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List of CFR Parts Affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

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

Rules and Regulations

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 2—DELEGATIONS OF AUTHORITY

Miscellaneous Amendments

1. Section 2.5 is revised to read as follows:

§ 2.5 Delegation of authority to certify copies of documents, records, or papers in Veterans Administration files.

Persons occupying or acting in the following positions in the Office of the General Counsel are authorized to certify copies of public documents, records, or papers belonging to or in the files of the Veterans Administration for the purposes of 38 U.S.C. 202: General Counsel, Associate General Counsel, Assistant General Counsel, and Deputy Assistant General Counsel.

2. In § 2.6, paragraphs (b), (d)(3), and (e)(1) (that portion preceding subdivision (i)), (3)(iv), (5), and (6) are amended to read as follows:

§ 2.6 Administrator's delegations of authority to certain officials (38 U.S.C. 212(a)).

* * * * *

(b) *Department of Veterans Benefits*—(1) *General.* The Chief Benefits Director is delegated authority to act on all matters assigned to the Department of Veterans Benefits, and to authorize supervisory or adjudicative personnel within his jurisdiction to perform such functions as may be assigned.

(2) *Philippines.* The Director, Veterans Administration Regional Office, Manila, Philippines, is delegated authority to exercise such authorities as are delegated to directors of regional offices in the United States, which are appropriate to the administration in the Republic of the Philippines of the laws administered by the Veterans Administration.

* * * * *

(d) *Federal Claims Collection Act of 1966—Public Law 89-508 (80 Stat. 308).* * * *

(3) Authority is delegated to the General Counsel, Associate General Counsel, Assistant General Counsel, and those authorized to act for them, to collect, compromise, suspend or terminate any claim not exceeding $20,000 involving damage to or loss of Government property under the jurisdiction of the Veterans Administration resulting from the negligence or other legal wrong of a person, other than an employee of the Government, and to execute an appropriate release therefor. Chief Attorneys and attorneys authorized to act for them are delegated like authority with respect to such claims not exceeding $2,500.

(e) *General Counsel and Chief Attorneys.* (1) Under the Federal Tort Claims Act pursuant to the provisions of 28 U.S.C. 2672 authority is delegated to the General Counsel, Associate General Counsel and Assistant General Counsel, or those authorized to act for them, to:

* * * * *

(3) * * *

(iv) General Counsel, Associate General Counsel, Assistant General Counsel, Deputy Assistant General Counsel.

* * * * *

(5) Under the provisions of 38 U.S.C. 236, the General Counsel, Associate General Counsel and Assistant General Counsel, or those authorized to act for them, are authorized to consider, ascertain, adjust, determine, and settle tort claims cognizable thereunder and to execute an appropriate voucher and other necessary instruments in connection with the final disposition of such claims.

(6) Pursuant to the provisions of the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 241, the General Counsel, Associate General Counsel, Assistant General Counsel and Deputy Assistant General Counsel, or those authorized to act for them, are authorized to settle and pay a claim for not more than $6,500 made by a civilian officer or employee of the Veterans Administration for damage to, or loss of, personal property incident to his service occurring subsequent to August 31, 1964.

* * * * *

3. Section 2.8 is revised to read as follows:

§ 2.8 Delegation of authority to authorize allowances for Veterans Administration employees who are notaries public.

(a) Employees occupying or acting in the positions designated in paragraph (b) of this section are authorized to designate those employees who are required to serve as notaries public in connection with the performance of official business and to pay an allowance for the costs therefor not to exceed the expense required to be incurred by them in order to obtain their commission. (5 U.S.C. 5945.)

(b) Designated positions: Deputy Administrator, Chief Benefits Director, Chief Data Management Director, Chief Medical Director, General Counsel, Directors of regional offices, hospitals, domiciliaries, and centers.

(72 Stat. 1114; 38 U.S.C. 210)

These VA regulations are effective the date of approval.

Approved: August 24, 1970.

By direction of the Administrator.

[SEAL] RUFUS H. WILSON,
Associate Deputy Administrator.

[F.R. Doc. 70-11453; Filed, Aug. 28, 1970; 8:46 a.m.]

Title 7—AGRICULTURE

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

[Valencia Orange Reg. 327, Amdt. 1]

PART 908 — VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Valencia oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i) and (ii) of § 908.627 (Valencia Orange Reg. 327, 35 F.R. 13281) are hereby amended to read as follows:

§ 908.627 Valencia Orange Regulation 327.

* * * * *

(b) *Order.* (1) * * *

(i) District 1: 315,000 cartons;

(ii) District 2: 385,000 cartons.

* * * * *

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

Dated: August 26, 1970.

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

[F.R. Doc. 70–11467, Filed, Aug. 28, 1970; 8:48 a.m.]

[Lemon Reg. 442]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.742 Lemon Regulation 442.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on August 25, 1970.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period August 30, 1970, through September 5, 1970, are hereby fixed as follows:

(i) District 1: Unlimited;

(ii) District 2: 215,000 cartons;

(iii) District 3: 7,000 cartons.

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

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

Dated: August 27, 1970.

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

[F.R. Doc. 70–11482; Filed, Aug. 28, 1970; 8:48 a.m.]

PART 932—OLIVES GROWN IN CALIFORNIA

Miscellaneous Amendments

Notice was published in the FEDERAL REGISTER issue of August 1, 1970 (35 F.R. 12345), that the Department was giving consideration to a proposed amendment of the rules and regulations (Subpart—Rules and Regulations, 7 CFR 932.108–932.161) currently in effect pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932), regulating the handling of olives grown in California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Amendment was proposed by the Olive Administrative Committee, established pursuant to the amended marketing agreement and order as the agency to administer the provisions thereof. No written data, views, or arguments were filed with respect to said proposal during the period specified therefor in the notice.

After consideration of all revelant matter presented, including that in the notice, it is hereby found that amendment, as hereinafter set forth, of said rules and regulations is in accordance with said amended marketing agreement and order and will tend to effectuate the declared policy of the act; and said rules and regulations (Subpart—Rules and Regulations, 7 CFR 932.108–932.161) are hereby amended as follows:

1. A new § 932.149 is added to read as follows:

§ 932.149 Modified grade requirements for specified styles of canned olives of the ripe type.

The grade requirements prescribed in § 932.52(a)(1) are modified with respect to specified styles of olives of the ripe type as follows:

(a) Canned whole olives of the ripe type shall grade at least U.S. Grade C, and shall meet the requirements of Grade B with respect to uniformity of size, character, and absence of defects:

(b) Canned pitted olives of the ripe type shall grade at least U.S. Grade C, and shall meet the requirements of Grade B with respect to character;

(c) Canned broken pitted olives of the ripe type shall grade at least U.S. Grade C, and shall meet the requirements of Grade B with respect to character; and

(d) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; "U.S. Grade B," "U.S. Grade C," and the terms "uniformity of size," "character," "absence of defects," and "ripe type" shall have the same meaning as when used in the U.S. Standards for Canned Ripe Olives (§§ 52.3751–52.3766 of this title).

2. The introductory language and paragraph (e) of § 932.150 are amended to read as follows:

§ 932.150 Changes in the percentage tolerances for canned whole ripe olives.

The percentage tolerances for canned whole ripe olives set forth in § 932.52(a)(2), are changed as follows:

* * * * *

(e) The provisions of this section shall terminate on August 31, 1971.

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give further notice and good cause exists for making this amendment effective at the time hereinafter set forth and for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) seasonal handling of California olives will begin on or about September 1, 1970, and to be of maximum benefit the provisions of this amendment should become effective as soon as possible to afford handlers more efficiency in their operations, (2) the effective date hereof will not require of handlers any preparation that cannot be completed prior thereto, and (3) this amendment was recommended by members of the Olive Administrative Committee in an open meeting at which all interested persons were afforded an opportunity to submit their views.

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

Dated, August 26, 1970, to become effective September 1, 1970.

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

[F.R. Doc. 70-11443; Filed, Aug. 28, 1970; 8:45 a.m.]

PART 981—ALMONDS GROWN IN CALIFORNIA

Expenses of Almond Control Board and Rate of Assessment for 1970–71 Crop Year

Notice was published in the August 12, 1970, issue of the FEDERAL REGISTER (35 F.R. 12767) regarding proposed expenses of the Almond Control Board for the 1970–71 crop year and rate of assessment for that crop year, pursuant to §§ 981.80 and 981.81 of the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981; 35 F.R. 11372), regulating the handling of almonds grown in California. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The notice afforded interested persons an opportunity to submit written data, views, or arguments with respect to the proposal. None were submitted within the prescribed time.

After consideration of all relevant matter presented, including that in the notice, the information and recommendations submitted by the Control Board, and other available information, it is found that the expenses of the Control Board and rate of assessment for the crop year beginning July 1, 1970, shall be as follows:

§ 981.320 Expenses of the Control Board and rate of assessment for the 1970–71 crop year.

(a) *Expenses.* Expenses in the amount of $105,000 are reasonable and likely to be incurred by the Control Board during the crop year beginning July 1, 1970, for its maintenance and functioning and for such purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for said crop year, payable by each handler in accordance with § 981.81, is fixed at 0.08 cent per pound of almonds (kernel weight basis).

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular crop year shall be applicable to all almonds received by handlers for their own accounts during such crop year; and (2) the current crop year began July 1, 1970, and the rate of assessment herein fixed will automatically apply to all such almonds beginning with that date.

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

Dated: August 25, 1970.

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

[F.R. Doc. 70-11444; Filed, Aug. 28, 1970; 8:45 a.m.]

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Schedule of Payments on Raisins Held Beyond Crop Year of Acquisition

Notice was published in the August 6, 1970, issue of the FEDERAL REGISTER (35 F.R. 12544) regarding a proposal to amend Subpart—Schedule of Payments to adjust the rates of payment for storage, handling, fumigation, and container rental with respect to reserve tonnage raisins held by handlers beyond the crop year of acquisition. The proposed rates of payment for such services and container rental recognize that shipments or other removal of carried over reserve raisins in the earlier part of the crop year releases containers and handler storage space when new crop acquisitions are heavy. Such rates also reflect increased costs incurred by handlers in providing such services by increasing the payment for services on reserve raisins which must be held for longer periods. Interested persons were afforded an opportunity to submit written data, views, or arguments with respect to the proposal. No comments were received within the period prescribed therefor.

The proposal was based on a unanimous recommendation of the Raisin Administrative Committee. The Committee is established under, and its recommendations are made in accordance with, the provisions of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

After consideration of all relevant matter presented, including that in the notice, the information and recommendation of the Committee, and other available information, amendment of paragraphs (b) and (c) of § 989.401 to provide the payment rates for the aforesaid handler services and container rental, as hereinafter set forth, is hereby approved. Therefore, § 989.401 is amended to read as follows:

§ 989.401 Payment for services performed with respect to reserve tonnage raisins.

* * * * *

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Each handler holding reserve tonnage raisins for the account of the Committee on September 1 of any crop year (commencing with the crop year beginning Sept. 1, 1970) which were also held by him as such on August 15 of the preceding crop year, shall be compensated for storing, handling, and fumigating such raisins at the rate of 50 cents per ton per month, or any part thereof, for each month of the 3-month period ending November 30 of the then current crop year, and 25 cents per ton per month, or any part thereof, for each month of the remaining 9 months of the crop year. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

(c) *Payment of rental on boxes containing reserve tonnage raisins held beyond the crop year of acquisition.* Each handler, producer, dehydrator, and other person who furnishes boxes in which reserve tonnage raisins are held for the account of the Committee on September 1 of any crop year (commencing with the crop year beginning Sept. 1, 1970) which were also so held on August 15 of the preceding crop year, shall be compensated for the use of such boxes at the rate of one cent (1¢) per day per average net weight of raisins in a sweatbox, not to exceed a total payment of 30 cents per year per average net weight of raisins in a sweatbox, with equivalent rates for raisins in containers other than sweatboxes. The average net weight of raisins in each type of container shall be the industry average as computed by the Committee, for the containers in which the raisins are so held. No further compensation shall be paid unless the raisins are so held in the containers on the succeeding September 1.

* * * * *

It is found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) and making the effective date September 1, 1970, in that: (1) This action imposes no restriction on handlers; (2) commencing September 1, 1970, the rates of payment contained herein should apply to services provided for all reserve tonnage carried over from any previous crop year and a new crop year begins September 1, 1970; (3) the payment for such services and container rental is customarily made as a deduction from the Committee's sale price to handlers when releasing such reserve tonnage for export and should be made effective on September 1, 1970, so the Committee will be able to make such payment as deduction on or after that date; and (4) no useful purpose would be served by postponing the effective date of this action beyond September 1, 1970.

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

Dated August 25, 1970, to become effective September 1, 1970.

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

[F.R. Doc. 70-11445; Filed, Aug. 28, 1970; 8:45 a.m.]

Chapter X—Consumer and Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

[Milk Order 36]

[Docket No. AO–179–A32, AO–179–A32–RO2]

PART 1036—MILK IN EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

Order Amending Order

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

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

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

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, 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, 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(i) Producer milk (including such handler's own production);

(ii) Other source milk allocated to Class I pursuant to § 1036.45(a) (4) and (9) and the corresponding steps of § 1036.45(b); and

(iii) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

DEFINITIONS

MARKET ADMINISTRATOR

REPORTS, RECORDS, AND FACILITIES

CLASSIFICATION

MINIMUM PRICES

APPLICATION OF PRICES

PAYMENTS

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

MISCELLANEOUS PROVISIONS

AUTHORITY: The provisions of this Part 1036 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

DEFINITIONS

§ 1036.1 Act.

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

§ 1036.2 Secretary.

"Secretary" means the Secretary of Agriculture or such other officer or employee of the United States authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ 1036.3 Department.

"Department" means the U.S. Department of Agriculture.

§ 1036.4 Person.

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

§ 1036.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

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

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members; and

(c) To have all of its activities under the control of its members.

§ 1036.6 Eastern Ohio-Western Pennsylvania marketing area.

The "Eastern Ohio-Western Pennsylvania marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the following geographical units, including all waterfront facilities connected therewith and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within the listed geographical units:

(a) In Ohio:

(1) The following counties in their entirety:

Ashtabula.	Lake.
Belmont.	Mahoning.
Carroll.	Monroe.
Columbiana.	Portage.
Cuyahoga.	Stark.
Geauga.	Summit.
Harrison.	Trumbull.
Holmes.	Tuscarawas.
Jefferson.	Wayne.

(2) The townships of Amherst, Avon, Avon Lake, Black River, Carlisle, Columbia, Eaton, Elyria, Grafton, Ridgeville, and Sheffield in Lorain County;

(3) All of Medina County except the townships of Chatham, Homer, Litchfield, and Spencer;

(4) All of Ashland County except the townships of Ruggles, Sullivan, and Troy; and

(5) The townships of Londonderry, Millwood, and Oxford in Guernsey County.

(b) In Pennsylvania:

(1) The following counties in their entirety:

Allegheny.	Fayette.
Armstrong.	Greene.
Beaver.	Lawrence.
Butler.	Mercer.
Crawford.	Venango.
Erie.	Washington.

(2) The townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby in Clarion County; and

(3) All of Westmoreland County except the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward and the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair.

(c) In West Virginia, the following counties in their entirety:

Barbour.	Ohio.
Brooke.	Preston.
Doddridge.	Randolph.
Hancock.	Taylor.
Harrison.	Tucker.
Lewis.	Tyler.
Marion.	Upshur.
Marshall.	Wetzel.
Monongalia.	

§ 1036.7 Fluid milk product.

"Fluid milk product" means the following products or mixtures in either fluid or frozen form, including such products or mixtures that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milk shake mixes containing less than 12 percent total milk solids, and mixtures of cream and milk or skim milk containing less than 10.5 percent butterfat. The term "fluid milk product" shall not include those products and mixtures listed in § 1036.41 (b) (1) and (3), and (c) (1).

§ 1036.8 Route disposition.

"Route disposition" means a delivery (except to a plant), either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine), of a fluid milk product classified as Class I pursuant to § 1036.41(a)(1).

§ 1036.9 Distributing plant.

"Distributing plant" means a plant in which fluid milk products approved by a duly constituted health authority for fluid consumption, or filled milk, are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1036.10 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority, or filled milk, is transferred or diverted during the month to a pool plant.

§ 1036.11 Pool plant.

"Pool plant" means a plant specified in paragraph (a), (b), or (c) of this section that is not an other order plant or a producer-handler plant.

(a) A distributing plant that has:

(1) Route disposition, except filled milk, during the month of not less than 50 percent (40 percent for each month of April through August) of the total receipts of fluid milk products, except filled milk, that are approved by a duly constituted health authority for fluid consumption and that are physically received at such plant or diverted as producer milk pursuant to § 1036.16 to a nonpool plant; and

(2) Route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of the receipts described in subparagraph (1) of this paragraph.

(b) A supply plant from which during the months of September, October, and November not less than 50 percent, and in all other months not less than 40 percent, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received (excluding that diverted from other plants) at such plant from dairy farmers and handlers defined in § 1036.13(d) or diverted as producer milk pursuant to § 1036.16 to pool plants and nonpool plants is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants qualified under paragraph (a) of this section or disposed of as route disposition in the marketing area.

(c) A plant that was a pool plant under paragraph (b) of this section in each of the immediately preceding months of September through February shall be a pool plant for the months of March through August unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a 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 as a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant.

§ 1036.12 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing, or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) Except as provided in paragraphs (c)(2) and (d)(2) of this section, "other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1036.11 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

(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:

(1) A nonpool plant that is a distributing plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to its route disposition in the marketing area that is not priced and pooled pursuant to any order issued pursuant to the Act.

(d) "Unregulated supply plant" means:

(1) A nonpool plant that is a supply plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to fluid milk products which were received at a pool plant from such a plant and which are not priced and pooled pursuant to any order issued pursuant to the Act.

§ 1036.13 Handler.

"Handler" means:

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

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

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

(d) Any cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(e) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant; and

(f) Any producer-handler.

§ 1036.14 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no fluid milk products from sources other than his own farm production and pool plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1036.15 Producer.

(a) "Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk for fluid consumption in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1036.16 from a pool plant to a nonpool plant or another pool plant.

(b) "Producer" shall not include a person with respect to milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II or Class III classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another order issued pursuant to the Act.

§ 1036.16 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer which is:

(a) With respect to a handler defined in § 1036.13(a):

(1) Received at the handler's pool plant directly from the producer, excluding receipts of milk diverted from another pool plant;

(2) Received at the handler's pool plant from a handler defined in § 1036.13(d) that does not operate a pool plant;

(3) Diverted for the handler's account from its pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions set forth in paragraph (e) of this section; or

(4) Diverted for the handler's account from its pool plant to another pool plant, subject to the conditions set forth in paragraph (f) of this section;

(b) With respect to a handler defined in § 1036.13(c), diverted for the handler's account from a pool plant of another handler to a nonpool plant that is not a producer-handler plant, subject to the conditions set forth in paragraph (e) of this section;

(c) With respect to a handler defined in § 1036.13(d) that does not operate a pool plant, received by the handler from the producer's farm in excess of the producer's milk that is received by a pool plant operator pursuant to paragraph (a)(2) of this section; and

(d) With respect to a handler defined in § 1036.13(d) that also operates a pool plant, received by the handler from the producer's farm.

(e) The following conditions shall apply to milk diverted from a pool plant to a nonpool plant that is not a producer-handler plant:

(1) Except as provided in subparagraph (2) of this paragraph, such milk shall be deemed to have been received by the diverting handler at the location of the pool plant from which diverted;

(2) In any month of April through July, the quantity of milk of any producer diverted to nonpool plants that exceeds that physically received at pool plants shall be deemed to have been received by the diverting handler at the location of the nonpool plants to which diverted;

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

(4) In any month of August through March, the quantity of milk of any producer diverted to nonpool plants that exceeds that physically received at pool plants shall be deemed to have not been received by the diverting handler and shall not be producer milk;

(5) The diverting handler shall designate the dairy farmers' deliveries that are not producer milk pursuant to this paragraph. If the handler fails to make such designation, no milk diverted by him to a nonpool plant shall be producer milk;

(6) In determining if the diversion limitations specified in this paragraph have been exceeded, the quantity of milk diverted to nonpool plants or physically received at pool plants shall be considered in terms of days of production of the producer; and

(7) Milk diverted to an other order plant shall be producer milk only if a Class II or Class III classification is designated for such milk pursuant to the provisions of another order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order.

(f) The following conditions shall apply to milk diverted from a pool plant to another pool plant:

(1) Except as provided in subparagraph (2) of this paragraph, such milk shall be deemed to have been received by the diverting handler at the location of the pool plant from which diverted; and

(2) If less than one-half of a producer's milk pooled under this order during the month (such quantity to be considered in terms of days of production of the producer) is physically received at a pool plant from which milk of the producer is diverted to any other plant, such producer's milk diverted to another pool plant shall be deemed to have been received by the diverting handler at the location of the pool plant to which diverted.

§ 1036.17 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Fluid milk products and bulk cream from any source except producer milk, fluid milk products and bulk cream from pool plants, and fluid milk products and bulk cream in inventory at the beginning of the month;

(b) Products, other than fluid milk products and Class II products listed in § 1036.41(b)(1) and (3), from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for pursuant to § 1036.33.

§ 1036.18 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload operation on the premises of a plant shall be considered a part of the plant operation.

§ 1036.19 Chicago butter price.

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-score bulk creamery butter at Chicago as reported for the month by the Department.

§ 1036.20 Pittsburgh district.

"Pittsburgh district" means all the territory in the marketing area that is either in West Virginia or within 80 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) of the Pittsburgh, Pa., city hall.

§ 1036.21 Cleveland-Erie district.

