base multiplied by the number of days of production on which such milk was received at pool plants during the month. "Excess milk" is that producer milk received during the month which is in excess of the base milk received from such producer during such month.

Class I disposition of the market would first be assigned to base milk. If the aggregate Class I disposition is more than the base milk pooled in any month, such additional Class I milk would be allocated to excess milk and the excess price increased accordingly. Except under such circumstances, producers would receive only a Class II price for their excess milk and the remaining pool proceeds would be paid on base milk.

In some circumstances, due to audit adjustment or inventory classification, the normal procedure for calculation of base and excess prices might result in a base price higher than the Class I price. If this situation should occur, such additional value over the Class I price should be assigned to excess milk until the value of excess milk per hundredweight is brought up to the Class I price and any remaining additional values should be prorated between base and excess milk.

Location adjustments would be applicable only to the price paid producers for base milk. Since excess milk will essentially represent only milk classified in Class II to which no location adjustment is applicable, the producer price for excess milk should not be subject to a location differential.

The order should provide appropriate rules for the handling of base transfers and for other conditions that arise in connection with the administration of the base and excess plan.

The Deputy Administrator, in his recommended decision issued March 16, 1970 (35 F.R. 4902), concluded that a base transfer should be permitted only in its entirety and only in case of death of the baseholder or discontinuance of milk production because of entry into military service of such baseholder. Certain exceptors to this conclusion argued that some further flexibility should be provided.

As it has been indicated elsewhere in these findings, limitation on the transfer of bases as well as certain other terms of the order are being adopted to correct the numerous abuses which have attended the operation of the existing base plans in the separate markets, particularly in the Delaware Valley Market. The free transfer of base, permitted by the existing base plans, has resulted in a marketable value being attached to each base which, in turn, has led to trading in bases, and other conditions of market disorder such as the seasonal shift of producers onto the market primarily for base acquisition and subsequent sale. These abuses to the seasonal plans now effective in these respective markets as well as to those in neighboring markets have thwarted the full effective operation of such plans.

Under the base plan here adopted, each producer establishes a new base each fall. A producer may relinquish his established base at any time and obtain a new base under the same rules that apply to a new producer. It follows, therefore, that a base should generally have no negotiable value and that only a minimum of rules are needed to accommodate name changes within a continuing family operation or the circumstances of the baseholder discontinuing his dairy operation because of entrance into military service.

For legal or other reasons (including death) it may be necessary that the baseholder's holdings be placed in the name of another member of the immediate family. Where the dairy operation continues on the same farm in the name of a member of the immediate family and without interruption, it is desirable and appropriate that the name change of the baseholder be accommodated and it is so provided in the attached order.

Other circumstances of base transfer cannot appropriately be adopted if the purposes of the plan are to be achieved. Accordingly, all exceptions for a further liberalization of the base transfer rules are denied.

Base transfers should be accomplished only through written application to the market administrator on forms

prescribed by the market administrator and must be signed by the baseholder and by the person acquiring such base. A separate base is applicable to each farm in the case of multiple farm operations and only one base can be established for each farm. Where a base has been established jointly and a copy of the partnership agreement setting forth the percentages of interest of each partner has been filed with the market administrator before the end of the base-forming period, then on termination of the partnership each partner will be entitled to his stated share. Provision also is made whereby, in bona fide partnership operations, two or more producers may combine bases which would then be applicable for a single farm.

Each of the orders here being merged provides a base plan and established bases would otherwise be operative under each through June 1970. Appropriately, therefore, the new base plan should not be effected until March 1, 1971. However, bases to be effective March 1, 1971, will be computed on the basis of deliveries during the August–December 1970 period.

Since it is not possible for the merged order to become effective before the end of the current base paying periods of the individual orders (through June 1970), no provisions are necessary for a carry-over of the existing plans into the merged order.

(e) *Marketing service provision.* Provision should be made in the merged order for the performance of marketing service for producers such as verification of the weights and tests of producer milk and dissemination of market information. The Act specifically authorizes marketing service provisions of the nature herein adopted.

The services should be provided by the market administrator and the cost should be borne by the producers receiving the services. When a cooperative association is actually performing for its member producers the services which the market administrator would otherwise provide under this provision, such member producers would not be subject to the marketing services deduction.

It is concluded that a maximum marketing service rate of 5 cents per hundredweight should be established for the combined order. The Washington, D.C., and Upper Chesapeake Bay orders presently provide for a 5-cent maximum assessment while no assessment is provided for under the Delaware Valley order. Under Orders 3 and 16, nonmember producers have had assurance through the checking of weights and tests of their milk by the market administrator that their payment for such milk correctly reflects the volume and test of milk delivered. In addition, through the marketing information disseminated by the respective market administrators they have had essential information on marketing conditions (including current supplies, demand, production cost information, prices, prospective returns and related data) to more effectively plan their production programs. These services should be made equally available to nonmember producers on the combined market.

The market administrator of Order 4 has no regular check testing program on nonmember milk and has not participated in any program of checking bulk farm tank calibrations. Also, it does not appear that the States of New Jersey and Pennsylvania have direct responsibility in the matter of farm bulk tank calibrations and their activities in the matter of checking butterfat tests have been nominal. The respective States have neither the personnel nor the funds to carry out an adequate check testing and weight verification program.

Now that the market has converted to bulk tank handling the samples for butterfat testing must be taken, and the checking of the weights of producer milk must be done at the farm rather than at the plant as was formerly the case when milk was shipped in cans. The marketing services program here adopted for the combined market, therefore, will promote orderly marketing by assuring individual producers that they have obtained accurate weights and tests of their milk.

The 5-cent maximum rate of deduction appears reasonable in view of the number of producers involved and the rates which have been applicable under the Washington, D.C., and Upper Chesapeake Bay orders and should provide the necessary funds to support an adequate marketing service program. Should experience indicate that such service can be performed at a lesser rate, provision is made whereby the Secretary may adjust the rate downward without the necessity of calling a hearing to consider the matter.

The order proponents supported a marketing service program in conjunction with a "cooperative payment" program and held that if both programs could not be adopted, the marketing service program should be dropped in favor of cooperative payments. While there could be some overlapping of services under the two programs, particularly in the dissemination of market information, the two programs would not otherwise serve similar purposes. In any case, the request for cooperative payment provisions is hereinafter denied and there is an essential need for the marketing service program.

(f) *Cooperative payment provisions.* Payments to qualified cooperative associations or federations from pool proceeds, in compensation for marketwide services of benefit to all producers, should not be provided for in the order on the basis of this record.

Pennmarva proposed that the merged order provide "cooperative payment" provisions essentially similar to those contained in the New York-New Jersey order (Order 2). Under the proposal, a qualified cooperative (any cooperative representing at least 10 percent of all producers on the market and determined by the market administrator to be performing specified marketwide services benefiting all producers) would receive payment at the rate of 4 cents per hundredweight of member producer milk. Such monies would be derived from pool proceeds prior to the computation of the blended price.

In certain circumstances, cooperatives not otherwise qualifying for such payments could affiliate with a qualified cooperative to the end that the latter could receive payment on both its producer milk and the affiliate's member producer milk. Cooperatives performing marketwide services, but not qualifying because of size, could federate to qualify for the payments.

Proponent anticipated that under its proposal each of its three member cooperatives would qualify individually for payments. Except through possible federation on the part of other cooperatives, no other payment recipients were in prospect at the time of the hearing.

The spokesmen for the three member cooperatives of Pennmarva initially held that essentially all the activities (with minor exceptions) of these cooperatives, and hence expenditures, individually are marketwide in nature and represent qualifying activities under their proposal. Later this position was modified. The annual monetary disbursements of each were reviewed and divided between (1) expenditures primarily in the interest of members only, and (2) expenditures in the interest of producers generally (marketwide services). While the modified position resulted in a substantial reduction in the claimed expenditure for marketwide services, such claimed expenditures exceeded for each cooperative the amount of reimbursement payable under the proposal at the 4 cents per hundredweight rate on member milk.

The specific problem, from which proponent seeks relief through cooperative payments, is an alleged disadvantage to its member cooperatives created by the presence of cooperative payments under Order 2 (New York-New Jersey). Proponent states that the local cooperatives compete for membership among producers in this market with New York-based cooperative recipients of such payments which, because of the payments, can and do have lower membership dues than the local cooperatives.

Proponent's spokesman testified further that because of this his own cooperative (Inter-State) had lost perhaps as many as 20 members (or potential members) to such New York-based cooperatives in the past few years. He further testified that his cooperative's membership percentage among producers in this market had declined while that of New York-based cooperatives had increased.

The fact that certain cooperatives, whose primary membership is in the New York-New Jersey market, have increased their membership in this merged market in recent years would not be adequate basis in itself for adopting cooperative payments under this order. Competition among cooperatives for membership is commonplace. In any such organization some members inevitably become dissatisfied and resign membership for one reason or another. Some may then join a

competing organization. It would be surprising if proponent's member cooperatives do not hold as producer members some dairy farmers who previously were members of the same cooperatives of which it complains. It is most likely, however, that any increase in membership of the New York-New Jersey cooperatives in this market is largely the result of the additional plants which became regulated under Order 4 following the change from individual-handler to marketwide pooling effective June 1, 1967.

