FEDERAL REGISTER

VOLUME 35 • NUMBER 188

Saturday, September 26, 1970 • Washington, D.C.

Pages 14973–15040

Agencies in this issue—

Detailed list of Contents appears inside.

FEDERAL REGISTER

Area Code 202 Phone 962-8626

Published daily, Tuesday through Saturday (no publication on Sundays, Mondays, or on the day after an official Federal holiday), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., Ch. 15), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $2.50 per month or $25 per year, payable in advance. The charge for individual copies is 20 cents for each issue, or 20 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended (44 U.S.C. 1510). The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER or the CODE OF FEDERAL REGULATIONS.

Contents

(Continued on next page)

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.

3 CFR

PROCLAMATION:

4005 14979

EXECUTIVE ORDERS:

5727 (revoked by PLO 4911) 14981

11561 14981

5 CFR

213 (2 documents) 14983

7 CFR

910 14983

987 (2 documents) 14984

1133 14985

PROPOSED RULES:

1001 14998

1002 14998

1004 14998

1006 14998

1007 14998

1011 14998

1012 14998

1013 14998

1015 14998

1030 14998

1032 14998

1033 14998

1036 14998

1040 14998

1043 14998

1044 14998

1046 14998

1049 14998

1050 14998

1060 14998

1061 14998

1062 14998

1063 14998

1064 14998

1065 14998

1068 14998

1069 14998

1070 14998

1071 14998

1073 14998

1075 14998

1076 14998

1078 14998

1079 14998

1090 14998

1094 14998

1096 14998

1097 14998

1098 14998

1099 14998

1101 14998

1102 14998

1103 14998

1104 14998

1106 14998

1108 14998

1120 14998

1121 14998

1124 14998

1125 14998

1126 14998

1127 14998

1128 14998

1129 14998

1130 14998

1131 14998

1132 14998

1133 14998

1134 (2 documents) 14998

1136 (2 documents) 14998, 15006

1137 14998

1138 14998

12 CFR

556 14983

13 CFR

124 14987

14 CFR

39 14985

71 14986

75 14986

PROPOSED RULES:

71 (2 documents) 15020, 15021

77 15021

139 15022

16 CFR

PROPOSED RULES:

501 14997

20 CFR

404 14986

21 CFR

141 14988

145 14989

149y 14989

26 CFR

PROPOSED RULES:

31 14992

48 14992

33 CFR

207 14987

36 CFR

PROPOSED RULES:

1 14995

12 14995

55 14995

41 CFR

1–8 14989

5–1 14990

43 CFR

PUBLIC LAND ORDER:

4911 14988

47 CFR

PROPOSED RULES:

73 14997

50 CFR

32 14990

33 14991

PROPOSED RULES:

25 14994

29 14994

31 14994

32 14994

33 14994

Presidential Documents

Title 3—THE PRESIDENT

Proclamation 4005

AMERICAN EDUCATION WEEK, 1970

By the President of the United States of America

A Proclamation

When Horace Mann gave up a fine legal practice and a promising position in the State legislature to take on the poorly paid and obscure role of Secretary of the State Board of Education in Massachusetts, many of his friends thought he had made a terrible mistake. But Mann explained his decision this way in a letter to his wife in 1837: "If I can be the means of ascertaining what is the best construction of [school] houses, what are the best books, what is the best mode of instruction; if I can discover by what appliance of means a non-thinking, non-reflecting, non-speaking child can most surely be trained into a noble citizen . . . if I can only obtain and diffuse throughout the state a few good ideas on these and similar subjects, may I not flatter myself that my ministry has not been wholly in vain?"

Horace Mann went on to become America's first great educational reformer. But the fundamental questions which he asked of his wife in 1837 are questions which great educators still ask in our day. How should we design and build our educational plants? How should we write our textbooks and other educational materials? What are the best modes of instruction? How can we best encourage a noble citizenry? These problems now demand answers that will be as appropriate in our time as Mann's answers were in his. And the nation waits again for men who will "obtain and diffuse throughout the state a few good ideas on these and similar subjects."

The theme of American Education Week this year is "Shape Schools for the Seventies." That theme puts our challenge well. For the decade we are now entering will surely be a time of immense change in almost every area of life and learning. If we are really going to "Shape Schools for the Seventies," then we must be ready to *reshape* them with greater imagination, greater boldness and greater energy than we have ever applied before. I have every confidence that the educators of America, working with parents, students and all Americans, are ready and able to meet this challenge.

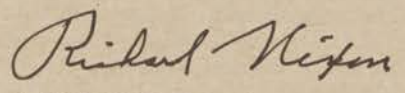
This work is particularly important at a time when impatience with old forms is straining our social fabric in ways which we have never before experienced. At such a time, some even despair at the possibility of reform and a few have forsaken reason and discussion as the means of achieving change. It is imperative that we vigorously repudiate the counsel of those who preach despair and division and destruction. But it is also imperative that we vindicate those who vigorously affirm the possibility of orderly reform and who proudly work toward its achievement.

We owe a great deal to the devoted educators of our country—those who served in the past and those who serve today. They have built an educational system which has been a great source of national strength and pride. As they have pursued excellence and equality in education, they have fostered excellence and equality in every area of American life. They also represent a resource of incalculable value for the future. Because of them we can say with the German philosopher Leibnitz: "I have hope that society may be reformed when I see how much education may be reformed."

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby designate the period of October 25 through October 31, 1970, as American Education Week.

I urge my countrymen to engage during this week in earnest discussion and serious reflection on the challenges and opportunities which confront the American educational system and on the ways in which our society can best respond to them.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September, in the year of our Lord nineteen hundred seventy and of the Independence of the United States of America the one hundred ninety-fifth.



[F.R. Doc. 70-12974; Filed, Sept. 25, 1970; 9:16 a.m.]

Executive Order 11561

DELEGATION OF CERTAIN AUTHORITY UNDER TITLE VIII OF THE ECONOMIC OPPORTUNITY ACT

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, the authority conferred upon the President by that portion of section 833(c)(2) of the Economic Opportunity Act of 1964 (42 U.S.C. 2994b (c)(2)) which reads "except as otherwise determined by the President" is hereby delegated as follows: (1) To the Civil Service Commission to the extent that such authority is with respect to the laws administered by the Commission, and (2) to the Secretary of State to the extent that such authority is with respect to the Foreign Service Act of 1946, as amended.

Richard Nixon

THE WHITE HOUSE,
September 25, 1970.

[F.R. Doc. 70-13008; Filed, Sept. 25, 1970; 11:10 a.m.]

Rules and Regulations

Title 12—BANKS AND BANKING

Chapter V—Federal Home Loan Bank Board

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[No. 70-253]

PART 556—STATEMENTS OF POLICY

Branch Office Applications

SEPTEMBER 23, 1970.

Resolved that the Federal Home Loan Bank Board, upon the basis of its consideration of the advisability of revising a portion of its Statement of Policy relating to the processing of applications for branch offices by Federal savings and loan associations for the purpose of providing for the dispensation of certain eligibility requirements in certain cases of competitive hardship, hereby amends § 556.5 of the rules and regulations for the Federal Savings and Loan System (12 CFR 556.5) by revising subparagraph (4) of paragraph (b) thereof to read as follows:

§ 556.5 **Establishment of Federal savings and loan associations and branch office and mobile facilities of such associations.**

* * * * *

(b) *Policy on approval of branch office and mobile facilities.* * * *

(4) As a general policy under § 545.14 (b) of this chapter, the Board will not consider or process any application by a Federal association for permission to establish a branch office unless the applicant association meets all of the eligibility requirements contained in subparagraphs (1) through (6) of § 545.14 (b) of this chapter. However, under the proviso to paragraph (b) of § 545.14 of this chapter, the Board may, in its discretion, permit the consideration and processing of particular branch applications even if the applicant association fails to meet the eligibility requirements contained in subparagraphs (2) and (4) of § 545.14(b) of this chapter.

(i) It is the intention of the Board to permit this special treatment in connection with applications for branches to serve low-income, inner-city areas which are inadequately served by existing savings and loan facilities. Applicant associations wishing such special treatment with respect to a particular application must furnish the Supervisory Agent with detailed information demonstrating that the application (or a prior branch application, if it is still pending or if less than 12 months have expired from the date of publication of notice thereof and the branch is not yet opened) is for a branch office (*a*) to be located within an area characterized by substandard family incomes, chronically high unemployment, a high percentage of welfare recipients, and substandard housing, and (*b*) to fulfill the objective of facilitating the granting of loans in such area, particulary for construction or rehabilitation of housing, stimulating thrift and providing financial guidance among low-income residents of such area, and providing opportunities for employment or job training for residents of such area. If the Supervisory Agent is satisfied that the above criteria for special treatment of the application have been met, he may determine that the association is eligible under § 545.14(g) of this chapter, and the application may be processed as provided therein.

(ii) In addition to permitting special treatment under the proviso to paragraph (b) of § 545.14 of this chapter for applications for branches to serve certain low-income, inner-city areas, the Board may permit the consideration and processing of branch office applications for all Federal associations serving particular geographical areas, e.g., State, county, or city, upon recommendation by the Supervisory Agent that the eligibility requirements of subparagraphs (2) and (4) of § 545.14(b) of this chapter could cause a competitive hardship on such associations. In the event of such a recommendation by a Supervisory Agent in which the Board concurs, a branch office application from any such Federal association may be filed not less than 4 months after publication of notice of the immediately preceding branch office application of such association.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorganization Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, Jr.,
Assistant Secretary.

[F.R. Doc. 70-12887; Filed, Sept. 25, 1970; 8:50 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

General Services Administration

Section 213.3337 is amended to show that the position of Executive Assistant to the Administrator is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (12) is added to paragraph (a) of § 213.3337 as set out below.

§ 213.3337 **General Services Administration.**

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

(12) Executive Assistant to the Administrator.

* * * * *

(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. 70-12868; Filed, Sept. 25, 1970; 8:48 a.m.]

PART 213—EXCEPTED SERVICE

Department of Transportation

Section 213.3394 is amended to show that one position of General Counsel, Federal Aviation Administration is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (7) is added to paragraph (h) of § 213.3394 as set out below.

§ 213.3394 **Department of Transportation.**

* * * * *

(h) *Federal Aviation Administration.* * * *

(7) General Counsel.

(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. 70-12921; Filed, Sept. 25, 1970; 8:50 a.m.]

Title 7—AGRICULTURE

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

[Lemon Reg. 446]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.746 **Lemon Regulation 446.**

(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 September 22, 1970.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period September 27, 1970, through October 3, 1970, are hereby fixed as follows:

(i) District 1: unlimited movement;

(ii) District 2: 125,000 cartons;

(iii) District 3: 54,502 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: September 23, 1970.

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

[F.R. Doc. 70–12880; Filed, Sept. 25, 1970; 8:49 a.m.]

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN A DESIGNATED AREA OF CALIFORNIA

Containers

Notice was published in the September 4, 1970, issue of the FEDERAL REGISTER (35 F.R. 14087) regarding proposals, based on the unanimous recommendation of the Date Administrative Committee, to amend § 987.501 of Subpart — Container Regulation and § 987.155(a) (1) of Subpart — Administrative Rules and Regulations. The subparts are operative pursuant to the marketing agreement, as amended, and Order No. 987, as amended (7 CFR Part 987), regulating the handling of domestic dates produced or packed in a designated area of 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 was submitted within the prescribed time.

Section 987.501 prescribes several net weight contents for certain plastic containers which handlers must observe when they package or handle whole or pitted dates in such containers for disposition as free dates. The amendment of § 987.501 would add net weight contents of 8 ounces for whole dates, and 1 pound for pitted dates.

Section 987.155(a) (1) (ii) specifies for restricted dates and marketable dates eligible as restricted dates, several net weight contents for certain containers, regardless of the material from which made, in which handlers may pack such dates for export to countries other than Canada and Mexico. The amendment of § 987.155(a) (1) would terminate the export container requirements specified in subdivision (ii) as the most practical way to permit handlers to pack restricted dates and marketable dates eligible as restricted dates to meet the different net weight preferences of individual countries.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Committee, and other available information, it is found that the authorization for additional net weight contents for certain plastic containers, and the termination of the export container requirements to permit handlers to pack to meet the different net weight preferences of individual countries, as hereinafter set forth, will tend to effectuate the declared policy of the act.

Therefore, Subpart — Container Regulation (7 CFR 987.501) and Subpart — Administrative Rules and Regulations (7 CFR 987.100—987.174) are amended as follows:

1. Section 987.155(a) (1) of Subpart—Administrative Rules and Regulations is amended by deleting therefrom subdivision (ii).

2. Section 987.501 of Subpart—Container Regulation is amended by revising the first sentence thereof to read as follows: "No handler shall package or handle any whole or pitted Deglet Noor, Zahidi, Halawy, or Khadrawy varieties of dates in plastic containers, other than bags and master shipping containers, unless the net weight content of the dates in the container is: (a) For whole dates, either 8 ounces, 12 ounces, 1 pound 8 ounces, or more than 2 pounds; and (b) for pitted dates, either 10 ounces, 1 pound, 1 pound 8 ounces, or more than 2 pounds."

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 (U.S.C. 553) in that: (1) This action relieves current restrictions on handlers; (2) handlers are aware of the Committee's unanimous recommendation and need no time for preparation to use the additional containers; and (3) postponing the effective time of this action beyond the date of publication in the FEDERAL REGISTER would serve no useful purpose.

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

Dated September 22, 1970, to become effective upon publication in the FEDERAL REGISTER.

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

[F.R. Doc. 70–12836; Filed, Sept. 25, 1970; 8:46 a.m.]

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN A DESIGNATED AREA OF CALIFORNIA

Establishment of Free and Restricted Percentages and Withholding Factors for 1970–71 Crop Year

Notice was published in the September 10, 1970, issue of the FEDERAL REGISTER (35 F.R. 14266) regarding a proposal to establish, for the 1970–71 crop year, free and restricted percentages and withholding factors applicable to specified varieties of domestic dates. The crop year began August 1, 1970. The establishment of such percentages and withholding factors is pursuant to the relevant provisions of the marketing agreement, as amended, and Order No. 987, as amended (7 CFR Part 987). The amended marketing agreement and order regulate the handling of domestic dates produced or packed in a designated area of California, and are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was unanimously recommended by the Date Administrative Committee.

The notice afforded interested persons opportunity to submit written data, views, or arguments on 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 committee, and other available information, it is found that to establish free percentages, restricted percentages, and withholding factors, as hereinafter set forth, will tend to effectuate the declared policy of the act.