"Cleveland-Erie district" means all the territory in the marketing area that is not within the Pittsburgh district.

§ 1036.22 Filled milk.

"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).

Market Administrator

§ 1036.25 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.

§ 1036.26 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1036.27 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to, the following:

(a) Within 30 days following the date on which he enters upon his duties or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such 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 funds provided by § 1036.77:

(1) The cost of his bond and of the bonds of his employees;

(2) His own compensation; and

(3) All other expenses, except those incurred under § 1036.76, 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, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1036.30 through 1036.32, or payments pursuant to §§ 1036.70, 1036.74, 1036.76, 1036.77, and 1036.78;

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

(h) On or before the 20th day of each month, report to each cooperative association that so requests the class utilization of milk received during the preceding month by each handler from producers who are members of such association, prorating to such receipts the class utilization of all producer receipts of such handler;

(i) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other handler or nonhandler upon whose utilization the classification of skim milk and butterfat for such handler depends;

(j) On or before the dates specified herein, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate the following:

(1) The 6th day of each month, the Class I price and the Class I butterfat differential for the current month, and the Class II and Class III prices and butterfat differentials for the preceding month; and

(2) The 14th day of each month, the uniform price computed pursuant to § 1036.61 and the butterfat differential computed pursuant to § 1036.71;

(k) Prepare and disseminate to the public such statistics and information as he deems advisable and as do not reveal confidential information;

(l) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1036.45(a)(10) and the corresponding step of § 1036.45(b), 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;

(m) 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 § 1036.45 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in the verification of such report; and

(n) Furnish to each handler operating a pool plant who has shipped fluid milk products and bulk cream to an other order plant the classification to which the skim milk and butterfat in such fluid milk products and bulk cream 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

§ 1036.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, reports of receipts and utilization for such month shall be made to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(a) Each handler operating a pool plant shall report for each of his pool plants:

(1) Receipts of skim milk and butterfat contained in or represented by:

(i) Producer milk, showing in the case of milk received directly from each producer the pounds and butterfat test and the number of days of production involved for each producer;

(ii) Fluid milk products and bulk cream from other pool plants and from a handler defined in § 1036.13(d) that also operates a pool plant; and

(iii) Other source milk;

(2) Inventories of fluid milk products and products listed in § 1036.41(b)(1) at the beginning and the end of the month, showing separately such inventories of products listed in § 1036.41(b)(1) that are in bulk form and in packaged form;

(3) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately:

(i) Total route disposition and route disposition in the marketing area, showing separately such disposition of filled milk inside and outside the marketing area; and

(ii) Transfers and diversions to other plants; and

(4) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk and butterfat contained in milk from producers for which it is the handler pursuant to § 1036.13 (c) and (d), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds and butterfat test of the milk and the number of days of production involved;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to subparagraph (1) of this paragraph, except that contained in producer milk described in § 1036.16(a)(2); and

(3) Such other information with respect to its receipts and utilization of skim milk and butterfat as the market administrator may prescribe; and

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section except that receipts of bottling grade milk from dairy farmers shall be reported in lieu of receipts of producer milk. Such report shall include a separate statement showing the amount of reconstituted skim milk in route disposition in the marketing area.

§ 1036.31 Producer payroll reports.

(a) Each handler defined in § 1036.13 (a), (c), and (d) shall report to the market administrator on or before the 25th day after the end of the month, in the detail and on forms prescribed by the market administrator, his producer payroll for such month which shall show for each producer:

(1) His identity;

(2) The quantity of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;

(3) The average butterfat content of such milk; and

(4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

(b) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1036.62(b) shall report to the market administrator on or before the 25th day after the end of the month the same information required of handlers pursuant to paragraph (a) of this section. In such report, payments to dairy farmers delivering milk that is approved by a duly constituted health authority for fluid consumption shall be reported in lieu of payments to producers.

§ 1036.32 Other reports.

(a) Each producer-handler shall report to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator.

§ 1036.33 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 during the month;

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

(d) Payments to dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

§ 1036.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the calendar month to which such books and records pertain. If the market administrator notifies the handler in writing within such 3-year period that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1036.40 Skim milk and butterfat to be classified.

The skim milk and butterfat required to be reported pursuant to § 1036.30 shall be classified each month pursuant to the provisions of §§ 1036.41 through 1036.45: *Provided*, That such skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 1036.41 Classes of utilization.

Subject to the conditions set forth in § 1036.43, 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 in the form of a fluid milk product, except as provided in paragraphs (b) and (c) of this section; and

(2) Not accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of as fluid cream (including aerated cream and sterilized cream) or as mixtures of cream and milk or skim milk containing 10.5 percent or more butterfat;

(2) In packaged inventory at the end of the month of the products listed in subparagraph (1) of this paragraph:

(3) Used to produce yogurt, sour cream, sour cream products (e.g., dips), cottage cheese, and cottage cheese curd; and

(4) Disposed of in bulk as fluid milk products or products listed in subparagraph (1) of this paragraph to any commercial food processing establishment (other than a milk or filled milk plant) for the manufacture of packaged food products (other than milk products and filled milk) for consumption off the premises.

(c) *Class III milk.* Class III milk shall be:

(1) Skim milk and butterfat used to produce frozen desserts and frozen dessert mixes, eggnog, frozen cream, butter, cheese (excluding cottage cheese and cottage cheese curd), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, any product containing 6 percent or more nonmilk fat (or oil), milk shake mixes containing 12 percent or more total milk solids, and sterilized products (except those products listed in paragraph (b) (1) and (3) of this section in hermetically sealed glass or metal containers;

(2) Skim milk and butterfat in fluid milk products and products listed in paragraph (b) (1) and (3) of this section that are disposed of by a handler for livestock feed;

(3) Skim milk and butterfat in fluid milk products and products listed in paragraph (b) (1) and (3) of this section that are dumped by a handler after notification to, and opportunity for verification by, the market administrator;

(4) Skim milk and butterfat in inventory of fluid milk products and bulk cream at the end of the month;

(5) Skim milk represented by the nonfat milk solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(6) Skim milk and butterfat, respectively, in each pool plant's shrinkage, but not in excess of:

(i) Two percent of producer milk physically received at the plant (except that received from a handler defined in § 1036.13(d));

(ii) Plus 1.5 percent of milk received from a handler defined in § 1036.13(d) and of milk diverted to such plant from another pool plant, except that if the plant operator receiving such milk files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(iii) Plus 0.5 percent of producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the other plant purchases such milk on the basis of farm weights, no percentage shall apply;

(iv) Plus 1.5 percent of bulk fluid milk products and bulk cream received by transfer from other pool plants;

(v) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II or Class III classification was requested by the operators of both plants;

(vi) Plus 1.5 percent of bulk fluid milk products received from unregulated supply plants exclusive of the quantity for which Class II or Class III classification is requested by the handler; and

(vii) Less 1.5 percent of bulk fluid milk products and bulk cream transferred to other plants;

(7) Skim milk and butterfat, respectively, in shrinkage of other source milk assigned pursuant to § 1036.42(b)(2); and

(8) Skim milk and butterfat, respectively, in shrinkage of milk from producers that is diverted from a pool plant to a nonpool plant by a cooperative association acting as a handler pursuant to § 1036.13(c) or in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1036.13(d), but not in excess of 0.5 percent of the receipts of milk from producers, exclusive of such receipts for which farm weights are used as the basis of receipt at the plant to which delivered.

§ 1036.42 Shrinkage.

The market administrator shall allocate shrinkage over each pool plant's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each pool plant; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat, respectively, in:

(1) The net quantity of producer milk and other fluid milk products and bulk cream specified in § 1036.41(b)(6); and

(2) Other source milk exclusive of that specified in § 1036.41(b)(6).

§ 1036.43 Interplant movements.

Skim milk or butterfat in the form of a fluid milk product or bulk cream shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred or diverted from a pool plant to the pool plant of another handler, subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after the computations pursuant to § 1036.45(a)(10) and the corresponding step of § 1036.45(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1036.45(a)(4) and the corresponding step of § 1036.45(b), 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 plant received during the month other source milk to be allocated pursuant to § 1036.45(a)(9) or (10) and the corresponding steps of § 1036.45(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 plant. If Class II or Class III utilization is requested by the operators of both plants, such classification shall be as Class II or Class III milk to the extent of such utilization at the transferee plant;

(c) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, 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 as Class II or Class III in his report submitted pursuant to § 1036.30;

(2) The operator of such nonpool 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; and

(3) The skim milk and butterfat so transferred or diverted 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, next pro rata to receipts from other order plants, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(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, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute regular sources 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 plant from all pool plants and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred or diverted shall be classified as Class III milk to the extent Class III utilization is available and the remainder as Class II milk; and

(d) As follows, if transferred to an other 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, movements in bulk form shall be classified as Class III milk to the extent of the Class III 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 only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk and butterfat allocated to the other class shall be classified as Class III milk; 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 § 1036.41.

§ 1036.44 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors all reports submitted pursuant to § 1036.30 and shall compute for each handler the total pounds of skim

milk and butterfat in each class: *Provided*, That the skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids.

§ 1036.45 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1036.44, the market administrator shall determine the classification of producer milk for each handler as follows: *Provided*, That the classification of producer milk for which a cooperative association is the handler pursuant to § 1036.13 (c) or (d) shall be determined separately from the operations of any pool plant operated by such cooperative association:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III milk pursuant to § 1036.41(c)(6);

(2) 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 (4)(v) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III milk pursuant to § 1036.41(c)(5) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Except for the first month this subparagraph is effective, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in packaged products listed in § 1036.41(b)(1) that are in inventory at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product or bulk cream;

(ii) Receipts of fluid milk products (except filled milk) and bulk cream for which appropriate health approval is not established and receipts of fluid milk products and bulk cream from unidentified sources;

(iii) Receipts of fluid milk products and bulk cream from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in bulk cream received from nonpool plants that were not subtracted pursuant to subparagraph (4)(iii) of this paragraph;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II and Class III (beginning with Class III), but not in excess of such quantities:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (4)(iv) of this paragraph:

(*a*) For which the handler requests Class III classification; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (4)(v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (4)(v) of this paragraph, in excess of similar transfers to such plant, if Class III classification was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory of fluid milk products and bulk cream (and, for the first month this subparagraph is effective, packaged products listed in § 1036.41(b)(1)) at the beginning of the month;

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

(9) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (4)(iv) and (6)(i) of this paragraph;

(10) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant that are in excess of similar transfers to the same plant and that were not subtracted pursuant to subparagraphs (4)(v) and (6)(ii) of this paragraph:

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1036.27(l) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(11) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk cream received from pool plants of other handlers according to the classification of such products pursuant to § 1036.43(a);

(12) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of milk from a handler defined in § 1036.13(d) that also operates a pool plant;

(13) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

MINIMUM PRICES

§ 1036.50 Basic formula price.

The basic formula price shall be the price per hundredweight for manufacturing grade milk f.o.b. plants in Wisconsin and Minnesota, as reported on a 3.5 percent butterfat basis by the Department for the month. For the purpose of computing Class I prices from the effective date hereof, the basic formula price shall not be less than $4.33.

§ 1036.51 Class prices.

Subject to the provisions of §§ 1036.52 and 1036.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the preceding month plus $1.67 for plants in the Cleveland-Erie district and $1.77 for plants in the Pittsburgh district, plus 20 cents for each district. At a plant outside the marketing area, add to the basic formula price for the preceding month the amount applicable pursuant to this paragraph at the location of the city hall of the following cities that is nearest such plant (by the shortest hard-surfaced highway distance as determined by the market administrator): Canton and Cleveland, Ohio; Erie, Pittsburgh, and Uniontown, Pa.; and Clarksburg, W. Va.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month, but not to exceed an amount computed as follows:

(1) Multiply by 4.2 the Chicago butter price;

(2) Multiply by 8.2 the weighted average of carlot prices per pound of nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing

plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

§ 1036.52 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices calculated pursuant to § 1036.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I milk.* Multiply the Chicago butter price for the preceding month by 0.12.

(b) *Class II and Class III milk.* Multiply the Chicago butter price for the month by 0.115.

§ 1036.53 Location adjustments to handlers.

(a) The Class I price for producer milk and other source milk (for which a location adjustment is applicable) at a plant more than 85 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from all the cities in § 1036.51(a) shall be reduced 13 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 100 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the city hall of the nearest of the cities listed in § 1036.51(a).

(b) For the purpose of computing location adjustments, receipts of fluid milk products from pool plants at a pool plant shall be assigned any remainder of Class I milk at such plant that is in excess of 92.5 percent of the sum of producer milk receipts at the plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment is applicable pursuant to this section and then in sequence beginning with receipts from the plant with the lowest applicable location adjustment.

§ 1036.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price that is required.

APPLICATION OF PRICES

§ 1036.60 Computation of the net pool obligation of each handler.

The net pool obligation of each handler defined in § 1036.13 (a), (c), and (d) for each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class as computed pursuant to § 1036.45(c) by the applicable class price;

(b) Add the amounts obtained from multiplying the overage deducted from each class pursuant to § 1036.45(a)(13) and the corresponding step of § 1036.45 (b) by the applicable class price;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I or Class II price for the current month, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1036.45(a)(7) and the corresponding step of § 1036.45(b);

(d) Add the amount obtained from multiplying the difference between the Class I price at the pool plant and the Class III price, both for the current month, by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.45(a) (4) and (5) and the corresponding steps of § 1036.45 (b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1036.45(a)(4) (iv) and (v) and the corresponding steps of § 1036.45(b) (4) the Class I price shall be adjusted to the location of the transferor plant (but not to be less than the Class III price); and

(e) Add the amount obtained from multiplying the Class I price adjusted for the location of the nearest nonpool plants from which an equivalent volume was received, but not to be less than the Class III price, by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.45(a)(9) and the corresponding step of § 1036.45(b).

§ 1036.61 Computation of the uniform price.

For each month, the market administrator shall compute a uniform price per hundredweight as follows:

(a) Combine into one total the values computed pursuant to § 1036.60 for all handlers who filed the reports pursuant to § 1036.30 for the month, except those in default of payments required pursuant to § 1036.74 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of milk specified in paragraph (f) of this section is less or more, respectively, than 3.5 percent the amount obtained by multiplying such difference by the butterfat differential pursuant to § 1036.71, and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the total value of the minus location differentials computed pursuant to § 1036.72(a);

(d) Subtract an amount equal to the total value of the plus location differential computed pursuant to § 1036.72(a);

(e) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1036.60(e);

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(h) For the months specified in paragraphs (i) and (j) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (e) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (f)(2) of this section by the weighted average price;

(i) Subtract for each of the months of April, May, June, and July the amount obtained by multiplying the hundredweight of producer milk specified in paragraph (f)(1) of this section by a rate that is equal to 6 percent of the average basic formula price (computed to the nearest cent) for the preceding calendar year but not to exceed 25 cents;

(j) Add for each of the months of September, October, and November one-fourth of the total amount subtracted pursuant to paragraph (i) of this section for the preceding period of April through July, and add for the month of December the remainder of such total amount plus any interest earned on such total amount;

(k) Divide the amount resulting from the computations pursuant to paragraphs (h), (i), and (j) of this section by the hundredweight of producer milk specified in paragraph (f)(1) of this section; and

(l) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1036.62 Obligation of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-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 §§ 1036.30 and 1036.31(b) 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) The obligation that would have been computed pursuant to § 1036.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or other order plant shall

be classified as Class II or Class III 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 III price. There shall be included in the obligation so computed a charge in the amount specified in § 1036.60(e) and a credit in the amount specified in § 1036.74(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 III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1036.30 a similar report for each 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 § 1036.11 (b) and (c), 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, deduct the sum of:

(i) The gross payments made by such handler for milk 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) 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 in the plant's route disposition in the marketing area;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition 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 (not to be less than the Class III price), subtract its value at the weighted average price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant (not to be less than the Class III price), less the value of such skim milk at the Class III price.

§ 1036.63 Notification.

On or before the 14th day of each month the market administrator shall notify each handler who submitted a report for the preceding month pursuant to § 1036.30 of:

(a) The classification pursuant to § 1036.45 of skim milk and butterfat in producer milk received by such handler during the month and the value of such milk pursuant to § 1036.60;

(b) The uniform price for the month pursuant to § 1036.61; and

(c) The amount due such handler pursuant to § 1036.75 and the amount to be paid by such handler pursuant to §§ 1036.74, 1036.76, and 1036.77.

§ 1036.64 Obligation of handler operating an other order plant.

Each handler who operates an other order plant that is regulated under an order providing 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:

(a) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition 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 as route disposition in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to the route disposition in each marketing area; and

(b) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (a) of this section to route disposition in this marketing area at the Class I price under this part applicable at the location of the other order plant (not to be less than the Class III price) and substract its value at the Class III price.

PAYMENTS

§ 1036.70 Time and method of payment.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) To each producer, on or before the 18th day of the following month, the uniform price per hundredweight for his deliveries of producer milk during the month adjusted pursuant to §§ 1036.71, 1036.72, and 1036.76, subject to the following:

(i) Minus payments made pursuant to paragraph (c) of this section;

(ii) Less proper deductions authorized in writing by the producer; and

(iii) If by such date the handler has not received full payment from the market administrator pursuant to § 1036.75 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) (1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall pay to the cooperative association for producer milk on or before the 16th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer, and submit to the cooperative association written information which shows for each such member-producer (i) the total pounds of milk received from him during the preceding month, (ii) the total pounds of butterfat contained in such milk, (iii) the number of days on which milk was received, and (iv) the amounts withheld by the handler in payment for supplies sold. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association;

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

(c) Upon written request filed with him on or before the 15th day of the month by a producer, or by a cooperative association which collects payments pursuant to paragraph (b) of this section, each handler shall make payment as follows:

(1) On or before the last day of the month, to each such producer who has not discontinued delivery of milk to such handler, an amount not less than the

value of milk received from such producer during the first 15 days of such month computed at the Class III price for the preceding month for milk of 3.5 percent butterfat content, without deduction for hauling; and

(2) On or before the 27th day of the month, to the cooperative association, for milk received during the first 15 days of the month from certified members specified in the request for payment, an amount not less than the aggregate value of such milk at the Class III price for the preceding month for milk of 3.5 percent butterfat content, without deduction for hauling; and

(d) On or before the 15th day after the end of each month, each handler shall pay a cooperative association at not less than the class prices applicable pursuant to § 1036.51 for milk which he receives:

(1) By transfer or diversion from a pool plant operated by such cooperative association; or

(2) From such cooperative association in its capacity as a handler pursuant to § 1036.13(d), if such cooperative association also operates a pool plant.

§ 1036.71 Butterfat differential to producers.

The uniform price shall be increased or decreased for each one-tenth percent that the butterfat content of such milk is above or below 3.5 percent, respectively, at the rate (rounded to the nearest one-tenth cent) determined by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1036.45 by the respective butterfat differential for each class and dividing the sum of the resulting amounts by the total pounds of butterfat in producer milk.

§ 1036.72 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk shall be adjusted as follows:

(1) At all plants, reduced according to the location of the plant at the rates set forth in § 1036.53; and

(2) Additionally, at plants at which the Pittsburgh district Class I price is applicable, increased 10 cents.

(b) For the purpose of computations pursuant to § 1036.74(b), the weighted average price shall be adjusted at the rates set forth in § 1036.53 that are applicable at the location of the nonpool plant from which other source milk was received.

§ 1036.73 Producer-settlement fund.

(a) The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments pursuant to §§ 1036.62, 1036.64, and 1036.74 and out of which he shall make all payments pursuant to § 1036.75: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

(b) All amounts subtracted pursuant to §1036.61(i) shall be deposited in the producer-settlement fund and set aside as an obligated balance until withdrawn for the purpose of effectuating § 1036.61(j).

§ 1036.74 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section:

(a) The net pool obligation pursuant to § 1036.60 for such handler; and

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform price; and

(2) The value at the weighted average price applicable at the location of the plants from which received (not to be less than the value at the Class III price) of other source milk for which a value is computed pursuant to § 1036.60(e).

§ 1036.75 Payments from 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 § 1036.74(b) exceeds the amount computed pursuant to § 1036.74(a). If, at such time, 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 funds are available.

§ 1036.76 Marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 16th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 16th day after the end of each month, pay over such deductions to the association rendering such services.

§ 1036.77 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 16th day after the end of the month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

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

(b) Other source milk allocated to Class I pursuant to § 1036.45(a)(4) and (9) and the corresponding steps of § 1036.45(b); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

§ 1036.78 Adjustment of accounts.

(a) *Payments.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due the market administrator from such handler, due such handler from the market administrator, or due any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

(b) *Overdue accounts.* Any unpaid obligation of a handler or of the market administrator pursuant to § 1036.74, § 1036.75, § 1036.76, § 1036.77, or paragraph (a) of this section shall be increased one-half of 1 percent on the first day of the calendar month next following the due date of such obligation, and on the first day of each calendar month thereafter until such obligation is paid.

§ 1036.79 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 calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The months during which the skim milk and butterfat, with respect to which the obligation exists, were 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 producers or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part

to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the 2-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15)(A) of the Act a petition claiming such money.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 1036.90 Effective time.

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

§ 1036.91 Suspension or termination.

The Secretary shall suspend or terminate any or all provisions of this part whenever he finds that they obstruct or do not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 1036.92 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided,* That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons or agency as the Secretary may designate.

(b) The market administrator or such other person as the Secretary may designate shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) From time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such other person, to such person as the Secretary shall direct; and

(3) If so directed by the Secretary, execute such assignment or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such other person pursuant thereto.

§ 1036.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet the outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1036.100 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.

§ 1036.101 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.

Effective date: October 1, 1970.