Further, the relatively small number of nonmember producers does not attest to any weakness in cooperative organization in this market. In the period between 1962 and 1968, the total number of producers decreased by 620, while the number of cooperative member producers increased by 565. In the Washington, D.C., area almost 93 percent of all producers are members of cooperatives and this has been the situation throughout the 7-year period. In each of the other two segments of the market, cooperative membership currently represents 80 percent of all producers, whereas in 1962 cooperative membership in the Delaware Valley market was only 60 percent and in the Upper Chesapeake Bay market was approximately 75 percent. If payment were provided for market services of a marketwide nature, such services would be financially supported primarily by, and would accrue mainly to, the producer members of proponent's member cooperatives.

Proponent's request for cooperative payments thus appears unrelated to any circumstances for which such payments conceivably might be warranted. The market activities for which reimbursement is requested, as well as the functions of supply balancing and handling of the market's reserve supply, are currently activities which the member cooperatives have elected to pursue in the interest of their producer members. In performing such activities, each of such cooperatives has acted as any alert, intelligent, organized participant of the market would be expected to do. That incidental benefits may accrue to the relatively few nonmembers remaining in this market from in the direct interest of their members activities engaged in by such cooperatives cannot be construed, under the conditions in this market, as reason for requiring by law that all producers must share the cost of such activities.

The important positions which the three Pennmarva cooperatives have acquired in their respective segments of the market is the direct result of the enterprise and initiative they have individually shown in advancing the interests of their member producers. When cooperatives can achieve and retain, as voluntary organizations, a dominant market position, as these cooperatives have, without outside help in the collection of income for the normal range of cooperative services, it would not be sound to provide assistance in the form of a subsidy, or hidden dues, by regulation. In such circumstances, assistance of this kind could hardly strengthen such cooperatives in the long run, and actually might weaken them through their increased dependence on the regulation and by the supervision that follows from providing such funds as a public function.

Even proponent indicates some doubt of its position. It pursues its request, but it also points out that removal of the cooperative payment provisions from Order 2 would be a preferable solution to the problem presented. This is not, of course, a proper place for further discussion of the terms of the Order 2 payment provisions or of their possible modification. However, if as proponent holds, Order 2 cooperatives, by virtue of the funds they receive through cooperative payments, operate at an advantage in this market in competing with local cooperatives for membership, a more appropriate action for proponent would be to consider whether there are appropriate adjustments that might be made in the cooperative service provisions of Order 2, particularly as they relate to requirements on the membership of Order 2 recipient cooperatives serving this (merged) market as a basis for payment eligibility. This, of course, could only be accomplished through hearing procedure on Order 2.

It is concluded from the foregoing that cooperative payments are not warranted under the merged order either to solve the competitive problem relating to cooperative membership, or on any need to give financial assistance to the cooperatives in carrying on customary services which may have incidental benefit to nonmember producers.

(g) *Payments to individual producers and to cooperative associations.* The order should provide for partial payment to producers on or before the last day of the month and for final payment on or before the 20th day after the end of the month. The partial payment should be for milk received during the first 15 days of the month and should be at not less than the Class II price for the preceding month. Final payment to each producer should reflect the handler's total obligation for milk received from such producer in the preceding month less the amount of partial payment and proper authorized deductions, adjusted to reflect any butterfat variation from 3.5 percent, location adjustment, and the direct-delivery differential. When payment is being made to a cooperative association, such payments should be paid on the second day prior to the date for payment to individual producers.

Both the Washington, D.C., and Upper Chesapeake Bay orders provide for a single payment to producers on or before the 15th day after the end of the month. The Delaware Valley order provides for a partial payment and final payment at the same time and in substantially the same manner here provided.

Almost 60 percent of the producers under the several orders have had their milk priced under the Delaware Valley order. They are accustomed to receiving payment on the same dates here prescribed and the record presents no compelling evidence for a different plan.

While this payment schedule will be a change for producers whose milk is currently priced under the other two orders such change should present no substantial problems. Although final payment can be as much as 5 days later (the 20th of the following month rather than the 15th), the impact of this will be offset by the earlier partial payment to be made on or before the end of the month (15 days earlier than such producers are now paid).

Under the present structure of the market, producers require substantial operating capital. They must make substantial cash investments and have the ready cash to meet their obligations. Regular partial payment for milk delivered during the first part of the month should ease problems attendant to the maintenance of sufficient operating capital in order to adjust effectively to changing operating conditions in the market.

Use of the Class II milk price for the previous month in making the partial payment will minimize the possibility of any overpayments on the part of the handler.

Payment to a cooperative association, either in its capacity as the marketing agent of the producer or in its capacity as a handler, 2 days earlier than payment to individual producers is necessary in order that the cooperative will have the information and moneys needed to pay its members on the same dates that other producers are paid. In this connection, the order provides that, in making final payments to producers or to a cooperative association as the agency of a producer, each handler shall furnish a statement identifying the producer, the pounds of milk delivered and butterfat test thereof, the minimum price required to be paid and the nature and amounts of any deductions. Such information is necessary in order that the producer may verify that the payment is proper, and in the case of payment to a cooperative association, is alditionally needed for purpose of preparing producer payrolls.

To insure the solvency of the producer-settlement fund, it is provided that payments to the fund will be made on or before the 15th day after the end of the month, and payments out of the fund will be made on the 17th day after the end of the month. This sequence of payments will insure that the market administrator has the necessary funds to pay handlers who draw from the fund and that the handlers in turn have moneys to pay cooperative associations on the 18th day after the end of the month and producers 2 days later. The other dates prescribed in the order on which handlers and the market administrator must perform specific functions are geared to insure that all necessary prepayment activities will be completed on a schedule which insures payment on the dates here prescribed.

The proponent Federation proposed and supported the payment schedule herein provided. In its exceptions, however, it suggested that an option be provided whereby a handler would be

required to make payment as here provided or in a single payment on or before the 16th day after the close of the month, dependent upon the wishes of the majority of his producers.

Such a procedure could not provide uniform application of regulation to all handlers. Further, the dates for filing reports, announcing the uniform price and making payments to and from the producer-settlement fund would have to be adjusted to meet a 16th of the month payment date. Under such circumstances there would be no reason for deferring final payment for handlers paying twice a month until the 20th.

It is essential that the order prescribe a single payment procedure. Either plan proposed would necessarily be a deviation from current practice for a substantial segment of the combined market. The procedure presently prescribed under the Delaware Valley order is therefore adopted for reasons previously stated.

(h) *Miscellaneous administrative and conforming changes.* To accomplish the merger of the three orders most equitably, the assets in the administrative and marketing service funds which have accrued under the separate orders should be combined. A similar procedure should be carried out with respect to the producer-settlement fund reserves. Any liabilities of such funds under the individual orders should be paid from the new funds so created. Similarly, obligations which are due and owing to the funds under the separate orders should remain and be paid to the combined funds under the merged order. This procedure will assure and maintain the continuity of the regulatory program in these markets.

The Middle Atlantic order should provide for a maximum rate of 4 cents per hundredweight of milk which handlers shall pay as their pro rata share of the expense of administration of the order. This maximum rate appears reasonable in view of the present maximum rates of 4 cents under the Delaware Valley and Washington, D.C., orders and 5 cents under the Upper Chesapeake Bay order and the plan to transfer the present reserves in the separate administrative funds to the market administrator of the merged order for similar use thereunder. The order provides that if at any time it appears that a lesser rate of assessment would provide the necessary administrative funds the Secretary may set the actual rate at a lower rate without the necessity of amending the order.

As a proper pro rata assessment on handlers, payment under the merged order should apply to all receipts within the month of milk from producers, including milk of such handler's own production, any other source milk allocated to Class I (except milk so assessed under another Federal order), milk received from a cooperative association in its capacity as a handler on farm bulk tank milk, and milk transferred in bulk to a pool plant from a plant owned and operated by a cooperative association. A cooperative association should pay the administrative assessment only on its receipts for which the assessment is applicable, and for which such assessment is not to be paid by other handlers.

The Act provides that the administrative cost of the order shall be borne by handlers. In this connection, it seems apparent that Congress must have contemplated, in any circumstance in which a proprietary handler was purchasing milk from a cooperative association, that the assessment would be passed on to the proprietary handler. If this were not the case, all proprietary handlers could simply avoid the burden of administrative cost by purchasing milk only from cooperative associations.

When a cooperative association is operating plant facilities, it is a handler under the order and in this role is hardly distinguishable from a proprietary handler in the same role. Nevertheless, it is readily apparent in the competitive situation existing in this market, that if the administrative assessment on bulk transfers from such a cooperative plant to a proprietary handler was levied on the cooperative, this value would become a bargaining tool whereby all such cooperatives could simply outbid bargaining cooperatives for outlets with proprietary handlers.

Under such circumstances, it is likely that bargaining cooperatives would be forced to absorb the administrative cost (even though levied directly on the handler), risking the penalty for violating the order simply as the only practical means of retaining their accounts.

When a cooperative association operates a processing plant or acts in the capacity of a handler diverting milk to nonpool plants or in the limited capacity as responsible handler with respect to shrinkage on farm bulk tank milk which it causes to be picked up at the farm, it, of course, must be held responsible for the assessment payable on such milk.

This order specifies minimum performance standards which must be met to obtain regulated status. With certain specified exceptions, operators of plants not meeting such standards would, under the provisions of the order, be required to either make specific payments into the producer-settlement fund on route disposition in the marketing area in excess of offsetting purchases of Federal order Class I milk, or otherwise pay into such fund and/or to dairy farmers an amount not less than the full classified use value of receipts.