Therefore, the free percentages, restricted percentages, and withholding factors, for the 1970–71 crop year, applicable to marketable dates are, pursuant to §§ 987.44 and 987.45, established as follows:

§ 987.218 Free and restricted percentages, and withholding factors.[1]

The various free percentages, restricted percentages, and withholding factors applicable to marketable dates of each variety shall be, for the crop year beginning August 1, 1970, and ending July 31, 1971, as follows: (a) Deglet Noor variety dates: Free percentage, 73 percent; restricted percentage, 27 percent; and withholding factor, 37 percent; (b) Zahidi variety dates: Free percentage, 80 percent; restricted percentage, 20 percent; and withholding factor, 25 percent; (c) Halawy variety dates: Free percentage, 100 percent; restricted percentage, 0 percent; withholding factor, 0 percent; (d) Khadrawy variety dates: Free percentage, 100 percent; restricted percentage, 0 percent; withholding factor, 0 percent.

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 (a) free and restricted percentages and withholding factors established for a particular crop year shall be applicable during the entire crop year to all marketable dates, and (b) the withholding obligations based on the continued regulations from the preceding crop year shall be adjusted to the newly established percentages upon their establishment; and (2) the percentages and withholding factors established herein for the current 1970–71 crop year (which began August 1, 1970), will apply, and adjustment thereto of handlers' withholding obligations are required, automatically, with respect to all such dates.

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

[1] The Date Administrative Committee included no countries other than the United States and Canada in trade demand.

Dated: September 22, 1970.

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

[F.R. Doc. 70–12881; Filed, Sept. 25, 1970; 8:49 a.m.]

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

[Milk Order 133]

PART 1133—MILK IN THE INLAND EMPIRE MARKETING AREA

Order Suspending Certain Provisions

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Inland Empire marketing area.

It is hereby found and determined that for 1970 the following provision in § 1133.12(c)(5) no longer tends to effectuate the declared policy of the Act: "Producers eligible for diversion in the months of September, October, or November must in addition have their milk received at a pool plant on at least 6 days (3 days in the case of every-other-day delivery) during the current month."

This suspension removes the requirement that a producer must deliver any milk to a pool plant in September, October, or November 1970 to qualify his diverted milk as producer milk during such month.

A cooperative representing a substantial number of producers on the market requested the suspension. Because of current conditions in the market the cooperative is required to handle a disproportionate share of an increasing quantity of the reserve supplies of milk for the market. Without the proposed suspension, the cooperative would be forced to make uneconomic movements of producer milk to qualify it for pooling.

Producer associations representing about two-thirds of the producers and a handler on the market expressed support for the proposed suspension.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(b) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Interested parties were afforded opportunity to file written data, views or arguments concerning this suspension (35 F.R. 14220). There was no substantial opposition to the proposed suspension.

Therefore, good cause exists for making this order effective September 1, 1970.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for September, October and November 1970.

(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 September 23, 1970.

RICHARD E. LYNG,
Assistant Secretary.

[F.R. Doc. 70–12883; Filed, Sept. 25, 1970; 8:50 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 10354; Amdt. 39–1083]

PART 39—AIRWORTHINESS DIRECTIVES

Morane Saulnier Models MS.880B, MS.885, and MS.894A Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspection of the airspeed indicator cover glass to ensure proper alignment and cross marking of the glass and instrument to permanently indicate the proper alignment position of the glass on Morane Saulnier Models MS.880B, MS.885, and MS.894A airplanes was published in the FEDERAL REGISTER, 35 F.R. 9859.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

MORANE SAULNIER. Applies to Models MS.880B, MS.885, and MS.894A airplanes.

To maintain correct alignment of the airspeed limit markings on the cover glass of the airspeed indicator with the face of the dial, within the next 50 hours' time in service after the effective date of this AD, unless already accomplished, align the cover glass and mark its correct position in accordance with Socata Service Bulletin No. 73 dated March 1970, or later SGAC-approved issue or an FAA-approved equivalent.

This amendment becomes effective October 26, 1970.

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

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

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

[F.R. Doc. 70-12847; Filed, Sept. 25, 1970; 8:46 a.m.]

[Airspace Docket No. 70-AL-2]

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

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Jet Route and Federal Airway Segment and Designation of Jet Route and Federal Airways

On May 9, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 7305) stating that the Federal Aviation Administration was considering amendments to Parts 71 and 75 of the Federal Aviation Regulations that would realign and designate jet routes and VOR Federal airway segments in the vicinity of King Salmon, Alaska, and Anchorage, Alaska.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable. Subsequent to the issuance of the notice, it was determined that realignment of V-456/J-115 via the King Salmon 053° and Kenai, Alaska, 239° radials rather than direct between King Salmon and Kenai as proposed in the notice would provide 15° separation between V-456/J-115 and V-436. This alignment would provide more efficient air traffic control service during periods of nonradar control. Radar service from King Salmon is provided on a part-time basis.

In consideration of the foregoing, Parts 71 and 75 of the Federal Aviation Regulations are amended, effective 0901 G.m.t., December 10, 1970, as hereinafter set forth.

1. Section 71.125 (35 F.R. 2040) is amended as follows:

a. V-427 is added as follows:

V-427 From King Salmon, Alaska, 042° 103 miles, 19 miles 135 MSL; INT King Salmon 042° and Anchorage, Alaska, 246° radials; 42 miles 135 MSL, 15 miles 120 MSL, 15 miles 95 MSL, to Anchorage.

b. In V-456 all between the phrases "King Salmon, Alaska," and "Anchorage, Alaska;" is deleted and the phrase "053° 93 miles, 9 miles 125 MSL; INT King Salmon 053° and Kenai, Alaska, 239° radials, 46 miles 125 MSL, 10 miles 115 MSL, Kenai;" is substituted therefor.

c. V-462 is added as follows:

V-462 From Dillingham, Alaska, 35 miles, 45 MSL, 42 miles 100 MSL, 85 miles 135 MSL, 15 miles 120 MSL, 15 miles 105 MSL, to Anchorage, Alaska.

2. Section 75.100 (35 F.R. 2359, 2583, 5007, 5465, 10655) is amended as follows:

a. In Jet Route No. 115 all between the phrases "King Salmon, Alaska;" and "Fairbanks, Alaska;" is deleted and the phrase "INT King Salmon 053° and Kenai, Alaska, 239° radials; Kenai; Anchorage, Alaska;" is substituted therefor.

b. Jet Route No. 127 is added as follows:

Jet Route No. 127 (King Salmon, Alaska, to Anchorage, Alaska). From King Salmon, Alaska, via INT King Salmon 042° and Anchorage, Alaska, 246° radials to Anchorage.

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

Issued in Washington, D.C., on September 17, 1970.

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

[F.R. Doc. 70-12843; Filed, Sept. 25, 1970; 8:46 a.m.]

Title 20—EMPLOYEES' BENEFITS

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

[Regs. No. 4, further amended]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950- - - -)

Subpart D—Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

BENEFIT RATES

Regulations No. 4 of the Social Security Administration, as amended (20 CFR 404.1 et seq.), are further amended as follows:

1. Section 404.305 is revised to read as follows:

§ 404.305 Old-age insurance benefits; rate of benefit.

The amount of the old-age insurance benefit to which an individual is entitled for any month is, except as provided in § 404.113a, equal to his primary insurance amount (see section 215(a) of the Act) for such month, subject to reduction under section 202(q) of the Act.

2. Section 404.315 is revised to read as follows:

§ 404.315 Wife's insurance benefits; rate of benefit.

The amount of a wife's insurance benefit for any month is equal to one-half of the husband's (or former husband's) primary insurance amount except as provided in § 404.113a(b). (For months after January 1968 and before January 1970, a wife's insurance benefit for any such month is equal to one-half of the husband's (or former husband's) primary insurance amount or $105, whichever is the smaller amount.) However, such wife's insurance benefit may be reduced by a specified percentage, as provided in section 202(q) of the Act.

3. Section 404.318 is revised to read as follows:

§ 404.318 Husband's insurance benefits; rate of benefit.

The amount of the husband's insurance benefit for any month is equal to one-half of his wife's primary insurance amount. (For months after January 1968 and before January 1970, a husband's insurance benefit for any such month is equal to one-half of the wife's primary insurance amount or $105, whichever is the smaller amount.) However, such husband's insurance benefit may be reduced by a specified percentage, as provided in section 202(q) of the Act.

4. Paragraph (c) of § 404.330 is revised to read as follows:

§ 404.330 Widow's insurance benefits; rate of benefit.

* * * * *

(c) *Benefit rate after remarriage.* If after attaining age 60, a widow marries a man who is not entitled to widower's, parent's, or child's (after attainment of age 18) insurance benefits, the widow's insurance benefit is equal to one-half of the primary insurance amount of the deceased individual on whose earnings record her benefit is based. For benefits for months after January 1968 and before January 1970, such benefit is equal to one-half of the primary insurance amount of such deceased individual or $105, whichever is the smaller amount. This paragraph is applicable to benefits for months after August 1965, but in the case of an individual who was not entitled to a widow's insurance benefit for August 1965, only on the basis of an application filed after June 1965.

5. Paragraph (c) of § 404.333 is revised to read as follows:

§ 404.333 Widower's insurance benefits; rate of benefit.

* * * * *

(c) *Remarriage after age 62.* If a widower, after attainment of age 62, marries a woman not entitled to wife's, widow's, mother's, or parent's insurance benefits or child's (after attainment of age 18) insurance benefits the amount of the widower's insurance benefit for any month beginning with the month in which such marriage occurs and for each month thereafter through the month prior to the month the marriage is terminated, is equal to one-half of the primary insurance amount of the deceased wife upon whose earnings record the widower's insurance benefit is based. For benefits for months after January 1968 and before January 1970, such benefit is equal to one-half of the primary insurance amount of such deceased individual or $105, whichever is the smaller amount. (This paragraph is applicable to benefits for months after August 1965, but in the case of an individual who was not entitled to a widower's insurance benefit for August 1965 only on the basis of an application filed after June 1965.)

6. Section 404.352 is revised to read as follows:

§ 404.352 Minimum monthly survivor's insurance benefit amount.

When only one individual is entitled to a survivor's insurance benefit for any month, the amount of such monthly survivor's insurance benefit, before any reduction under § 404.353 or section 202(q) of the Act, shall be not less than:

(a) $64 for months after December 1969;

(b) $55 for months after January 1968 and before January 1970;

(c) $44 for months after December 1964 and before February 1968;

(d) $40 for months after July 1961 and before January 1965.

7. Section 404.376 is revised to read as follows:

§ 404.376 Special payments at age 72; amount of payment.

(a) *General.* The amount of the special payment to which an individual is entitled under the provisions of section 228 of the Act for any month (except as provided in paragraph (b) of this section) shall be as follows:

(1) $46 for months after December 1969;

(2) $40 for months after January 1968 and before January 1970;

(3) $35 for months after September 1966 and before February 1968.

(b) *Husband and wife entitled.* If both husband and wife are simultaneously entitled (or upon application would be entitled) to special payments as provided under section 228 of the Act for any month, the amount of the special payment shall be as follows:

(1) For months after December 1969, (i) $46 for the husband and (ii) $23 for the wife;

(2) For months after January 1968 and before January 1970, (i) $40 for the husband, and (ii) $20 for the wife;

(3) For months after September 1966 and before February 1968, (i) $35 for the husband, and (ii) $17.50 for the wife.

For purposes of this paragraph, the determination of whether an individual has the relationship of husband or wife to another individual is made in accordance with the provisions of § 404.1101 without regard to the provisions of § 404.1103 or § 404.1106.

(Secs. 202, 215, 228, 1102, 49 Stat. 623, as amended, 64 Stat. 506, as amended, 80 Stat. 67, as amended, 49 Stat. 647, as amended, section 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 402, 415, 428, 1302)

8. *Effective date.* The foregoing regulations shall become effective upon publication in the FEDERAL REGISTER.

Dated: September 8, 1970.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: September 18, 1970.

ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

[F.R. Doc. 70-12837; Filed, Sept. 25, 1970; 8:46 a.m.]

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

[Amdt. 3]

PART 124—PROCUREMENT AND TECHNICAL ASSISTANCE

Certificates of Competency

Part 124 of Title of 13 of the Code of Federal Regulations is hereby amended by revising §§ 124.8-15 and 124.8-16 thereof. As amended, §§ 124.8-15 and 124.8-16 read as follows:

§ 124.8-15 Definition.

A Certificate of Competency (COC) is a written instrument issued by SBA to a Government contracting officer, certifying that a small concern or group of such concerns named therein possesses the capacity and credit to perform a specific Government procurement (or sale) contract.

§ 124.8-16 Issuance.

(a) Government contracting officers, upon determining that a small business qualifies for award in all respects other than capacity or credit to perform the contract, notifies SBA of such determination. Award is withheld by the contracting officer for a period up to 15 working days following the date of receipt by SBA of notice of such determination (with appropriate documentation) in order to permit SBA to investigate and certify as to the bidder's capacity and credit.

(b) Upon receipt of this notification, SBA personnel then contact the company concerned to inform it of the impending decision, and to offer an opportunity to apply to SBA for a COC. A concern wishing to apply to SBA for a COC is furnished a Form 74 which is filed with the SBA regional office for the geographic area within which he is located. Upon timely receipt of a COC application, a team of financial and technical personnel is sent to the firm to investigate the competency, as to capacity and credit, of the applicant to perform the proposed contract and make recommendations to the Regional Director.

(c) If the Regional Director's decision is negative, the COC is denied and both the firm and procuring activity are notified. If the Regional Director's decision is affirmative and the procurement is less than $250,000, the Regional Director issues a COC. For procurements in excess of $250,000, if the Regional Director recommends issuance of the Certificate, the Associate Administrator for Procurement and Management Assistance causes a review to be made and either issues or denies the Certificate. If the Associate Administrator's decision is negative, the firm and procuring activity are so informed; if affirmative, a letter, certifying the competency of the firm as to capacity and credit to perform the contract (the Certificate of Competency) is sent to the procuring activity and the applicant informed of such issuance by the regional office. By the terms of the Small Business Act, the COC is conclusive on questions of capacity and credit. Contracting officers are authorized to award a contract without requiring the firm to meet any other requirement with respect to capacity and credit.

(d) The notification to an unsuccessful applicant will state the reasons for denial and inform the applicant that he may request a meeting with the appropriate SBA regional personnel to discuss the reasons for denial. Upon receipt of a request for such a meeting, the appropriate regional personnel will confer with the applicant and explain fully the reason for SBA's action. However, such conference will be for the sole purpose of enabling the applicant to improve or correct its capacity or credit and will not constitute a basis for reopening the case in which the Certificate was denied.