Signed at Washington, D.C., on August 25, 1970.

RICHARD E. LYNG,
Assistant Secretary.

[F.R. Doc. 70-11448; Filed, Aug. 28, 1970; 8:46 a.m.]

[Milk Order 98]

[Docket No. AO-184-A29]

PART 1098—MILK IN NASHVILLE, TENN., MARKETING AREA

Order Amending Order

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

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Nashville, Tenn., marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than September 1, 1970. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Deputy Administrator, Regulatory Programs, was issued June 23, 1970, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued August 19, 1970. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective September 1, 1970, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Nashville, Tenn., marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. Revise § 1098.7 as follows:

§ 1098.7 Producer.

"Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority or produces milk acceptable for fluid consumption at Federal, State, or municipal establishments within the marketing area, which milk is received at a pool plant or diverted from the farm directly to a nonpool plant. The term shall not include such person with respect to milk received at a pool plant from an other order plant by diversion if both buyer and seller have requested Class II classification (or its equivalent) in the reports of recepits and utilization filed with the respective market administrators.

2. In § 1098.13 add a new paragraph (c) as follows:

§ 1098.13 Producer milk.

* * * * *

(c) Diverted from a pool plant to an other order plant if both buyer and seller have requested Class II classification or its equivalent in the reports of receipts and utilization filed with the respective market administrators.

3. Revise the introductory text of § 1098.44, the introductory text to paragraph (e) of § 1098.44 and subparagraphs (2) and (3) of paragraph (e) as follows:

§ 1098.44 Transfers.

Skim milk or butterfat transferred or diverted in the form of a fluid milk product shall be classified as:

* * * * *

(e) As follows, if transferred or diverted to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (2) or (3) of this paragraph:

* * * * *

(2) If transferred or diverted 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 or diversions 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. Revise § 1098.81(a) as follows:

§ 1098.81 Payments to market administrator.

(a) On or before the 25th day of each month each handler receiving milk from producers or from a handler pursuant to § 1098.8(c) (except for producers having made deliveries for less than 20 days during the month) shall pay to the market administrator for deposit into the producer-settlement fund an amount of money calculated by multiplying the hundredweight of producer milk received by him during the first 15 days of such month by the Class II price for the preceding month;

* * * * *

5. Revise § 1098.91 as follows:

§ 1098.91 Handlers subject to other Federal orders.

In the case of a handler in his capacity as operator of a plant specified in paragraphs (a), (b), and (c) of this section the provisions of this part shall not apply except as specified in paragraphs (d) and (e) of this section:

(a) A distributing plant qualified pursuant to § 1098.11(a) which meets the requirements of a fully-regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as Class I route disposition in the marketing area regulated by the other order than as Class I route disposition in the Nashville, Tenn., marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceeding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its Class I route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order, subject to the proviso of this paragraph: *And provided further,* On the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I route dispositions in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) Class I disposition made under limited term contracts to governmental bases and institutions;

(b) A distributing plant qualified pursuant to § 1098.11(a) which meets the requirements of a fully-regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Nashville, Tenn., marketing area as Class I route disposition than as Class I route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation, even though such plant has greater Class I route disposition in the marketing area of the Nashville, Tenn., order;

(c) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the proviso of § 1098.11(b) during the preceding August through January period;

(d) The operator of a plant specified in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator; and

(e) Each handler operating a plant specified in paragraph (a) or (b) 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 marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(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.

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

Effective date: September 1, 1970.

Signed at Washington, D.C., on August 25, 1970.

RICHARD E. LYNG,
Assistant Secretary.

[F.R. Doc. 70–11446; Filed, Aug. 28, 1970; 8:46 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Office of Economic Opportunity

Section 213.3373 is amended to show that not to exceed 10 positions of Policy Advisor, Policy Analyst, and Confidential Assistant in the Office of Planning and Program Analysis are excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (19) is added to paragraph (a) of § 213.3373 as set out below.

§ 213.3373 Office of Economic Opportunity.

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

(19) Not to exceed 10 positions of Policy Advisor, Policy Analyst, and Confidential Assistant in the Office of Planning and Program Analysis.

* * * * *

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

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

[F.R. Doc. 70–11500; Filed, Aug. 28, 1970; 8:48 a.m.]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER C—MEDICAL CARE AND EXAMINATIONS

PART 37—SPECIFICATIONS FOR MEDICAL EXAMINATIONS OF UNDERGROUND COAL MINERS

Chest Roentgenographic Examinations

Correction

In F.R. Doc. 70–10794 appearing at page 13206 in the issue for Wednesday, August 19, 1970, the last line of § 37.4 (a)(5) should read "and (3) and (e) (2) and (3)."

SUBCHAPTER G—PREVENTION, CONTROL, AND ABATEMENT OF AIR POLLUTION

PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Menominee-Escanaba, Mich. and Marinette, Wis., Interstate Region

On May 20, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 7740) to amend Part 81 by designating the Menominee-Escanaba (Michigan)—Marinette (Wisconsin) Interstate Air Quality Control Region.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c–2(a)) was held on June 30, 1970. Due consideration has been given to all relevant material presented.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, § 81.67, as set forth below, designating the Menominee-Escanaba (Michigan)—Marinette (Wisconsin) Interstate Air Quality Control Region, is adopted effective on publication.

§ 81.67 Menominee-Escanaba (Michigan)—Marinette (Wisconsin) Interstate Air Quality Control Region.

The Menominee-Escanaba (Michigan)—Marinette (Wisconsin) Interstate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Michigan:
Delta County.
Dickinson County.
Menominee County.
In the State of Wisconsin:
Florence County.
Marinette County.
Oconto County.

(Secs. 107(a), 301(a), 81 Stat. 490, 504; 42 U.S.C. 1857c–2(a), 1857g(a))

Dated: August 17, 1970.

ELLIOT L. RICHARDSON,
Secretary.

[F.R. Doc. 70–11165; Filed, Aug. 28, 1970; 8:45 a.m.]

PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

South Bend-Elkhart, Ind.—Benton Harbor, Mich., Interstate Region

On May 20, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 7740) to amend Part 81 by designating the South Bend-Elkhart (Indiana)—Benton Harbor (Michigan) Interstate Air Quality Control Region.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c–2(a)) was held on June 30, 1970. Due consideration has been given to all relevant material presented.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, § 81.73, as set forth below, designating the South Bend-Elkhart (Indiana)—Benton Harbor (Michigan) Interstate Air Quality Control Region, is adopted effective on publication.

§ 81.73 South Bend-Elkhart (Indiana)—Benton Harbor (Michigan) Interstate Air Quality Control Region.

The South Bend-Elkhart (Indiana)—Benton Harbor (Michigan) Interstate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Indiana:
Elkhart County. Marshall County.
Kosciusko County. St. Joseph County.
La Porte County.

In the State of Michigan:
Berrien County. Van Buren County.
Cass County.

(Secs. 107(a), 301(a), 81 Stat. 490, 504; 42 U.S.C. 1857c–2(a), 1857g(a))

Dated: August 17, 1970.

ELLIOT L. RICHARDSON,
Secretary.

[F.R. Doc. 70–11167; Filed, Aug. 28, 1970; 8:45 a.m.]

PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Youngstown, Ohio-Erie, Pa., Interstate Region

On May 20, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 7740) to amend Part 81 by designating the Youngstown (Ohio)-Erie (Pennsylvania) Interstate Air Quality Control Region.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c–2(a)) was held on July 2, 1970. Due consideration has been given to all relevant material presented.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, § 81.74, as set forth below, designating the Youngstown (Ohio)-Erie (Pennsylvania) Interstate Air Quality Control Region, is adopted effective on publication.

§ 81.74 Youngstown (Ohio)—Erie (Pennsylvania) Interstate Air Quality Control Region.

The Youngstown (Ohio)—Erie (Pennsylvania) Interstate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Ohio:
Ashtabula County. Trumbull County.
Mahoning County.
In the State of Pennsylvania:
Crawford County. Mercer County.
Erie County.

(Secs. 107(a), 301(a), 81 Stat. 490, 504; 42 U.S.C. 1857c–2(a), 1857g(a))

Dated: August 17, 1970.

ELLIOT L. RICHARDSON,
Secretary.

[F.R. Doc. 70–11166; Filed, Aug. 28, 1970; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1006, 1012, 1013]

[Dockets Nos. AO-356-A6, AO-347-A10, AO-286-A18]

MILK IN UPPER FLORIDA, TAMPA BAY, AND SOUTHEASTERN FLORIDA MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreements and to Orders

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Upper Florida, Tampa Bay, and Southeastern Florida 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 Orlando, Fla., on May 7, 1970, pursuant to notice thereof issued on April 28, 1970 (35 F.R. 7023).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on July 23, 1970 (35 F.R. 12066; F.R. Doc. 70-9713), 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.

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

1. Revision of the Class II classification provisions;

2. Modification of the allocation provisions with respect to:

(a) Receipts of Class I products by pool plants from unregulated plants when:

(i) Equivalent amounts of "priced" milk have been purchased by the unregulated plant; or

(ii) Such Class I products at the unregulated plant were derived from reconstituted skim milk, or milk from producer-handlers or exempt plants.

(b) Class I products disposed of in the marketing area by a partially regulated distributing plant which contain fluid milk products received from a producer-handler or an exempt plant;

3. Location adjustments on other source milk.

4. Revision of requirements for "producer" status; and

5. Revision of the "producer-handler" definition to permit purchase of fluid milk products from pool plants.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Classification of sterilized products.* All fluid milk products that are now classified as Class I milk under the three Florida orders, regardless of the form of processing or type of package, should be continued in Class I milk.

Producer proponents cited a need for clarification of the classification provisions of the three Florida orders. The specific proposal would remove from the Class II milk definition the words "and sterilized products in hermetically sealed containers."

Proponents stated that the problem which gave rise to their proposal developed from two causes. The first factor is the development of specialty concerns processing and packaging cream, half and half, chocolate drinks, and buttermilk packaged in foil-lined containers. These packaged items are claimed to be sterilized products in hermetically sealed containers.

The second factor was the amendatory action taken by the Secretary effective April 1, 1970, for each of the three Florida orders. This action changed the classification of cream, half and half, and flavored milk drinks (including chocolate drinks and buttermilk) from Class II milk to Class I milk.

Proponents contended that the intent of each of the amended orders, effective April 1, 1970, was to classify all products defined as fluid milk products as Class I milk, regardless of the form of processing (i.e., pasteurized or sterilized) or the type of package used. They further contended that whether a fluid milk product is pasteurized or sterilized, and whether it is packaged in a conventional or some other container, should not be the basis for classifying and pricing the product.

Two companies, one located in the Tampa Bay marketing area, the other in the Upper Florida marketing area distribute fluid milk products in each marketing area. These products are mainly half and half and flavored milk drinks packaged in foil-lined containers. Witnesses for each company testified that the products produced by them are sterilized and in hermetically sealed containers. Even though Health Department regulations in Florida do not require the use of Grade A dairy products in the production of sterilized items, the witnesses stated that only Grade A products are used.

Based on the Secretary's decision issued February 12, 1970 (35 F.R. 2878), effective April 1, 1970, the classification provisions have been applied correctly to classify all fluid milk products regardless of the form of processing or type of package as Class I milk. Clarification of the classification provisions of the three Florida orders as requested is appropriate, however. The removal of the phrase "and sterilized products in hermetically sealed containers" from the Class II milk definition clarifies the intent of these orders with respect to the classification of "sterilized fluid milk products."

2. *Modification of allocation provisions.* The allocation provisions of the three Florida orders should be modified as follows:

(a) There should be no pool obligation on Class I milk received at a pool plant from an unregulated supply plant when the unregulated plant has received an equivalent volume of milk priced as Class I under any order and such milk is not used as an offset on any other payment obligation pursuant to any other order;

(b) Class I products derived from reconstituted skim milk, or milk from producer-handlers or exempt plants under these or any other orders that are received at a pool plant from an unregulated supply plant should be allocated to the pool plant's utilization in the same manner as if received directly from a producer-handler or exempt plant; and

(c) Class I products containing fluid milk products received from producer-handlers or exempt plants under these or any other orders that are disposed of in the marketing area by a partially regulated distributing plant should be allocated in the same manner as Class I products containing reconstituted skim milk that are distributed by such a plant.

Proposals to modify the allocation provisions were made by cooperative associations representing producers serving these markets.

The three orders presently provide for a pro rata allocation of certain receipts by a pool plant from an unregulated supply plant. On any of these purchases that are allocated to Class I, the pool plant operator is required to make a compensatory payment into the producer-settlement fund at the rate of the difference between the Class I and uniform prices. Proponents pointed out that under certain circumstances this provision can result in a double charge being applied to such receipts.

When bulk milk is transferred from a pool plant under a Florida or any other Fereral milk order to an unregulated plant it may be classified and priced as Class I on the basis of the allocation procedure. The unregulated plant, in turn, may transfer bulk or packaged milk to another regulated plant. The plant operator receiving such a transfer is charged a compensatory payment on that portion of such receipts allocated to Class I at his plant.

This situation does occur in these markets. To the extent that such milk, or an equivalent volume, has been priced as

Class I under a Federal order, the receiving pool handler should not be assessed and additional pool obligation on such milk. On any unpriced milk received from an unregulated plant, however, Florida handlers should continue to have an obligation to the respective producer-settlement fund at the rate of the difference between the Class I and uniform price.

These same pro rata allocation provisions of the three Florida orders also presently apply to milk products derived from reconstituted skim milk, or milk from producer-handlers and exempt plants, which are received at a pool plant from an unregulated supply plant. The provisions also apply to the route disposition in the marketing area of such receipts by a partially regulated distributing plant. Any of these receipts from an unregulated plant, or the route disposition of a partially regulated plant, allocated to Class I carries a compensatory payment at the rate of the difference between the Class I and uniform prices. It should be noted that there is no compensatory payment on milk purchased by a partially regulated handler which has been priced previously as Class I under any Federal milk order.

When milk is received from producer-handlers or exempt plants directly at a pool plant without first passing through an unregulated plant, it is allocated in series beginning with the lowest priced class. On any portion of such milk allocated to Class I, the rate of the compensatory payment the pool handler is required to pay into the producer-settlement fund is the difference between the Class I and Class II prices. As the producer proponents pointed out, there are two problems. First, surplus milk of producer-handlers or exempt plants can be shipped to an unregulated plant which, in turn, can ship such milk, or its equivalent, to a pool handler. By such movements of milk the pool handler can avoid the higher rate of compensatory payment.

Secondly, a partially regulated distributing plant can distribute as Class I milk in the marketing area surplus milk of producer-handlers or exempt plants and under present terms of the orders pay the lower rate of compensatory payment which is the difference between the Class I and uniform prices. This places a fully regulated pool handler at some cost disadvantage, since this handler is required to pay a higher rate of compensatory payment into the producer-settlement fund on any such direct receipts from producer-handlers or exempt plants which are classified as Class I.

Proponents contended that comparable milk from similar sources should be allocated and valued in a similar manner. Milk receipts by a handler from an unregulated supply plant which were initially derived from milk of producer-handlers, exempt plants, or by reconstitution are, for all practical purposes, no different from that which is received directly from these sources. The act of first passing such milk through an unregulated plant, or shipping it to a partially regulated plant, does not alter its value at point of origin.

Much of the milk received at an unregulated supply plant is milk which does not have a regular fluid market outlet, or is surplus to the normal needs of the fluid market. The surplus aspect of such milk is accentuated at certain times of the year when there are characteristic seasonal increases in the production of milk without corresponding increases in the demand for milk. If it were not for the sale in the regulated fluid market, such milk would have no higher value to the plant operator than its value as surplus. In such circumstances the operator of such an unregulated plant has a great incentive to "dump" his surplus milk into the regulated market at any price higher than a surplus price and thereby obtain a competitive advantage for such milk over regulated milk.

Regulated handlers cannot convert otherwise surplus Class II milk into Class I utilization without accounting to the producer-settlement fund at the difference between the Class I and Class II prices on the volume of Class I milk involved. Therefore, on the surface it would appear that a similar rate of charge should be assessed against milk from unregulated plants which has been obtained by pool plants and used as Class I.

In light of the Supreme Court decision in the Lehigh Valley case, however, and because of the administrative difficulty in determining whether particular milk from an unregulated plant utilized as Class I in any of these markets actually had only a surplus value or cost at its source, it has been determined previously that the operator of a pool plant shall be charged a rate of compensatory payment on such receipts equal to the difference between the Class I and uniform prices.

On the other hand, certain milk by its very nature must be treated as surplus when received at pool plants regulated by a Federal milk order and, therefore, must be assigned a surplus value. One such source is milk received at a pool plant, in either bulk or packaged form, from a producer-handler or an exempt plant (under any Federal milk order). Another source is milk produced by the reconstitution to fluid form of manufactured dairy products, such as fluid skim milk made by the addition of water to nonfat dry milk.

Under the Florida orders, as under most orders, producer-handlers and exempt plants are excluded from the pooling and pricing provisions. This exemption is based on the principle that producer-handlers and exempt plants assume the burden of disposing of their milk supplies which are in excess of their Class I needs. Being exempt from these provisions of the orders makes it possible for such plant operators to retain the full return from their Class I sales of milk on routes even though such sales are in competition with regulated handlers. It has been determined, however, that producer-handlers or exempt plant operators will not have a significant advantage over regulated handlers if they assume the full burden of their own surpluses.

Producer-handlers and exempt plants are primarily engaged in Class I fluid milk operations. They do not normally maintain facilities for processing and manufacturing any milk produced in excess of their Class I needs. Because of the seasonality of milk production and demand, producer-handlers and exempt plants produce some milk in excess of their Class I needs. The best available outlets for this surplus milk usually are fully regulated plants in the market. It is often economically advantageous for these handlers to dispose of such excesses at surplus prices to regulated handlers. Such milk, therefore, is available to regulated handlers at surplus prices. Accordingly, a regulated handler is obligated to the producer-settlement fund on such milk at the difference between the Class I and Class II prices.

Other surplus disposal outlets for producer-handlers or exempt plants, however, are unregulated supply plants and partially regulated distributing plants. As the proponents pointed out, a producer-handler or exempt plant can ship surplus milk to an unregulated or partially regulated plant which, in turn, can move this milk back into the marketing area, either to a pool plant or directly on routes. When this occurs, this surplus milk should carry no higher value than the Class II price.

Therefore, when it is demonstrable that such milk, or its equivalent, is shipped to an unregulated or partially regulated plant, and then is moved into the marketing area as Class I, the handler for such milk should be required to pay into the producer-settlement fund the difference between the Class I and Class II prices on such milk. A partially regulated handler, however, should be allowed to offset any such purchases from producer-handlers or exempt plants with sufficient purchases of milk previously priced as Class I under any Federal milk order.

The basis for a compensatory payment at the rate of the difference between Class I and Class II milk prices on reconstituted fluid milk products and on receipts at a pool plant from producer-handlers and exempt plants, allocated to Class I was established in the Assistant Secretary's decisions issued June 19, 1964 (29 F.R. 9002) for 76 orders, including the Southeastern Florida order. Official notice is taken of this decision which also was noticed in the proceedings establishing the allocation and compensatory payment provisions of the Tampa Bay and Upper Florida orders.

The present decision, while dealing with a slightly different marketing situation, does not alter the basis for the compensatory payment provisions set forth in the 1964 decisions. It is merely an extension of those provisions.

Proponents testified that at present there is only one exempt plant, as defined, operating under the Florida orders. Producer-handlers operate in all three markets. The surplus milk of these handlers is disposed of in all three of the Florida markets, either via fully regulated handlers, partially regulated handlers, or through unregulated plants.

Accordingly, the modifications as discussed herein should be adopted in all three orders.

3. *Location adjustments on other source milk.* The three Florida orders should be amended so as to place a lower limit on the Class I price when computing the location adjustment for milk received from unregulated supply plants.

Producers proposed that the Class I price, when adjusted for location of a nonpool plant, be no lower than the Class II price. There was no testimony presented in opposition to the proposal.

The three orders presently provide that a plant operator's obligation to the producer-settlement fund shall include a payment for fluid milk products received from an unregulated supply plant if they are allocated to Class I use. The handler's payment is determined by charging him at the Class I price for the milk involved and giving him a credit on such milk at the uniform price. Both prices are adjusted for the location of the unregulated supply plant. The adjustment of the uniform price, though, is limited to not less than the Class II price. No limitation is applied to the Class I price adjustment.

It should be provided that the location adjustment credit on Class I milk received from an unregulated supply plant will not exceed the difference between the Class I and Class II milk prices. Otherwise, the Class I price adjustment could result under certain conditions in the handler receiving a payment from the producer-settlement fund on the Class I milk obtained from the unregulated supply plant. Such payment could result when the location differential at the distant plant is greater than the difference between the Class I and Class II prices. In this circumstance, producers under the order, in effect, would be giving the handler a credit sufficient to reduce his cost for the distant milk below its value for manufacturing use at the point of purchase. The three orders should be amended so as to preclude such a situation.

4. *Producer status requirements.* The 8-day delivery rquirement should be removed from the producer definition in the Southeastern Florida order. Cooperative associations proposed the removal of this requirement. There was no testimony presented in opposition to the proposal.

The present producer definition in the Southeastern Florida order requires that at least 8 days' production of a dairy farmer be received at pool plants during the current (or preceding) month for such person to acquire producer status. Otherwise, the milk received from such dairy farmers is treated as "other source" milk. Such milk then is down-allocated, and any which is ultimately classified as Class I is subject to a compensatory payment.

Proponents contended that such a qualification requirement tends to limit the opportunity for temporary movements of milk of producers normally associated with the Upper Florida or Tampa Bay markets to meet fluid sales requirements in excess of local production in Southeastern Florida.