The market administrator, in administration of the order, as it applies to the nonpool distributor, must incur expenses in essentially the same manner as in applying the order to pool handlers. Partial regulation (as prescribed) of such distributor does not, however, provide the same benefits to such handlers as accrue to the fully regulated handler; i.e., the privilege of participation in the market pool and assurance of uniform price payments to his dairy farmers. If the nonpool route distributor elects to make a payment on his in-area sales at the difference between the Class I price and the uniform price for the market, the expenses incurred by the market administrator in administration of the order with respect to such handler are nominal and payment of the administrative assessment on his in-area sales reasonably would constitute his pro rata share of administrative costs.

In the situation where the partially regulated distributor elects to pay the full use value of his milk to his dairy farmers, the administrative expense is substantially the same as that in the case of administering the order with respect to a fully regulated handler. However, if the assessment rate were similarly applied, it is likely that the assessment might make possible a financial obligation under the order in excess of the handler's total obligation under the alternative of electing to make a payment to the producer-settlement fund. In order to give more meaningful effect to the choice of an alternative, the pro rata share of the administrative expense should be the assessment rate but only with respect to the route disposition in the marketing area which is in excess of Class I receipts from federally regulated plants, regardless of the option which may be chosen by the unregulated distributor.

A proposal by the Mid-Atlantic Federal Order Committee would require that producer-handlers pay the administrative assessment on own farm production.

The order is intended to exempt producer-handlers, except for the filing of reports as required by the market administrator, to permit ascertainment of continuing status as producer-handlers. Except for intermittent verification of reports, no substantial time or money would be involved in administration of the order as it applies to such persons, and it is therefore neither necessary nor appropriate that they be required to contribute to the administrative assessment fund.

The order has been drafted to incorporate certain conforming and qualifying changes, including updating of language for clarity and consistency. These changes have been necessary to effectuate the findings and conclusions made herewith. Except for the terms of the order previously discussed, these changes of conforming nature will not affect the scope of the order or its application to any handler subject therewith.

Rulings on Proposed Findings and Conclusions

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

A number of motions were made at the hearing relating to the exclusion or inclusion of certain proposals and certain evidence. Offers of proof were made

with respect to certain evidence so excluded. In its brief, the Mid-Atlantic Federal Order Committee requested that consideration be given to a reversal of certain of these rulings.

The presiding officer's rulings have been reviewed in light of the arguments presented. These rulings, for the reasons stated by the presiding officer on the record, are hereby affirmed.

GENERAL FINDINGS

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

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

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

RULINGS ON EXCEPTIONS

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Middle Atlantic Marketing Area", and "Order Amending and Merging the Orders Regulating the Handling of Milk in the Washington, D.C., Delaware Valley, and Upper Chesapeake Bay Marketing Areas", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

REFERENDA ORDER TO DETERMINE PRODUCER APPROVAL; DETERMINATION OF REPRESENTATIVE PERIOD; AND DESIGNATION OF REFERENDUM AGENT

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 et seq.), to determine whether the issuance of the attached order amending and merging the orders regulating the handling of milk in the Washington, D.C., Delaware Valley, and Upper Chesapeake Bay marketing areas, is approved or favored by the producers, as defined under the terms of such attached order, and who, during the representative period, were engaged in the production of milk for sale within the marketing area defined in such attached order.

It is hereby further directed that a separate referendum in which each individual producer has one vote be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 et seq.), to determine whether the proposed base plan of payment to producers, as specified in the attached order regulating the handling of milk in the Middle Atlantitc marketing area is separately approved or favored by producers, as defined under the terms of such attached order, and who, during the representative period, were engaged in the production of milk for sale within the marketing area defined in such order.

The representative period for the conduct of such referenda is hereby determined to be the month of March 1970.

The agent of the Secretary to conduct such referenda is hereby designated to be Aaron L. Reeves.

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

RICHARD E. LYNG,
Assistant Secretary.

Order[1] Amending and Merging the Orders Regulating the Handling of Milk in the Washington, D.C., Delaware Valley and Upper Chesapeake Bay Marketing Areas

FINDINGS AND DETERMINATIONS

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

The following findings are hereby made with respect to each of the aforesaid orders:

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Washington, D.C., Delaware Valley, and Upper Chesapeake Bay marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The Middle Atlantic order which amends and merges the Washington, D.C., Delaware Valley and Upper Chesapeake Bay orders 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 Middle Atlantic marketing area, and the minimum prices specified in the Middle Atlantic 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 Middle Atlantic 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, the marketing agreements upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the Middle Atlantic 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, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk handled during the month as follows:

(i) Each handler (excluding a cooperative association in its capacity as a handler pursuant to § 1004.10(c), and a cooperative association as the operator of a pool plant with respect to milk transferred in bulk to a pool plant) with respect to his receipts of producer

[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.

milk (including such handler's own-farm production, milk received from a cooperative association pursuant to § 1004.10(c), and milk transferred in bulk from a pool plant owned and operated by a cooperative association) and other source milk allocated to Class I pursuant to § 1004.46(a) (5) and (9) and the corresponding step of § 1004.46(b);

(ii) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area in excess of his receipts of Class I milk from pool plants, cooperative associations as handlers pursuant to § 1004.10(b), and other order plants assigned to such disposition.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the orders regulating the handling of milk in the Washington, D.C., Delaware Valley, and Upper Chesapeake Bay marketing areas (Parts 1003, 1004, and 1016, respectively) shall be amended and merged into one order. Parts 1003 and 1016 are superseded thereby, and such vacated part designations shall be reserved for future assignment. The handling of milk in the merged marketing area, to be designated as the "Middle Atlantic marketing area" (Part 1004), shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended and merged as follows:

The provisions of the proposed marketing agreement and order amending and merging the Washington, D.C., Delaware Valley and Upper Chesapeake Bay orders contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on March 16, 1970, and published in the FEDERAL REGISTER on March 20, 1970 (35 F.R. 4902; F.R. Doc. 70-3281), shall be and are the terms and provisions of this order, and are set forth in full herein subject to the following modifications:

1. Section 1004.15 is redrafted without substantive change.

2. The following provisions which are necessary to effectuate a base-excess plan are regrouped as a separate part of the attached order for purposes of referenda relating thereto. In the event both the order and the base-plan are approved by producers, such base plan provisions will be reincorporated into the order in the format as set forth in the tentative order which accompanied the recommended decision: Sections 1004.16 (d) and (e), 1004.22(1), 1004.63, 1004.64, 1004.65, 1004.72, and the text contained in §§ 1004.71 (introductory text), 1004.80(a)(2), and 1004.82.

3. Section 1004.64 (b) and (c) are revised, a new paragraph (g) is added thereunder, § 1004.66 and certain text in § 1004.71(f) is deleted.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Subpart—Order Regulating Handling

DEFINITIONS

MARKET ADMINISTRATOR

REPORTS, RECORDS AND FACILITIES

CLASSIFICATION

MINIMUM PRICES

APPLICATION OF PROVISIONS

DETERMINATION OF UNIFORM PRICE

PAYMENTS

EFFECTIVE TIME, SUSPENSION OR TERMINATION

MISCELLANEOUS PROVISIONS

AUTHORITY: The provisions of this Part 1004 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

DEFINITIONS

§ 1004.1 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.).

§ 1004.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States to whom authority may be delegated to act in his stead.

§ 1004.3 Department of Agriculture.

"Department of Agriculture" means the U.S. Department of Agriculture or any other Federal agency authorized to perform the functions of the U.S. Department of Agriculture.

§ 1004.4 Person.

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

§ 1004.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

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

(b) Has full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or milk products for its members; and

(c) Has its entire activities under the control of its members.

§ 1004.6 Middle Atlantic marketing area.

"Middle Atlantic marketing area" (hereinafter called the "marketing area") means all territory within the boundaries of the following places, including piers, docks and wharves and territory within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

(a) The District of Columbia.

(b) The State of Delaware.

(c) In the State of Maryland:

(1) The counties of:

Anne Arundel.	Howard.
Baltimore.	Kent.
Calvert.	Montgomery.
Caroline.	Prince Georges.
Carroll.	Queen Annes.
Cecil.	Somerset.
Charles.	St. Marys.
Dorchester.	Talbot.
Frederick.	Wicomico.
Harford.	Worcester.

(2) The city of Baltimore.
(3) Fort Ritchie.
(d) In the State of New Jersey:
(1) The counties of:

Atlantic.	Cumberland.
Burlington.	Gloucester.
Camden.	Mercer.
Cape May.	Salem.

(2) In Ocean County:
(i) The townships of:

Eagleswood.	Ocean.
Lacey.	Stafford.
Long Beach.	Union.
Little Egg Harbor.	

(ii) The boroughs of:

Barnegat Light.	Ship Bottom.
Beach Haven.	Tuckerton.
Harvey Cedars.	

(e) In the State of Pennsylvania:
(1) The counties of:

Delaware.	Philadelphia.

(2) In Montgomery County:
(i) The townships of:

Springfield.	Upper Moreland (south of the Trenton cutoff of the Pennsylvania Railroad only).
Cheltenham.	
Abington.	
Lower Merion.	
Lower Moreland (south of the Trenton cutoff of the Pennsylvania Railroad only).	