(e) After a COC is awarded and the contract is let to the applicant, SBA keeps a close watch on the progress. Monthly checks are made by SBA field personnel who report directly to the Central Office on the status of the contract. In this way SBA assistance is constantly available to the contractor.

(f) A manufacturing, construction, or service concern shall not be eligible for a COC unless it performs a significant portion of the contract, measured in dollar value, with its own facilities and personnel on its own payroll.

(g) A nonmanufacturing concern which submits bids or offers in its own name shall not be eligible for a COC unless the end items to be furnished under the contract will be manufactured by a small business concern in the United States.

This amendment is effective upon publication in the FEDERAL REGISTER.

Dated: September 14, 1970.

HILARY SANDOVAL, Jr.,
Administrator.

[F.R. Doc. 70-12853; Filed, Sept. 25, 1970; 8:47 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 207—NAVIGATION REGULATIONS

Willamette and Yamhill Rivers, Oreg.

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 207.680 governing the use, administration, and navigation of canal and locks at Willamette Falls, Oreg., is hereby amended with respect to the last sentence of paragraph (b)(7) changing the address of the District Engineer, and § 207.690 governing the use, administration, and navigation of Yamhill Lock, Yamhill River, Oreg., is hereby revoked, effective upon publication in the FEDERAL REGISTER, as follows:

§ 207.680 Willamette River, Oreg.; use, administration, and navigation of canal and locks at Willamette Falls, Oreg.

* * * * *

(b) *Use and navigation.* * * *

(7) *Use of canal and locks.* * * * Copies may be obtained without charge from the lock master or from the District Engineer, Corps of Engineers, Department of the Army, 2850 SE. 82d Avenue, Post Office Box 2946, Portland, Oreg. 97208.

* * * * *

§ 207.690 Yamhill Lock, Yamhill River, Oreg.; use, administration, and navigation. [Revoked]

[Regs., Sept. 8, 1970, 1522-01 (Willamette & Yamhill Rivers, Oreg.)—ENGCW-ON]

(Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

For the Adjutant General.

RICHARD B. BELNAP,
Special Advisor to TAG.

[F.R. Doc. 70-12850; Filed, Sept. 25, 1970; 8:47 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4911]

[Utah 0149180]

UTAH

Revocation of Executive Order No. 5727 of September 29, 1931; Withdrawal for Wildlife Management

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

1. Executive Order No. 5727 of September 29, 1931, reserving the following described lands for and creating the Locomotive Springs Migratory Bird Refuge, is hereby revoked:

SALT LAKE MERIDIAN

T. 11 N., R. 10 W.,
Sec. 4, lots 1 to 5, inclusive, SE¼NE¼, E½ SE¼;
Sec. 10, lots 1 and 2, SW¼NW¼.
T. 12 N., R. 10 W.,
Sec. 34.

The areas described aggregate 1,031 acres in Box Elder County.

2. Simultaneously with the revocation of Executive Order No. 5727, and subject to valid existing rights, the lands described in paragraph 1, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., ch. 2), but not from leasing under the mineral leasing laws, and reserved for management in cooperation with the State of Utah in connection with an existing State waterfowl management area.

3. Upon the execution of a cooperative agreement with the Secretary of the Interior, or his delegate, the State of Utah is authorized to manage the withdrawn lands for the conservation of small game and waterfowl and as a public hunting ground, consistent with Federal programs for the management of the lands.

4. The withdrawal made by this order does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral and vegetative resources other than under the mining laws. However, leases, licenses, contracts or permits will be issued only if the proposed use of the lands will not interfere with the management of the lands for wildlife purposes.

HARRISON LOESCH,
Assistant Secretary of the Interior.

SEPTEMBER 22, 1970.

[F.R. Doc. 70-12842; Filed, Sept. 25, 1970; 8:46 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER C—DRUGS

CARBENICILLIN

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), Parts 141 and 145 are amended and Part 149y is established as follows to provide for certification of the antibiotic drug carbenicillin:

PART 141—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. Section 141.5(b) is amended by alphabetically inserting a new item in the table, as follows:

§ 141.5 Safety test.

* * * * * * *

(b) * * *

Antibiotic drug	Test dose: Diluent (diluent number as listed in sec. 141.3)	Test dose: Concentration in units or milligrams of activity per milliliter	Test dose: Volume in milliliters to be administered to each mouse	Route of administration as described in paragraph (c) of this section
* * *	* * *	* * *	* * *	* * *
Disodium carbenicillin	3	40 mg.	0.5	Do.
* * *	* * *	* * *	* * *	* * *

2. Section 141.104 is amended by alphabetically inserting a new item in paragraph (b), as follows:

§ 141.104 Test organisms.

* * * * * * *

(b) * * *

Test organisms	Method used	Medium used for the—: Slants	Medium used for the—: Roux bottles	Incubation period of Roux bottle	Suggested dilution factor	Suggested storage period of suspensions under refrigeration
Test organism W—*Pseudomonas pyocyanea* (ATCC 23389).	1	1	1	24 hours	1:25	2 weeks.

3. Section 141.110 is amended by alphabetically inserting new items in the tables in paragraphs (a) and (b), as follows:

§ 141.110 Microbiological agar diffusion assay.

* * * * * * *

(a) * * *

Antibiotic	Media to be used (as listed by medium number in § 141.103(b)): Base layer	Media to be used (as listed by medium number in § 141.103(b)): Seed layer	Milliliters of media to be used in the base and seed layers: Base layer	Milliliters of media to be used in the base and seed layers: Seed layer	Test organism	Suggested volume of standardized inoculum to be added to each 100 milliliters of seed agar	Incubation Temperature for the plates
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
Carbenicillin	9	10	21	4	W	[1] 0.5	37
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *

(b) * * *

Antibiotic	Working standard stock solutions: Drying conditions (method number as listed in § 141.501)	Initial solvent	Diluent (solution number as listed in § 141.102(a)	Final concentration units or milligrams per milliliter	Storage time under refrigeration	Standard response line concentrations: Diluent	Final concentrations, units or micrograms of antibiotic activity per milliliter
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
Carbenicillin	Not dried	1	1 mg	2 weeks		1	12.8, 16.0, 20.0, 25.0, 31.2 μg.
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *

PART 145—ANTIBIOTIC DRUGS; DEFINITIONS AND INTERPRETATIVE REGULATIONS

4. Section 145.3 is amended by adding a new subparagraph to paragraph (a) and another to paragraph (b), as follows:

§ 145.3 Definitions of master and working standards.

(a) * * *

(41) *Carbenicillin.* The term "carbenicillin master standard" means a specific lot of carbenicillin designated by the Commissioner as the standard of comparison in determining the potency of the carbenicillin working standard.

(b) * * *

(41) *Carbenicillin.* The term "carbenicillin working standard" means a specific lot of homogenous preparation of carbenicillin.

5. Section 145.4(b) is amended by adding a new subparagraph, as follows:

§ 145.4 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(44) *Carbenicillin.* The term "microgram" applied to carbenicillin means the carbenicillin activity (potency) contained in 1.135 micrograms of the carbenicillin master standard.

PART 149y—CARBENICILLIN

6. Title 21, Chapter I, is amended by adding new Part 149y containing, at this time, one section as follows:

§ 149y.1 Sterile disodium carbenicillin.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Disodium carbenicillin is the disodium salt of α-carboxybenzylpenicillin. It is so purified and dried that:

(i) It contains not less than 770 micrograms of carbenicillin per milligram on an anhydrous basis. If it is packaged for dispensing, its carbenicillin content is not less than 90 percent and not more than 120 percent of the number of milligrams of carbenicillin that it is represented to contain.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) It passes the safety test.

(v) Its moisture content is not more than 6 percent.

(vi) Its pH in an aqueous solution containing 10 milligrams of carbenicillin per milliliter (or if packaged for dispensing, after reconstitution as directed in the labeling) is not less than 6.0 and not more than 8.0.

(vii) It gives a positive identity test for disodium carbenicillin.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

(3) *Request for certification; samples.* In addition to the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, safety, moisture, pH, and identity.

(ii) Samples required:

(*a*) If the batch is packaged for repacking or for use in the manufacture of another drug:

(*1*) For all tests except sterility: 10 packages, each containing approximately 300 milligrams; and 5 packages, each containing approximately 1 gram.

(*2*) For sterility testing: 20 packages, each containing approximately 300 milligrams.

(*b*) If the batch is packaged for dispensing:

(*1*) For all tests except sterility: A minimum of 15 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 1.0 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a stock solution of convenient concentration; and also if it is packaged for dispensing, reconstitute as directed in the labeling. Then, using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single dose container; or if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. If it is a single dose container, use a separate needle and syringe for each container. Dilute with sufficient solution 1 to give a stock solution of convenient concentration. Further dilute the stock solution with solution 1 to the reference concentration of 20.0 micrograms of carbenicillin per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 141.2 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 141.4(b) of this chapter, using a solution containing 100 milligrams of carbenicillin per milliliter.

(4) *Safety.* Proceed as directed in § 141.5 of this chapter.

(5) *Moisture.* Proceed as directed in § 141.502 of this chapter.

(6) *pH.* Proceed as directed in § 141.503 of this chapter, using an aqueous solution containing 10 milligrams of carbenicillin per milliliter (or if packaged for dispensing, use a solution prepared as directed for reconstitution in the labeling).

(7) *Identity.* Proceed as directed in § 141.521 of this chapter, using a 0.5 percent potassium bromide disc prepared as directed in paragraph (b)(1) of that section.

Data supplied by the manufacturer concerning the subject antibiotic drugs have been evaluated. Since the conditions prerequisite to providing for certification of these drugs have been complied with and since not delaying in so providing is in the public interest, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: September 10, 1970.

SAM D. FINE,
Associate Commissioner for Compliance.

[F.R. Doc. 70-12774; Filed, Sept. 25, 1970; 8:45 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 1—Federal Procurement Regulations

PART 1-8—TERMINATION OF CONTRACTS

Contract Termination for Convenience of the Government

This amendment eliminates the formula for determining profit in settlement determinations heretofore included in fixed-price contract or subcontract

clauses which provide for termination for the convenience of the Government or its contractors. Results produced by the formula have not always been considered reasonable. Accordingly, an allowance for profit will henceforth be established on the basis of the criteria in § 1–8.303 which are designed to identify profits which are fair and reasonable under the circumstances.

Subpart 1–8.3—Additional Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience

Section 1–8.303(c) is deleted as follows:

§ 1–8.303 Allowance for profit.

* * * * *

(c) [Deleted]

Subpart 1–8.7—Clauses

1. Section 1–8.701 is amended by revising subdivision (e)(2)(iii) of the contract clause set forth in the section, as follows:

§ 1–8.701 Termination clause for fixed-price contracts.

* * * * *

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

* * * * *

(e) * * *
(2) * * *

(iii) A sum, as profit on (i), above, determined by the contracting officer pursuant to § 1–8.303 of the Federal Procurement Regulations (41 CFR 1–8.303), in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

* * * * *

2. Section 1–8.703 is amended by revising subdivision (e)(1)(iii) of the contract clause set forth in the section, as follows:

§ 1–8.703 Termination clause for fixed-price construction contracts.

* * * * *

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

* * * * *

(e) * * *
(1) * * *

(iii) A sum, as profit on (i), above, determined by the contracting officer pursuant to § 1–8.303 of the Federal Procurement Regulations (41 CFR 1–8.303), in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

* * * * *

3. Section 1–8.706 is amended by revising subdivision (e)(2)(iii) of the contract clause set forth in the section, as follows:

§ 1–8.706 Subcontract termination clause.

* * * * *

TERMINATION

* * * * *

(e) * * *
(2) * * *

(iii) A sum, as profit on (i), above, determined by the buyer pursuant to § 1–8.303 of the Federal Procurement Regulations (41 CFR 1–8.303), in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the seller would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

* * * * *

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

Effective date. This regulation is effective November 2, 1970, but may be observed earlier.

Dated: September 21, 1970.

ROBERT L. KUNZIG,
Administrator of General Services.

[F.R. Doc. 70–12832; Filed, Sept. 25, 1970; 8:45 a.m.]

Chapter 5—General Services Administration

PART 5–1—GENERAL

Coordination of Procurement Regulations Affecting Small Business and Location of Qualified Small Business Sources

This amendment provides that proposed agency regulations affecting small business shall be coordinated with the Small Business Administration (SBA), and it further provides that contracting officers shall seek the assistance of SBA procurement representatives in locating qualified small business sources.

The table of contents for Part 5–1 is amended by adding the following entry:

Sec.
5–1.109 Coordination of servicewide regulations concerning small business.

Subpart 5–1.1—Introduction

Section 5–1.109 is added as follows:

§ 5–1.109 Coordination of servicewide regulations concerning small business.

Proposed regulations to be issued by Heads of Services and Staff Offices of GSA and by authorized regional officials of GSA in designated chapters of GSPR which contain policies and procedures affecting the operation of the small business program shall be submitted to the Federal Procurement Regulations Staff (FL), Federal Supply Service, for coordination with the Small Business Administration prior to issuance.

Subpart 5–1.7—Small Business Concerns

Section 5–1.704–2 is amended by the revision of paragraphs (a) and (e) and the addition of paragraph (g), as follows:

§ 5–1.704–2 Program operations.

(a) Each procuring activity and each Business Service Center shall use its best efforts to identify commodities and services where a potential exists for increasing the small business share of contract awards. Business Service Centers and contracting offices shall cooperate in developing effective methods for identifying such categories. Whenever feasible and practicable, contracting officers shall regularly seek the assistance of SBA procurement representatives in locating qualified small business sources.

* * * * *

(e) Each Business Service Center shall keep all other Business Service Centers and the Business Services Staff, FSS, continuously informed on a timely basis as to the commodities and services identified under paragraph (a) of this § 5–1.704–2.

* * * * *

(g) Proposed regulations and procedures affected the operation of the small business program shall be coordinated with the Small Business Administration prior to issuance (see § 5–1.109).

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

Effective date. This amendment is effective September 21, 1970.

Dated: September 21, 1970.

ROBERT L. KUNZIG,
Administrator.

[F.R. Doc. 70–12831; Filed, Sept. 25, 1970; 8:45 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 32—HUNTING

Hagerman National Wildlife Refuge, Tex.

On page 13452 of the FEDERAL REGISTER of August 22, 1970, there was published a notice of a proposed amendment to 50 CFR 32.11 and 32.21. The purpose of this amendment is to provide public hunting of migratory game birds and upland game on certain areas of the National Wildlife Refuge System, as legislatively permitted.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections with respect to the proposed amendment. No comments, suggestions, or objections have been received. The proposed amendment is hereby adopted without change.