The 8-day delivery requirement was suspended during the months of August 1969 through February 1970. Proponents testified that during this period it was necessary to move some milk into the Southeastern Florida market from the other two Florida markets. During December 1969 and February 1970 close to a million pounds of milk were shipped from these other markets. According to the proponents' testimony, the Southeastern Florida market will require additional supplemental milk supplies in the months ahead, at least on a seasonal basis.

This delivery requirement is burdensome and uneconomic in this market. In many instances it is not practical or economical to receive as much as 8-day's production from a dairy farmer in the other two marketing areas so as to meet the producer qualification requirement in the Southeastern Florida order. If milk of dairy farmers regularly associated with the other Florida markets cannot be moved to meet shortages in the Southeastern market, extra costs are incurred for handling and transportation to obtain the necessary supplemental supplies from more distant sources. Thus, producer milk in the other two Florida markets would be channeled into Class II uses even though there is a fluid outlet in the Southeastern Florida market. This is not conducive to efficient or orderly marketing.

The 8-day delivery requirement was put in the Southeastern Florida milk order before the Tampa Bay and Upper Florida orders were adopted. This was done to protect the Southeastern Florida pool from milk that was surplus to the requirements of nonfederally regulated markets where individual-handler pooling was in effect. The other two Florida orders do not contain such a provision.

Under present conditions such protection for the Southeastern Florida market is unnecessary. In order to reflect the current marketing structure and to maintain orderly, efficient marketing conditions within the areas covered by the three Florida orders, the 8-day delivery requirement should be removed from the Southeastern Florida producer definition.

5. *Revision of the producer-handler definition.* The definition of producer-handler in each of the three Florida orders should be revised to permit producer-handlers to purchase fluid milk products other than whole milk from pool plants in an amount not in excess of the lesser of 5,000 pounds, or 5 percent of their Class I sales, during the month.

Eight producer-handlers, and two corporations formerly qualifying as producer-handlers, proposed that any producer-handler be permitted to purchase milk from pool plants in his own market in an amount not to exceed 5 percent of the producer-handler's own production. Since the inception of each of the three Florida orders, the producer-handler has not been permitted to maintain exemption from pooling if he purchased Class I products from a pool plant.

Such proponents contended that the amended orders, effective April 1, 1970, place an unnecessary hardship on them. They pointed out that before April 1 producer-handlers were permitted to purchase cream and cream mixtures (including half and half), and flavored milk drinks such as buttermilk and chocolate milk drinks from pool plants without losing such exempt status. They stated the amended orders make it extremely difficult for producer-handlers to maintain their exempt status on a continuing basis. One producer-handler indicated that half and half, cream, and flavored milk drinks represents about 10 percent of his Class I sales. Another producer-handler indicated that the purchase of fluid milk products from pool plants of up to the equivalent of 5 percent of his own production would not completely alleviate his problem. Proponents further testified that only the three Florida orders plus the Mississippi order do not provide producer-handlers the opportunity to purchase some Class I milk products from pool plants.

Producer-handlers also contended that the seasonalities of sales and production force them to "over-produce" in 8 to 10 months of the year in order to have a sufficient supply from their own production to meet their Class I sales during the other months. The producer-handlers were of the opinion that this causes an undue hardship on them and is not conducive to orderly marketing in the three Florida milk marketing areas.

Representatives of producers and handlers opposed any relaxation of the present restrictions on producer-handlers. One proposal would fully regulate a producer-handler for a full 12-month period once he had lost his exempt status during any month. Other proposals would restrict the maximum size of producer-handlers for exemption from pricing and pooling under each of the orders. One proposal would limit producer-handlers in all three markets to a production of 30,000 pounds of milk per month. Another proposal would exclude from exemption any producer-handler who distributed Class I milk on routes in any month in excess of one percent of the total disposition of such route sales by fully regulated handlers in his market. This proposal would limit the monthly production for a producer-handler in each market as follows: Tampa Bay—240,000 pounds; Upper Florida—330,000 pounds; and Southeastern Florida — 420,000 pounds. In support of these proposals, proponents contended that exemption of producer-handlers from full regulation has the effect of lowering blend prices. The amount of milk supplied by producers, they argued, is influenced by the level of blend prices.

The average number of producer-handlers in the Upper Florida marketing area for 1969 was 10; in the Tampa Bay area, seven; and in the Southeastern Florida market, one.[1] The Southeastern Florida producer-handler is new in the market and information on the size of his operation was not available for the record.

[1] Official notice is taken of the monthly market statistics published by the market administrator for the period April 1969 through May 1970 for each of the three Florida orders.

From the data available, the approximate average monthly production of producer-handlers is calculated to be about 500,000 pounds in the Upper Florida marketing area, and about 600,000 pounds in the Tampa Bay market. The estimated range in the average monthly production by producer-handlers varies from something less than 100,000 pounds to more than 4.5 million pounds.

In the Tampa Bay marketing area, producer-handlers during the 3-year period, 1967–69, produced from a low of 49 to a high of 59 million pounds of milk per year. This production of milk by producer-handlers represented an average for the 3 years of 12.8 percent of the total milk received from producers and producer-handlers under this order. Producer-handlers in the Upper Florida order produced, for the same 3-year period, from a low of 56 to a high of nearly 65 million pounds per year. This 3-year average represented 12.1 percent of the total amount of milk received from producers and producer-handlers during this period in the Upper Florida market.

Three of the larger producer-handlers (one regulated by the Tampa Bay order and two by the Upper Florida order) testified with respect to their production. On a monthly basis, their production approximated 1.5, 1.0, and 4.5 million pounds of milk, respectively.

Exemption from the pricing and pooling provisions of the Florida orders is now afforded producer-handlers who depend entirely on their own-farm production to meet their Class I needs (except for nonfat solids used to fortify Class I products).

This exemption from the pricing and pooling provisions provided by each of the Florida orders is based on recognition that the producer-handler assumes the burden of maintaining the necessary supply of milk associated with his fluid milk operation and of disposing of any daily or seasonal surpluses he may produce. For assuming the costs and risks of production of his own milk supply and disposal of this supply, including any surplus, the producer-handler is not required to share with other producers the returns from his Class I milk sales.

Some producer-handlers have difficulty in maintaining their exempt status from month to month. For example, two producer-handlers under the Tampa Bay order were fully regulated for 4 and 6 months, respectively, during the 12-month period of April 1969 through March 1970. During the same period of time seven producer-handlers under the Upper Florida order became fully regulated for periods ranging from 1 to 5 months. The difficulty of maintaining exempt status after April 1, has increased for a producer-handler since he now must produce all his own cream and flavored milk drinks as well as his needs for whole milk.

Whole milk is the primary product of all producer-handlers. Each producer-handler should be reliant upon his own production for such needs to warrant exemption from pooling in these markets. Any purchases from pool plants should be limited to fluid milk products other than whole milk. As provided herein, an outside limit of 5,000 pounds is placed on such purchases of fluid milk products. It is possible, however, that this amount (5,000 pounds) could represent 10 percent or more of the total production of a small producer-handler. It is provided further, therefore, that the amount of such fluid milk products purchased from pool plants by a producer-handler should not exceed 5 percent of his Class I sales during the month.

This should meet the minimum emergency needs of most producer-handlers but not open the way for undue effect on returns to producers in any of the markets. Allowing producer-handlers, as provided herein, to purchase limited quantities of fluid milk products (about 160 pounds per day) will not materially affect the competitive position of pool handlers in these Florida markets.

The proposals for further restrictions on producer-handlers are not required for orderly marketing.

No other substantive change has been made from the present definition of producer-handler in each of these orders. The definitions have been rephrased, however, to specify more clearly the dual functions of production and distribution required of producer-handlers as a basis for their exemption from pooling.

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.

Counsel for certain handlers objected to the ruling of the Presiding Officer that witnesses could not present testimony with respect to a proposed amendment relative to assessing producer-handlers a pro rata share of the cost of administering the orders. The Presiding Officer deemed this proposal to be outside the scope of the hearing notice. Counsel presented an offer of proof. This offer of proof has been reviewed and it is concluded that the Presiding Officer ruled correctly in rejecting the proffered testimony.

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 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 tentative marketing agreements and orders:

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

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. 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, a marketing agreement regulating the handling of milk, and an order amending the orders regulating the handling of milk in the aforesaid specified 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 order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of producer approval and representative period. March 1970 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid specified marketing areas, are approved or favored by producers, as defined under the terms of each of the orders, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the respective marketing areas.

Signed at Washington, D.C., on August 25, 1970.

RICHARD E. LYNG,
Assistant Secretary.

Order[1] Amending the Orders, Regulating the Handling of Milk in Certain Specified 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 agreements and to 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 and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

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

(4) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in §§ 1006.77, 1012.77, and 1013.86 of the aforesaid orders.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending each of the specified orders contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on July 23, 1970, and published in the FEDERAL REGISTER on July 28, 1970 (35 F.R. 12066; F.R. Doc. 70-9713), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein:

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. Section 1006.14 is revised as follows:

§ 1006.14 Producer-handler.

"Producer-handler" means any person who meets all the following conditions:

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

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

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

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

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

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

(ii) Fluid milk products (other than whole milk) from pool plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;

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

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

2. Paragraph (b)(1) of § 1006.41 is revised as follows:

§ 1006.41 Classes of utilization.

* * * * *

(b) * * *

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, sour cream products (e.g., dips), yogurt, aerated cream and aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, and a product which contains six percent or more nonmilk fat (or oil);

* * * * *

3. Paragraph (b)(3) (i) and (ii) of § 1006.43 is revised as follows:

§ 1006.43 Transfers.

* * * * *

(b) * * *

(3) The skim milk and butterfat so transferred (in excess of receipts of skim milk and butterfat at the pool plant from such nonpool plant) 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 Class I route disposition in the marketing area, then any transfers from such nonpool plant to pool plants which are assigned to Class I pursuant to § 1006.45(a)(8) and the corresponding step of § 1006.45(b), shall be assigned first to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to such receipts from other order plants, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply of Grade A milk for such nonpool plant;

(ii) Any Class I route disposition in the marketing area of an other order issued pursuant to the Act, then any transfers from such nonpool plant to an other order plant which are assigned to Class I pursuant to the provisions of such other order, shall be assigned first to the skim milk and butterfat in receipts of fluid milk products transferred or diverted from plants fully regulated by such order, next pro rata to such receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant;

* * * * *

4. Paragraph (a) of § 1006.45 is revised by adding a new subparagraph (2-a), and subparagraphs (3)(v), (5)(i), and (8) are revised as follows:

§ 1006.45 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(2-a) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk at plant of origin and is not used as an offset on any other payment obligation pursuant to any other order;

* * * * *

(3) * * *

(v) Receipts from unregulated supply plants consisting of reconstituted skim

[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 that in filled milk) and any skim milk received at the unregulated plant from producer-handlers and exempt plants defined in any order that were not subtracted pursuant to subparagraph (2–a) of this paragraph, and

* * * * *

(5) * * *

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2–a) and (3)(v) of this paragraph:

* * * * *

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (2–a), (3)(v), and (5)(i) of this paragraph;

* * * * *

5. Paragraphs (e) and (f) of § 1006.60 are revised as follows:

§ 1006.60 Computation of the net pool obligation of each handler.

* * * * *

(e) Add an amount equal to the difference between the Class I and Class II price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1006.45(a)(3) and the corresponding step of § 1006.45(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1006.45 (a)(3) (v) and (vi) and the corresponding step of § 1006.45(b) the Class I price shall be adjusted to the location of the transferor plant (but not to be less than the Class II price); and

(f) Add the value at the Class I price adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received (but not to be less than the Class II price), of the skim milk and butterfat subtracted from Class I pursuant to § 1006.45(a)(8) and the corresponding step of § 1006.45(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by pool handlers defined in any order issued pursuant to the Act is classified and priced as Class I milk at plant of origin and is not used as an offset on any other payment obligation pursuant to any other order.

6. Paragraphs (a)(1), and (b) (2), (3), and (5) of § 1006.62 are revised as follows:

§ 1006.62 Obligations of handlers operating a partially regulated distributing plant.

* * * * *

(a) * * *

(1) The obligation that would have been computed pursuant to § 1006.60 at such plant shall be determined as though such plant were a pool plant, subject to the following modifications:

(i) Receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant;

(ii) Transfers from such nonpool plant to a pool plant or an other order plant shall be classified in the class to which allocated at the pool plant or other order plant. Class I milk transferred from such nonpool plant to pool plants and other order plants shall be valued at the uniform price of the respective order, except that reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be valued at the Class II price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk;

(iii) Such handler's obligation shall include any charges computed pursuant to § 1006.60(f) and any credits computed pursuant to § 1006.74(b)(2) with respect to receipts of Class I milk from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (iv) of this subparagraph;

(iv) If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1006.30 a similar report for each 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 § 1006.10(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.

* * * * *

(b) * * *

(2) Deduct the respective amounts of skim milk and butterfat received at the partially regulated distributing plant as follows:

(i) Any Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) Receipts from a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation pursuant to any other order;

(3) Deduct from any remainder the quantity of reconstituted skim milk, and milk or skim milk contained in receipts from producer-handlers and exempt plants defined in any order disposed of as fluid milk products on routes in the marketing area;

* * * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location, and add for the quantity of milk deducted pursuant to subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such milk at the Class II price. For purposes of this subparagraph, the prices shall not be adjusted to less than the Class II price.

7. Paragraph (b) of § 1006.63 is revised as follows:

§ 1006.63 Obligation of handler operating an other order plant.

* * * * *

(b) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (a) of this section to Class I disposition in this marketing area at the Class I price under this part applicable at the location of the other order plant (not to be less than the Class II price), and subtract its value at the Class II price.

8. Paragraphs (b) and (c) of § 1006.77 are revised as follows:

§ 1006.77 Expense of administration.

* * * * *

(b) Any other source milk allocated to Class I pursuant to § 1006.45(a) (3) and (8) and the corresponding step of § 1006.45(b), except such other source milk excluded from pool obligations pursuant to § 1006.60(f); and

(c) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1006.62(b)(2)(ii).

9. In § 1006.43 a new paragraph (e) is added as follows:

§ 1006.43 Transfers.

* * * * *

(e) As Class I milk if transferred in the form of a fluid milk product from a pool plant to a producer-handler plant.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. Section 1012.14 is revised as follows:

§ 1012.14 Producer-handler.

"Producer-handler" means any person who meets all the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the requirements set forth in paragraph (b) of this section, and

provides proof satisfactory to the market administrator that:

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

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

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

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

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

(ii) Fluid milk products (other than whole milk) from pool plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;

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

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

2. Paragraph (b)(1) of § 1012.41 is revised as follows:

§ 1012.41 Classes of utilization.

* * * * *

(b) * * *

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, sour cream products (e.g., dips), yogurt, aerated cream and aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, and a product which contains 6 percent or more nonmilk fat (or oil).

* * * * *

3. Paragraphs (b)(3) (i) and (ii) of § 1012.43 is revised as follows:

§ 1012.43 Transfers.

* * * * *

(b) * * *

(3) The skim milk and butterfat so transferred (in excess of receipts of skim milk and butterfat at the pool plant from such nonpool plant) shall be classified on the basis of the following assignment of utilization of such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I route disposition in the marketing area, then any transfers from such nonpool plant to pool plants which are assigned to Class I pursuant to § 1012.45(a)(8) and the corresponding step of § 1012.45(b), shall be assigned first to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to such receipts from other order plants, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply of Grade A milk for such nonpool plant;

(ii) Any Class I route disposition in the marketing area of an other order issued pursuant to the Act, then any transfers from such nonpool plant to an other order plant which are assigned to Class I pursuant to the provisions of such other order, shall be assigned first to the skim milk and butterfat in receipts of fluid milk products transferred or diverted from plants fully regulated by such order, next pro rata to such receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular sources of supply for such nonpool plant;

* * * * *

4. Parargaph (a) of § 1012.45 is revised by adding a new subparagraph (2–a), and subparagraphs (3)(iv), (5)(i), and (8) are revised as follows:

§ 1012.45 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(2–a) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk at plant of origin and is not used as an offset on any other payment obligation pursuant to any other order;

* * * * *

(3) * * *

(iv) Receipts from unregulated supply plants consisting of reconstituted skim milk (including that in filled milk) and any skim milk received at the unregulated plant from producer-handlers and exempt plants defined in any order that were not subtracted pursuant to subparagraph (2–a) of this paragraph; and

* * * * *

(5) * * *

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2–a) and (3)(iv) of this paragraph:

* * * * *

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (2–a), (3)(iv), and (5)(i) of this paragraph;

* * * * *

5. Paragraphs (e) and (f) of § 1012.60 are revised as follows:

§ 1012.60 Computation of the net pool obligation of each handler.

* * * * *

(e) Add an amount equal to the difference between the Class I and Class II price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1012.45(a)(3) and the corresponding step of § 1012.45(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1012.45(a)(3) (iv) and (v) and the corresponding step of § 1012.45(b) the Class I price shall be adjusted to the location of the transferor plant (but not to be less than the Class II price); and

(f) Add the value at the Class I price adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received (but not to be less than the Class II price), of the skim milk and butterfat subtracted from Class I pursuant to § 1012.45(a)(3) and the corresponding step of § 1012.45(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by pool handlers defined in any order issued pursuant to the Act is classified and priced as Class I milk at plant of origin and is not used as an offset on any other payment obligation pursuant to any other order.

6. Paragraphs (a)(1), and (b)(2), (3), and (5) of § 1012.62 are revised as follows:

§ 1012.62 Obligations of handlers operating a partially regulated distributing plant.

* * * * *

(a) * * *

(1) The obligation that would have been computed pursuant to § 1012.60 at such plant shall be determined as though such plant were a pool plant, subject to the following modifications:

(i) Receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant;

(ii) Transfers from such nonpool plant to a pool plant or an other order plant shall be classified in the class to which allocated at the pool plant or other order plant. Class I milk transferred from such nonpool plant to pool plants and other order plants shall be valued at the uniform price of the respective order, except that reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be valued at the Class II price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk;

(iii) Such handler's obligation shall include any charges computed pursuant to § 1012.60(f) and any credits computed pursuant to § 1012.74(b)(2) with respect to receipts of Class I milk from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (iv) of this subparagraph;

(iv) If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1012.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipment to such plant during the month equivalent to the requirements of § 1012.10(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.

* * * * *

(b) * * *

(2) Deduct the respective amounts of skim milk and butterfat received at the partially regulated distributing plant as follows:

(i) Any Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) Receipts from a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation pursuant to any other order;

(3) Deduct from any remainder the quantity of reconstituted skim milk, and milk or skim milk contained in receipts from producer-handlers and exempt plants defined in any order disposed of as fluid milk products on routes in the marketing area;

* * * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location, and add for the quantity of milk deducted pursuant to subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such milk at the Class II price. For purposes of this subparagraph, the prices shall not be adjusted to less than the Class II price.

7. Paragraph (b) of § 1012.63 is revised as follows:

§ 1012.63 Obligation of handler operating an other order plant.

* * * * *

(b) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (a) of this section to Class I disposition in this marketing area at the Class I price under this part applicable at the location of the other order plant (not to be less than the Class II price), and subtract its value at the Class II price.

8. Paragraphs (b) and (c) of § 1012.77 are revised as follows:

§ 1012.77 Expense of administration.

* * * * *

(b) Any other source milk allocated to Class I pursuant to § 1012.45(a) (3) and (8) and the corresponding step of § 1012.45(b), except such other source milk excluded from pool obligations pursuant to § 1012.60(f); and

(c) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1012.62(b)(2)(ii).

9. In § 1012.43 a new paragraph (d) is added as follows:

§ 1012.43 Transfers.

* * * * *

(d) As Class I milk if transferred in the form of a fluid milk product from a pool plant to a producer-handler plant.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

1. Section 1013.14 is revised as follows:

§ 1013.14 Producer-handler.

"Producer-handler" means any person who meets all the following conditions:

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

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

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

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

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

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

(ii) Fluid milk products (other than whole milk) from pool plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;

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

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

2. Section 1013.15 is revised as follows:

§ 1013.15 Producer.

"Producer" means any person except a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk (as described in § 1013.63) in compliance with the inspection requirements of a duly constituted health authority for fluid consumption (as used in this subpart, compliance with inspection requirements shall include production of milk acceptable to agencies of the U.S. Government located in the marketing area for fluid consumption).

3. Revise paragraph (b)(1) of § 1013.41 as follows:

§ 1013.41 Classes of utilization.

* * * * *

(b) * * *

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, sour cream products (e.g., dips), yogurt, aerated cream and aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, and a product which contains 6 percent or more nonmilk fat (or oil);

* * * * *

4. Paragraph (c)(3) (i) and (ii) of § 1013.44 is revised as follows:

§ 1013.44 Transfers.