(ii) The boroughs of:

Bryn Athyn.	Rockledge.
Narberth.	Jenkintown.

(3) In Bucks County:
(i) The townships of:

Bensalem.	Lower Makefield.
Bristol.	Lower Southampton.
Falls.	Middletown.

(ii) The boroughs of:

Bristol.	Morrisville.
Hulmeville.	Penndel.
Langhorne.	Tullytown.
Langhorne Manor.	Yardley.

(f) In the State of Virginia:
(1) The counties of:

Arlington.	Loudoun.
Fairfax.	Prince William.

(2) The cities of:

Alexandria.	Fairfax.
Falls Church.	

§ 1004.7 Plant.

"Plant" means the land and buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, processing or packaging of milk or milk products (including filled milk). However, a separate facility used only for the purpose of transferring bulk milk from one tank truck to another tank truck or only as a distribution depot for fluid milk products in transit for route distribution shall not be included under this definition.

§ 1004.8 Pool plant.

"Pool plant" means a plant (except an other order plant, a producer-handler plant, or the plant of a handler pursuant to § 1004.10(e)) specified in paragraphs (a) through (e) of this section.

(a) A plant from which during the month a volume not less than 50 percent of its receipts described in paragraphs (1) or (2) of this paragraph is disposed of as Class I milk (except filled milk) and a volume not less than 10 percent of such receipts is disposed of as route disposition (other than as filled milk) in the marketing area;

(1) Milk received at such plant directly from dairy farmers (including milk diverted as producer milk pursuant to § 1004.15, by either the plant operator or by a cooperative association, but excluding the milk of dairy farmers for other markets) and from a cooperative in its capacity as a handler pursuant to § 1004.10(c); or

(2) In the case of a plant with no receipts described in subparagraph (1) of this paragraph, receipts of fluid milk products (other than filled milk) from other plants.

(b) Any plant not meeting the conditions of paragraph (a) of this section from which during the month a quantity of fluid milk products (other than filled milk) not less than the applicable percentage (as specified in subparagraph (1) of this paragraph) of such plant's receipts of milk from dairy farmers (including milk diverted as producer milk pursuant to § 1004.15 by either the plant operator or by a cooperative association) and from a cooperative association in its capacity as a handler pursuant to § 1004.10(c) is moved to a plant(s) meeting the percentage disposition requirements specified in paragraph (a) of this section with respect to its total receipts of fluid milk products (other than filled milk) from dairy farmers, cooperative associations as handlers pursuant to § 1004.10(c) and from other plants. However, a plant shall not qualify pursuant to this paragraph in any month in which a greater proportion of its qualifying shipments are made to a plant(s) regulated under another Federal order than to plants regulated under this order.

(1) The applicable percentage for the purpose of this paragraph shall be:

(i) 50 percent for any month of September through February; and

(ii) 40 percent for any month of March through August.

(c) A reserve processing plant which was a pool plant under the Delaware Valley, Upper Chesapeake Bay or Washington, D.C., orders in each of the 12 months preceding the effective date of this order and which does not meet the conditions for pool status pursuant to paragraph (a) or (b) of this section shall continue to hold such status in each consecutive succeeding month in which:

(1) It is owned and operated by a handler who also operates a plant qualified pursuant to paragraph (a) of this section;

(2) The handler files a written request with the market administrator on or before the effective date of this order requesting pool status for such plant under this paragraph;

(3) The plant does not qualify as a pool plant pursuant to the provisions of another Federal order;

(4) The plant, in combination with a distributing plant of such handler, meets the performance standards of paragraph (a) of this section;

(5) No plant of such handler is a means for qualification of any other plant for pooling pursuant to paragraph (b) of this section; and

(6) The handler notifies the market administrator each month, at the time of filing reports pursuant to § 1004.30 in the detail prescribed by the market administrator, with respect to any receipts from dairy farmers delivering to such plant not meeting the health requirements for disposition as fluid milk in the marketing area.

(d) A reserve processing plant operated by a cooperative association at least 70 percent of the members of which are producers whose milk is received throughout the month at plants qualified pursuant to paragraphs (a), (b), or (e) of this section (including the milk of such producers which is delivered to such plants by the cooperative in its capacity as a handler pursuant to § 1004.10(c): *Provided*, That such cooperative shall notify the market administrator each month, at the time of filing reports pursuant to § 1004.30 in the detail prescribed by the market administrator, with respect to any receipts from dairy farmers delivering to such plant not meeting the health requirements for disposition as fluid milk in the marketing area.

(e) Subject to the conditions of subparagraph (1) of this paragraph, a plant that was a plant qualified pursuant to paragraph (b) of this section during each of the immediately preceding months of September through February shall remain so qualified during the following months of March through August, unless written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated a nonpool plant for such month and each subsequent month of such period during which it does not otherwise qualify pursuant to said paragraph (b): *Provided*, That pool plant status under the Delaware Valley, Upper Chesapeake Bay, or Washington, D.C., orders during each of the months of September 1969 through February 1970 shall be considered qualification for such automatic pooling status for purposes of this paragraph for the period through August 1970;

(1) The automatic pooling status of any plant pursuant to this paragraph shall be canceled beginning on the first day of any month during the March through August period in which another

supply plant is qualified for pooling through shipments to the same plants through which such automatic pooling status was acquired.

§ 1004.9 Nonpool plant.

"Nonpool plant" means a plant other than a pool plant. The following categories of nonpool plants are further defined:

(a) "Other order plant" means a plant that is fully subject to the pricing and payment provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a plant which is not a pool plant, a producer-handler plant, an other order plant, or the plant of a handler pursuant to § 1004.10(e), from which fluid milk products in consumer-type packages or dispenser units are disposed of as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a plant which is not a pool plant, a producer-handler plant, an other order plant, or the plant of a handler pursuant to § 1004.10(e), from which fluid milk products are shipped during the month to a plant qualified under § 1004.8.

§ 1004.10 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of:

(1) A pool plant;

(2) A partially regulated distributing plant;

(3) An unregulated supply plant; or

(4) An other order plant.

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted in accordance with the provisions of § 1004.15 to a nonpool plant for the account of such cooperative association.

(c) Any cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant of another person in a tank truck owned and operated by or under contract to such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator in writing prior to the first day of the month that the plant operator will be responsible for payment for the milk and is purchasing the milk on the basis of farm weights determined by farm bulk tank calibrations and butterfat tests based on samples taken at the farm. Milk for which the cooperative association is qualified pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which such milk is delivered.

(d) A producer-handler.

(e) A governmental agency in its capacity as the operator of a plant with route disposition in the marketing area.

(f) Any other person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant.

§ 1004.11 Pool handler.

"Pool handler" means any person in his capacity as the operator of a pool plant or a cooperative association in its capacity as a handler pursuant to § 1004.10 (b) or (c).

§ 1004.12 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a plant with route disposition in the marketing area, and whose sole source of supply of fluid milk products is his own farm production and transfers of such products from pool plants: *Provided*, That,

(a) the quantity of fluid milk products received from pool plants during the month shall not exceed 10,000 pounds; and

(b) such person furnishes proof satisfactory to the market administrator that the maintenance and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding transfers from pool plants), and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

§ 1004.13 Dairy farmer.

"Dairy farmer" means any person who produces milk which is delivered in bulk to a plant.

§ 1004.14 Dairy farmer for other markets.

"Dairy farmer for other markets" means any dairy farmer with respect to milk reported pursuant to § 1004.8 (c)(6) or the proviso of paragraph (d) of said § 1004.8.

§ 1004.15 Producer.

Subject to the conditions of paragraph (d) and the exceptions of paragraph (e) of this section, "producer" means any person described in paragraphs (a) through (c) of this section.

(a) A dairy farmer with respect to milk which is received at a pool plant directly from the farm including milk received at a pool plant pursuant to § 1004.8 (c) or (d) as milk diverted from a pool plant pursuant to § 1004.8 (a), (b), or (e).

(b) A dairy farmer with respect to milk received by a cooperative association in its capacity as a handler pursuant to § 1004.10(c).

(c) A dairy farmer with respect to milk which is diverted to a nonpool plant (other than a producer-handler plant) in accordance with the conditions of subparagraphs (1) and (2) of this paragraph.

(1) During any month of March through August.

(2) Not more than 10 days production during any month of September through February unless all of the diversions of member and nonmember milk, as the case may be, are pursuant to subdivision (i) or (ii), respectively, of this subparagraph and they fall within the limits prescribed thereunder. If a handler diverting milk pursuant to this subparagraph diverts milk of any dairy farmer in excess of the limits prescribed such dairy farmer shall be a producer only with respect to that milk physically received at a pool plant.

(i) All of the diversions of milk of members of a cooperative association to nonpool plants are for the account of such cooperative association and the amount of member milk so diverted does not exceed 15 percent of the volume of milk of all members of such cooperative association received at all pool plants during such month.

(ii) All of the diversions of milk of dairy farmers who are not members of a cooperative association diverting milk for its own account during the month are diversions by a handler in his capacity as the operator of a pool plant from which the quantity of such nonmember milk so diverted does not exceed 15 percent of the total of such nonmember milk delivered to such handler during the month.