Since this amendment benefits the public by relieving existing restrictions on hunting of migratory game birds and upland game, it shall become effective upon publication in the FEDERAL REGISTER.

(Sec. 7, 80 Stat. 929, 16 U.S.C. 715i; sec. 4, 80 Stat. 927, 16 U.S.C. 668dd(c) (d))

1. Section 32.11 is amended by the following addition:

§ 32.11 List of open areas; migratory game birds.

* * * * *

TEXAS

Hagerman National Wildlife Refuge.

* * * * *

2. Section 32.21 is amended by the following addition:

§ 32.21 List of open areas; upland game.

* * * * *

TEXAS

Hagerman National Wildlife Refuge.

* * * * *

JOHN S. GOTTSCHALK,
Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 23, 1970.

[F.R. Doc. 70-12838; Filed, Sept. 25, 1970; 8:46 a.m.]

PART 33—SPORT FISHING

Crescent Lake and North Platte National Wildlife Refuges, Nebr.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEBRASKA

CRESCENT LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Crescent Lake National Wildlife Refuge, Nebr., is permitted on Crane and Island Lakes only on the areas designated by signs as open to fishing. These open areas comprising about 500 acres, are delineated on maps available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from January 1 through September 30, 1971, inclusive.

(2) Boats propelled with poles, oars, or paddles only may be used for fishing.

(3) No person shall use minnows, fish, or parts thereof, for bait, nor have in possession any minnows or seine or net for capturing minnows.

(4) Overnight camping is not permitted.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Part 33, and are effective through September 30, 1971.

NORTH PLATTE NATIONAL WILDLIFE REFUGE

Sport fishing on the North Platte National Wildlife Refuge, Nebr., is permitted only on the areas designated by signs as open to fishing. This open area, comprising 3,300 acres, is delineated on maps available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from January 15, through September 30, 1971, inclusive.

(2) Boats, motorboats, and other floating craft may be used.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Part 33, and are effective through September 30, 1971.

DON R. PERKUCHIN,
Refuge Manager.

SEPTEMBER 18, 1970.

[F.R. Doc. 70-12825; Filed, Sept. 25, 1970; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 31, 48]

EMPLOYMENT TAXES AND MANUFACTURERS AND RETAILERS EXCISE TAXES

Deposit of Certain Taxes and Filing of Certain Returns for Periods Beginning After December 31, 1970

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

In order to revise the rules for the deposit of certain employment and excise taxes and to revise the rules for the time for filing certain returns of employment taxes, the Employment Tax Regulations (26 CFR Part 31) and the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) are amended as follows:

I. Employment tax regulations (26 CFR Part 31):

PARAGRAPH 1. Paragraph (a)(1) of § 31.6071(a)-1 is amended to read as follows:

§ 31.6071(a)-1 Time for filing returns and other documents.

(a) *Federal Insurance Contributions Act and income tax withheld from wages*—(1) *Quarterly or annual returns.* Except as provided in subparagraph (4) of this paragraph each return required to be made under § 31.6011(a)-1, in respect of the taxes imposed by the Federal Insurance Contributions Act, or required to be made under § 31.6011(a)-4, in respect of income tax withheld, shall be filed on or before the last day of the first calendar month following the period for which it is made. However, a return for a period which ends before January 1, 1971, may be filed on or before the 10th day of the second calendar month following such period if timely deposits under section 6302(c) of the Code and the regulations thereunder have been made in full payment of such taxes due for the period. For the purpose of the preceding sentence, a deposit which is not required by such regulations in respect of the return period may be made on or before the last day of the first calendar month following the close of such period, and the timeliness of any deposit will be determined by the date the deposit is received (or is deemed received under section 7502(e)) by a Federal Reserve bank or by an authorized commercial bank, whichever is earlier.

* * * * *

PAR. 2. Paragraph (a) of § 31.6302(c)-1 is amended by revising subparagraph (1), by revising the heading and subdivisions (ii) and (iii) of subparagraph (2), and by revising subdivision (iii) of subparagraph (3). These revised provisions read as follows:

§ 31.6302(c)-1 Use of Government depositaries in connection with taxes under Federal Insurance Contributions Act and income tax withheld.

(a) *Requirement*—(1) *In general.* (i) In the case of a calendar quarter which begins after December 31, 1970—

(*a*) Except as provided in paragraph (b) of this section and hereinafter in this subdivision (i), if on the last payday of a calendar month other than the last month of the calendar quarter, the aggregate amount of taxes (as defined in subdivision (iii) of this subparagraph) with respect to wages paid during the calendar quarter exceeds by $200 or more the total amount of such taxes deposited by the employer for such quarter, the employer shall deposit the undeposited taxes in a Federal Reserve bank or authorized commercial bank (see subparagraph (3)(iii) of this paragraph) within 3 banking days after such payday. However, the preceding sentence shall not apply if the employer has previously made a deposit of taxes pursuant to (*b*) of this subdivision (i) with respect to a payday which occurred during such month;

(*b*) If on any payday the aggregate amount of undeposited taxes with respect to wages paid during the calendar quarter in which such payday occurs is $2,000 or more, the employer shall deposit the undeposited taxes in a Federal Reserve bank or authorized commercial bank within 3 banking days after such payday; and

(*c*) If on the last payday of a calendar quarter, the aggregate amount of undeposited taxes with respect to wages paid during the calendar quarter is $200 or more, the employer shall deposit the undeposited taxes in a Federal Reserve bank or authorized commercial bank within 3 banking days after such payday.

However, any deposit otherwise required by this subdivision to be made with respect to a calendar quarter by an employer less than 7 calendar days after the last date by which a deposit was previously required to have been made by such employer with respect to the same calendar quarter is not required to be made before the seventh calendar day after such date, provided the previous deposit was in fact made. For purposes of this subdivision (i), the term "payday" means the day on which the employer actually or constructively makes a payment of wages. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such case, the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition.

(ii) (*a*) In the case of a calendar quarter which begins before January 1, 1971, except as provided in paragraph (b) of this section and (*b*) of this subdivision (ii), if during any calendar month other than the last month of a calendar quarter, the aggregate amount of taxes (as defined in subdivision (iii) of this subparagraph) exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank or authorized commercial bank. Notwithstanding the provisions of this subdivision—

(*1*) Amounts required to be deposited for May 1966 may be deposited after June 15, 1966, but not later than June 20, 1966, if such amounts are combined with an amount required to be deposited under (*b*) of this subdivision (ii) for the first semimonthly period in June 1966, and

(*2*) Amounts required to be deposited under this subdivision (ii) for January 1967 may be deposited after February 15, 1967, but not later than February 20,

1967, if such amounts are combined with an amount required to be deposited under (*b*) of this subdivision (ii) for the first semimonthly period in February 1967.

(*b*) This subdivision (ii) (*b*) shall apply to taxes with respect to wages paid by an employer after January 31, 1967, and before January 1, 1971, if the aggregate of the taxes with respect to wages paid during any calendar month in the preceding calendar quarter exceeded $2,500 in the case of such employer. This subdivision (ii) (*b*) also applies to taxes with respect to wages paid by an employer during June 1966, during either of the last two calendar quarters in the calendar year 1966, or during January 1967, if the aggregate of the taxes with respect to wages paid during any calendar month in the preceding calendar quarter exceeded $4,000 in the case of such employer. An employer shall deposit taxes to which this subdivision (ii) (*b*) applies in a Federal Reserve bank or authorized commercial bank within 3 banking days after the close of the semimonthly period during which the wages to which such taxes relate are paid. For purposes of this subdivision (ii) (*b*), "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th of such month. An employer will be considered to have complied with the requirements of this subdivision (ii) (*b*) for a semimonthly period if—

(*1*) (*i*) His deposit for such semimonthly period is not less than 90 percent of the aggregate amount of the taxes for such period, and (*ii*) if such period occurs in a month other than the last month in a calendar quarter, he deposits any underpayment for such month within 3 banking days after the 15th day of the following month;

(2) (*i*) His deposit for each semimonthly period in the month is not less than 45 percent of the aggregate amount of the taxes for the month, and (*ii*) if such month is other than the last month in a calendar quarter, he deposits any underpayment for such month within 3 banking days after the 15th day of the following month; or

(3) (*i*) His deposit for each semimonthly period in the month is not less than 50 percent of the aggregate amount of the taxes for the preceding month, and (*ii*) if the current month is other than the last month in a calendar quarter, he deposits any underpayment for such month within 3 banking days after the 15th day of the following month.

Items (2) and (3) of this subdivision (ii) (*b*) shall not apply to any employer who normally pays in the first semimonthly period in each month more than 75 percent of the total wages paid during the month.

(iii) As used in subdivisions (i) and (ii) of this subparagraph, the term "taxes" means—

(*a*) The employee tax withheld under section 3102,

(*b*) The employer tax under section 3111, and

(*c*) The income tax withheld under section 3402,

exclusive of taxes with respect to wages for domestic service in a private home of the employer or, if paid before January 1, 1971, wages for agricultural labor.

(iv) If the aggregate amount of taxes reportable on a return (other than a return on Form 942) for a calendar quarter beginning after March 31, 1968, and before January 1, 1971, exceeds by more than $100 the total amount deposited by the employer pursuant to subdivision (ii) of this subparagraph for such calendar quarter, the employer shall, on or before the last day of the first calendar month following the period for which the return is required to be filed, deposit with a Federal Reserve bank or authorized commercial bank an amount equal to the amount by which the taxes reportable on the return exceed the total deposits (if any) made pursuant to subdivision (ii) of this subparagraph for such calendar quarter. As used in this subdivision, the term "taxes" shall have the meaning assigned to such term in subdivision (iii) of this subparagraph, except that the term shall include the employee tax and employer tax referred to in (*a*) and (*b*) of such subdivision (iii) of this subparagraph with respect to any wages for domestic service in a private home of the employer which the employer elects to report on a quarterly return other than a quarterly return made on Form 942.

(2) *Employers of agricultural workers for calendar years before 1971.* * * *

(ii) *Requirement for 1956 and subsequent years ending before January 1, 1971.* Except as provided in paragraph (b) of this section, if during any calendar month other than December, in any calendar year after 1955 and before 1971, the aggregate amount of—

(*a*) The employee tax withheld under section 3102 during such month with respect to wages for agricultural labor, plus any such employee tax which was previously withheld in the same calendar year with respect to such wages but which was neither deposited nor required to be deposited on or before the last day of such month, and

(*b*) The employer tax under section 3111 for such month with respect to wages for agricultural labor, plus any such employer tax, which was neither deposited nor required to be deposited on or before the last day of such month, for any prior month of the same calendar year with respect to wages for agricultural labor,

exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank or authorized commercial bank.

(iii) *Additional requirement for 1968, 1969, and 1970.* If the aggregate amount of taxes reportable on a return on Form 943 for calendar year 1968, 1969, or 1970, exceeds by more than $100 the total amount deposited by the employer pursuant to subdivision (ii) of this subparagraph for such calendar year, the employer shall, on or before the last day of the first calendar month following the period for which the return is required to be filed, deposit with a Federal Reserve bank or authorized commercial bank an amount equal to the amount by which the taxes reportable on the return exceed the total deposits (if any) made pursuant to subdivision (ii) of this subparagraph for such calendar year.

(3) *Depositary forms.* * * *

(iii) *Deposits for 1968 and subsequent years.* Each remittance of amounts required to be deposited under subparagraph (1) of this paragraph for periods subseqeunt to 1967 shall be accompanied by a Federal Tax Deposit, Withheld Income and FICA Taxes, form (Form 501), or a Federal Tax Deposit, Withheld Income and FICA Taxes for Agricultural Workers, form (Form 511), or both, as the case may be. Each remittance of amounts required to be deposited under subparagraph (2) of this paragraph for years subsequent to 1967 and before 1971 shall be accompanied by a Federal Tax Deposit, FICA Taxes (Employer and Employee Taxes), for Agricultural Workers, form (Form 511). Such forms shall be prepared in accordance with the instructions applicable thereto. The remittance, together with the required form or forms, shall be forwarded to a Federal Reserve bank or, at the election of the employer, to a commercial bank authorized in accordance with Treasury Department Circular No. 1079, 31 CFR Part 214, to accept remittances of the taxes for transmission to a Federal Reserve bank. The timeliness of the deposit will be determined by the date the deposit is received (or is deemed received under section 7502(e)) by a Federal Reserve bank or by the authorized commercial bank, whichever is earlier. Each employer making deposits pursuant to this section shall report on the return for the period with respect to which such deposits are made information regarding such deposits in accordance with the instructions applicable to such return and pay therewith (or deposit by the due date of such return) the balance, if any, of the taxes due for such period.

* * * * *

II. Manufacturers and retailers excise tax regulations (26 CFR Part 48):

PAR. 3. Section 48.6302(c)–1 is amended by revising so much of subdivision (ii) of paragraph (a) (1) as precedes subdivision (*a*) thereof, by revising subdivision (*c*) of subdivision (ii) of paragraph (a) (1), and by revising paragraph (b), to read as follows:

§ 48.6302(c)–1 Use of Government depositaries.

(a) *Requirement*—(1) *In general.* * * *

(ii) This subdivision shall apply to excise taxes (to which this part relates) which are reportable on Form 720 by any person for a calendar quarter if such person's total liability for all excise taxes reportable on such form for any calendar month in the preceding calendar quarter exceeded $2,000. In any case to which this subdivision applies, the

excise tax for a semimonthly period (as defined in paragraph (b)(1) of this section) shall be deposited by such person in a Federal Reserve bank on or before the depositary date (as defined in paragraph (b)(2) of this section). A person will be considered to have complied with the requirements of this subdivision for a semimonthly period if—

* * * * *

(c)(1) His deposit for each semimonthly period in the month is not less than 50 percent of the total amount of the excise taxes (to which this part and Part 46 relate) reportable by him on Form 720 for the second preceding calendar month (the preceding calendar month for periods ending before January 1, 1971), and (2) if such month is other than the last month in a calendar quarter, he deposits any underpayment for such month by the last day of the following month.

* * * * *

(b) *Definitions.* For purposes of this part—

(1) *Semimonthly period.* A "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of such month.

(2) *Depositary date.* (i) The depositary date for deposits for semimonthly periods beginning after December 31, 1970, is the 7th day of the semimonthly period following the semimonthly period for which the taxes are reportable.

(ii) The depositary date for deposits for semimonthly periods ending before January 1, 1971, is the last day of the semimonthly period following the semimonthly period for which the taxes are reportable.