* * * * *

(c) * * *

(3) The skim milk and butterfat so transferred (in excess of receipts of skim milk and butterfat at the pool plant from such nonpool plant) 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 Class I route disposition in the marketing area, then any transfers from such nonpool plant to pool plants which are assigned to Class I pursuant to § 1013.46(a)(9) and the corresponding step of § 1013.46(b), shall be assigned first to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to such receipts from other order plants, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source

of supply of Grade A milk for such nonpool plant;

(ii) Any Class I route disposition in the marketing area of an other order issued pursuant to the Act, then any transfers from such nonpool plant to an other order plant which are assigned to Class I pursuant to the provisions of such other order, shall be assigned first to the skim milk and butterfat in receipts of fluid milk products transferred or diverted from plants fully regulated by such order, next pro rata to such receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant;

* * * * *

5. Paragraph (a) of § 1013.46 is revised by adding a new subparagraph (2-a), and subparagraphs (4)(iii), (6)(i), and (9) are revised as follows:

§ 1013.46 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(2-a) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk at plant of origin and is not used as an offset on any other payment obligation pursuant to any other order;

* * * * *

(4) * * *

(iii) Receipts from unregulated supply plants consisting of reconstituted skim milk (including that in filled milk) and any skim milk received at the unregulated plant from producer-handlers and exempt plants defined in any order that were not subtracted pursuant to subparagraph (2-a) of this paragraph; and

* * * * *

(6) * * *

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2-a) and (4)(iii) of this paragraph:

* * * * *

(9) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (2-a), (4)(iii), and (6)(i) of this paragraph;

* * * * *

6. Paragraph (d)(2) of § 1013.61 is revised as follows:

§ 1013.61 Plants where other Federal orders may apply.

* * * * *

(d) * * *

(2) Compute the value of the quantity of reconstituted skim milk assigned in subparagraph (1) of this paragraph to Class I disposition in this marketing area at the Class I price under this part applicable at the location of the other order plant (not to be less than the Class II price), and subtract its value at the Class II price.

* * * * *

7. Paragraphs (a)(1), and (b)(2), (3), and (5) of § 1013.62 are revised as follows:

§ 1013.62 Obligations of handlers operating a partially regulated distributing plant.

* * * * *

(a) * * *

(1) The obligation that would have been computed pursuant to § 1013.70 at such plant shall be determined as though such plant were a pool plant, subject to the following modifications:

(i) Receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant;

(ii) Transfers from such nonpool plant to a pool plant or an other order plant shall be classified in the class to which allocated at the pool plant or other order plant. Class I milk transferred from such nonpool plant to pool plants and other order plants shall be valued at the uniform price of the respective order, except that reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be valued at the Class II price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk;

(iii) Such handler's obligation shall include any charges computed pursuant to § 1013.70(f) and any credits computed pursuant to § 1013.82(b)(2) with respect to receipts of Class I milk from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (iv) of this subparagraph;

(iv) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1013.30 and 1013.31(c) similar reports for each 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 § 1013.10(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.

* * * * *

(b) * * *

(2) Deduct the respective amounts of skim milk and butterfat received at the partially regulated distributing plant as follows:

(i) Any Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) Receipts from a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation pursuant to any other order;

(3) Deduct from any remainder the quantity of reconstituted skim milk, and milk or skim milk contained in receipts from producer-handlers and exempt plants defined in any order disposed of as fluid milk products on routes in the marketing area;

* * * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location, and add for the quantity of milk deducted pursuant to the subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such milk at the Class II price. For purposes of this subparagraph, the prices shall not be adjusted to less than the Class II price.

8. Paragraphs (e) and (f) of § 1013.70 are revised as follows:

§ 1013.70 Computation of the net pool obligation of each handler.

* * * * *

(e) Add an amount equal to the difference between the Class I and Class II price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1013.46(a)(3) and (4) and the corresponding step of § 1013.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1013.46(a)(4)(iii) and (iv) and the corresponding step of § 1013.46(b) the Class I price shall be adjusted to the location of the transferor plant (but not to be less than the Class II price); and

(f) Add the value at the Class I price adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received (but not to be less than the Class II price), of the skim milk and butterfat subtracted from Class I pursuant to § 1013.46(a)(9) and the corresponding step of § 1013.46(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by pool handlers defined in any order issued pursuant to the Act is

classified and priced as Class I milk at plant of origin and is not used as an offset on any other payment obligation pursuant to any other order.

9. Paragraph (a) of § 1013.86 is revised as follows:

§ 1013.86 Expense of administration.

(a) As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(1) Producer milk (including such handler's own production);

(2) Any other source milk allocated to Class I pursuant to § 1013.46(a) (3), (4), and (9) and the corresponding steps of § 1013.46(b), except such other source milk excluded from pool obligations pursuant to § 1013.70(f); and

(3) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk:

(i) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(ii) Specified in § 1013.62(b)(2)(ii).

* * * * *

10. In § 1013.44 a new paragraph (e) is added as follows:

§ 1013.44 Transfers.

* * * * *

(e) As Class I milk if transferred in the form of a fluid milk product from a pool plant to a producer-handler plant.

[F.R. Doc. 70-11447; Filed, Aug. 28, 1970; 8:46 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Proposal To Identify α-Methylstyrene-Vinyl Toluene Presently Permitted for Food-Contact Use

The Commissioner of Food and Drugs has concluded that the α-methylstyrene-vinyltoluene copolymer resins presently permitted for use under §§ 121.2520, 121.2526, 121.2562, and 121.2569 should be identified to provide for use of only those resins that have been shown to be safe by feeding studies and/or by lack of significant migration to food under the conditions of intended use. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(d), 72 Stat. 1787; 21 U.S.C. 348(d)) and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that the aforementioned sections of the regulations be amended by identifying the subject resins as those in a molar ratio of 1-α-methylstyrene to 3-vinyltoluene, as follows:

§ 121.2520 Adhesives.

* * * * *

(c) * * *

(5) * * *

COMPONENTS OF ADHESIVES

Substances	*Limitations*
* * *	* * *
α-methylstyrene-vinyltoluene copolymer resins (molar ratio 1-α-methylstyrene to 3-vinyltoluene).	

* * * * *

§ 121.2526 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(b) * * *

(2) * * *

List of substances	*Limitations*
* * *	* * *
α-methylstyrene-vinyltoluene copolymer resins (molar ratio 1-α-methylstyrene to 3-vinyltoluene).	

* * * * *

§ 121.2562 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(iv) * * *

α-methylstyrene-vinyltoluene copolymer resins (molar ratio 1-α-methylstyrene to 3-vinyltoluene).	

* * * * *

§ 121.2569 Resinous and polymeric coatings for polyolefin films.

* * * * *

(b) * * *

(3) * * *

List of substances	*Limitations*
(i) * * *	* * *
α-methylstyrene-vinyltoluene copolymer resins (molar ratio 1-α-methylstyrene to 3-vinyltoluene).	For use only in coatings that contact food under conditions of use D, E, F, or G described in table 2 of § 121.2526(c), provided that the concentration of α-methylstyrene-vinyltoluene copolymer resins in the finished food-contact coating does not exceed 1.0 milligram per square inch of food-contact surface.

* * * * *

Interested persons may, within 30 days after publication hereof in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Dated: August 21, 1970.

SAM D. FINE,
Associate Commissioner for Compliance.

[F.R. Doc. 70-11437; Filed, Aug. 28, 1970; 8:45 a.m.]

Office of the Secretary

[45 CFR Part 3]

NATIONAL INSTITUTES OF HEALTH RESERVATION, BETHESDA, MD.

Conduct and Traffic on Facilities and Grounds

Pursuant to authority delegated by the Administrator, General Services Administration, to the Secretary of Health, Education, and Welfare (33 F.R. 604) and redelegated to the Director, National Institutes of Health, notice is hereby given that the Director, National Institutes of Health, proposes to amend Subtitle A of Title 45 of the Code of Federal Regulations by adding a new Part 3 prescribing regulations for the protection of the facilities and grounds of the National Institutes of Health Reservation in Montogmery County, Md., over which the Federal Government has acquired exclusive or concurrent jurisdiction under the Laws of Maryland, Chapter 158, approved March 31, 1953. The proposed regulations set forth rules pertaining to parking and operation of motor vehicles and other conduct of employees and members of the public.

The proposed regulations relate solely to conduct on public property and are therefore exempt from the requirements of the Administrative Procedure Act (5 U.S.C. Section 553) pertaining to public participation in rule making. However, since such regulations will be applicable to members of the public, as well as Federal employees, public participation in the formulation of such regulations is deemed appropriate.

Accordingly, inquiries may be addressed, and data, views, and arguments relating to the proposed regulations may be presented in writing, in triplicate, to the Director, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014. All relevant material received not later than 30 days after publication of this notice in the FEDERAL REGISTER will be considered.

Notice is also given that it is proposed to make any regulations that are adopted effective 30 days after publication in the FEDERAL REGISTER.

It is therefore proposed to amend Subtitle A of Title 45 of the Code of Federal Regulations by adding immediately before Part 4, the following new Part 3:

PART 3—REGULATIONS GOVERNING CONDUCT AND TRAFFIC ON THE NATIONAL INSTITUTES OF HEALTH RESERVATION, BETHESDA, MD.

Subpart A—General

Subpart B—Traffic and Vehicular Regulations

Subpart C—Buildings and Grounds

Subpart D—Penalties

AUTHORITY: The provisions of this Part 3 issued under secs. 1–5, 62 Stat. 281, as amended; 40 U.S.C. 318–318d; 63 Stat. 377, as amended; 40 U.S.C. 471 note; 33 F.R. 604, Jan. 17, 1968.

Subpart A—General

§ 3.1 Definitions.

As used in this part:

(a) The NIH reservation, Bethesda, Md., hereinafter referred to as "the reservation" means those facilities and grounds of the Department of Health, Education, and Welfare located in Montgomery County, Md., over which the Federal Government has acquired exclusive or concurrent jurisdiction under the Laws of Maryland, Chapter 158, approved March 31, 1953 (Maryland Code Ann., Art. 96, Section 34 (1964)).

(b) "Uniformed Guard" means a U.S. Special Policeman appointed pursuant to the provisions of the Act of June 1, 1948, as amended (62 Stat. 281, 40 U.S.C. 318 et seq.).

(c) "Department" means the Department of Health, Education, and Welfare.

§ 3.2 Applicability.

The regulations in this part establish rules with respect to the parking and operation of vehicles and other activities and conduct on or within the reservation except that with respect to areas on the reservation used as living quarters, §§ 3.27, 3.28, 3.49, and 3.50, shall not be applicable. These regulations are intended to supplement the rules and regulations regarding conduct on Federal property adopted by the Department and set forth in the Department Real Property Management Manual as Exhibit X–33.

§ 3.3 Compliance with directions.

No person shall fail or refuse to comply with any order or direction of a uniformed guard in connection with the direction, control or regulation of traffic and parking, or pursuant to any of the requirements of these regulations.

§ 3.4 Making or giving of false reports.

No person shall knowingly give any false or fictitious report or information to any authorized person investigating an accident or violation of law or these regulations.

Subpart B—Traffic and Vehicular Regulations

§ 3.20 Laws of Maryland applicable.

Unless otherwise specifically provided herein, the laws of the State of Maryland governing the use and operation of motor vehicles shall be applicable to the reservation.

§ 3.21 Inspection of license and registration.

No person operating a motor vehicle on the reservation shall refuse to exhibit for inspection, upon request of a uniformed guard, his operator's license or proof of ownership or registration.

§ 3.22 Speed limit.

No person shall drive a motor vehicle in excess of 20 m.p.h. unless otherwise posted.

§ 3.23 Emergency vehicles.

No person shall fail or refuse to yield the right-of-way to an emergency vehicle when operating with siren or flashing lights.

§ 3.24 Signs.

Every driver shall comply with all posted traffic and parking signs.

§ 3.25 Pedestrian traffic.

No person shall fail or refuse to yield the right-of-way to a pedestrian crossing a street in marked crosswalks.

§ 3.26 Parking.

(a) No person unless otherwise authorized by a posted traffic sign shall stand or park a vehicle—

(1) On a sidewalk;

(2) Within an intersection or within a crosswalk;

(3) Within 15 feet of a fire hydrant, 5 feet of a driveway or 30 feet of a stop sign or traffic control device;

(4) At any place which would result in the vehicle being double parked;

(5) At curbs painted yellow;

(6) In a direction facing on-coming traffic; or

(7) In a manner which would obstruct traffic.

(b) No person shall park a motor vehicle—

(1) Except within the lane painted or marked for such purpose;

(2) In excess of 24 hours, unless permission has been granted by the Uniformed Guard Force Office.

§ 3.27 Parking permits.

No person, except visitors parking in areas identified by posted signs as reserved for visitors, shall park a motor vehicle on the reservation without having a currently valid parking permit displayed on such motor vehicle in compliance with instructions of the issuing authority. Such permits may be revoked by the issuing authority for violation of any of the provisions of this part.

§ 3.28 Prohibited servicing of vehicles.

No person shall wash, polish, or make nonemergency repairs on privately owned vehicles on the reservation.

§ 3.29 Unattended vehicles.

No person shall leave a motor vehicle unattended on the reservation with the engine running, the ignition unlocked, the key in the vehicle, or the brake ineffectively set.

Subpart C—Buildings and Grounds

§ 3.40 Closing reservation.

As determined by the Director, the reservation may be closed to the public in emergency situations and at such other times as may be necessary for the orderly conduct of the Government's business. Admission to properties during periods when such properties are closed to the public is limited to authorized individuals who may be required to sign a register and display identification when requested by a uniformed guard, watchman, or other authorized individual.

§ 3.41 Preservation of property.

No person shall, without authorization, willfully destroy or damage Federal property located on the reservation.

§ 3.42 Removal of property.

(a) No person shall remove Federal property from the reservation or any building thereon, except upon the issuance of a property pass signed by an authorized property custodian and specifically describing the item(s) to be removed. In an emergency, when the property custodian is not available, the uniformed guard on duty may approve removal of property if, after consulting with the Administrative Officer or other responsible official of the Institute or other agency involved, he is authorized by that official to do so.

(b) No person shall remove from the reservation or any building thereon, privately owned property, other than property ordinarily carried on the person, except upon establishing proper identification to a uniformed guard or by following the procedures set forth in (a) above.

§ 3.43 Conformity with posted signs.

No person shall fail or refuse to comply with officially posted signs of a prohibitory or directory nature, and, during emergencies, with the directions of authorized individuals.

§ 3.44 Nuisances.

No person shall willfully disrupt the conduct of official business on the reservation, use loud, abusive, or obscene language, commit any obscene or indecent act or otherwise engage in disorderly conduct; nor shall any person litter or dispose of rubbish in an unauthorized manner, throw articles of any kind from a building or climb upon any part of a building for other than authorized purposes.

§ 3.45 Gambling.

No person shall participate in games for money or other property, or in the operation of gambling devices, the conduct of lotteries or pools, or in the selling or purchasing of numbers tickets, or the taking or placing of bets.

§ 3.46 Intoxicating beverages and narcotics.

The consumption or use of intoxicating beverages, or narcotic drugs, except in connection with legal work assignments or in the course of professional treatment, or as otherwise authorized by the Director, is prohibited.

§ 3.47 Weapons and explosives.

No person other than uniformed guards specifically authorized, or other Federal, State, or local law enforcement officials so authorized, shall carry, transport, or otherwise possess on the reservation, firearms, other dangerous or deadly weapons or materials, or explosives, either openly or concealed.

§ 3.48 Nondiscrimination.

No person shall discriminate by segregation or otherwise against any other person(s) because of race, creed, color, sex, or national origin, in furnishing, or by refusing to furnish to such person(s) the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided thereby on the reservation.

§ 3.49 Pets and other animals.

No person shall bring upon the reservation any cats, dogs or other animals except for authorized purposes, provided however, that blind persons may have the use of seeing eye dogs.

§ 3.50 Sports and hobbies.

No person shall participate in any sport or hobby on the reservation unless authorized or except in designated areas.

§ 3.51 Photography for news, advertising, or commercial purposes.

Except where security regulations apply, photographs for news purposes may be taken in entrances, lobbies, foyers, corridors, and auditoriums when used for public meetings, in facilities on the reservation, unless otherwise marked, without prior approval. Photography for advertising and commercial purposes may be conducted only with the written permission of the Director, National Institutes of Health: *Provided, however,* That photographs involving patients of the Clinical Center may be taken only with the consent of the patient and upon the written approval of the Director, Clinical Center.

Subpart D—Penalties

§ 3.60 Penalties—other laws.

Whoever shall be found guilty of violating these regulations is subject to a fine of not more than $50 or imprisonment of not more than 30 days, or both (40 U.S.C. 318c). Except as expressly provided in this part, nothing contained in these regulations shall be construed to abrogate any other Federal laws or regulations, or any State and local laws and regulations applicable to the area in which the reservation is situated.

Dated: August 21, 1970.

ROBERT Q. MARSTON,
Director,
National Institutes of Health.

[F.R. Doc. 70-11450; Filed, Aug. 28, 1970; 8:46 a.m.]

DEPARTMENT OF TRANSPORTATION

Hazardous Materials Regulations Board

[49 CFR Parts 172, 173, 174, 177]

[Docket No. HM-42; Notice No. 70-3]

TRANSPORTATION OF HAZARDOUS MATERIALS

Combustible Liquids; Public Hearing

On February 12, 1970, the Hazardous Materials Regulations Board issued a notice of proposed rule making, Docket No. HM-42; Notice No. 70-3 (35 F.R. 3298 published Feb. 21, 1970), proposing certain regulations for liquids, other than flammable liquids, having a flash point at or below 200° F. or having a temperature above their flash point during transportation.

Many comments were received in response to the notice. Comments ranged from complete rejection to complete support of the Board's proposal. Upon review of the comments, the Board believes that further public participation would be helpful in resolving certain questions that have been raised. Therefore, the Board will conduct a public hearing at 10 a.m. on September 29, 1970, in room 2230, Nassif Building, 400 Seventh Street SW., Washington, D.C.

Principal points to be covered at the hearing are: (1) Should motor vehicles transporting material such as fuel oil, kerosene, and other similarly combustible materials be permitted to bear "nonflammable" placards, (2) should motor vehicles be required to bear any warning placards when they are carrying combustible liquids, (3) should the "more than 110 gallons rated capacity" be higher or lower as a basis for exemption, and (4) setting aside questions on method of flash point determination (to be handled by a separate rulemaking action), what range of combustibility should the Board consider if it carries through with its proposal to regulate combustible liquids.

The hearing will be an informal one conducted by the Board. It will not be a judicial or evidentiary type of hearing. There will be no cross-examination of persons presenting statements. A representative of the Board will make an opening statement outlining the scope of the hearing. Statements should focus on the issues raised by this notice and the notice published in the February 21, 1970, FEDERAL REGISTER. After all initial statements have been completed, those persons who wish to make rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures for the conduct of the hearing will be announced at the hearing.

Interested persons are invited to attend the hearing and present oral or written statements on the matters set for hearing. These statements will be made a part of the record of the hearing, the transcript of which will be a matter of public record. Any person who wishes to make an oral statement at the hearing should notify the Secretary of the Hazardous Materials Regulations Board by September 22, 1970, stating the amount of time required for his initial statement. The Board will receive written comments on matters relative to the notice and hearing until October 30, 1970.

All communications concerning the hearing and notice should be addressed to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590.

Notice No. 70-3 and therefore this hearing does not involve the regulations of the Federal Aviation Administration in 14 CFR Part 103.

This notice is issued under the authority of sections 831-835 of title 18, United States Code, and section 9 of the Department of Transportation Act (49 U.S.C. 1657).

Issued in Washington, D.C., on August 26, 1970.

W. C. JENNINGS,
Chairman, Hazardous
Materials Regulations Board.

[F.R. Doc. 70-11456; Filed, Aug. 28, 1970; 8:46 a.m.]

National Highway Safety Bureau

[49 CFR Part 571]

[Docket No. 69-2, Notice 3]

VEHICLE POWER REQUIREMENTS; TRUCKS AND BUSES

Proposed Motor Vehicle Safety Standard

Correction

In F.R. Doc. 70-11099, appearing at page 13469 in the issue of Saturday, August 22, 1970, the second vehicle power ratio appearing under paragraph S4 should be transposed to appear first and is corrected to read "Vehicles manufactured on or after January 1, 1972—1/250."

[49 CFR Part 571]

[Docket No. 70-20; Notice 1]

FUEL SYSTEM INTEGRITY

Proposed Federal Motor Vehicle Safety Standard

Federal Motor Vehicle Safety Standard No. 301 (Fuel Tanks, Fuel Tank Filler Pipes, and Fuel Tank Connections) established requirements to minimize the likelihood of fuel fires occurring in the aftermath of vehicle collisions. This standard (see 33 F.R. 19724) applies to passenger cars and prohibits fuel spillage from fuel tanks, filler pipes, and connections in excess of 1 ounce per minute during and after a front end longitudinal barrier collision test conducted at a speed of 30 miles per hour.

Recognizing that the present requirements are narrow in scope, the Bureau established Dockets Nos. 3–1 and 3–2 (32 F.R. 14282) suggesting additional areas and vehicle types to be covered by Standard No. 301. A specific rule making proposal was published on January 24, 1969 (34 F.R. 1174), addressed to problems of fuel spillage from passenger cars in rear end collisions and sudden decelerations or panic stops. The Bureau is establishing Docket No. 70–20 to consolidate the subject matters of Dockets Nos. 3–1 and 3–2, and this proposal supersedes the earlier one of January 24, 1969.

The Bureau believes that, as of January 1, 1972, Standard No. 301 should apply to all self-propelled motor vehicles, except motorcycles, with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. The proposal thus covers 97 percent of all new self-propelled motor vehicles registered annually (other than motorcycles), and over 75 percent of all trucks and buses. The scope of the Standard would be broadened to cover the entire fuel system, not just the fuel tank, filler pipes, and connections. No fuel spillage would be permitted in the situations specified. As of January 1, 1972, no fuel spillage would be permitted in a spike stop from 60 miles per hour, and as a consequence of a 30 m.p.h. front-end fixed collision barrier test. If a vehicle is not capable of a speed of 60 m.p.h., the spike stop would be conducted from the "speed attainable in 1 mile", defined as "the speed attainable by accelerating for 1 mile at maximum rate from a standing start." This speed is the same as the "maximum sustained vehicle speed" defined in 49 CFR 575.2(c)(2), Consumer Information. A vehicle with a GVWR of 6,000 pounds or less would also have to demonstrate fuel system integrity in a rear-end fixed collision barrier impact at 20 m.p.h. Effective January 1, 1973, this speed would be increased to 30 m.p.h., and vehicles with a GVWR of 6,000 pounds or less would also have to demonstrate fuel system integrity during rollover conducted after both front- and rear-end fixed barrier collisions. The fixed collision barrier used is that recently defined by the Bureau (35 F.R. 11242, July 14, 1970).