(d) Milk which is diverted in accordance with the provisions of this section shall be deemed to have been received by the handler for whose account it is diverted at a pool plant at the location of the plant from which it is diverted, except that, for the purpose of applying location adjustments pursuant to §§ 1004.51 and 1004.82 and the direct-delivery differential pursuant to § 1004.83, milk which is diverted in the manner described in subparagraph (1), (2), or (3) of this paragraph shall be treated as though received at the location of the plant to which diverted.

(1) Diverted from a pool plant at which no location adjustment credit is applicable to a plant at which a location adjustment credit is applicable.

(2) Diverted from a pool plant at which a location adjustment credit is applicable to a plant at which a greater location adjustment credit is applicable.

(3) Diverted from a pool plant in the direct-delivery zone to a plant outside such direct-delivery zone.

(e) This definition shall not include a:

(1) Producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Dairy farmer for other markets;

(3) Government agency which is a handler pursuant to § 1004.10(e);

(4) Dairy farmer with respect to milk reported as milk diverted to an other order plant if any portion of such dairy farmer's milk so moved is assigned to Class I under the provisions of such other order; or

(5) Dairy farmer with respect to milk physically received at a pool plant as diverted milk from an other order plant if all of the milk so received from such dairy farmer is assigned to Class II and the milk is treated as producer milk under the provisions of such other order.

§ 1004.16 Milk and milk products.

(a) "Fluid milk product" means milk, skim milk (including concentrated and reconstituted milk or skim milk), buttermilk, cultured buttermilk, flavored milk, milk drinks (plain or flavored), filled milk, and (except ice cream, ice cream mixes, ice milk mixes, milkshake mixes, eggnog, yogurt, condensed or evaporated milk, and any product which contains six percent or more nonmilk fat [or oil])

any mixture in fluid form of cream and milk or skim milk containing less than 10 percent butterfat: *Provided*, That when the product is modified by the addition of nonfat milk solids, the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of unmodified product of the same nature and butterfat content.

(b) "Producer milk" means any skim milk or butterfat contained in milk:

(1) Received at a pool plant directly from producers (including milk received at a pool plant pursuant to § 1004.8 (c) or (d) as milk diverted from a pool plant pursuant to § 1004.8 (a), (b), or (e);

(2) Received from producers by a cooperative association in its capacity as a handler pursuant to § 1004.10(c); or

(3) Diverted to a nonpool plant in accordance with the provisions of § 1004.15.

(c) "Other source milk" means all skim milk and butterfat contained in or represented by:

(1) Receipts in the form of fluid milk products from any source other than producers, pool plants, or from a cooperative association in its capacity as a handler pursuant to § 1004.10(c);

(2) Receipts (including any Class II product produced in the handler's plant during a prior month) in a form other than as a fluid milk product which are reprocessed, converted, or combined with another product during the month; and

(3) Receipts in a form other than a fluid milk product for which the handler fails to establish a disposition.

(d) [Reserved]

(e) [Reserved]

(f) "Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

(g) "Certified milk" is milk which is produced, packaged, and sold under the label of certified milk in accordance with the rules and regulations promulgated by the American Association of Medical Milk Commissions, Inc.

§ 1004.17 Route disposition.

"Route disposition" means any delivery of a fluid milk product from a plant to a retail or wholesale outlet (including any delivery through a distribution depot, by a vendor, from a plant store or through a vending machine) except any delivery to a plant.

Market Administrator

§ 1004.20 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 at the discretion of, the Secretary.

§ 1004.21 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.

§ 1004.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part including, but not limited to, the following:

(a) Within 45 days following the date on which he enters upon his duties, 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 § 1004.89:

(1) The cost of his bond and the bonds of his employees,

(2) His own compensation, and

(3) All other expenses necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 5 days after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1004.30 and 1004.31, or payments pursuant to §§ 1004.80 through 1004.89;

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

(h) Verify all reports and payments of each handler, by audit, if necessary, of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends;

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

(j) 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 following:

(1) The fifth day of each month:

(i) The Class I price for the current month computed pursuant to § 1004.50 (a); and

(ii) The Class II price computed pursuant to § 1004.50(b) and the producer butterfat differential computed pursuant to § 1004.81 both for the preceding month.

(2) The 13th day of each month, the uniform price(s) computed pursuant to §§ 1004.71 and 1004.72 for the preceding month.

(k) On or before the 15th day after the end of each month, report to each cooperative association which so requests, the class utilization of milk purchased from such association or delivered to the pool plant(s) of each handler by producers who are members of such cooperative association. For the purpose of this report, the milk so purchased or received shall be allocated to each class in the same ratio as all producer milk received by such handler during such month;

(l) [Reserved]

(m) Whenever required for purpose of allocating receipts from other order plants pursuant to § 1004.46(a)(10) and the corresponding step of § 1004.46(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(n) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1004.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(o) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

Reports, Records and Facilities

§ 1004.30 Reports of receipts and utilization.

(a) On or before the eighth day after the end of each month each handler with respect to each of his pool plants

shall report for the month to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) The quantities of skim milk and butterfat contained in:

(i) Receipts of producer milk (including such handler's own production);

(ii) Receipts of fluid milk products from other pool plants and milk received from a cooperative association for which it is a handler pursuant to § 1004.10(c); and

(iii) Receipts of other source milk;

(2) Inventories of fluid milk products on hand at the beginning and end of the month; and

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately in-area route disposition, except filled milk, and filled milk route disposition in the area;

(b) Each handler who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of milk from dairy farmers shall be reported in lieu of producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(c) Each producer-handler and each handler pursuant to § 1004.10(e) shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe; and

(d) On or before the eighth day after the end of each month, each cooperative association shall report with respect to milk for which it is a handler pursuant to § 1004.10 (b) or (c) as follows:

(1) Receipts of skim milk and butterfat from producers;

(2) Utilization of skim milk and butterfat diverted to nonpool plants; and

(3) The quantities of skim milk and butterfat delivered to each pool plant of another handler.

§ 1004.31 Other reports.

(a) Each pool handler shall report to the market administrator in detail and on forms prescribed by the market administrator as follows:

(1) On or before the 25th day after the end of the month for each pool plant, his producer payroll for such month which shall show for each producer:

(i) His name and address;

(ii) The total pounds of milk received from such producer;

(iii) The average butterfat content of such milk; and

(iv) The net amount of the handler's payment, together with the price paid and the amount and nature of any deduction;

(2) Such other information with respect to receipts and utilization of butterfat and skim milk as the market administrator shall prescribe.

(b) Promptly after a producer moves from one farm to another, or starts or resumes deliveries to a pool handler, the handler shall file with the market administrator a report stating the producer's name and post office address, the health department permit number, if applicable, the date on which the changes took place, and the farm and plant location involved.

(c) In making payments to producers pursuant to § 1004.80(a)(2), or to a cooperative association pursuant to § 1004.80(b), each pool handler shall furnish such producer or cooperative association with respect to each of its producer members from whom the handler received milk during the month, a written statement showing:

(1) The month and the identity of the handler and the producer;

(2) The total pounds and average butterfat test of milk delivered by the producer;

(3) The minimum rate at which payment to such producer is required under § 1004.80(a)(2);

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The nature and amount of any deductions made in payment due such producer; and

(6) The net amount of the payment to the producer.

(d) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1004.62(b) shall report the same information as required in paragraph (a) of this section with respect to dairy farmers from whom he receives milk.

(e) On or before the 20th day after the end of the month, each handler pursuant to § 1004.10(f) shall report to the market administrator, in the detail and on forms prescribed by the market administrator, all transactions wherein milk was bought or dealt in, giving the following information:

(1) The name and address of any cooperative association or producer for whom the handler by either purchase or direction caused milk of producers to be moved to a plant;

(2) The total pounds of milk involved in the transaction, and the average butterfat content of such milk; and

(3) Such other information with respect to such transaction as the market administrator may prescribe.

§ 1004.32 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations together with such facilities as are necessary for the market administrator to verify or establish the correct data for each month, with respect to:

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

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled;

(c) The pounds of skim milk and butterfat contained in or represented by all items in inventory at the beginning and end of each month required to be reported pursuant to § 1004.30(a)(2); and

(d) Payments to producers and cooperative associations, including any deductions and the disbursement of money so deducted.

§ 1004.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such books and records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further 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

§ 1004.40 Skim milk and butterfat to be classified.

The skim milk and butterfat to be reported by each handler pursuant to § 1004.30 shall be classified each month by the market administrator pursuant to the provisions of § 1004.41 through § 1004.46.

§ 1004.41 Classes of utilization.

Subject to the conditions set forth in § 1004.42 through § 1004.46, the classes of utilization shall be as follows:

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

(1) Disposed of as a fluid milk product except as provided in paragraph (b) (2), (3), or (7) of this section;

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

(3) Not specifically accounted for as Class II milk.