* * * * *

[F.R. Doc. 70-12914; Filed, Sept. 25, 1970; 8:50 a.m.]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Parts 25, 29, 31, 33]

NATIONAL WILDLIFE REFUGE SYSTEM

Notice of Proposed Rule Making

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Migratory Bird Conservation Act of February 18, 1929, as amended (45 Stat. 1222; 16 U.S.C. 715), and the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927 as amended; 16 U.S.C. 668dd), it is proposed to amend 50 CFR 25.1, 29.3, 31.16, and 33.1.

The purpose of the proposed amendment is to conform to recent enacted laws and to improve management practices within the National Wildlife Refuge System.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections, with respect to this proposed amendment, to the Director, Bureau of Sport Fisheries and Wildlife, Washington, D.C. 20240, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

1. In Part 25—General Provisions, the last paragraph of § 25.1 is amended as follows:

§ 25.1 Definitions.

* * * * *

"Wildlife refuge areas" means all lands, waters, and interests therein administered by the Bureau of Sport Fisheries and Wildlife as national wildlife refuges, for the protection and conservation of fish and wildlife including those that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas.

2. In Part 29—Land Use Management, Subpart A—General Rules, § 29.3 is revised as follows:

§ 29.3 Nonconforming uses.

Uses of wildlife refuge areas that make no contribution to the primary objective of the program for any individual area or are in no way related to that objective are classed as nonconforming uses. Permission for such uses will be granted only when compatible with the major purpose for which such areas were established.

3. In Part 31—Wildlife Species Management, Subpart A—Surplus Wildlife, § 31.16 is revised as follows:

§ 31.16 Trapping program.

Except as hereafter noted, persons trapping animals on wildlife refuge areas where trapping has been authorized shall secure and comply with the provisions of a Federal permit issued for that purpose. This permit shall specify the terms and conditions of trapping activity and the rates of charge or division of pelts, hides, and carcasses. Lands acquired as "waterfowl production areas" shall be open to public trapping without Federal permit provided that trapping on all or part of individual areas may be temporarily suspended by posting upon occasions of unusual or critical conditions of, or affecting, land, water, vegetation, or wildlife population. Each person trapping on any wildlife refuge area shall possess the required State license or permit and shall comply with the provisions of State laws and regulations.

4. In Part 33—Sport Fishing, § 33.1 is revised as follows:

§ 33.1 Public fishing authorization.

Except as hereafter noted, the opening or closing of wildlife refuge areas to sport fishing shall be in accordance with the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553). However, wildlife refuge areas will be opened to sport fishing only when a determination has been made that such activity is not detrimental to the objectives for which the area was established. Lands acquired as "waterfowl production areas" shall be open to sport fishing subject to the provisions of State laws and regulations and the pertinent provisions of Parts 25 through 31 of this subchapter: *Provided,* That fishing on all or any part of individual areas may be temporarily suspended by posting upon occasions of unusual or critical conditions of, or affecting, land, water, vegetation, or wildlife populations.

JOHN S. GOTTSCHALK,
Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 23, 1970.

[F.R. Doc. 70-12840; Filed, Sept. 25, 1970; 8:46 a.m.]

[50 CFR Part 32]

UL BEND NATIONAL WILDLIFE REFUGE, MONT.

Proposed Listing as Area Open to Hunting of Migratory Game Birds

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Migratory Bird Conservation Act of February 18, 1929, as amended (45 Stat. 1222; 16 U.S.C. 715), and the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927 as amended; 16 U.S.C. 668dd), it is proposed to amend 50 CFR Part 32 by the addition of UL Bend National Wildlife Refuge, Mont., to the list of areas open to the hunting of migratory game birds as legislatively permitted.

It has been determined that regulated hunting of migratory game birds may be permitted as designated on the UL Bend National Wildlife Refuge without detriment to the objectives for which the area was established.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objection, with respect to the proposed amendment, to the Director, Bureau of Sport Fisheries and Wildlife, Washington, D.C. 20240, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

Section 32.11 is amended by the following addition:

§ 32.11 List of open areas; migratory game birds.

* * * * *

MONTANA

UL Bend National Wildlife Refuge.

* * * * *

JOHN S. GOTTSCHALK,
Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 23, 1970.

[F.R. Doc. 70-12839; Filed, Sept. 25, 1970; 8:46 a.m.]

National Park Service

[36 CFR Parts 1, 12, 55]

NATIONAL CEMETERY REGULATIONS

Visitor Use and Informational Guidelines

Notice is hereby given that pursuant to the authority contained in section 3 of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 3), and the Act of February 22, 1867 (14 Stat. 400, as amended; 24 U.S.C. 271), and E.O. 6166 of June 10, 1933, as amended, it is proposed to amend Part 1 of Title 36, to redesignate Part 55 of Title 36 as Part 12 of Title 36, and to revise the redesignated national cemetery regulations as set forth below.

The purpose of the revision is to incorporate by reference several general regulations on visitor use, motor vehicles, and commercial and private operations for application to national cemeteries, to eliminate regulations that are not needed, to add and modify regulations, to title informational regulations as informational guidelines, and to separate the use regulations to which penalty provisions apply, from the informational guidelines.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment and revision to the Director, National Park Service, Department of the Interior, Washington, D.C., within 30 days following the date of publication of this notice in the FEDERAL REGISTER.

1. Section 1.1(a) of Part 1 of Title 36 of the Code of Federal Regulations is amended to read as follows:

§ 1.1 Applicability and scope.

(a) The regulations contained in Parts 1 through 6 of this chapter shall apply to all persons entering, using, visiting, or who are otherwise within the boundaries of any federally owned or controlled areas administered by the National Park Service except: (1) Areas administered by the National Park Service in the District of Columbia and its environs to which Part 50 of this chapter is specifically applicable, and (2) national cemeteries to which Part 12 of this chapter is specifically applicable. The special regulations in Part 7 of this chapter also apply to all persons entering, using, or visiting the areas for which they are adopted. The regulations contained in Parts 1 through 7 of this chapter are hereby made and prescribed for the proper use, management, government and protection of, and maintenance of good order in the areas to which they apply.

* * * * *

2. Redesignated Part 55 is revised to read as follows:

PART 12—NATIONAL CEMETERY REGULATIONS

VISITOR USE REGULATIONS

INFORMATIONAL GUIDELINES

AUTHORITY: The provisions of this Part 12 issued under R.S. 4881, as amended, sec. 1, 19 Stat. 99, as amended, secs. 1–3, 495, 496; 16 U.S.C. 1, 3, 231, 450o, 24 U.S.C. 278, 286. E.O. 6166, as amended, 5 U.S.C. 132 note; E.O. 8428, 5 F.R. 2131; and Proc. 2554, 7 F.R. 3143.

VISITOR USE REGULATIONS

§ 12.1 Purpose.

The following regulations apply to all persons entering, using, visiting, or who are otherwise within the boundaries of a national cemetery under the administration of the National Park Service, or within an area listed in § 12.3.

(a) The regulations in Parts 4 and 5 of this chapter and §§ 2.1, 2.3, 2.4, 2.6, 2.7, 2.8, 2.9, 2.10, 2.15, 2.16, 2.19, 2.21, 2.22, 2.24, and 2.29, of this chapter are incorporated by reference.

§ 12.2 Authority for national cemeteries.

Basic legal authority pertaining to national cemeteries is contained in the Act of February 22, 1867, ch. 61, 14 Stat. 400, as amended; 24 U.S.C. 271; the Act of August 25, 1916, ch. 408, 39 Stat. 535, as amended; 16 U.S.C. 1 and E.O. 6166, June 10, 1933, as amended; 5 U.S.C. 132 (note).

§ 12.3 Administration, control, and supervision.

The Director of the National Park Service, under the direction and control of the Secretary of the Interior, is responsible for the operation, maintenance, and administration of the national cemeteries below listed, and for the formulation of plans, policies, procedures, and regulations pertaining thereto.

Andrew Johnson National Monument.
Antietam (Sharpsburg), Md.
Battleground, District of Columbia.
Chalmette National Historical Park.
Custer Battlefield National Monument.
Fort Donelson (Dover), Tenn.
Fredericksburg, Va.
Gettysburg, Pa.
Poplar Grove (Petersburg), Va.
Shiloh (Pittsburgh Landing), Tenn.
Stones River (Murfreesboro), Tenn.
Vicksburg, Miss.
Yorktown, Va.

§ 12.4 Visitors.

(a) Visitors will be admitted during the hours the gates are open.

(b) The possession, destruction, injury, defacement, removal, or disturbance in any manner of any building, sign, equipment, monument, statue, marker, or other structure, or of any animal or plant matter and direct or indirect products thereof, including but not limited to petrified wood, flower, cone or other fruit, egg, nest, or nesting site, or of any soil, rock, mineral formation, phenomenon of crystallization, artifact, relic, historic or prehistoric feature, or of any other public property of any kind, is prohibited.

(c) The use of a trap, seine, hand-thrown spear, net (except a landing net), firearm (including an air- or gas-powered pistol or rifle), blowgun, bow and arrow or crossbow, or any other implement designed to discharge missiles in the air or under the water which is capable of destroying animal life is prohibited, except that firearms may be used as part of an official ceremony.

(d) Camping, picnicking, fishing, and the kindling of any fire is prohibited.

(e) The use of national cemetery drives as public highways is prohibited. The speed of vehicles shall not exceed 25 miles per hour.

(f) Special advance plans may be developed, in anticipation of large crowds, to restrict the number of motor vehicles permitted to enter the cemetery area in order to relieve congestion and to promote public safety.

§ 12.5 Services and ceremonies.

(a) *General.* Patriotic organizations may, with proper permission, conduct services in national cemeteries. Requests for permission should be addressed to the cemetery superintendent who will assign an appropriate time and render assistance in carrying out the programs. No organization will be given exclusive permission to enter any cemetery or for any particular occasion. Where several requests are received for separate services, the superintendent will schedule each so as to avoid interference.

(b) *Special occasions.* Since many organizations regularly conduct such services on Memorial Day, Veteran's Day, Easter Sunday, national holidays, and other special occasions, the procedure governing such services will be essentially as above provided. When Memorial Day falls on Sunday the ceremonies may be scheduled for either Sunday or Monday.

§ 12.6 Penalties.

Any person who violates any provision of §§ 12.1–12.5, or as the same may be amended or supplemented, in regard to any national cemetery under the jurisdiction of the Secretary of the Interior shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500 or imprisonment for not exceeding 6 months, or both, and be adjudged to pay all costs of the proceedings (16 U.S.C. 3): *Provided*, That the penalties set out in § 1.3(b) of this chapter shall apply to violations which take place at Andrew Johnson National Monument and Chalmette National Historical Park.

INFORMATIONAL GUIDELINES

§ 12.7 Interments and disinterments.

(a) *Who may be interred.* Bural in a national cemetery is authorized in accordance with regulations prescribed by the Secretary of the Army.

(b) *Burial permits.* Burial permits, usually a part of the death certificate, are required for interments except those of cremated remains. In such cases burial permits will be required only where State law makes them mandatory. It is permissible to inter, prior to receipt of the burial permit, the remains of members of the Armed Forces who die on active duty.

(c) *Assignment of gravesites.* (1) Under present policy of the Department of the Army, only one gravesite is authorized for the burial of the service member and eligible members of his immediate family. This policy will be applied to all national cemeteries under the jurisdiction of the Department of the Interior, except in those cases in which the Director specifically determines this to be infeasible.

(2) Gravesites will not be reserved in cemeteries in which the one-gravesite-per-family-unit policy has been placed in effect.

(3) Gravesite reservations made in writing prior to the establishment of the one-gravesite-per-family-unit policy will remain in effect as long as the reservee remains eligible for burial in a national cemetery.

(4) Burial sections:

(i) Layout plans for burial sections in all national cemeteries will be approved by the Director. Sizes of gravesites will conform to dimensions designated by the Chief of Support Services, Department of the Army.

(ii) Until grave space is exhausted in sections that were in existence prior to January 1, 1947, burials may be made in accordance with procedures and policies in effect at the time such sections were established, provided, however, that no person otherwise eligible will be denied burial by reason of policies in existence prior to Januray 1, 1947, if burial space exists anywhere in the cemetery. In all burial sections established on or after January 1, 1947, burials will be made in accordance with policies or procedures in effect on or after January 1, 1947.

(iii) Burials will not be made in memorial sections.

(iv) As the need arises for the use of new sections for burials, such cases will be forwarded to the Director for approval. Plans and recommendations for resolving the situation will accompany the request for final decision.

(d) *Disinterments.* (1) Interments of eligible remains in national cemeteries are considered to be permanent and final and disinterments will not be permitted except upon approval of the Director. Disinterments and removal of remains from a national cemetery will be approved only when next of kin (includes the person who directed the initial interment if still living) give their consent and establish cogent reasons for the disinterment, or in recognition of a court order directing the disinterment.

(2) All requests for authority to disinter remains will be submitted to the Director, and must state the reason for desiring the disinterment and be accompanied by the following documents:

(i) Notarized affidavits by all close living relatives of the deceased, stating that they interpose no objection to the proposed disinterment. "Close relatives" are defined as surviving spouse, parents, adult brothers and sisters, and adult children and will include the person who directed the initial interment, if living, even though the legal relationship of such person to the decedent may have changed.

(ii) A sworn statement, by a person having knowledge thereof, that those who supplied such affidavits comprise all the living close relatives of the deceased, including the person who directed the initial interment.

(iii) In lieu of the documents required in this subparagraph (2), an order of a court of competent jurisdiction will be considered.

(iv) Any disinterment that may be authorized under this section must be accomplished without expense to the Government.

§ 12.8 Headstones and markers.

Headstones and markers, authorized to be furnished at Government expense, will be provided under rules and regulations promulgated by the Secretary of the Army.

§ 12.9 Monuments and inscriptions at private expense.

(a) The erection of markers and monuments at private expense to mark graves in lieu of Government headstones and markers requires prior approval of the Director and is permitted only in sections in existing national cemeteries in which private monuments and markers were authorized as of January 1, 1947. Such monuments will be simple in design, dignified, and appropriate to a military cemetery. The name of the person(s) or the name of an organization, fraternity, or society responsible for the purchase and erection of the marker will not be permitted on the marker or anywhere else in the cemetery.

(b) Where a headstone or monument has been erected to an individual interred in a national cemetery and the next of kin desires to inscribe thereon the name and appropriate data pertaining to a deceased spouse, parent, son, daughter, brother, or sister whose remains have not been recovered and who would have been eligible in their own right for burial in a national cemetery, such inscriptions may be incised on the headstone or monument at no expense to the Government with the prior written approval of the Director. The words "In Memoriam" or "In Memory Of" are mandatory elements of such inscriptions.