Several different problems relating to fuel spillage are involved in this rule making action. Of greatest concern is fuel spillage resulting from a collision or a rollover that produces ruptures or punctures in the fuel tank and damage to fuel system components. The location of principal fuel system components in areas prone to impact damage represents a prime weakness in fuel containment capability. Additional components necessitated by fuel evaporative emission controls are also subject to impact damage and resultant loss of fuel containment integrity. The susceptibility of engine compartment fuel system components to impact damage represents a potentially dangerous ignition source for fires. Fuel spillage during severe braking (as may precede a crash) represents another area of potential danger. Although most 1971 model vehicles will not have open vents in the fuel tank, there are, nevertheless, variations in the system components capable of malfunction that may result in fuel spillage.

Accident studies indicate that a rear-end collision is more likely to produce fuel spillage than a front-end collision. Rollover of a vehicle, in addition to producing a high incidence of fuel spillage, also creates the additional hazard of entrapping occupants when doors jam upon structural deformation. Including both rear-end collisions and rollovers is necessary to minimize the fuel spillage hazard created by such impacts.

The Bureau believes that the proposed requirements, if implemented, would significantly reduce the likelihood of fuel spillage fires.

In consideration of the foregoing, it is proposed to amend Federal Motor Vehicle Safety Standard No. 301 of § 571.21 to read as set forth below.

Interested persons are invited to participate in the making of the amendment by submitting written data, views, or arguments. Comments are also invited suggesting other possible test methods including nondestructive tests that might be used to demonstrate fuel system integrity, simulating severe collision and rollover modes.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Safety Bureau, Room 4223, 400 Seventh Street SW., Washington, D.C. 20591. Ten copies are requested but not required. All comments received before the close of business on November 30, 1970, will be considered and will be available for examination, both before and after the closing date. To the extent possible, comments filed after the closing date will be considered by the Bureau. However, the rule making action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rule making. The Bureau will continue to file relevant material, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

This notice of proposed rule making is issued under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392, 1407), and the delegations of authority at 49 CFR 1.51 (35 F.R. 4955) and 49 CFR 501.8 (35 F.R. 11126).

Issued on August 24, 1970.

RODOLFO A. DIAZ,
Acting Associate Director,
Motor Vehicle Programs.

MOTOR VEHICLE SAFETY STANDARD NO. 301

FUEL SYSTEM INTEGRITY

S1. *Purpose and scope.* By prohibiting fuel spillage under certain conditions this standard is intended to increase fuel system integrity and decrease the likelihood of fires occurring as a result of sudden decelaration, vehicle collision, and vehicle rollover.

S2. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, trucks, and buses, with a GVWR of 10,000 pounds or less.

S3. *Definitions.* "Gross Axle Weight Rating" (GAWR) means the value specified by the manufacturer as the loaded weight on a single axle measured at the tire-ground interfaces.

"Gross Vehicle Weight Rating" (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle.

"Skid number" means the frictional resistance measured in accordance with American Society for Testing and Materials Method E–274–65T at 40 m.p.h., omitting water delivery as specified in paragraph 7.1 of that method.

"Speed attainable in 1 mile" means the speed attainable by accelerating for 1 mile at maximum rate from a standing start.

"Spike stop" means a stop resulting from the application of 200 pounds of force on the service brake pedal within 0.04 seconds.

"Fuel spillage" means any fall, flow, or run of fuel from the fuel system but does not include wetness on a component of the fuel system resulting from capillary action.

S4. *Requirements.* Each vehicle shall meet the following requirements under the conditions of S5.

S4.1 *Spike stop: all vehicles.* There shall be no fuel spillage from a vehicle during a spike stop from 60 m.p.h., or from the speed attainable in 1 mile, if that speed is less than 60 m.p.h., on a level roadway with a skid number of 75.

S4.2 *Front-end collisions: all vehicles.* There shall be no fuel spillage from a vehicle when it impacts a fixed collision barrier perpendicularly while moving

longitudinally forward at any speed up to 30 m.p.h.

S4.3 *Rear end collisions: vehicles with GVWR of 6,000 pounds or less.* There shall be no fuel spillage from a vehicle with a GVWR of 6,000 pounds or less when it impacts a fixed collision barrier perpendicularly while moving longitudinally rearward at the following speeds:

Vehicles manufactured from January 1, 1972 through December 31, 1972—20 m.p.h.
Vehicles manufactured on or after January 1, 1973—30 m.p.h.

S4.4 *Rollover: vehicles with GVWR of 6,000 pounds or less.* There shall be no fuel spillage from a vehicle with a GVWR of 6,000 pounds or less manufactured on or after January 1, 1973 when, after impacting a fixed collision barrier in accordance with either S4.2 or S4.3, it is revolved 360° on its longitudinal axis and held for 5 minutes at each successive increment of 90°.

S5. *Conditions.* The requirements of S4 shall be met under the following conditions. Where a range of conditions is specified, the vehicle must be capable of meeting the requirements at all points within the range.

S5.1 *Vehicle weight.* The vehicle is loaded to its GVWR, and the fuel tank is filled to any level between 90 and 100 percent of capacity.

S5.2 *Vehicle weight distribution.* Weight in excess of curb weight is distributed to each axle in proportion to the vehicle's gross axle weight ratings, and is firmly fixed to the vehicle so that it absorbs no significant portion of the vehicle's kinetic energy.

S5.3 *Engine.* Engine is at ambient temperature.

S5.4 *Fuel tank.* The fuel tank contains either the fuel normally used to operate the vehicle or an alternative hydrocarbon, such as Stoddard solvent, having a minimum flash point temperature of 100° F., a minimum distillation recovery of 50 percent at 350° F., and an end point for distillation at 410° F. maximum.

S5.5 *Fuel system.* The carburetor, or fuel injection components, and the fuel pump are filled to their normal operating level with the fluid used in the fuel tank.

[F.R. Doc. 70-11417; Filed, Aug. 28, 1970; 8:48 a.m.]

CIVIL AERONAUTICS BOARD

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

[Docket No. 22174]

CHARTER REGULATIONS

Supplemental Notice of Proposed Rule Making

Correction

In F.R. Doc. 70-10998 appearing on page 13370 in the issue for Friday, August 21, 1970, the last sentence in the fourth paragraph should read, "To grant the full extension requested might jeopardize the Board's ability to take final action on the proposals in time for the 1971 summer season."

Notices

DEPARTMENT OF STATE

Agency for International Development

OFFICES OF INTERNATIONAL TRAINING AND PUBLIC SAFETY

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me by Delegation of Authority No. 17 from the Administrator of the Agency for International Development, dated March 13, 1969 (34 F.R. 6446), I hereby redelegate to the incumbents of the positions in the Office of International Training (OIT) and the Office of Public Safety (OPS) designated on the table which appears following paragraph 4 of this delegation, and within the limits stated for each position in the table, authority to sign or approve the documents specified therein for purposes related to the participant training program.

1. The authorities herein delegated are to be exercised in accordance with regulations, procedures, and policies now or hereafter established or modified and promulgated within A.I.D.

2. Any actions taken prior to the effective date hereof by officers duly authorized pursuant to superseded delegations are hereby continued in effect according to their terms until modified, revoked, or superseded by action of the officers to whom relevant authority has been delegated in this delegation.

3. Nothing herein shall be construed to derogate from the authority of the Chief, Contract Services Division, and the Contracting Officers of the Contract Operations Branch, Contract Services Division, Office of Procurement, in their discretion, at any time to exercise any of the functions herein delegated.

4. The authorities delegated herein may not be redelegated, but may be exercised by persons who are performing the functions of the designated officers in an "Acting" capacity.

OFFICERS AUTHORIZED TO OBTAIN GOODS AND SERVICES RELATIVE TO THE PARTICIPANT TRAINING PROGRAM

Director, and his Deputy; Assistant Director for Program, and his Deputy, OIT Director, and his Deputy; Chief Training Division, and his Deputy, OPS	Assistant Director for Administration; Chief, Services Branch, OIT/AD	Chiefs, Regional Training Branches, OIT/PD	Program Development Officers, OIT/PD	
$50,000	Nil	$3,500	Nil	Task Orders against Basic Ordering Agreements with universities or other educational institutions (including firms and organizations engaged in training) for participant training costs.
$50,000	Nil	$3,500	Nil	Contracts with universities or educational institutions for participant training costs based on published catalog tuition prices or other published mediums by which the institutions announce terms and conditions for enrollment.
$7,500	$7,500	Nil	Nil	Interpreting (including translating) services contracts and field program manager contracts.
$2,500	$2,500	$1,000	[1] $1,000	Purchase Orders to effect purchases related to the participant training program in accordance with the procedures set forth in Federal Procurement Regulations Subpart 1-3.600.

[1] This authority may also be executed by Field Program Managers, OIT.

5. This redelegation of authority supersedes in its entirety the Delegation of Authority of the A.I.D. Assistant Administrator for Material Resources to the Incumbents, Offices of International Training and Public Safety, dated November 10, 1965 (30 F.R. 14567), and the unpublished Redelegations of Authority to the Incumbents, Offices of International Training and Public Safety, signed by James M. Kearns as Acting Assistant Administrator for Administration, dated May 11, 1970.

6. This redelegation of authority shall be effective immediately.

Dated: August 24, 1970.

LANE DWINELL,
Assistant Administrator for Administration.

[F.R. Doc. 70-11460; Filed, Aug. 28, 1970; 8:47 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serials Nos. N-1885-A, N-2345-A]

NEVADA

Notice of Proposed Classification of Public Lands for Multiple-Use Management

AUGUST 21, 1970.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1412) it is proposed to classify for multiple-use management the public land described below. Publication of this notice has the effect of segregating the described land from all forms of appropriation under the public land laws, including the general mining laws, but not the Recreation and Public Purposes Act (44 Stat. 741, 68 Stat. 173; 43 U.S.C. 869) or the mineral leasing and material sale laws. As used in this order, the term "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. The land is located near the southern Lyon County line and northern Douglas County line. Sunrise Pass Road, a Bureau of Land Management maintained dirt roadway passes through the land. The topography of the land varies from level to rough. Recreation facilities could be developed on the meadow land. There is a spring to provide water.

3. The public land affected by this proposed classification is shown on maps on file and available for inspection in the Carson City District Office, 801 North Plaza Street, Carson City, Nev. 89701, and the Nevada Land Office, Bureau of Land Management, Room 3104, Federal Building, 300 Booth Street, Reno, Nev. 89502.

4. The land involved is located in Lyon and Douglas Counties and is described as follows:

MOUNT DIABLO MERIDIAN, NEVADA

T. 14 N., R. 22 E.,
Secs. 11, 12, 13, 14, that portion which encompasses the Margaret Morella, Baby Ruth, Snow Bog, Homestead, Hallie, Porcupine, Myrtle, Sunrise and Baltimore Fraction No. 1 Mining Claims;
Sec. 12, SW¼NW¼.

The land described aggregates 213.050 acres of public land.

5. For a period of 60 days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish to

submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the District Manager, Bureau of Land Management, 801 North Plaza Street, Carson City, Nev. 89701.

For the State Director.

H. JOHN HILLSAMER,
Acting Manager,
Nevada Land Office.

[F.R. Doc. 70-11459; Filed, Aug. 28, 1970; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

NEBRASKA

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of Nebraska natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

NEBRASKA

Gage. Johnson.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after June 30, 1971, except to applicants who previously received emergency or special livestock loan assistance and can qualify under established policies and procedures.

Done at Washington, D.C., this 26th day of August 1970.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[F.R. Doc. 70-11468; Filed, Aug. 28, 1970; 8:48 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

WAR RISK INSURANCE

Binders After Sept. 7, 1970

Title XII, War Risk Insurance, of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1281-1293), will expire on September 7, 1970, unless it is extended by act of Congress approved by the President.

Section 28 of H.R. 15424, 91st Congress, which passed the House of Representatives on May 22, 1970, would amend said title XII so as to make it expire on September 7, 1975, instead of September 7, 1970.

Section 34 of H.R. 15424, 91st Congress, as amended and reported by the Senate Commerce Committee on August 10, 1970 (Senate Report 91-1080) would also amend said title XII so as to make it expire on September 7, 1975, instead of September 7, 1970.

The marine insurance underwriters who write war risk insurance for American-flag vessels have notified the Maritime Administration that after September 7, 1970, they will not provide war risk insurance for American-flag vessels on terms that include the "American Institute War Risks and Strikes and Automatic Termination and Cancellation Clauses (Time)—Hulls—(Mar. 7, 1961)", but will provide such war risk insurance on terms that include the "American Institute Hull War Risks and Strikes Clauses (including Automatic Termination and Cancellation Provisions) for attachment to American Institute Hull Clauses January 18, 1970."

The Maritime Administrator has made a finding, pursuant to authority delegated to him by the Secretary of Commerce, that upon termination of war risk insurance by operation of the automatic termination clauses that will be in effect in commercial war risk insurance policies issued after September 7, 1970, war risk insurance adequate for the needs of the water-borne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States.

Therefore, notice is hereby given that effective when, as, and if title XII of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1281-1293), becomes effective after its present expiration date of September 7, 1970, all interim binders in effect on September 7, 1970, shall become effective, amended as follows:

1. By deleting the paragraphs reading:

Attaching automatically upon and simultaneously with the outbreak of war (whether there be a declaration of war or not) between any of the following countries: United States of America, United Kingdom, France, the Union of Soviet Socialist Republics, the People's Republic of China; upon the occurrence of any prior hostile act or acts by any of the said countries resulting in such outbreak of war and occurring within a period of 90 days preceding such outbreak.

Terminating thirty (30) days after the outbreak of war (whether there be a declaration of war or not) between any of the aforesaid countries.

and inserting in lieu thereof the following paragraphs:

Attaching automatically (a) upon and simultaneously with the outbreak of war, whether there be a declaration of war or not, between any of the following countries: United States of America, United Kingdom, France, the Union of Soviet Socialist Republics, or the People's Republic of China; or (b) upon and simultaneously with the occurrence of any hostile detonation of any nuclear weapon of war (including any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter) wheresoever or whensoever such detonation may occur and whether or not the vessel may be involved.

Terminating thirty (30) days after attachment.

2. By deleting the paragraph reading:

This binder shall automatically expire at midnight, September 7, 1970, G.m.t., unless insurance hereunder has attached prior to that date.

and inserting in lieu thereof the following:

This binder shall automatically expire at midnight, December 7, 1970. G.m.t. unless insurance hereunder has attached prior to that date.

3. By deleting the following words and figures wherever they appear:

American Institute War Risks and Strikes and Automatic Termination and Cancellation Clauses (Time)—Hulls—(Mar. 7, 1961).

and inserting in lieu thereof the following words and figures:

American Institute Hull War Risks and Strikes Clauses (including Automatic Termination and Cancellation Provisions) for attachment to American Institute Hull Clauses January 18, 1970.

By order of the Maritime Administrator.

Dated: August 28, 1970.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 70-11535; Filed, Aug. 28, 1970; 10:00 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 758]

CERTAIN PREPARATIONS CONTAINING ESTRADIOL, ESTRONE AND THYROID; OR ESTRADIOL, PROGESTERONE AND TESTOSTERONE

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following drugs:

1. Hormone "T" Tablets containing estradiol, estrone, and thyroid; marketed by G. W. Carnrick Co., 115 Park Avenue, Summit, N.J. 07901 (NDA 758).

2. Triple Hormones Suspension containing estradiol, progesterone, and testosterone; marketed by Taylor Pharmacal Co., 1222 West Grand Avenue, Decatur, Ill. 62525 (NDA 8-808).

The Food and Drug Administration has considered the Academy reports as well as other available evidence and concludes there is a lack of substantial evidence, within the meaning of the Federal Food, Drug, and Cosmetic Act, that these fixed combination drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

Accordingly, the Commissioner of Food and Drugs intends to initiate proceedings to withdraw approval of the above-listed new-drug applications.

Prior to initiating such action, however, the Commissioner invites the holders of the new-drug applications for these drugs and any interested person who might be adversely affected by their removal from the market, to submit pertinent data bearing on the proposal within 30 days after publication hereof in the FEDERAL REGISTER. To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well-organized, and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in § 130.12(a)(5) of the regulations published as a final order in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for the approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

This announcement of the proposed action and implementation of the NAS–NRC reports on these drugs is made to give notice to persons who might be adversely affected by their withdrawal from the market. Promulgation of an order withdrawing approval of the new-drug applications will cause any such drug on the market to be a new drug for which an approved new-drug application is not in effect and will make it subject to regulatory action.

The above-named holders of the new-drug applications for these drugs have been mailed a copy of the NAS–NRC reports. Any interested person may obtain a copy of the reports by writing to the office named below.

Communications forwarded in response to this announcement should be identified with the reference number DESI 758 and be directed to the attention of the following appropriate office and addressed to the Food and Drug Administration:

Requests for NAS–NRC reports: Press Relations Office (CE–200), 200 C Street SW., Washington, D.C. 20204.

All other communications regarding this announcement: Special Assistant for Drug Efficacy Study Implementation (BD–201), Bureau of Drugs, 5600 Fishers Lane, Rockville, Md. 20852.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–53, as amended; 21 U.S.C. 352, 355) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: August 11, 1970.

SAM D. FINE,
Associate Commissioner for Compliance.

[F.R. Doc. 70–11438; Filed, Aug. 28, 1970; 8:45 a.m.]

[DESI 10493]

CERTAIN STEROID COMBINATION PREPARATIONS FOR ORAL USE

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following combination antihistamine/glucocorticoid drugs for oral administration:

1. Triaminic HC Tablets containing hydrocortisone, phenylpropanolamine hydrochloride, pheniramine maleate, and pyrilamine maleate, marketed by Dorsey Laboratories, Division, The Wander Co., Northeast, U.S. 6 and Interstate 80, Lincoln, Nebr. 68501 (NDA 10–999).

2. Toldex Tablets containing dexamethasone and phenyltoloxamine citrate, marketed by Pitman-Moore Division of the Dow Chemical Co., Research Center, Box 10, Zionsville, Ind. 46077 (NDA 12–735).

3. Medrol with Orthoxine Tablets containing methylprednisolone and methoxyphenamine, marketed by The Upjohn Co., 7171 Portage Road, Kalamazoo, Mich. 49001 (NDA 12–040).

4. Metreton Tablets containing prednisone, chlorpheniramine maleate and ascorbic acid, marketed by Schering Corporation, 60 Orange Street, Bloomfield, N.J. 07003 (NDA 10–493).

5. Polanil Tablets containing dexamethasone, dexchlorpheniramine maleate, and ascorbic acid, marketed by Schering Corp. (NDA 11–988).

6. Aristomin Capsules containing triamcinolone, chlorpheniramine maleate, and ascorbic acid, marketed by Lederle Laboratories Division, American Cyanamid Co., Post Office Box 500, Pearl River, N.Y. (NDA 11–686).

7. Prednaman Tablets containing prednisone, chlorpheniramine maleate, and ascorbic acid, marketed by Dome Laboratories, Division of Miles Laboratories, Inc., 125 West End Avenue, New York, N.Y. 10023 (NDA 11–729).

The Food and Drug Administration has considered the Academy reports as well as other available evidence and concludes there is a lack of substantial evidence, within the meaning of the Federal Food, Drug, and Cosmetic Act, that these fixed combination drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

Accordingly, the Commissioner of Food and Drugs intends to initiate proceedings to withdraw approval of the above listed new-drug applications.

Prior to initiating such action, however, the Commissioner invites the holders of the new-drug applications for these drugs, and any interested person who might be adversely affected by their removal from the market, to submit pertinent data bearing on the proposal within 30 days after publication hereof in the FEDERAL REGISTER. To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well-organized, and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in § 130.12(a)(5) of the regulations published as a final order in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for the approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

This announcement of the proposed action and implementation of the NAS–NRC reports for these drugs is made to give notice to persons who might be adversely affected by their withdrawal from the market. Promulgation of an order withdrawing approval of the new-drug applications will cause any such drug on the market to be a new drug for which an approved new-drug application is not in effect and will make it subject to regulatory action.

The above-named holders of the new-drug applications for these drugs have been mailed a copy of the NAS–NRC reports. Any interested person may obtain a copy by request to the office named below:

Communications forwarded in response to this announcement should be identified with the reference number DESI 10493 and be directed to the attention of the following office and addressed (unless otherwise specified) to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852:

Requests for NAS–NCR reports: Press Relations Office (CE–200), Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204.

All other communications regarding this announcement: Special Assistant for Drug Efficacy Study Implementation (BD–201), Bureau of Drugs.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–53, as amended; 21 U.S.C. 352, 355) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: August 12, 1970.

SAM D. FINE,
Associate Commissioner for Compliance.

[F.R. Doc. 70–11440; Filed, Aug. 28, 1970; 8:45 a.m.]

[DESI 8582]

ERYTHROMYCIN PREPARATIONS FOR ORAL AND PARENTERAL USE

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study

Group, on the following erythromycin preparations:

1. Erythromycin Tablets containing 100 milligrams or 250 milligrams erythromycin per tablet; marketed by the Upjohn Co., 7171 Portage Road, Kalamazoo, Mich. 49001 (NDA 8-621).