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

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

(2) Disposed of for livestock feed;

(3) Contained in fluid milk products which are dumped, if the handler gives the market administrator such advance notice of intent to dump as the market administrator may prescribe;

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

(5) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1004.42(b)(1), but not to exceed the following:

(i) Two percent of producer milk received at a pool plant; plus

(ii) One and one-half percent of milk received at a pool plant from a cooperative association in its capacity as a handler pursuant to § 1004.10(c); plus

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

(iv) One and one-half percent of receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class II utilization was requested by the handler (and by the operator of such other order plant if such receipt is fully subject to the classification and pricing provisions of such other order); plus

(v) One and one-half percent of receipts from dairy farmers for other markets pursuant to § 1004.14 and receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler; less

(vi) One and one-half percent of milk moved in bulk tank lots from a pool plant to other plants; and plus

(vii) One-half of 1 percent in receipts of producer milk by a cooperative association in its capacity as a handler pursuant to § 1004.10(c);

(6) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1004.42(b)(2);

(7) Disposed of in bulk fluid milk products to manufacturing establishments such as bakeries, candy factories, soup factories, and similar establishments at which fluid milk products were used only in the manufacture of food products other than milk products; and

(8) In skim milk represented by the nonfat milk solids added to a fluid milk product for fortification which is in excess of the volume included within the fluid milk product definition pursuant to § 1004.16(a).

§ 1004.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts at each pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each handler; and

(b) Shrinkage shall be prorated between: (1) Skim milk and butterfat in receipts described in § 1004.41(b)(5); and (2) skim milk and butterfat in other source milk, exclusive of that specified in § 1004.41(b)(5).

§ 1004.43 Responsibility of handlers and the 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 proves to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

(c) In the case of milk received from producers by a cooperative association handler pursuant to § 1004.10(c), the cooperative association shall be responsible for proving that skim milk and butterfat in such milk which was not received at a pool plant should be classified other than as Class I, and the operator of a pool plant receiving skim milk and butterfat from a cooperative association handler pursuant to § 1004.10(c) shall be responsible for proving that such skim milk and butterfat should be classified other than as Class I.

§ 1004.44 Transfers.

Skim milk and butterfat in the form of any fluid milk product shall be classified:

(a) As Class I milk if diverted from a pool plant pursuant to § 1004.8 (a), (b), or (e) to a pool plant pursuant to § 1004.8 (c) or (d), or transferred from a pool plant or by a cooperative association as a handler pursuant to § 1004.10(c) to a pool plant, unless Class II utilization is indicated by the transferee and transferor handlers (or by the handler if such transaction is between two pool plants of the same handler) in their reports pursuant to § 1004.30(a) for the month, subject to the conditions of subparagraphs (1), (2), and (3) of this paragraph:

(1) The skim milk or butterfat so assigned to either class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1004.46(a)(10) and the corresponding step of § 1004.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1004.46(a)(5), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1004.46(a)(9) or (10), and the corresponding steps of § 1004.46(b), the skim milk and butterfat so transferred or diverted up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler;

(c) As Class I milk if transferred or diverted from a pool plant or delivered by a cooperative association in the capacity as a handler pursuant to § 1004.10(c) to a handler pursuant to § 1004.10(e).

(d) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is not an other order plant, a producer-handler plant, or the plant of a handler pursuant to § 1004.10(e), unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph;

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1004.30 for the month within which such transaction occurred;

(2) The operator of such nonpool transferee plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification;

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any route disposition in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, and thereafter pro rata to receipts from other order plants;

(ii) Any route disposition in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, and thereafter pro rata to receipts from pool plants and other order plants not regulated by such order;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to the receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant, and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool pool plant from all pool and other order plants; and

(iv) Any remaining receipts from pool plants or other order plants shall be assigned to Class II: *Provided*, That if on inspection of the books and records of the nonpool plant the market administrator finds that the remaining unassigned receipts at such plant exceed the available Class II utilization, the transfer shall be classified as Class I up to the amount of such excess.

(e) As follows, if transferred to another order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of

establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and milk allocated to other classes shall be classified as Class II; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1004.41.

§ 1004.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors, the reports of receipts and utilization submitted pursuant to § 1004.30(a) by each handler and compute the total pounds of skim milk and butterfat, respectively, in each class at each of the plants of such handler, and the total pounds of skim milk and butterfat in each class which was received from producers by a cooperative association handler pursuant to § 1004.10 (b) and (c) and was not received at a pool plant: *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 used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such products plus all the water originally associated with such solids.

§ 1004.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1004.45, the market administrator each month shall determine the classification of milk received from producers by each cooperative association handler pursuant to § 1004.10 (b) and (c) which was not received at a pool plant, and the classification of milk received from producers and from cooperative association handlers pursuant to § 1004.10(c) at each pool plant for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1004.41(b)(5);

(2) Subtract from the total pounds of skim milk in Class I, the pounds of skim milk in receipts of certified milk in packaged form;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (5) (vi) of this paragraph as follows:

(i) From Class II milk, the lesser of the pounds remaining, or 2 percent of such receipts; and

(ii) From Class I milk the remainder of such receipts;

(4) Except for the first month this order is effective, with respect to plants which in the immediately preceding month were either unregulated plants or pool plants under Orders 3 or 16, subtract from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of packaged fluid milk products on hand at the beginning of the month;

(5) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products from dairy farmers for other markets pursuant to § 1004.14 and from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of fluid milk products from a handler pursuant to § 1004.10(e);

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

(vi) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants for which the handler requests Class II utilization, but not in any case to exceed the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants which are in excess of the pounds of skim milk determined as follows:

(*a*) Multiply the pounds of skim milk remaining in Class I milk (exclusive of transfers between pool plants of the same handler) at all pool plants of the handler by 1.25;

(*b*) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, receipts from pool plants of other handlers, from a cooperative association in its capacity as a handler pursuant to § 1004.10(c), and in receipts in bulk from other order plants; and

(*c*) (*1*) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in remaining receipts of fluid milk products in bulk from an other order plant which are in excess of similar movements to such plant, if such receipts were classified and priced pursuant to the other order and if Class II utilization was requested by the operator of such plant and the transferee handler, but not in excess of the pounds of skim milk remaining in Class II milk;

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products in bulk (and for the first month this order is effective, in packaged fluid milk products not subtracted pursuant to subparagraph (4) of this paragraph) on hand at the beginning of the month;

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

(9) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants and from other order plant(s) if not classified or priced pursuant to the order regulating such plant, that were not subtracted pursuant to subparagraph (6) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(10) Subtract from the pounds of skim milk remaining in each class, the pounds of skim milk in remaining receipts of fluid milk products in bulk from other order plants (except receipts from other order plants not classified and priced pursuant to the order regulating such plant), in excess in each case of similar movements to the same plant, pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk:

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1004.22(m); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case, the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(11) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other pool plants and from a cooperative association in its capacity as a handler pursuant to § 1004.10(c) according to the classification assigned pursuant to § 1004.44(a); and

(12) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

Minimum Prices

§ 1004.50 Class prices.

Subject to the provisions of § 1004.51 the minimum class prices per hundredweight of milk containing 3.5 percent butterfat for the month shall be as follows:

(a) *Class I milk.* The price per hundredweight of Class I milk shall be $7.11 plus any amount by which the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the Department of Agriculture for the preceding month on a 3.5 percent butterfat basis, exceeds $4.33.

(b) *Class II milk.* The price per hundredweight of Class II milk shall be determined for each month as follows:

(1) Adjust the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the U.S. Department of Agriculture for the month, to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the Department for the month. Such price shall be rounded to the nearest cent but shall not exceed a price computed as follows:

(i) Multiply by 4.2 the Chicago butter price specified in this subparagraph;

(ii) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(iii) From the sum of the results arrived at under subdivision (i) and (ii) of this subparagraph subtract 48 cents, and round to the nearest cent.

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month	Amount
January	+$0.05
February	+.04
March	−.03
April	−.07
May	−.10
June	−.09
July	+.05
August	+.12
September	+.08
October	+.08
November	+.08
December	+.08

§ 1004.51 Location differential to handlers.

(a) For that milk received from producers and from a cooperative association in its capacity as a handler pursuant to § 1004.10(c) at a pool plant located 55 miles or more by shortest highway distance from the city hall in Philadelphia, Pa., and also 75 miles or more by the shortest highway distance from the nearer of the zero milestone in Washington, D.C., or the city hall in Baltimore, Md. (all such distance to be determined by the market administrator), and which is assigned to Class I milk, subject to the limitations pursuant to paragraph (b) of this section, and for other source milk for which a location adjustment is applicable, the Class I price shall be reduced at the rate of 1.5 cents per 10-mile distance or fraction thereof that such plant location is from the nearest of such basing points.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant in an amount not in excess of that by which such Class I disposition exceeds 95 percent of the sum of receipts at such plant from producers, cooperative associations pursuant to § 1004.10(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, and from dairy farmers for other markets pursuant to § 1004.14. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply: *Provided*, That for the purposes of this paragraph, transfers from a pool plant to a second pool plant which are in turn transferred to a third pool plant shall be treated as though the transfer was direct from the originating plant to the plant of final receipt.

§ 1004.52 Equivalent prices or indexes.

If for any reason a price or index specified by this part for use in computing class prices or other purposes is not reported or published in the manner described in this part, the market administrator shall use a price or index determined by the Secretary to be equivalent or comparable with the factor which is specified.

Application of Provisions

§ 1004.60 Producer-handler.

Sections 1004.40 through 1004.46, 1004.50 through 1004.52, 1004.62 through 1004.65, 1004.70 through 1004.72 and 1004.80 through 1004.89 shall not apply to a producer-handler.