(c) Except as may be authorized for marking group burials, ledger monuments, monuments of free-standing cross design, narrow shafts, mausoleums, or overground vaults are prohibited. Underground vaults may be placed at private expense, if desired, at the time of interment.

§ 12.10 Private memorials and commemorative tablets.

(a) *Purpose.* (1) The purpose of this section is to implement the Act of August 27, 1954 (68 Stat. 880, as amended, 24 U.S.C. 279d), which provides that the Secretary of the Interior and the Secretary of the Army shall set aside, when available, suitable plots in the national cemeteries under their jurisdiction to honor the memory of members of the Armed Forces missing in action or who died or were killed while serving in such forces, and whose remains have not been identified, have been buried at sea, or have been determined to be nonrecoverable, and to permit the erection of appropriate markers thereon in honor of any such member or group of members. The regulations in this section govern the erection of private memorial markers in national cemeteries under the jurisdiction of the Department of the Interior, a list of which is set forth in § 12.3. The source of the regulations in this section is the "Joint Resolution" of the Secretary of the Interior and the Secretary of the Army, issued pursuant to the Act of August 27, 1954, supra, and effective January 26, 1956.

(b) *Scope*—(1) *Those who may be memorialized.* Those members of the Armed Forces of the United States whose deaths occurred during a period when the United States was at war or as a result of military operations; whose remains have not been identified, have been buried at sea, or have been determined officially to be nonrecoverable; and on whom there has been either:

(i) A report of missing in action and a subsequent official finding of death; or

(ii) An official report of death in action. "In action" as used in this paragraph characterizes the casualty status as having been the direct result of hostile action; sustained in combat and related thereto; or sustained going to or returning from a combat mission, provided the occurrence was directly related to hostile action.

(2) *Extent of memorialization.* The erection of a private marker may be authorized to memorialize a person or a group of persons. Only one individual marker will be authorized for the memorialization of a person; however, the erection of an individual marker to a person will not preclude the inscription of his name on a group marker.

(c) *Application for memorialization.* (1) Application for authority to erect a private memorial marker shall be submitted to the Director, whose approval should be obtained prior to fabrication of the marker, since erection will not be permitted except on compliance with the conditions specified in the regulations in this part.

(2) Application for permission to erect an individual marker must be submitted by the legal next of kin of the decedent or the authorized representative of the legal next of kin.

(3) Application for permission to erect a group marker may be submitted by a person, a group of persons, or an organization. Each group-marker application must be accompanied by (i) a list of names of the persons to be memorialized and other data desired for inscription on the marker; (ii) the written approval of the legal next of kin of each person whose name is to be inscribed on the marker; and (iii) a scale plan depicting the details of the design, materials, finish, carving, lettering, and arrangement of inscription.

(4) The Chief of Support Services, Department of the Army, will determine the eligibility of the persons or groups of persons to be memorialized.

(5) The Director will exercise approval authority and control over assignment of plots for and the design type, size, materials, inscription, and erection of the memorial markers. Approval for erection will be conditional upon the applicant's granting to the Department of the Interior the substantive right to remove and dispose of the marker, if the applicant fails to maintain it in a condition acceptable to the Department.

(d) *Markers which may be authorized.* (1) Memorial markers will conform to the type, size, materials, design, and specifications prescribed for the cemetery section in which the memorial marker is to be erected. The inscriptions will conform to those authorized to mark graves in national cemeteries and in addition will include the words "In Memoriam" or "In Memory Of" as mandatory elements. The inscription on a memorial marker may not include the name of the person or group of persons or the name or insignia of an organization, fraternity, or society responsible for the purchase and erection of the marker.

(e) *Cost and maintenance of memorials.* (1) The cost of the private memorial markers, transportation, and erection in the cemetery will be at no expense to the Government. The Department of the Interior will assume no liability or responsibility incident to the purchase, fabrication, delivery, erection, maintenance of, or damage to private memorial markers.

§ 12.11 Cemetery maintenance.

Cemetery maintenance will be performed generally in accordance with the methods and procedures described in chapter 5 of Department of the Army Technical Manual TM 10-287.

§ 12.12 Use and display of flag.

The flag will be used and displayed in accordance with regulations promulgated pursuant to law (56 Stat. 377, ch. 435; 36 U.S.C. 173-178).

Approved: August 26, 1970.

HARTHON L. BILL,
Acting Director,
National Park Service.

[F.R. Doc. 70-12849; Filed, Sept. 25, 1970; 8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 18882]

TELEVISION BROADCAST STATIONS

Table of Assignments, New Jersey and Pennsylvania; Order Extending Time for Filing Comments and Reply Comments

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Camden and Atlantic City, N.J., and Philadelphia, Pa.)

1. This proceeding was begun by notice of proposed rule making (FCC 70-638) adopted June 17, 1970, and published in the FEDERAL REGISTER on June 25, 1970 (35 F.R. 10375). The dates for filing comments and reply comments are presently September 18, 1970, and September 28, 1970, respectively.

2. On September 18, 1970, Vue-Metrics, Inc. (Vue-Metrics), filed a request to extend the time for filing comments to October 5, 1970, and reply comments to October 15, 1970. Vue-Metrics states it has requested an informal study of the FAA as to whether FAA clearance could be obtained for a tower at 1,049 feet above mean sea level in the triangular area in which it would be possible to make use of Channel 40. Vue-Metrics further states that it has not yet received final word from FAA and therefore the additional time is necessary. Counsel for the New Jersey Public Broadcasting Authority has no objection to a grant of this extension.

3. We are of the view that the additional time requested is warranted and would serve the public interest. *Accordingly, it is ordered,* That the time for filing comments and reply comments in Docket No. 18882 is extended to and including October 5, 1970, and October 15, 1970, respectively.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted: September 22, 1970.

Released: September 23, 1970.

[SEAL] FRANCIS R. WALSH,
Chief, Broadcast Bureau.

[F.R. Doc. 70-12871; Filed, Sept. 25, 1970; 8:49 a.m.]

FEDERAL TRADE COMMISSION

[16 CFR Part 501]

CHAMOIS

Proposed Exemption From Certain Labeling Requirements

In the past it has been conventional to express the size of a full chamois skin in terms of extreme dimensions or in terms of area while the cuts made from those skins have been expressed in lineal dimensions or area. The Commission has concluded that all packaged or labeled chamois should bear a net quantity statement in terms of area to facilitate value comparison by the consumer.

A petition to exempt such whole skins and cuts from certain requirements of § 500.13 has been submitted by the Sponge and Chamois Institute, 60 East 42d Street, New York, N.Y. 10017.

Because present day machines used to measure whole skins compute the area in increments of square feet to the nearest one-quarter of a square foot, the petitioner seeks exemption from the dual declaration requirements for all full skins to be expressed in square feet. Since the majority of full skins range from 1 to 4 square feet in area, the marking of all skins with the same terms of measure will facilitate value comparison by the consumer.

The various cuts made from the full skin commonly measure less than 4 square feet. Therefore, it is considered of benefit to the consumer that all cuts be labeled in terms of square inches but when the cuts exceed 1 square foot, to accompany the declaration of square inches with a parenthetical statement in square feet.

Accordingly, pursuant to the provisions of the Fair Packaging and Labeling Act (sections 5(b), 6(b), 80 Stat. 1298, 1300; 15 U.S.C. 1454, 1455), the following regulation is proposed.

§ 501.4 Chamois.

Chamois packaged or labeled for retail sale is exempt from the requirements of § 500.13 of this chapter which specifies how measurement of commodities by area measure should be expressed: *Provided,*

(a) The quantity of contents for full skins is expressed in terms of square feet with any remainder in terms of the common or decimal fraction of the square foot.

(b) The quantity of contents for cut skins of any configuration is expressed in terms of square inches and fractions thereof. Where the area of a cut skin is at least 1 square foot or more, the statement of square inches shall be followed in parentheses by a declaration in square feet with any remainder in terms of square inches or common or decimal fractions of the square foot.

Any interested person may, within 60 days from the date of this publication in the FEDERAL REGISTER, file with the Secretary, Federal Trade Commission, Washington, D.C. 20580, written views on this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Issued: September 17, 1970.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 70-12888; Filed, Sept. 25, 1970; 8:50 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1001, 1002, 1004, 1006, 1007, 1011–1013, 1015, 1030, 1032, 1033, 1036, 1040, 1043, 1044, 1046, 1049, 1050, 1060–1065, 1068–1071, 1073, 1075, 1076, 1078, 1079, 1090, 1094, 1096–1099, 1101–1104, 1106, 1108, 1120, 1121, 1124–1134, 1136–1138]

[Docket No. AO–160–A44, etc.]

MILK IN MIDDLE ATLANTIC AND CERTAIN OTHER MARKETING AREAS

Supplemental Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR	Marketing area	Docket No.
1004	Middle Atlantic	AO–160–A44.
1001	Massachusetts-Rhode Island-New Hampshire.	AO–14–A48.
1002	New York-New Jersey	AO–71–A61.
1006	Upper Florida	AO–356–A7.
1007	Georgia	AO–366–A6.
1011	Appalachian	AO–251–A13.
1012	Tampa Bay	AO–347–A11.
1013	Southeastern Florida	AO–286–A19.
1015	Connecticut	AO–305–A27.
1030	Chicago Regional	AO–361–A4.
1032	Southern Illinois	AO–313–A21.
1033	Ohio Valley	AO–166–A41.
1036	Eastern Ohio-Western Pennsylvania.	AO–179–A33.
1040	Southern Michigan	AO–225–A23.
1043	Upstate Michigan	AO–247–A16.
1044	Michigan Upper Peninsula	AO–299–A18.
1046	Louisville-Lexington-Evansville.	AO–123–A38.
1049	Indiana	AO–319–A17.
1050	Central Illinois	AO–355–A10.
1060	Minnesota-North Dakota	AO–360–A5.
1061	Southeastern Minnesota-Northern Iowa.	AO–367–A3.
1062	St. Louis-Ozarks	AO–10–A43.
1063	Quad Cities-Dubuque	AO–105–A32.
1064	Greater Kansas City	AO–23–A39.
1065	Nebraska-Western Iowa	AO–86–A24.
1068	Minneapolis-St. Paul	AO–178–A26.
1069	Duluth-Superior	AO–153–A18.
1070	Cedar Rapids-Iowa City	AO–229–A23.
1071	Neosho Valley	AO–227–A25.
1073	Wichita	AO–173–A25.
1075	Black Hills	AO–248–A13.
1076	Eastern South Dakota	AO–260–A16.
1078	North Central Iowa	AO–272–A18.
1079	Des Moines	AO–295–A21.
1090	Chattanooga	AO–266–A14.
1094	New Orleans	AO–103–A31.
1096	Northern Louisiana	AO–257–A19.
1097	Memphis	AO–219–A24.
1098	Nashville	AO–184–A30.
1099	Paducah	AO–183–A26.
1101	Knoxville	AO–195–A20.
1102	Fort Smith	AO–237–A19.
1103	Mississippi	AO–346–A13.
1104	Red River Valley	AO–298–A17.
1106	Oklahoma Metropolitan	AO–210–A29.
1108	Central Arkansas	AO–243–A21.
1120	Lubbock-Plainview	AO–328–A12.
1121	South Texas	AO–364–A4.
1124	Oregon-Washington	AO–368–A3.
1125	Puget Sound	AO–226–A22.
1126	North Texas	AO–231–A36.
1127	San Antonio	AO–232–A22.
1128	Central West Texas	AO–238–A25.
1129	Austin-Waco	AO–256–A18.
1130	Corpus Christi	AO–259–A22.
1131	Central Arizona	AO–271–A14.
1132	Texas Panhandle	AO–262–A21.
1133	Inland Empire	AO–275–A22.
1134	Western Colorado	AO–301–A12.
1136	Great Basin	AO–309–A16.
1137	Eastern Colorado	AO–326–A16.
1138	Rio Grande Valley	AO–335–A17.

Notice was issued on August 21, 1970 (35 F.R. 13657), of a public hearing beginning on September 30, 1970, at Washington, D.C., on proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas.

Notice is hereby given 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 orders (7 CFR Part 900), that the portion of Proposal No. 1 identified as § 1000.2(f) of Part 1000 will not be considered at such hearing.

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

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 70–12979; Filed, Sept. 25, 1970; 10:05 a.m.]

[7 CFR Part 1134]

[Docket No. AO–301–A10]

MILK IN WESTERN COLORADO MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Western Colorado 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 (7 CFR Part 900), at Grand Junction, Colo., on December 16–17, 1969, pursuant to notices thereof issued on October 15, 1969 (34 F.R. 17070) and October 23, 1969 (34 F.R. 17446).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on June 12, 1970 (35 F.R. 10024; F.R. Doc. 70–7644), and on August 18, 1970 (35 F.R. 13371; F.R. Doc. 70–11017), filed successively with the Hearing Clerk, United States Department of Agriculture, his recommended decision and revised recommended decision, each containing a notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the revised recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications under the subheading "1. *Application of the order to producer-handler operations":* the first, second, third, 14th, and 15th paragraphs are changed and a new paragraph is added between the 14th and 15th paragraphs.

The material issues on the record relate to:

1. Application of the order to producer-handler operations.
2. The Class I price.
3. The Class I butterfat differential.
4. Interest payments on overdue accounts.
5. Pool plant qualifications.
6. Classification changes.
7. Modification of net pool obligation computation applicable to a handler's inventory of packaged fluid milk products.

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. *Producer-handler.* The quantities of fluid milk products that a producer-handler may receive from regulated plants should not be changed. He may now receive from Western Colorado pool plants the lesser of 5,000 pounds or 5 percent of his Class I sales during the month.

The producer-handler definition should, however, be rewritten to insure that producer-handler status is accorded only to a person who operates the farm(s) on which his "own-herd production" is produced at his sole risk and under his complete and exclusive management and control, who operates a plant at which the milk produced on his farm(s) is processed and packaged, and whose disposition of fluid milk products on his routes and at his stores includes only the milk produced on his farm(s) and allowable purchases from regulated plants.