2. a. Ilosone Drops containing erythromycin estolate equivalent to 100 milligrams erythromycin base per cubic centimeter when reconstituted (NDA 12-006); and

b. Ilosone Chewable Tablets containing erythromycin estolate equivalent to 125 milligrams erythromycin base per tablet (NDA 60-431); and

c. Ilosone Pulvules containing erythromycin estolate equivalent to 125 milligrams or 250 milligrams erythromycin base per capsule (NDA 12-353); and

d. Ilosone 125 For Oral Suspension containing erythromycin estolate equivalent to 125 milligrams erythromycin base per 5 cubic centimeters when reconstituted (NDA 12-008); and

e. Ilotycin Tablets containing 100 milligrams or 250 milligrams erythromycin per tablet (NDA 8582); and

f. Ilotycin Ethyl Carbonate Drops containing erythromycin ethyl carbonate equivalent to 100 millgrams erythromycin base per cubic centimeter when reconstituted (NDA 9037); and

g. Ilotycin Ethyl Carbonate, Pediatric 200, for Oral Suspension containing erythromycin ethyl carbonate equivalent to 200 milligrams erythromycin base per 5 cubic centimeters when reconstituted (NDA 9037); and

h. Ilotycin Gluceptate I.V. For Injection containing erythromycin gluceptate equivalent to 250 milligrams or 500 milligrams of 1 gram erythromycin base per ampoule; all 12 preparations marketed by Eli Lilly and Co., Post Office Box 618, Indianapolis, Ind. 46206 (NDA 9145).

3. a. Erythrocin Granules for Oral Suspension containing 200 milligrams erythromycin as erythromycin ethylsuccinate per 5 cubic centimeters when reconstituted (NDA 90-110); and

b. Erythrocin Drops, Granules for Oral Suspension containing 100 milligrams erythromycin as erythromycin ethylsuccinate per 2.5 milliliters when reconstituted (NDA 90-110); and

c. Erythrocin Stearate Filmtabs containing 100 milligrams or 250 milligrams erythromycin as erythromycin stearate per tablet (NDA 9283); and

d. Erythrocin-I.M. Injection containing 50 milligrams erythromycin as erythromycin ethylsuccinate per milliliter (NDA 11-215); and

e. Erythrocin Lactobionate I.V. Sterile Powder for Injection containing 500 milligrams or 1 gram erythromycin as erythromycin lactobionate per vial; all 7 preparations marketed by Abbott Laboratories, 14th and Sheridan Road, North Chicago, Ill. 60064 (NDA 9195).

Preparations containing erythromycin are subject to the antibiotic certification procedures pursuant to section 507 of the Federal Food, Drug, and Cosmetic Act. Batches of the drug for which certification is requested should provide for labeling information in accord with labeling guidelines developed on the basis of this reevaluation of the drug and published in this announcement. The above named firms and any other holders of applications approved for drugs of the kind described above are requested to submit, within 60 days following publication of this announcement in the FEDERAL REGISTER, amendments to their antibiotic applications to provide for revised labeling.

Batches of the drugs which bear labeling with claims evaluated as probably effective or possibly effective (see "Effectiveness Classification" paragraphs below) and which are otherwise in accord with the labeling conditions herein will be accepted for release or certification by the Food and Drug Administration for a period of 12 months for probably effective claims and 6 months for possibly effective claims, effective from the publication date of this announcement to allow any applicant to obtain and submit data to provide substantial evidence of effectiveness of the drug for use in such conditions.

Preparations containing the drug with labeling bearing claims evaluated as lacking substantial evidence of effectiveness will no longer be acceptable for certification or release after the publication date of this announcement.

Any person who would be adversely affected by deletion of the claims for which the drug lacks substantial evidence of effectiveness, as described in this announcement, may submit within 30 days following the publication date of this announcement, pertinent data bearing on the effectiveness of the drug for such uses. To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well-organized, and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in § 130.12(a)(5) of the regulations published as a final order in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies otbained under uncontrolled or partially controlled situations are not acceptable as a sole basis for the approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

I. *Erythromycin for oral administration*—A. *Effectiveness classification.* The Food and Drug Administration concludes that oral forms of erythromycin, erythromycin estolate, erythromycin ethyl carbonate, erythromycin ethylsuccinate, and erythromycin stearate are:

1. Effective for those indications described in the labeling guidelines (see I.B.) except for the indications listed in paragraph 2 below as probably effective.

2. Probably effective in pneumococcic infections; bacterial infections of the lower respiratory tract; in the treatment of acute bacterial pharyngitis and tonsillitis with prompt eradication of bacteria (streptococci) and a parallel prompt clinical improvement; primary atypical pneumonia caused by *Mycoplasma pneumoniae;* continuous or long-term prophylaxis against recurrence of rheumatic fever or rheumatic carditis in susceptible persons; short-term prophylaxis against bacterial endocarditis prior to dental or other operative procedures in patients with a history of rheumatic fever or congenital heart disease; staphylococcal infections; and hemolytic streptococci (or certain beta hemolytic streptococcal infections).

3. Possibly effective for *Lymphogranuloma venereum;* viridans group streptococci; anaerobic streptococci; infections in which the causative gram-positive organisms are resistant to other antibiotics, but susceptible to erythromycin; infections sensitive to its action; particularly in the treatment of bacterial infections of the upper respiratory tract; bacterial infections of the soft tissues; other infections due to susceptible bacteria in patients known to be hypersensitive to penicillin or other antibiotics may be considered for treatment with erythromycin; *Hemophilus influenzae;* Rickettsial infections; Clostridium; Trachoma; and *Neisseria meningitidis.*

4. Lacking substantial evidence of effectiveness for such claims as useful in a high proportion of bacterial diseases encountered in clinical practice; bronchopneumonia and otitis media in children have responded well to its use; in serious staphylococcal infections, erythromycin preparations should be used only in combination therapy with other antimicrobial agents; in this fashion (combined therapy plus surgical procedures plus large doses), erythromycin has been effective in staphylococcal pneumonia, osteomyelitis, septicemia, empyema, and meningitis; indicated for "all infections" which are susceptible to erythromycin; other gram-positive bacteria; and certain parasitic (other than *Entamoeba histolytica*) infections.

B. *Labeling conditions.* Those parts of the labeling indicated below should be substantially as set forth below. The "Indications" section includes those indications for which the drug is regarded as effective or probably effective. (Optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below.)

DESCRIPTION

Erythromycin is produced by a strain of *Streptomyces erythraeus* and belongs to the macrolide group of antibiotics. It is basic and readily forms salts with acids. The base, the stearate salt, and the esters are poorly soluble in water and are suitable for oral administration. (Other descriptive information to be included by the manufacturer should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTIONS

The spectrum of activity of erythromycin is similar, but not identical, to penicillin. However, many gram-positive strains have developed resistance to erythromycin, and culture and sensitivity testing should be done. If the Kirby-Bauer method of disc sensitivity is used, a 15 mcg. erythromycin disc should give a zone of over 17 mm. when tested against an erythromycin-sensitive bacterial strain. A single oral 250 mg. dose of

erythromycin given to a fasting adult produces in 2 hours a serum level of from 0.4 mcg./ml.–1.3 mcg./ml., depending on the preparation. The peak serum level rises with repeated administration.

Orally administered erythromycin is readily absorbed by most patients, especially on an empty stomach, but there is wide patient variation. Moreover, some forms (e.g., the estolate) are more completely absorbed and produce higher serum levels. In increasing order of absorption, the progression is: 1-erythromycin base, stearate or ethyl carbonate, 2-succinate, 3-estolate. After absorption, erythromycin diffuses readily into most body fluids. Only low concentrations are normally achieved in the spinal fluid, but passage of the drug across the blood-brain barrier increases in meningeal inflammation. In the presence of normal hepatic function, erythromycin is concentrated in the liver and excreted in the bile; the effect of hepatic dysfunction on excretion of erythromycin by the the liver into the bile is not known. After oral administration, less than 5 percent of the activity of the administered dose can be recovered in the urine.

INDICATIONS

Corynebacterium diphtheriae and *C. minutissimum:* As an adjunct to antitoxin, to prevent establishment of carriers, and to eradicate the organism in carriers. In the treatment of erythrasma.

Mycoplasma pneumoniae (Eaton agent): In the treatment of primary atypical pneumonia, when due to this organism.

Diplococcus pneumoniae: Upper and lower respiratory tract infections when penicillin in contraindicated because of hypersensitivity.

Streptococcus pyogenes (Group A beta hemolytic): Respiratory infections due to susceptible strains of *S. pyogenes* when penicillin is contraindicated due to hypersensitivity. In the treatment of such infections, a therapeutic dose should be administered for at least 10 days.

Short-term prophylaxis against bacterial endocarditis prior to dental or other operative procedures in patients with a history of rheumatic fever or congenital heart disease who are hypersensitive to penicillin. (Erythromycin is not suitable prior to genitourinary surgery where the organisms likely to lead to bacteremia are the enterococcal group of streptococci.)

Staphylococcus aureus: Infections due to susceptible strains of this organism. Resistance may develop rapidly during treatment.

Neisseria gonorrhoeae and *Treponema pallidum:* Erythromycin is an alternate choice of treatment of gonorrhea and primary syphilis in penicillin-sensitive patients. In the treatment of gonorrhea, patients who are suspected of also having syphilis should have a darkfield examination where possible before receiving erythromycin and monthly serologic tests for a minimum of 4 months. In the treatment of primary syphilis, spinal fluid examinations should be done before treatment and as part of followup after therapy.

Entamoeba histolytica: In the treatment of intestinal amebiasis only. Extra-enteric amebiasis requires treatment with other agents.

Listeria monocytogenes: Infections due to this organism.

CONTRAINDICATIONS

Erythromycin is contraindicated in patients with known hypersensitivity to this antibiotic.

WARNINGS

(Include in labeling for the estolate.) The administration of erythromycin estolate has been associated with an allergic type of cholestatic hepatitis. Patients receiving the estolate for more than 2 weeks or in repeated courses have shown an incidence of jaundice in the range of 2–4 percent, accompanied by right upper quadrant pain, fever, nausea, vomiting, eosinophilia and leukocytosis. Liver function tests should be monitored in patients on such dosage, and the drug discontinued if abnormalities develop.

(Include in labeling for other erythromycins.) Abnormalities in liver function tests may occur, particularly when erythromycin is administered for more than 2 weeks, or in high or repeated doses. The changes are reversible when the drug is discontinued.

Usage in pregnancy: Safety for use in pregnancy has not been established.

PRECAUTIONS

Patients with preexisting liver disease should be carefully followed to determine if changes in hepatic function occur during erythromycin administration. In this event, erythromycin should be discontinued.

ADVERSE REACTIONS

The most frequent side effects of erythromycin products are gastrointestinal and are dose-related. Nausea, vomiting and diarrhea occurr infrequently with oral doses of 250 mg. but gastrointestinal upset is common with doses of 500 to 1,000 mg. Glossitis and stomatitis are occasionally observed.

Allergic reactions, ranging from urticaria and mild skin eruptions to anaphylactoid reactions, have occurred with erythromycin, but are infrequent.

During prolonged or repeated therapy, there is a possibility of overgrowth of nonsusceptible bacteria or fungi. If such infections occur, the drug should be discontinued and appropriate therapy instituted.

DOSAGE AND ADMINISTRATION

Adults: 0.5–1.0 gm. every 6 hours depending on severity of infection.

Children: 30–50 mg./kg./day, in divided doses, depending on severity of infection.

In the treatment of streptococcal infections, a therapeutic dosage of erythromycin should be administered for at least 10 days. In continuous prophylaxis against recurrences of rheumatic fever in persons with a history of rheumatic heart disease, the dose is 200 mg. per day.

When used prior to surgery to prevent endocarditis (see *Streptococcus pyogenes*), a dosage of 250 mg. four times daily is recommended for adults and older children; 40 mg./kg./day in three or four divided doses, for smaller children.

For treatment of primary syphilis: 500 mg. four times daily for 15 days.

For treatment of gonorrhea: 500 mg. four times daily for 5 days.

For erythrasma: 1.0 gm. daily for 5 days.

For dysenteric amebiasis: 500 mg. four times daily for 4–5 days for adults; 20–40 mg./kg./day in divided doses for 4–5 days for children.

II. *Erythromycin Intramuscular*—A. *Effectiveness classification.* The Food and Drug Administration concludes that erythromycin ethyl succinate for intramuscular use is:

1. Effective for the indications described in the labeling guidelines (see II.B.) except for the indications listed in paragraph 2 below as probably effective.

2. Probably effective for: Pneumococcal infections; *Streptococcus pyogenes* (group A beta hemolytic streptococcus) infections; *Staphylococcus aureus* infections; and primary atypical pneumonia caused by *Mycoplasma pneumoniae* when the patient is penicillin sensitive.

3. Possibly effective for: Viridans group streptococci, anaerobic streptococci, *Hemophilus influenzae*, Clostridium, *Neisseria gonorrhoeae* and *N. meningitidis*, *Treponema pallidum*, *Lymphogranuloma venereum*, Trachoma, and *Corynebacterium minutissimum*.

4. Lacking substantial evidence of effectiveness for the following claimed indication: for "all infections" which are susceptible to erythromycin.

B. *Labeling conditions.* Those parts of the labeling indicated below should be substantially as set forth below. The "Indications" section below includes those indications for which the drug is regarded as effective or probably effective. (Optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below.)

DESCRIPTION

Erythromycin is produced by a strain of *Streptomyces erythraeus* and belongs to the macrolide group of antibiotics. The intramuscular dosage form is suitable for use in mild to moderately severe infections when erythromycin cannot be taken by mouth. When larger doses of antibiotic therapy are indicated parenterally, an intravenous preparation should be used. (Other descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTIONS

The spectrum of activity of erythromycin is similar, but not identical, to penicillin. However, since some gram-positive strains have developed resistance to erythromycin, sensitivity testing is advisable. If the Kirby-Bauer method of disc sensitivity is used, a 15 mcg. erythromycin disc should give a zone of over 17 mm. when tested against an erythromycin-sensitive bacterial strain. Intramuscular injection of 100 mg. of erythromycin in adults produced peak levels of 0.5 to 0.8 mcg./ml. in 1 hour, gradually falling to 0.1 mcg./ml. in 6–8 hours. A 50 mg. I.M. dose in children gave serum levels of over 0.6 mcg./ml. within 2 hours, gradually falling in 6 hours to 0.08.

Erythromycin diffuses readily into the body fluids. Only low concentrations are normally achieved in the spinal fluid, but passage of the drug across the blood-brain barrier increases in meningitis. In the presence of normal hepatic function, erythromycin is concentrated in the liver and excreted in the bile; the effect of hepatic dysfunction on excretion of erythromycin by the liver into the bile is not known.

INDICATIONS

Corynebacterium diphtheriae: As an adjunct to antitoxin, to prevent establishment of carriers, and for the treatment of carriers. Intramuscular erythromycin may be used in acute pharyngeal diphtheria, where erythromycin is indicated and oral administration is not possible.

In mild to moderately severe infections due to susceptible strains of the following organisms, intramuscular erythromycin may be used as an alternative drug when the patient is sensitive to penicillin:

Mycoplasma pneumoniae (Eaton agent).

Streptococcus pyogenes (group A beta hemolytic streptococcus) *Diplococcus pneumoniae.*

Staphylococcus aureus; however, organisms frequently and rapidly develop resistance to erythromycin during treatment.

CONTRAINDICATIONS

Intramuscular erythromycin is contraindicated in patients with known hypersensitivity to erythromycin.

WARNINGS

Adequate Dosage for the Treatment of Serious or Severe Infections Is Not Possible With Intramuscular Erythromycin for Adults, and Is Usually Too Painful for Children.

Intramuscular injection of erythromycin may cause severe pain, sterile abscess formation and necrosis.

Usage In Pregnancy: Safety for use in pregnancy has not been established.

PRECAUTIONS

This product must not be administered intravenously or subcutaneously. Since small children do not have the large muscle mass required for deep placement of injections, intramuscular erythromycin is not recommended for small children.

ADVERSE REACTIONS

Allergic reactions, ranging from urticaria and mild skin eruptions to anaphylaxis, have occurred with erythromycin.

During prolonged or repeated therapy, there is a possibility of overgrowth of nonsusceptible bacteria or fungi. If such infections occur, the drug should be discontinued and appropriate treatment instituted.

Nausea, vomiting, and diarrhea occur occasionally and are dose-related. Variations in liver function have occurred in daily doses at high levels or after prolonged therapy. Hepatic function tests should be performed in patients for whom such therapy is given.

DOSAGE AND ADMINISTRATION

The recommended adult dose is 100 mg., injected deeply in a large muscle mass, and repeated at 4–6 hour intervals (total daily dose, 5–8 mg./kg.). These doses are inadequate for the treatment of severe infections. Intravenous or oral erythromycin should be used in such cases.

The recommended dose for children over 30 pounds is 50 mg. repeated at 4–6 hour intervals, or approximately 12 mg./kg./day.

III. *Erythromycin intravenous*—A. *Effectiveness classification.* The Food and Drug Administration concludes that erythromycin, as the gluceptate and as the lactobionate, for intravenous use is:

1. Effective for the indications described in the labeling guidelines (see III.B.) except for the indications listed in paragraph 2 below as probably effective.

2. Probably effective for: Severe infection caused by pneumococci, *Mycoplasma pneumoniae,* and *Streptococcus pyogenes* (group A beta hemolytic).

3. Possibly effective for: Infections caused by staphylococci or enterococci; *Corynebacterium minutissimum; Hemophilus influenzae;* infections caused by gram-positive organisms resistant to other antibiotics; *Neisseria gonorrhoeae;* infections in persons hypersensitive to penicillin or other antibiotics; and streptococcus sore throat infections, erysipelas, cellulitis and abscesses due to hemolytic streptococci.

4. Lacking substantial evidence of effectiveness for the claimed indication: For "all infections" which are susceptible to erythromycin.

B. *Labeling conditions.* The "Indications" section below includes those indications for which the drug is regarded as effective or probably effective. (Optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below.) Those parts of the labeling indicated below should be substantially as follows:

DESCRIPTION

Erythromycin is produced by a strain of *Streptomyces erythraeus* and belongs to the macrolide group of antibiotics. The intravenous dosage form is suitable for intravenous administration after reconstitution with sterile water or 5 percent dextrose solution. (Other descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTIONS

The spectrum of activity of erythromycin is similar, but not identical, to penicillin. However, many gram-positive strains have developed resistance to erythromycin and culture and sensitivity testing should be done. If the Kirby-Bauer method of disc sensitivity is used, a 15 mcg. erythromycin disc should give a zone of over 17 mm. when tested against an erythromycin-sensitive bacterial strain. Intravenous injection of 200 mg. of erythromycin produces peak serum levels of 3–4 mcg./ml. almost immediately, 2 mcg./ml. at 1 hour and 0.5 mcg./ml. at 6 hours.

Erythromycin diffuses readily into the body fluids. Only low concentrations are normally achieved in the spinal fluid, but passage of the drug across the blood-brain barrier increases in meningitis. In the presence of normal hepatic function, erythromycin is concentrated in the liver and excreted in the bile; the effect of hepatic dysfunction on excretion of erythromycin by the liver into the bile is not known. From 12 percent to 15 percent of intravenously administered erythromycin is excreted in active form in the urine.

INDICATIONS

Corynebacterium diphtheriae: As an adjunct to antitoxin, to prevent establishment of carriers, and for the treatment of carriers. Intravenous erythromycin may be used in patients with severe diphtherial pharyngitis or so severely ill that oral administration is not possible.

Mycoplasma pneumoniae (Eaton agent): Erythromycin is an effective drug in the treatment of primary atypical pneumonia, when due to this organism.

Diplococcus pneumoniae: Severe infections due to susceptible strains of pneumococci, which cannot be treated with penicillin because of hypersensitivity, may be effectively treated with intravenous erythromycin.

Streptococcus pyogenes (group A beta hemolytic): In severe infections due to beta hemolytic streptococci, penicillin-sensitive patients may be effectively treated with intravenous erythromycin. If prophylaxis is needed against recurrences of rheumatic fever in a person with a well-established history of a previous attack of rheumatic heart disease, or against bacterial endocarditis when persons with rheumatic or congenital heart disease undergo operative procedures, intravenous erythromycin can be injected 1 hour before operation and at 6-hour intervals thereafter, to complete the schedule of prophylaxis. Oral administration should be instituted as soon as feasible.

CONTRAINDICATIONS

Intravenous erythromycin is contraindicated in patients with known hypersensitivity to erythromycin.

WARNING

Usage in pregnancy: Safety for use in pregnancy has not been established.

PRECAUTIONS

Side effects following the use of intravenous erythromycin are rare. Occasional venous irritation has been encountered, but if the injection is given slowly, in diluted solution, preferably by continuous intravenous infusion over 20–60 minutes, pain and vessel trauma are minimized.

ADVERSE REACTIONS

Allergic reactions, ranging from urticaria and mild skin eruptions to anaphylaxis, have occurred with intravenously administered erythromycin.

During prolonged or repeated therapy, there is a possibility of overgrowth of nonsusceptible bacteria or fungi. If such infections occur, the drug should be discontinued and appropriate treatment instituted.

Nausea, vomiting, and diarrhea occur occasionally and are dose-related. Variations in liver function have occurred in daily doses at high levels or after prolonged therapy. Hepatic function tests should be performed in patients to whom such therapy is given.

DOSAGE AND ADMINISTRATION

Prepare the initial solution with sterile water from a glass-sealed ampule, by dissolving the contents of the vial (250 mg.) (500 mg.) (1,000 mg.) in at least (1 ml.) (10 ml.) (20 ml.).