§ 1004.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall, except as specified in paragraphs (c) and (d) of this section, be exempt from the provisions of this part:

(a) Any plant qualified pursuant to § 1004.8(a) which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk, except filled milk, is disposed of from such plant as route disposition in the Middle Atlantic marketing area than is so disposed of in a marketing area regulated pursuant to such other order; or

(b) Any plant subject to the classification and pricing provisions of another order issued pursuant to the Act, notwithstanding its status under this order pursuant to § 1004.8 (a) or (b).

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to 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 (in lieu of reports pursuant to §§ 1004.30 and 1004.31) and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a) of this section if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in the marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant and subtract its value at the Class II price.

§ 1004.62 Obligations of a handler operating a partially-regulated distributing plant.

Each handler who operates a partially-regulated distributing plant shall pay to the market administrator for the producers-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1104.30(b) and 1004.31(d) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1004.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant, a cooperative association as a handler pursuant to § 1004.10 (b), or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be clasified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1004.70(e) and a credit in the amount specified in § 1004.85 (b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1004.30(b) and 1004.31(d) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1004.8(b) with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (i) the gross payments made by such handler for milk (approved by a duly constituted health authority for fluid disposition) received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph, and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants, cooperative associations in their capacity as handlers pursuant to § 1004.10(b), and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant (but not less than the Class II price), subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant (but not less than the Class II price), less the value of such skim milk at the Class II price.

DETERMINATION OF UNIFORM PRICE

§ 1004.70 Computation of the net pool obligation of each pool handler.

The net pool obligation of each pool handler for each pool plant, and of each cooperative association handler pursuant to § 1004.10 (b) and (c) with respect to milk which was not received at a pool plant, shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantiy of milk received from a cooperative association as a handler pursuant to § 1004.10(c) and allocated pursuant to § 1004.46(a)(11) and the corresponding step of § 1004.46 (b) and the quantity of producer milk in each class, as computed pursuant to § 1004.46(c), by the applicable class prices (adjusted pursuant to § 1004.51);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1004.46(a)(12) and the corresponding step of § 1004.46(b) by the applicable class prices adjusted by the applicable differentials pursuant to §§ 1004.51, 1004.81, and 1004.83;

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

(1) Multiply the difference between the applicable Class II price for the preceding month and the applicable Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.46(a)(7) and the corresponding step of § 1004.46(b) for the current month;

(2) Multiply the difference between the applicable Class I price for the preceding month and the applicable Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.46(a)(4) and the corresponding step of § 1004.46(b). If the Class I price for the current month is less than the Class I price for the preceding month, the result shall be a minus amount.

(d) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class II price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1004.46(a)(5) and the corresponding step of § 1004.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1004.46 (a)(5) (v) and (vi) and the corresponding step of § 1004.46(b) the Class I price shall be adjusted to the location of the transferor plant but not less than the Class II price; and

(e) Add an amount equal to the value at the Class I price of skim milk and butterfat assigned to Class I pursuant to § 1004.46(a)(9) and the corresponding step of § 1004.46(b) (excluding receipts from partially-regulated distributing plants for which disposition a specific allocation is made to Federal order receipts from this or any other order) adjusted for the location of the nearest plant from which such types of receipts were received and by the butterfat differential pursuant to § 1004.81 to reflect variation in butterfat content from 3.5 percent.

§ 1004.71 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1004.70 for all handlers who filed the reports prescribed by § 1004.30 for the month and who made the payments pursuant to § 1004.85 for the preceding month;

(b) Add an amount equal to the total value of the location differentials computed pursuant to § 1004.82;

(c) Subtract if the average butterfat content of milk specified in subparagraph (2) of paragraph (e) of this section is more than 3.5 percent, or add if such butterfat content is less than 3.5 percent, an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1004.81 and multiplying the result by the total hundredweight of such milk.

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

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk included pursuant to paragraph (a) of this section; and

(2) The total hundredweight for which a value is computed pursuant to § 1004.70(e).

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

PAYMENTS

§ 1004.80 Time and method of payment.

(a) Except as provided in (b) and (d) of this section, each pool handler shall make payment as specified in subparagraphs (1) and (2) of this paragraph to each producer from whom milk is received.

(1) On or before the last day of each month at not less than the Class II price for the preceding month per hundredweight for his deliveries of producer milk during the first 15 days of the month; and

(2) On or before the 20th of the following month at not less than the uniform price with respect to milk received from producers subject to the following adjustments:

(i) Proper deductions authorized in writing by such producers;

(ii) Partial payments made pursuant to subparagraph (1) of this paragraph;

(iii) The butterfat differential computed pursuant to § 1004.81; and

(iv) Less the location differential received pursuant to § 1004.82: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1004.86 for such month he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the second day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section; and

(c) In the case of milk received by a handler from a cooperative association in its capacity as the operator of a pool plant such handler shall on or before the second day prior to the date on which payments are due individual producers, pay to such cooperative association for milk so received during the month, an amount not less than the value of such milk computed at the applicable class prices for the location of the plant of the buying handler.

(d) Each handler who receives milk from a cooperative association handler pursuant to § 1004.10(c), shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at the rate specified in paragraph (a)(1) of this section; and

(2) A final payment equal to the value of such milk at the uniform price(s) adjusted by the applicable differentials pursuant to §§ 1004.81 and 1004.82, less the amount of partial payment on such milk.

§ 1004.81 Butterfat differential.

In making the payments to producers and cooperative associations required pursuant to § 1004.80, each handler shall add for each one-tenth of 1 percent of average butterfat content above 3.5 percent, or may deduct for each one-tenth of 1 percent of average butterfat content below 3.5 percent, as a butterfat differential an amount per hundredweight which shall be computed by the market administrator as follows: Multiply by 0.115 and round to the nearest even one-tenth cent the simple average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) reported during the period between the 16th day of the preceding month and the 15th day inclusive of the current month by the Department of Agriculture for Grade A (92-score) bulk creamery butter in the New York City market.

§ 1004.82 Location differential to producers.

(a) Subject to the exception pursuant to § 1004.15(d), for that milk received from producers and from cooperative association handlers pursuant to § 1004.10(c) at a pool plant located 55 miles or more from the city hall in Philadelphia, Pa., and also at least 75 miles from the nearer of the zero milestone in Washington, D.C., or the city hall in Baltimore, Md. (all distances to be the shortest highway distance as determined by the market administrator), the uniform price computed pursuant to § 1004.71 shall be reduced 1.5 cents for each 10 miles distance or fraction thereof that such plant is from the nearest of such basing points.

(b) For purposes of computations pursuant to §§ 1004.85 and 1004.86 the weighted average price shall be reduced at the rate set forth in paragraph (a) of this section applicable at the location of the nonpool plant(s) from which the milk was received with respect to other source milk for which a value is computed pursuant to § 1004.70(e).

§ 1004.83 Direct-delivery differential.

For producer milk received at a plant located within 55 miles of the city hall in Philadelphia, Pa., the handler in making payments to producers and cooperative association handlers pursuant to § 1004.10(c), in addition to any amounts required by other provisions of this part, shall pay 6 cents per hundredweight of milk so received.

§ 1004.84 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1004.61 and 1004.62, 1004.85, and 1004.87 and out of which he shall make all payments from such fund pursuant to §§ 1004.86 and 1004.87: *Provided*, That the market administrator shall offset the payment due to a handler against payment due from such handler.

§ 1004.85 Payments to the producer-settlement fund.

On or before the 15th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a) of this section exceeds the amounts specified in paragraph (b) of this section:

(a) The net pool obligation computed pursuant to § 1004.70 for such handler;

(b) The sum of:

(1) The value of milk received by such handler from producers and from cooperative association handlers pursuant to § 1004.10(c) at the applicable uniform price(s) pursuant to §§ 1004.71 and 1004.72 adjusted by location differentials, less in the case of a cooperative association on milk for which it is a handler pursuant to § 1004.10(c), the amount due from other handlers pursuant to § 1004.80(d), exclusive of differential butterfat values; and

(2) The value at the weighted average price adjusted by the applicable location differential on nonpool milk pursuant to § 1004.82(b) (not to be less than the value at the Class II price) with respect to other source milk for which values are computed pursuant to § 1004.70(e).

§ 1004.86 Payments out of the producer-settlement fund.

On or before the 17th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount

computed pursuant to § 1004.85(b) exceeds the amount computed pursuant to § 1004.85(a): *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1004.87 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such 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 error occurred.

§ 1004.88 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers for milk (other than milk of his own production) pursuant to § 1004.80(a) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator on or before the 20th day after the end of the month. Such money shall be expended by the market administrator to provide market information and to verify the weights, samples and tests of milk of producers who are not receiving such service from a cooperative association; and

(b) In the case of producers for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made directly to such producers pursuant to § 1004.80(a) as are authorized by such producers on or before the 18th day after the end of each month and pay such deductions to the cooperative rendering such services.

§ 1004.89 Expense of administration.

As his pro rata share of the expense of administration, each handler shall pay to the market administrator on or before the 20th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to milk handled during the month as follows:

(a) Each handler (excluding a cooperative association in its capacity as a handler pursuant to § 1004.10(c), and a cooperative association as the operator of a pool plant with respect to milk transferred in bulk to a pool plant) with respect to his receipts of producer milk (including such handler's own-farm production, milk received from a cooperative association pursuant to § 1004.10(c), and milk transferred in bulk from a pool plant owned and operated by a cooperative association) and other source milk allocated to Class I pursuant to § 1004.46(a) (5) and (9) and the corresponding step of § 1004.46(b);

(b) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area in excess of his receipts of Class I milk from pool plants, cooperative associations as handlers pursuant to § 1004.10(b), and other order plants assigned to such disposition.