To effectuate the above, a producer-handler should be defined as follows:

Producer-handler means any person who is an individual, partnership or corporation and 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 conditions 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 his sole risk and under his complete and exclusive management and control;

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

(3) Only he and no other person (except a member of his immediate family, or a stockholder in the case of a corporate farm) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(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: *Provided,* That:

(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) From pool plants or other order 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

(3) For the purpose of this section, all fluid milk products disposed of on routes or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at this plant; and the utilization for such plant shall include all such route and store dispositions; and

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

The proposal to revise the qualifications for obtaining producer-handler status was made by Western Colorado Milk Producers Association, the principal cooperative in the market. As proposed by the cooperative, the maximum purchases from pool plants allowed a producer-handler would be limited to a daily average of 100 pounds of packaged fluid milk products, about 3,000 pounds monthly. As indicated above, a producer-handler may now receive from pool plants bulk or packaged fluid milk products in a quantity that is not more than the lesser of 5,000 pounds or 5 percent of his Class I sales.

The cooperative's proposal would consider as one operation, for the purpose of determining producer-handler status, all processing and distribution operations maintained under the control of the same person. Also, the cooperative's proposal would limit a producer-handler's distribution to retail sales at his farm, deliveries to grocery stores and restaurants, and sales to any other outlet at which the fluid milk products purchased from the producer-handler are not offered for resale.

The cooperative's proposal to revise the standards whereby a handler may qualify for producer-handler status was opposed by the two producer-handlers in the market and by a handler with own-herd production who does not now qualify as a producer-handler.

The purpose of this proposal is to provide exemption from the pricing and pooling provisions of the order only to those handlers who rely basically on their own farm production and on limited purchases of fluid milk products from pool plants. The extensive record testimony was concerned primarily with incorporating in the order a producer-handler definition that would be suitable under current conditions in the Western Colorado market. It is particularly emphasized that such definition should be spelled out with greater specificity than the present definition.

The own-farm production of one producer-handler, whose plant is in Grand Junction, is about 550,000 pounds of milk monthly. His own-farm production, all of which is exempt from the pricing and pooling provisions of the order and practically all of which is utilized as Class I, is more than 20 percent of the total producer milk classified in Class I under the Western Colorado order.

The above producer-handler is a corporation with three principal stockholders. Two of the stockholders also own a controlling interest in another corporation, an ice cream plant in the marketing area, at Montrose, Colo. No fluid milk products for Class I use are processed or packaged at the ice cream plant.

In addition to the fluid milk products handled in the producer-handler's plant, the principal owners of both corporations control the disposition of substantial quantities of other fluid milk products on routes in the marketing area. A trailer truck operated by the ice cream plant, and partially owned by the producer-handler corporation, picks up packaged milk regularly at a pool plant in Grand Junction. These fluid milk products, which are packaged at the pool plant in cartons identical to those used by the producer-handler, are trucked to a parking lot at Montrose, where they are transferred to delivery trucks owned by the ice cream plant for delivery to retail and wholesale customers.

The total Class I disposition from the two plants (the producer-handler plant and the ice cream plant), which are controlled by the same persons, includes a quantity of fluid milk products received from pool plants that is substantially greater than the maximum allowable quantity that a handler may receive from pool plants to qualify for producer-handler status. In fact, a spokesman for the producer-handler operation testified that this was a means of maintaining the proportion of Class I that he had in the market previously as a regulated handler, while at the same time obtaining exemption from the order as a producer-handler on his own farm production.

The interlocking ownership of the producer-handler operation and the Class I disposition from the ice cream plant result in a market situation not covered by the present producer-handler provisions.

In providing the present limit on a producer-handler's receipts from pool plants (the lesser of 5,000 pounds or 5 percent of his Class I sales) it was not contemplated that a producer-handler, usually a family type operation, would obtain, as in this case, substantial quantities of fluid milk products for Class I purposes from sources other than his own farm production. The cooperative contended that according exemption as a producer-handler to a person who must depend on receipts from pool plants for a substantial quantity of fluid milk products for his Class I needs is not warranted under conditions in the Western Colorado market.

The spokesman for the persons controlling the producer-handler and ice cream plant operations proposed that a producer-handler be permitted unlimited purchases from pool plants. He did not explain, however, why such a provision would be appropriate in the Western Colorado order. If a producer-handler could rely on unlimited pool supplies to supplement his own production, he could utilize all his own production for Class I purposes without bearing any responsibility for the cost of maintaining his reserve supplies. In such circumstances, the producers regularly supplying the market would bear the burden of carrying the reserve supply for his needs and also the reserves not needed for Class I purposes by handlers fully regulated.

In conjunction with the changes herein proposed, the present limit on quantity of fluid milk products (the lesser of 5,000 pounds or 5 percent of his Class I sales) the producer-handler may receive from pool plants should be retained, but the producer-handler should be permitted to obtain such receipts from a pool plant under any order issued pursuant to the Act. This limit is reasonable under current conditions in the Western Colorado market. There was no significant opposition to permitting a producer-handler to purchase some fluid milk products from pool plants.

Under some circumstances, it may be more practicable for a producer-handler to obtain fluid milk products from a plant regulated by another order instead of from a Western Colorado pool plant. Since the fluid milk products thus obtained by the producer-handler must be accounted for and priced as Class I milk, the change herein provided would give him no advantage over other handlers. On the contrary, such a provision would tend to contribute to orderly marketing without in any way impairing the integrity of the regulation.

Allowing a producer-handler to receive from regulated plants the lesser of 5,000 pounds or 5 percent of his monthly Class I sales will enable any distributor who relies basically on his own farm production for his Class I needs to qualify for exemption from the order as a producer-handler. Such a person may, of course, depend on regulated plants as a regular source of various fluid milk products (e.g., buttermilk, cream) that are not processed or packaged in his own plant. Also, such an operation may occasionally, particularly in emergency situations, depend on regulated plants for supplemental supplies. Under the conditions in the Western Colorado market, it may reasonably be concluded that enabling a handler with own-herd production to obtain limited quantities of fluid milk products from regulated plants, as herein proposed, would not significantly affect the competitive position of handlers or producers.

In proposing greater specificity in spelling out the conditions which a handler must meet to qualify for producer-handler status, producers contended that the present order provisions make it possible for a person to obtain producer-handler status even though, in effect, he may not meet the basic requirements for such exempt status. Clarification of the order's producer-handler provisions is necessary to remove any uncertainty as to the conditions which must be met

by a handler to qualify as a producer-handler. Providing the standards adopted herein, by giving more specific meaning to the producer-handler definition in the order, will contribute substantially to orderly marketing in the Western Colorado area.

Thus, a producer-handler should be required to furnish proof, satisfactory to the market administrator, that the full maintenance of the milk-producing cows on his farm is his sole risk and under his complete and exclusive management and control. Further, each farm where his milk cows are maintained must be owned or operated by him, at his sole risk, and under his complete and exclusive management and control.

As a further safeguard, the definition should specify that (except for an individual who is a member of the producer-handler's immediate family, or a stockholder in the case of a corporate farm) no individual working on a farm of a producer-handler may own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced.

The total operation of a handler with own-farm production, whether conducted as one or more business units, should be taken into consideration in determining whether he qualifies as a producer-handler. Also, the fluid milk products handled at all stores operated by him, directly or indirectly, or by any vendor who controls or is controlled by him, should be considered as a receipt and a disposition by the handler in determining his producer-handler status. Otherwise, a handler with own-farm production whose purchases of fluid milk products from pool plants exceeded the maximum allowable to qualify as a producer-handler could unwarrantedly obtain producer-handler status by having such purchases made by a plant under his control established as a separate business unit, a store operated by him, or by a vendor controlled by him.

Thus, in determining whether a person qualifies as a producer-handler, all fluid milk products disposed of on routes or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, a stockholder) has a financial interest should be considered as having been received at his plant; and utilization for such plant should include all such route and store dispositions. Without such a provision the meaningfulness of the basic standards herein provided, and deemed appropriate, to qualify a person for producer-handler status in the Western Colorado market would be seriously diminished.

In its exceptions to the recommended decision, the principal cooperative in the market urged that in determining whether a person with own-farm production qualifies as a producer-handler, the total Class I disposition of any vendor who receives any fluid milk products from him during the month and the total receipts by the vendor from all sources be considered as a part of his receipts and disposition.

As herein provided, a vendor's total receipts and disposition are considered as a part of the producer-handler's receipts and disposition only if the handler has a financial interest in the vendor's operation, or controls or is controlled by him. The exceptions on the cooperative did not contend that the use of such vendor's receipts and disposition are inappropriate under current conditions in the market. Rather, the cooperative took the position that such standards possibly could be circumvented (and therefore not be meaningful). According to exceptor, this might be accomplished by altering legal arrangements between the producer-handler and his vendor or substituting some other operating arrangement in order to obtain an unwarranted exemption. If this were done, the cooperative claims, the change in the producer-handler definition provided by this decision would be nullified.

The exemption of a producer-handler from the pricing and pooling provisions of the order is based on the principle that he assumes the burden of disposing of that portion of his production that is surplus to his Class I needs. This enables the producer-handler to retain the full return from his Class I sales even though such sales are in competition with regulated handlers.

Inasmuch as a producer-handler's appropriate competitive relationship with other handlers and with other producers depends upon the producer-handler assuming the burden of his own surplus, an equitable relationship among the several groups would not be achieved if the producer-handler were allowed to dispose of his surplus and obtain the Class I price for such surplus. As long as the producer-handler has the advantage of enjoying the full benefit of his Class I use sales without sharing them in the pool with the Western Colorado order producers, he should not also receive additional Class I benefits from the pool, at the expense of these producers, for his surplus production.

Because fluid milk products (in bulk or packaged form) disposed of by a producer-handler to another handler are deemed to be surplus to the producer-handler's operation, they are allocated to the lowest use class at the transferee handler's plant. The order provides for a payment into the producer-settlement fund at the difference between the Class I and Class III prices on such milk allocated to Class I by the receiving handler. It is equally appropriate, under conditions in the Western Colorado market, that such payment also apply to a producer-handler's surplus production disposed of to a vendor.

A producer-handler supplying fluid milk products to a vendor who at the same time is obtaining fluid milk products from handlers regulated, fully or partially, by the Western Colorado order or by another order is, in effect, disposing of the production in excess of his own Class I distributional needs to the vendor. If the producer-handler's production is adequate only for his needs, a vendor must obtain his full supply from regulated handlers. Such purchases are decreased during those periods when the excess production of the producer-handler is obtained by the vendor for his Class I distribution. As a consequence, the surplus production of the producer-handler displaces Class I sales from regulated plants, and the quantity thus displaced must be disposed of in the lowest-priced class. The producers supplying the handlers on whom the vendor depends for his Class I requirements in excess of that received from the producer-handler thus must carry an additional burden of reserve supply. The producer-handler consequently gains Class I sales while not assuming the full risk of carrying his own surplus.

In view of the above, it is concluded that the disposition of the surplus production of a producer-handler to a vendor receiving fluid milk products from other handlers should be treated in the same manner as the disposition of a producer-handler's surplus to a regulated handler. This would be accomplished by providing that the vendor make payment to the producer-settlement fund at the difference between the Class I and Class III prices on such milk, as is now required of regulated handlers.

The above payment would not be applicable to the fluid milk products received from a producer-handler by a vendor who depends upon him for his total supply, or by one in whose operation the producer-handler has a financial interest, or who controls or is controlled by him. As provided by this decision, the total receipts and disposition of such a vendor are considered a part of the producer-handler's receipts and disposition. The fluid milk products supplied such a vendor by a producer-handler are an integral part of the producer-handler's operation. The provisions relating to this kind of relationship limit the purchases that may be made from pool plants by such producer-handler and his vendor.

A hearing completed at Memphis, Tenn., on May 24, 1968, considered whether a producer-handler handling reconstituted skim milk should lose his exempt status. Amendments were made in 62 orders, including the Western Colorado order, effective January 1, 1970, on the basis of that record.

The findings in the October 13, 1969, decision (34 F.R. 16881) resulting from that hearing provide that the producer-handler definition of each order should preclude the use of reconstituted skim milk or unregulated milk in fluid milk products. The decision also finds that, since he is not subject to the pricing and pooling provisions of an order, a producer-handler using reconstituted skim milk or unregulated milk in any fluid milk product disposition thereby would disqualify himself from his exempt status as a producer-handler.

The findings in the aforesaid decision relative to precluding a producer-handler's using reconstituted skim milk in any fluid milk product are appropriate under current conditions in the Western Colorado market and are reaffirmed and

adopted in this decision. Accordingly, under the order modifications hereinafter set forth a producer-handler may no longer reconstitute any fluid milk products.

The addition of nonfat dry milk and similar products in fortified fluid milk products is a common practice among handlers. No purpose would be served by restricting producer-handlers in this regard, and they should be permitted to use nonfat milk solids in the fortification of fluid milk products without limit.

2. *Class I price.* The Class I price should be the basic formula price (Minnesota-Wisconsin manufacturing milk price) for the preceding month plus $2.

For 1969, the Western Colorado price averaged $6.55. For the same period the price herein proposed would have averaged $6.41. The Western Colorado Class I price is now determined by subtracting five cents from the Eastern Colorado order Class I price for the same month. Under the Eastern Colorado order, the Class I price is the basic formula price for the preceding month plus $2.30, and plus or minus a supply-demand adjustment. In 1969 when the supply-demand adjustment averaged minus 11 cents, the Eastern Colorado Class I price averaged $6.60, 19 cents above the $6.41 price that would have resulted from the Class I price formula for Western Colorado proposed by this decision.

The Class I price herein provided, the basic formula plus $2, was proposed by Western Colorado Milk Producers Association, a cooperative representing all but one of the approximately 75 producers on the market. The association contends that the present Class I price formula is not suitable under current conditions in the market, particularly since it is determined solely by the Eastern Colorado Class I price. The Western Colorado Class I price, the cooperative claims, should take into account more directly the supply and demand conditions of the Western Colorado market, while giving consideration to an appropriate alignment with Class I prices in all other markets in the region. Otherwise, it was claimed, handlers regulated by the Western Colorado order would be at a disadvantage in competing for sales with handlers regulated by these other orders.

The Western Colorado cooperative supplies, on a regular basis, not only Western Colorado handlers but also handlers under the Eastern Colorado order. In addition, the production of three of its members is shipped regularly to an unregulated bottling plant in northwestern Colorado. Milk not needed by its regular buyers is sold to plants under the Rio Grande and Central Arizona orders and to nonpool manufacturing plants at distant locations from the market.

In the 12 months through October 1969, when 38 million pounds of milk were pooled under the Western Colorado order, the cooperative marketed 57 million pounds of milk for its members. Of that amount, 34 million pounds were pooled under the Western Colorado order, 15 million pounds were sold to Eastern Colorado handlers and the remainder was shipped to plants in the Rio Grande and Central Arizona orders and to unregulated plants.