When all of the drug is dissolved, the solution may then be added to normal sodium chloride or to 5 percent dextrose solution, to give 1 gm. per liter for slow, continuous infusion. If the medication is to be given by intermittent injection, one-fourth of the total daily dose can be given in 20–60 minutes by slow intravenous injection of 250 to 500 mg. in 100 to 250 ml. of normal (0.9 percent) sodium chloride or 5 percent dextrose solution. Injection should be sufficiently slow to avoid pain along the vein.

The recommended I.V. dosage for severe infections in adults and children is 15–20 mg./kg. body weight per day. Higher doses may be given in severe infections. Continuous infusion is preferable, but administration in divided doses not greater than every 6 hours is also effective.

STORAGE CONDITIONS

(To be supplied by manufacturer.)

A copy of the NAS–NRC report has been furnished to each firm referred to above. Any other interested person may obtain a copy by request to the appropriate office named below.

Communications forwarded in response to this announcement should be identified with the reference number, DESI 8582, and be directed to the attention of the following appropriate office and addressed (unless otherwise specified below) to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852:

Supplements (identify with NDA number, if known): Division of Anti-Infective Drugs (BD–140), Office of New Drugs, Bureau of Medicine.

All other communications regarding this announcement: Special Assistant for Drug Efficacy Study Implementation (BD–201), Bureau of Medicine.

Requests for NAS–NRC report: Press Relations Office (CE–200), 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050–53, as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: August 14, 1970.

SAM D. FINE,
Associate Commissioner for Compliance.

[F.R. Doc. 70–11439; Filed, Aug. 28, 1970; 8:45 a.m.]

[DESI 12673]

PENTAERYTHRITOL TETRANITRATE AND HYDROCHLOROTHIAZIDE

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following drugs:

Perithiazide SA Tablets; containing pentaerythritol tetranitrate and hydrochlorothiazide; marketed by Warner-Chilcott Laboratories Division, Warner-Lambert Pharmaceutical Co., 201 Tabor Road, Morris Plains, N.J. 07950 (NDA 12–673).

The Food and Drug Administration has considered the Academy report as well as other available evidence and concludes there is a lack of substantial evidence, within the meaning of the Federal Food, Drug, and Cosmetic Act, that this fixed combination drug will have the effect it purports or its represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

Accordingly, the Commissioner of Food and Drugs intends to initiate proceedings to withdraw approval of the above-listed new-drug application and any other application for a combination drug having these components.

Prior to initiating such action, however, the Commissioner invites the holders of new-drug applications for such drug, and any interested person who might be adversely affected by its removal from the market, to submit pertinent data bearing on the proposal within 30 days after publication hereof in the FEDERAL REGISTER. To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well-organized, and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in § 130.12(a)(5) of the regulations published as a final order in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

This announcement of the proposed action and implementation of the NAS–NRC report for this drug is made to give notice to persons who might be adversely affected by its withdrawal from the market. Promulgation of an order withdrawing approval of the new-drug application will cause any such drug on the market to be a new drug for which an approved new-drug application is not in effect and will make it subject to regulatory action.

The above-named holder of the new-drug application for this drug has been mailed a copy of the NAS–NRC report. Any interested person may obtain a copy of the report by writing to the office named below.

Communications forwarded in response to this announcement should be identified with the reference number DESI 12673 and be directed to the attention of the following appropriate office and addressed to the Food and Drug Administration:

Requests for NAS–NRC reports: Press Relations Staff (CE–200), 200 C Street SW., Washington, D.C. 20024.

All other communications regarding this announcement: Special Assistant for Drug Efficacy Study Implementation (BD–201), Bureau of Drugs, 5600 Fishers Lane, Rockville, Md. 20852.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–53, as amended; 21 U.S.C. 352, 355) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: August 17, 1970.

SAM D. FINE,
Associate Commissioner for Compliance.

[F.R. Doc. 70–11441; Filed, Aug. 28, 1970; 8:45 a.m.]

ATOMIC ENERGY COMMISSION

CALIFORNIUM-252

Price Decrease

1. As the result of economics resulting from large-scale production, the AEC can provide, beginning in early CY 1971, increased quantities of californium-252 at a reduced price.

2. The AEC proposes to reduce its price for this radioisotope from the current $100 per one-tenth of a microgram to $10 per microgram. The reduction in price would take place when the first material from the larger quantities now being produced becomes available. The material will be delivered by AEC in unencapsulated form as the oxide, chloride, or other form selected as compatible for shipment and use, f.o.b. AEC plantsite. Applicants proposing to use such material in the conduct of research and development or in medical therapy will be given preference. The present limitation of a maximum of 1 microgram per order will be abolished. The standard shipment would be 1 milligram or more. The handling charge would be $1,600 per standard shipment. Shipments of less than 1 milligram, but more than 10 micrograms, would be considered individually by AEC. The handling charge for such a shipment would not exceed $1,600 and will be provided upon request.

3. All interested persons who desire to submit written comments for consideration in connection with this proposed price decrease should send them to the Secretary, U.S. Atomic Energy Commission, Washington, D.C. 20545, within 30 days after publication of this notice in the FEDERAL REGISTER. Unless suspended or rescinded subsequent to the period provided for public comments, the new price and terms for the material to be available beginning early in CY 1971 will become established on November 1, 1970. In the meantime, the present price and quantity limitation will continue.

4. Public comments received after the 30-day period provided for public comment 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.

Dated at Germantown, Md., this 27th day of August 1970.

For the Atomic Energy Commission.

W. B. MCCOOL,
Secretary.

[F.R. Doc. 70–11536; Filed, Aug. 28, 1970; 10:00 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 22366]

AIR HALIFAX LTD.

Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on September 10, 1970, at 10 a.m., e.d.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Ross I. Newmann.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless at or prior to the conference a person objects or shows reason for further postponement.

Dated at Washington, D.C., August 25, 1970.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 70–11461; Filed, Aug. 28, 1970; 8:47 a.m.]

[Docket No. 21513]

ASPEN AIRWAYS, INC.

Notice of Postponement of Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended,

that hearing in the above-entitled proceeding, now assigned to be held on August 27, 1970, at 10 a.m., e.d.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before examiner Joseph L. Fitzmaurice, is postponed and reassigned for hearing on September 22, 1970, at the same time and place as indicated above.

Dated at Washington, D.C., August 26, 1970.

[SEAL] JOSEPH L. FITZMAURICE,
Hearing Examiner.

[F.R. Doc. 70-11465; Filed, Aug. 28, 1970; 8:47 a.m.]

[Docket No. 22413]

CANADIAN VOYAGEUR AIRLINES LTD.

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing on the above-entitled application is assigned to be held on September 2, 1970, at 10 a.m., e.d.s.t., in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Hyman Goldberg.

Dated at Washington, D.C., August 25, 1970.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 70-11462; Filed, Aug. 28, 1970; 8:47 a.m.]

[Docket No. 22508 etc.; Order 70-8-102]

MAINLAND-PONCE SERVICE INVESTIGATION ET AL.

Order Denying Exemptions and Instituting Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 25th day of August 1970.

Mainland-Ponce Service Investigation, Docket 22508; application of Eastern Air Lines, Inc., Trans Caribbean Airways, Inc., and Pan American World Airways, Inc., Dockets 22135, 22182, 22188, and 22189, for exemptions, order to show cause or certificate amendment.

Eastern Air Lines, Inc. (Eastern), in Docket 22135,[1] and Trans Caribbean Airways, Inc. (TCA), in Docket 22189,[2] request exemption authority so as to permit service between New York/Newark and Ponce, P.R. In addition, TCA filed a motion requesting the Board to issue an order to show cause why Ponce should not be designated as a cointermediate point with San Juan, P.R., on segment 1 of route 137.[3] The authority sought by the carriers is requested in response to the announcement of the Government of Puerto Rico that it intends to proceed immediately to lengthen and strengthen the existing runway at Ponce Airport in order to accommodate B-727 aircraft.[4] The improvements will permit the first nonstop service from New York to Ponce, and first single-plane service from Ponce to New York, via San Juan.[5]

In support of its application, Eastern alleges, inter alia, that existing traffic between New York and Ponce is estimated to be over 100,000 passengers per year; that those who now travel in the market must use surface transportation or air taxi service to San Juan and connect at the congested San Juan Airport; that Eastern will initially provide two round trips per day, serving 102,000 passengers per year; [6] that a thrift fare will be offered; that a substantial amount of cargo will be carried on this service; and that in fiscal 1971, Eastern expects to realize an operating profit of $177,000 from the proposed operations.

In support of its application TCA alleges, in pertinent part, that TCA estimates that the total New York-Ponce traffic amounts to approximately 300,000 passengers per year; that TCA initially would offer two round trips per day; [7] that TCA would provide Ponce traffic with service at the same fare level as charged for connecting services; and that the proposed services would result in an operating profit for TCA of $405,613 during the first year of operations.

The Commonwealth of Puerto Rico filed an answer in which it strongly supports direct air service between New York and Ponce. However, the Commonwealth declined to take a position on which carrier or carriers should be selected to provide such service.

Caribbean-Atlantic Airlines, Inc. (Caribair),[8] filed an answer stating that it does not oppose grant of the applications to the extent that they encompass interim New York-Ponce authority pending review of Ponce-Mainland service in a certificate proceeding.

Pan American World Airways, Inc. (Pan American), filed an answer to Eastern's application,[9] contending that the Board should not grant an application involving a request for Ponce service by one carrier above from one mainland gateway, but instead, an expedited certificate amendment proceeding or other action should be instituted so as to consider Ponce service for all incumbent Mainland-Puerto Rico carriers from all mainland gateways.[10] Pan American contends that the airport improvements at Ponce will not be completed until at least December 1970, and that since the service proposals contemplated in the exemption requests cannot begin immediately there is adequate time available for the Board to accord all carrier proposals comparative consideration.[11]

TCA filed an answer to Eastern's application stating that the New York-Ponce market is large enough for more than one carrier, but that if exclusive rights to serve Ponce from the mainland are to be granted to only one carrier, that TCA should be selected on the basis of its need for strengthening.

Eastern filed an answer to TCA's application and motion for an order to show cause, and also filed a reply to the answers of TCA and Pan American. Generally, Eastern contends that TCA has overestimated the size of the New York-Ponce market; that three-carrier competition is not required since a single carrier could increase its frequencies to meet traffic demand; and that Eastern has requested an exemption only as an interim measure pending the opening of the new Southwestern Puerto Rico International Airport proposed by Puerto Rico.[12]

Upon consideration of the pleadings and all the relevant matters, we have decided to deny the requests of Eastern and TCA for exemption authority in the New York-Ponce market, as well as the request of TCA for an order to show cause.

The pleadings filed have raised a number of complex considerations and in the circumstances here presented we do not believe that an award of New York-Ponce authority to any one carrier should be made by means of an expedited exemption or show cause procedure in advance of a full evidentiary hearing.

We will, however, institute and investigation to determine whether any of the incumbent U.S. Mainland-Puerto Rico carriers [13] should be awarded certificate authority to engage in service between their existing mainland gateways and Ponce. In our view, direct air service to Ponce may contribute to a reduction of congestion at the crowded San Juan Airport,[14] since a substantial number of travelers would no longer be required to

[1] Apr. 22, 1970.
[2] May 11, 1970.
[3] Docket 22188.

[4] The improvements are not expected to be completed until December 1970, at the earliest.

[5] The airport improvements will not be adequate to permit northbound nonstop service.

[6] 140 passengers per day, each way.

[7] TCA states that because of the estimated size of the potential market, up to 800 passengers per day, as many as four round trips would be needed to serve the entire market.

[8] Caribair is the only air carrier certificated to serve Ponce. However, its operations at Ponce have been temporarily suspended due to financial difficulties, but the carrier states that it would seek Mainland-Ponce authority in a certificate proceeding.

[9] In a letter to the Board, Pan American stated that it would rely on its answer to Eastern's application as its response to TCA's pleadings.

[10] We will grant Pan American's motion to the extent that it requests a certificate amendment proceeding.

[11] Pan American also filed a certificate amendment application, requesting Mainland-Ponce authority, in Docket 22182.

[12] The Southwestern International Airport will be located between Ponce and Mayaguez.

[13] Eastern and Pan American are authorized to provide service between San Juan and Boston-New York/Newark-Philadelphia-Washington/Baltimore and Miami. Trans Caribbean offers nonstop service to San Juan from New York/Newark-Washington. Caribair is authorized to operate one-stop service to San Juan from Miami.

[14] Air carrier operations at San Juan increased by 51 percent during 1969, as compared with 1968.

connect at San Juan. Moreover, it is estimated that direct New York-Ponce service alone would convenience from 100,000 to 300,000 passengers per year. In these circumstances, we believe that an investigation into the need for Mainland-Ponce service is appropriate.

In order to limit the scope of the investigation, any award made in the investigation instituted herein will be limited to service between existing mainland gateways and Ponce.[15]

Accordingly, it is ordered:

1. That the applications of Eastern Airlines, Inc., Docket 22135, and Trans Caribbean Airways, Inc., Docket 22189, be and they hereby are denied;

2. That the motion of Trans Caribbean Airways, Inc., Docket 22188, be and it hereby is denied;

3. That the motion of Pan American World Airways, Inc., to the extent that the carrier seeks a certificate amendment proceeding, be and it hereby is granted;

4. That an investigation designated Mainland-Ponce Service Investigation, be and it hereby is instituted in Docket 22508, pursuant to sections 204(a) and 401(g) of the Federal Aviation Act of 1958, as amended, to determine whether the public convenience and necessity require, and the Board should order the alteration, amendment, or modification of the certificates of public convenience and necessity of Eastern, Pan American, Trans Caribbean, and Caribbean-Atlantic by extending segments 1 and 2 of Eastern's route 108 beyond San Juan to Ponce; by extending segment 2 of Caribbean-Atlantic's route 59 beyond San Juan to Ponce; by extending segment 1 of Trans Caribbean's route 137 beyond San Juan to Ponce; and by extending segments IA1, IA2(a) and IB1 of Pan American's route 136 beyond San Juan to Ponce;

5. That the following applications, to the extent that they fall within the scope of the proceeding as hereinbefore delineated, are hereby consolidated with the above investigation: Pan American World Airways, Inc., Docket 22182; and Trans Caribbean Airways, Inc., Docket 22188;

6. That motions to consolidate, applications, and motions or petitions seeking modification or reconsideration of this order shall be filed no later than 20 days after the service date of this order and answers to such pleadings shall be filed no later than 20 days thereafter;

7. That this proceeding shall be set down for hearing before an examiner of the Board at a time and place hereafter designated; and

8. That a copy of this order shall be served upon the following cities: Boston, New York/Newark, Philadelphia, Washington/Baltimore, Miami, San Juan, and Ponce; and upon the following carriers: Caribbean-Atlantic Airlines, Inc., Eastern Air Lines, Inc., Pan American World Airways, Inc., and Trans Caribbean Airways, Inc.

[15] Existing mainland gateways include Boston, New York/Newark, Philadelphia, Washington/Baltimore, and Miami.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-11466; Filed, Aug. 28, 1970; 8:47 a.m.]

[Docket No. 22463]

KUONI TRAVEL, INC.

Notice of Prehearing Conference

Kuoni Travel, Inc. (U.S.) and Kuoni Travel, Ltd. (Switzerland), doing business as Kuoni Travel, Inc.

Application for a foreign air carrier permit so as to authorize inclusive tour and bulk inclusive tour operations.

Notice is hereby given that a prehearing conference on the above-entitled application is assigned for September 4, 1970, at 10 a.m., e.d.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Ross I. Newmann.

Dated at Washington, D.C., August 25, 1970.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 70-11464; Filed, Aug. 28, 1970; 8:47 a.m.]

[Dockets Nos. 22444, 22445]

LINEAS AEREAS DE NICARAGUA, S.A. (LANICA)

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on September 8, 1970, at 10 a.m., e.d.s.t., in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Hyman Goldberg.

Dated at Washington, D.C., August 25, 1970.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 70-11463; Filed, Aug. 28, 1970; 8:47 a.m.]

SMALL BUSINESS ADMINISTRATION

RUTGERS MINORITY INVESTMENT CO.

Notice of Issuance of Small Business Investment Company License

On August 1, 1970, a notice was published in the FEDERAL REGISTER (35 F.R. 12379) stating that Rutgers Minority Investment Co., 18 Washington Place, Newark, N.J. 07102, had filed an application with the Small Business Administration pursuant to the regulations governing small business investment companies (13 CFR Part 107, 33 F.R. 326) for a license to operate as a minority enterprise small business investment company (MESBIC).

Interested parties were given to the close of business August 8, 1970, to submit written comments to SBA. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA has issued License No. 02/02-5283 to Rutgers Minority Investment Co., pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

A. H. SINGER,
Associate Administrator for Investment.

AUGUST 11, 1970.

[F.R. Doc. 70-11451; Filed, Aug. 28, 1970; 8:46 a.m.]

[Delegation of Authority 30-C (Region X), Amdt. 1]

REGIONAL DIVISION CHIEFS ET AL.

Delegation of Authority To Conduct Program Activities in Region X

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30-C, 35 F.R. 2840, published in the FEDERAL REGISTER on February 11, 1970, Delegation of Authority No. 30-C (Region X) published in 35 F.R. 4574 on March 14, 1970, is hereby amended by adding Items IV.8. and 9., to read as follows:

IV. *Branch Manager — Fairbanks, Alaska.* * * *

8. To enter into blanket loan guarantee agreements with banks.

9. To take all necessary actions in connection with the administration, servicing, and collection of all loans, exclusive of liquidation and litigated matters, and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing.

a. The assignment, endorsement, transfer, and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator.

b. The execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing.

c. The approval of bank applications for use of liquidity privilege under the loan guaranty plan.

d. Except: (1) To compromise or sell any primary obligation or other evidence

of indebtedness owed to the Agency for a sum less than the total amount due thereon; and (2) to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement.

* * * * *

Effective date: February 9, 1970.

FORBES M. BRUCE,
Regional Director, Region X.

[F.R. Doc. 70-11452; Filed, Aug. 28, 1970; 8:46 a.m.]

TARIFF COMMISSION

UMBRELLAS AND METAL PARTS

Reports to the President

AUGUST 26, 1970.

The Tariff Commission today reported to the President the results of its investigation of umbrellas and metal parts thereof (TEA-I-17) conducted under section 301(b)(1) of the Trade Expansion Act of 1962 in response to a petition for an increase in import restrictions filed by the Umbrella Frame Association of America.

The Commission found (Commissioner Leonard dissenting) that umbrellas and metal parts thereof are not, as a result in major part of trade-agreement concessions, being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to the domestic industry producing like or directly competitive products.

A part of the material contained in the Commission's report to the President may not be made public since it includes information that would disclose the operations of individual firms. The Commission, therefore, is releasing to the public only those portions of the report that do not contain such information.

Copies of the public report (T.C. Pub. 334), which contains statements of the reasons for the Commissioners' findings, are available upon request as long as the limited supply lasts. Requests should be addressed to the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, D.C. 20436.

[SEAL] KENNETH R. MASON,
Secretary.

[F.R. Doc. 70-11449; Filed, Aug. 28, 1970; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 580]

MOTOR CARRIER TRANSFER PROCEEDINGS

AUGUST 26, 1970.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-72191. By order of August 21, 1970, the Motor Carrier Board approved the transfer to Awawego Delivery, Inc., Syracuse, N.Y., of the operating rights in certificate No. MC-119045 (Sub-No. 1) issued May 18, 1961, to Abbott Air Freight Co., Inc., Milford, Conn., authorizing the transportation of general commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between La Guardia and International Airports, New York, N.Y., and Newark Airport, Newark, N.J., on the one hand, and, on the other, points in Connecticut. William J. Meuser, 101 River Street, Milford, Conn. 06460, attorney for applicants.

No. MC-FC-72240. By order of August 20, 1970, the Motor Carrier Board approved the transfer to Pauline E. Richardson, doing business as Rich's South Shore Express, Hull, Mass., of the operating rights evidenced by the certificate of registration in No. MC-58407 (Sub-No. 2) issued September 14, 1965, to Edmund J. Rastellini, doing business as Eddie's Freight Service, Revere, Mass., involving the right to transport general commodities within the Commonwealth of Massachusetts, as specified in irregular route common carrier certificate No. 3462 dated April 8, 1964, issued by the Massachusetts Department of Public Utilities. Francis P. Barrett, 60 Adams Street, Milton, Mass. 02187, and Lawrence T. Sheils, 28 Hall Drive, Norwell, Mass. 02061, attorneys for applicants.

No. MC-FC-72280. By order of August 24, 1970, the Motor Carrier Board approved the transfer to Robert T. Adams, doing business as Checkerboard Vans, Tamaqua, Pa., of the operating rights in certificate No. MC-331 issued August 5, 1954, to Mary E. Purcell, doing business as Purcell Moving & Storage, Pottsville, Pa., authorizing the transportation of household goods between points in Schuylkill County, Pa., on the one hand, and, on the other, points in New York and New Jersey. James R. Bowe, 129 West Broad Street, Tamaqua, Pa. 18252, attorney for applicants.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[F.R. Doc. 70-11454; Filed, Aug. 28, 1970; 8:46 a.m.]

[S.O. 944; ICC Order 43, Amdt. 2]

FRANKFORT AND CINCINNATI RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of ICC Order No. 43 (Frankfort and Cincinnati Railroad Co.) and good cause appearing therefor:

It is ordered, That:

ICC Order No. 43 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) Expiration date: This order shall expire at 11:59 p.m., October 31, 1970, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., August 31, 1970, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 25, 1970.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[F.R. Doc. 70-11455; Filed, Aug. 28, 1970; 8:46 a.m.]

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