§ 1004.89a Termination of obligations.

The provisions of this section shall apply to any obligation 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 2 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 2-year period the market administrator notifies the handler that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the 2-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin 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 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; 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 2 years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or 2 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.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1004.90 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 pursuant to § 1004.91.

§ 1004.91 Suspension or termination.

The Secretary may suspend or terminate this part or any provisions of this part whenever he finds this part or any provisions of this part obstructs or does not tend to effectuate the declared policy of the Act. This part shall terminate, in any event, whenever the provisions of the Act authorizing it cease to be in effect.

§ 1004.92 Continuing obligations.

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.

§ 1004.93 Liquidation.

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such 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 assignment 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

§ 1004.100 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.

§ 1004.101 Separability of provisions.

If any provision 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.

BASE AND EXCESS PLAN

The following provisions are necessary to effectuate a base and excess plan in the preceding order. If approved by producers voting individually in a separate referendum, they will be added to the preceding order provisions or substituted for such specified order provisions as indicated below:

1. Paragraphs (d) and (e) of § 1004.16 are added and read as follows:

§ 1004.16 Milk and milk products.

* * * * *

(d) "Base milk" means milk received from a producer by a pool handler which is not in excess of such producer's daily base computed pursuant to § 1004.63 (§ 1004.66 for the period through June 1970), multiplied by the number of days in such month on which such producer's milk was so received: *Provided*, That with respect to any producer on every-other-day delivery, the day of nondelivery prior to a day of delivery, although such prior day is in the preceding month, shall be considered as a day of delivery for purposes of this paragraph.

(e) "Excess milk" means milk received from a producer by a pool handler which is in excess of base milk received from such producer during the month.

* * * * *

2. In § 1004.22, a paragraph (l) is added to read as follows:

§ 1004.22 Duties.

* * * * *

(l) On or before February 25 of each year, notify each producer, the handler receiving his milk and the cooperative association of which he is a member of the daily base established by such producer;

* * * * *

3. Sections 1004.63, 1004.64, and 1004.65 are added and read as follows:

§ 1004.63 Computation of base for each producer.

After February 1971, for each month of the year, the market administrator shall compute, subject to the rules set forth in § 1004.64, a base for each producer described in paragraphs (a) through (d) of this section by dividing the applicable quantity of milk receipts specified in such paragraph by 153 (by 154 in the case of a producer on every-other-day delivery schedule who delivered August 1) less the number of days, if any, during the applicable base-forming period of August through December for which it is shown that the day's production of milk of such producer was not received by a pool handler as described in the applicable paragraphs (a) through (d) of this section under which such producer's base is computed: *Provided*, That in no event shall the number of days used to compute a producer's base pursuant to this section be less than 120.

(a) For any producer, except as provided in paragraphs (b) through (e) of this section, the quantity of milk receipts shall be the total pounds of producer milk received by all pool handlers from such producer during the preceding months of August through December;

(b) Except as provided in paragraph (c) of this section, for any producer whose milk was received at a plant which first became a pool plant after the beginning of the preceding August–December period, which plant was a pool plant for at least 120 days during such period, the quantity of milk receipts to be used in the computation of such producer's base shall be the total pounds of milk received from such dairy farmer at such plant during the entire August–December period.

(c) For any producer who on August 1 was an Order 2 (New York-New Jersey) producer and who held such status in all or part of the 2 months of August and September and who otherwise was a producer only under this part for all of the remaining August through December period, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer by pool handlers under both orders throughout the August–December period.

(d) For any producer whose milk was received during the preceding August through December period at a plant which became a pool plant pursuant to § 1004.8(a) during or after such August through December period, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer during such August–December period by pool handlers as producer milk and at such plant as a nonpool plant.

(e) Any producer who made no qualifying milk deliveries during the base-forming period of August through December, or who relinquishes his established base pursuant to § 1004.65, shall have a base reflecting the percentage of his average daily deliveries of producer milk each month as set forth in the following table. A new base is earned on the basis of his milk deliveries during the subsequent August through December period.

Month	Percentage of production as base
January and February	60
March through June	50
July	60
August through November	70
December	60

§ 1004.64 Base rules.

After February 1971, the following rules shall apply in connection with the establishment of bases:

(a) A base computed pursuant to paragraph (a) through (d) of § 1004.63 (except as provided in paragraph (e) of said section) shall be effective for the subsequent months of March through February, inclusive.

(b) A base computed pursuant to paragraphs (a) through (d) of § 1004.63 may be transferred only in its entirety to another dairy farmer and only upon discontinuance of milk production because of the entry into military service of the baseholder.

(c) Base transfers shall be accomplished only through written application to the market administrator on forms prescribed by the market administrator and shall be signed by the baseholder and by the person to whom such base is to be transferred: *Provided*, That if a base is held jointly, except as provided in paragraph (e), the entire base only is transferrable and only upon receipt of such application signed by all joint holders.

(d) If a producer operates more than one farm and milk is received from each at a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1004.10 (b) or (c), he shall establish a separate base with respect to producer milk delivered from each such farm.

(e) Only one base shall be allocated with respect to milk produced by one or more persons where a dairy farm is jointly owned or operated: *Provided*, That in the case of a base established jointly, if a copy of the partnership agreement setting forth as a percentage of the total interest of the partners in the base is filed with the market administrator before the end of the base-forming period, then upon termination of the partnership agreement each partner will be entitled to his stated share of the base to hold in his own right or to transfer in conformity with the provisions of paragraph (b) or (c) of this section (including transfer to a partnership of which he is a member). Such termination of partnership shall become effective as of the end of any month during which an application for such division of base signed by each member of such partnership is received by the market administrator.

(f) Two or more producers with bases may combine such bases upon the formation of a bona fide partnership operating from one farm. Such a combination shall be considered a joint base under paragraph (e) above.

(g) Subject to approval by the market administrator, the name of the baseholder may be changed to that of another member of the baseholder's immediate family but only under circumstances where the base would be applicable to milk production from the same herd and on the same farm.

§ 1004.65 Relinquishing a base.

After February 1971, a producer holding an established base can, upon notification to the market administrator, relinquish his established base and be paid pursuant to the provisions of § 1004.63(e) beginning with the first day of the month in which such notification is received by the market administrator and extending until March 1, next.

4. In § 1004.71, the following section heading and introductory text (preceding paragraph (a)) are substituted:

§ 1004.71 Computation of weighted average prices.

For each month the market administrator shall compute the weighted average price per hundredweight of milk received from producers as follows:

* * * * *

5. Section 1004.72 is added and reads as follows:

§ 1004.72 Computation of uniform prices for base milk and excess milk.

For each month after February 1971 the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk received from producers, each of 3.5 percent butterfat content, f.o.b. market, as follows:

For each of the months from the effective date hereof through June 1970 and after February 1971 the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk received from producers, each of 3.5 percent butterfat content, f.o.b. market, as follows:

(a) Compute the aggregate value of excess milk for all handlers included in the computations pursuant to § 1004.71 (a) as follows:

(1) Multiply the hundredweight quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II milk price;

(2) Multiply the remaining hundredweight quantity of excess milk 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 round to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(c) From the amount resulting from the computations of § 1004.71 (a) through (d) subtract an amount computed by multiplying the hundredweight of milk specified in § 1004.71(e)(2) by the weighted average price;

(d) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b) of this section by the hundredweight of excess milk, from the amount computed pursuant to paragraph (c) of this section;

(e) Divide the amount calculated pursuant to paragraph (d) of this section by the total hundredweight of base milk for handlers included in these computations: *Provided*, That if the resulting price should exceed the Class I price by more than the amount deducted pursuant to paragraph (f) of this section the aggregate amount in excess thereof shall be included in the computation of the excess price pursuant to paragraph (a) of this section, except that if by such addition the excess price should exceed the base price then the aggregate amount of the excess shall be prorated to the aggregate values of base milk and excess milk on the basis of the respective volumes of base and excess milk; and

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

6. In § 1004.80(a), the text of subparagraph (2) immediately preceding subdivision (i) is replaced by the following:

(2) On or before the 20th of the following month at not less than the uniform price for base milk computed pursuant to § 1004.72 (c) through (f) with respect to base milk received from such producer and not less than the excess price determined pursuant to § 1004.72 (a) and (b) for excess milk received from such producers subject to the following adjustments:

7. In § 1004.82, the following text is substituted for paragraph (a):

§ 1004.82 Location differential to producers.

(a) Subject to the exception pursuant to § 1004.15(d), for that milk received from producers and from cooperative association handlers pursuant to § 1004.10(c) at a pool plant located 55 miles or more from the city hall in Philadelphia, Pa., and also at least 75 miles from the nearer of the zero milestone in Washington, D.C., or the city hall in Baltimore, Md. (all distances to be the shortest highway distance as determined by the market administrator), the weighted average price computed pursuant to § 1004.71 during any month from the effective date hereof through February 1971 and the uniform price for base milk computed pursuant to § 1004.72 for any month after February 1971 shall be reduced 1.5 cents for each 10 miles distance or fraction thereof that such plant is from the nearest of such basing points.

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