The 57 million pounds of milk marketed by the cooperative in the 12 months through October 1969 is approximately the same as the quantity it marketed in the corresponding period a year earlier. The total quantity of milk pooled under the Western Colorado order was 38 million pounds in the 12 months through October 1969, and 42 million pounds a year earlier. Class I utilization in the Western Colorado order pool was 24 million pounds in the year ending October 1969, and 29 million pounds for the prior year.

The decline in the quantities of milk pooled and classified in Class I under the Western Colorado order is due primarily to the change in status of a handler from pool plant operator to a producer-handler in July 1968. The development of own-herd production by the handler has displaced substantial quantities of producer milk previously purchased. The consequent loss of Class I sales to the pool has caused the Western Colorado cooperative to market a relatively large proportion of its members' production for manufacturing purposes as surplus.

Grand Junction, the principal city in the Western Colorado marketing area, is approximately 270 miles from Denver, 390 miles from Albuquerque, 300 miles from Salt Lake City, and 600 miles from Phoenix, the principal cities in the marketing areas of Eastern Colorado, Rio Grande, Great Basin, and Central Arizona orders, respectively.

The Class I differential of $2 proposed by the cooperative, and provided by this decision, compares with Class I differentials in the Eastern Colorado, Rio Grande, Great Basin, and Central Arizona orders of $2.30, $2.35, $2.25, and $2.52, respectively. Of these, only the Class I price under the Eastern Colorado order is subject to a supply-demand adjustment. In the other orders, the Class I price is computed by adding the Class I differential to the basic formula price for the preceding month, as is herein proposed for the Western Colorado order.

The present Western Colorado Class I price formula (Eastern Colorado Class I price minus 5 cents) is tending to attract substantially more milk for the market than can be marketed as Class I milk, and the cost of marketing the excess production has become economically burdensome to Western Colorado producers. Except for limited sales to an ice cream manufacturer, there are no ready outlets in the market for surplus producer milk.

It is not expected that the reduction in the Class I price proposed by this decision will achieve immediately a substantial drop in production for the market relative to its Class I needs. It should tend, however, to bring about a satisfactory balance between supply and sales within a reasonable period of time. In view of this, the level of the Class I price proposed by producers, and as proposed by this decision is, under current conditions, an appropriate basis for pricing Class I milk under the Western Colorado order. Also, it should be helpful in maintaining orderly marketing in the area by enabling Western Colorado handlers to compete on improved terms for Class I sales with handlers from other order markets, both inside and outside the marketing area.

A spokesman for a major cooperative in the Great Basin market which operates regulated plants under the Great Basin and Rio Grande orders, opposed reducing the Western Colorado Class I price. He claimed that it would disadvantage his cooperative in competing for fluid milk sales with Western Colorado handlers.

Salt Lake City and Albuquerque, the principal cities in the Great Basin and Rio Grande markets, are about 300 miles and 390 miles, respectively, from Grand Junction. Except for some sparsely populated places in southern Utah and southwestern Colorado, there is no overlapping of the sales areas of Western Colorado handlers and those of handlers regulated by the Great Basin and Rio Grande orders. Moreover, the rather limited areas where the Western Colorado handlers compete with milk under the Great Basin and Rio Grande orders are at great distance from the main centers of population under the respective orders and involve only small proportions of the milk regulated under each order. In any event the Western Colorado price has developed a substantial proportion of milk in the market which has no Class I outlet at this time.

It cannot be concluded, on the basis of the testimony presented, that the reduction in the Western Colorado Class I price herein proposed would provide any significant advantage to Western Colorado handlers in competing with Great Basin and Rio Grande order handlers.

3. *Class I butterfat differential.* The butterfat differential applicable to Class I milk should be 12 percent of the Chicago butter price for the preceding month (instead of 13 percent as now provided in the order).

In proposing a lower Class I butterfat differential, producers contended that the values now assigned to butterfat and skim milk in Class I products were first included in the order a number of years ago and do not reflect the current values.

In recent years the proportion of solids not fat in the fluid milk products in Class I has increased, and the proportion of butterfat has decreased. This has been evidenced by the increasing sales of skim milk items (plain, fortified and flavored skim and part skim milk, buttermilk, etc.) while sales of whole milk and cream have been declining. The change in the butterfat differential gives recognition to the changing value of butterfat in fluid milk products in Class I.

In the 12 months through October 1969, when the actual butter fat differential averaged 8.8 cents, the proposed differential would have averaged 8.1 cents. In the same 12-month period, when the Class I price averaged $6.52, the value of 3.5 pounds of butterfat in a hundred pounds of milk was $3.08 (35 times 8.8 cents). The skim milk portion

of such hundred pounds of milk was valued at $3.50.

The proposed butterfat differential of 12 percent of the butter price would have valued the butterfat in a hundred pounds of milk in the 12 months through October 1969 at $2.835 (35 times 8.1 cents). This is 23.5 cents less than the value of 3.5 pounds of butterfat in a hundred pounds of milk under the Western Colorado order in the same period. Had such a differential been in effect, however, the value of the skim milk portion of the milk would have been increased by 23.5 cents.

4. *Interest payments on overdue accounts.* The unpaid obligation of a handler to the market administrator should be increased one percent for each month or portion thereof beginning with the third day following the date by which such obligation is payable.

A cooperative proposed that handlers be required to pay interest on overdue accounts.

Prompt payment of monies due the market administrator, whether to the producer-settlement fund, for expense of administration or for marketing services, is essential to the operation of the order.

As herein provided, interest on unpaid obligations would be charged at the rate of 1 percent for each month or portion thereof beginning with the third day following the due date of an obligation and would be applied until the obligation is paid. The 3-day interval between the due date of an obligation and the time from which interest would be computed is a reasonable period of time to use as a basis for the payment of interest on overdue accounts.

The current scarcity of money and the relatively high rates of interest on commercial loans could provide an incentive for handlers to delay payments to the market administrator in lieu of borrowing needed money from other sources. Commercial loans in the area are available only at about 12 percent per annum on a secured loan. The rate adopted is reasonable in consideration of today's financial markets.

The interest payable on overdue accounts should be computed monthly on the unpaid balance, including any accrued interest. A handler who has not made payment when due to the market administrator has use of such money for the time beyond which it was due.

Some handlers may have unpaid obligations due the market administrator when the provision herein proposed would become effective. In consideration of the main purpose of the interest provisions, i.e., to obtain prompt payments for producers, there is no basis for differentiating between unpaid obligations resulting from milk handled in preceding months or in a future month. It is intended that the unpaid obligation of a handler at the time the interest payment provision herein proposed would become effective will be treated in the same manner as any unpaid obligation subsequently incurred by the handler.

If a handler refuses or fails to file a report from which his obligation is computed, interest should be charged on any payments due the market administrator as though the report was filed when due. Otherwise, handlers would be provided an incentive to be delinquent in filing their reports.

It was suggested that the market administrator be required to pay interest on any unpaid obligation to a handler. The order sets forth clearly the dates by which the market administrator must pay handlers any amount due them from the producer-settlement fund. He has no authority to delay such payments, the due dates of which are set forth in the order. There is no indication that the market administrator has at any time failed to make payments as required pursuant to the order and there would be no reason for him to make late payments if all handlers comply with order terms. Moreover, any such interest payments could come only from monies paid by other handlers for administrative purposes. The proposal is denied.

The order should not provide that a handler pay interest to producers or cooperatives on unpaid obligations for producer milk or that a handler's report be excluded from the market administrator's uniform price computation in any month because he is delinquent in making payment for producer milk. Except for the own-herd production of a pool plant operator, all producer milk in the pool is marketed by the Western Colorado Milk Producers Association, which collects from handlers for its members' deliveries.

The order is specific in prescribing the dates by which handlers must pay the cooperative for producer milk. Moreover, handlers apparently have not been delinquent in paying for producer milk by the dates specified in the order. Hence, there is no justification, under current conditions in the Western Colorado market, for specifying in the order that a handler must pay interest on unpaid obligations to producers or cooperatives or that a handler's report must be excluded from the uniform price computation because he is delinquent in making payment for producer milk.

5. *Pool plant qualifications.* The requirements for a plant to qualify as a distributing pool plant should not be changed.

A distributing pool plant is any plant in which fluid milk products are processed or packaged during the month and from which (1) at least 50 percent of its total receipts of Grade A milk (except receipts from a distributing pool plant) is disposed of as fluid milk products (except filled milk) on routes; and (2) at least 10 percent of its total receipts of Grade A milk or 2,000 pounds per day, whichever is less, is disposed of as fluid milk products (except filled milk) on routes in the marketing area.

As proposed by the principal cooperative in the market, a plant would be pooled if at least 50 percent of "any" receipts of Grade A milk (except receipts from a distributing pool plant) is disposed of as fluid milk products from "said plant or premises" on routes and at least 10 percent of its Grade A "disposition" or 2,000 pounds per day, whichever is less, is disposed of on routes in the marketing area during the month.

The cooperative's proposal could result in designating a plant used exclusively for manufacturing purposes (e.g., an ice cream manufacturing plant) as a distributing pool plant. As proposed, all fluid milk products received by the operator of a plant at any location for disposition to retail or wholesale outlets would be considered as a receipt at his plant; and the transfer to the vehicle of a plant operator at any location, or the delivery to the storage box or storage trailer of a handler at any location of fluid milk products for disposition to retail or wholesale outlets would be considered a receipt at, and a disposition from, his plant.

The proposal was made by the cooperative primarily to preclude the circumvention of the producer-handler provisions of the order. A handler who now qualifies as a producer-handler receives packaged fluid milk products from another handler at a parking lot near a manufacturing plant controlled by him. These fluid milk products are distributed to retail and wholesale outlets by delivery trucks owned by the manufacturing plant. Presently, the fluid milk products thus handled are not considered as a receipt of or a disposition by the producer-handler. Elsewhere in this decision provision is made to implement the producer-handler definition so that the total receipts of and the total disposition by a handler with own farm production at his plant and at all other locations will be considered in determining whether he qualifies for producer-handler status.

No purpose would be served by pooling a manufacturing plant based on distribution in the marketing area by the operator of that plant of fluid milk products which originated at another plant and were not received at the manufacturing plant. Such disposition must be accounted for under the order as a disposition on a route from the plant at which such fluid milk products were processed or packaged. The operator of that plant would be the responsible handler under the order for accounting for that disposition. Such plant could be a pool plant, an other order plant, a partially regulated distributing plant, or a producer-handler plant.

A vendor (a person who does not operate a plant but receives fluid milk products from a plant and resells them via a mobile delivery vehicle to retail and wholesale customers) is essentially the same as the operator of a manufacturing plant with respect to the distribution in the marketing area of packaged fluid milk products which originated at another plant and which were not handled in the manufacturing plant. The fluid milk products distributed by a vendor are considered as a disposition on a route from the plant at which they were processed or packaged.

Designating a vendor as a handler would enable the market administrator to obtain reports from him. Such a provision is necessary in order that the market administrator can determine that all

fluid milk products distributed in the marketing area during the month from all plants and by distributors who do not operate plants are accounted for and to carry out the other terms of the order.

6. *Classification changes.* (a) No action should be taken at this time on the producers' proposal relating to the classification of "sterilized products in hermetically sealed containers."

As proposed by producers, the term "sterilized products in hermetically sealed containers," as used in the order to exclude products so designated from the Class I classification, would be changed to "sterile products in hermetically sealed containers." The purpose of the proposal is to clarify the present terminology so that only fluid milk products in containers that can assure sterility could be classified other than as Class I.

Producers indicated that they expect to join in a request for a hearing on a national or regional basis to consider a uniform classification plan under orders. Also, that such contemplated hearing on orders generally would provide a more appropriate basis for considering the classification of sterilized products in hermetically sealed containers than the limited testimony presented on the record of this hearing.

(b) Western Colorado handlers manufacture no yogurt in their plants. Some yogurt is distributed in the marketing area from plants outside the market.

The order does not include yogurt in the Class I classification. Neither does it explicitly state that the skim milk and butterfat used to produce yogurt shall be Class III. Producers proposed that the order should specify a Class III classification for yogurt until a hearing is held to consider the classification of yogurt in a uniform classification plan under orders. There was no opposition to the producers' proposal and no testimony was presented for classifying yogurt in a classification other than Class III. Accordingly, it is concluded that the order should, for the present, specify a Class III classification for yogurt.

7. *Inventory adjustment computation.* The net pool obligation computation adjustment applicable to a handler's inventory of packaged fluid milk products should be discontinued.

A handler's net pool obligation is now increased by the amount that the Class I price value for the current month of packaged fluid milk products in inventory at the end of the preceding month exceeds their Class I price value for the preceding month. When the current month's Class I price is less than that for the preceding month, the handler's net pool obligation on inventory of packaged fluid milk products is decreased.

Producers proposed that the above provision be deleted from the order. They claim that the elimination of this provision would simplify administration of the order. The effect of the provision has been insignificant. Since its inclusion in the order in May 1968, it has had little benefit for either producers or handlers. There was no opposition at the hearing to deleting the provision from the order.

Official notice is taken of the market administrator's monthly statistical summaries and uniform price announcements for May 1968–October 1969. In this 18-month period, the rate of adjustment on Class I packaged inventory was a plus amount in 7 months, a minus amount in 5 months, and zero in 6 months. The adjustment for the 18-month period increased the value of Class I milk in the pool an average of $7 per month. The value of Class I milk pooled averaged $137,000 per month during this period. The average net monthly adjustment of $7 affected the value of Class I milk pooled by $5/1000$ of 1 percent. Discontinuing this provision will tend to simplify order administration without adverse effect.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

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

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

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which 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 decison.

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 order regulating the handling of milk in the Western Colorado marketing area 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. July 1970 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Western Colorado marketing area, is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on September 22, 1970.

RICHARD E. LYNG,
Assistant Secretary.

Order [1] Amending the Order, Regulating the Handling of Milk in the Western Colorado Marketing Area.

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 Western Colorado marketing area. The hearing was held pursuant to the provisions of the Agricultural

[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.

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; 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.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Western Colorado 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:

The provisions of the proposed marketing agreement and order amending the order contained in the revised recommended decision issued by the Deputy Administrator, Regulatory Programs, on August 18, 1970, and published in the FEDERAL REGISTER on August 21, 1970 (35 F.R. 13371; F.R. Doc. 70-11017), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein subject to the following modifications in §§ 1134.11, 1134.13, 1134.83, and 1134.88a.

1. Section 1134.11 is revised as follows:

§ 1134.11 Handler.

"Handler" means:

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

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

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

(d) A cooperative association with respect to milk of its member-producers which is delivered from the farm to the pool plant of another handler in a truck owned and operated by the association or by a hauler under contract to the association;

(e) A producer-handler or any person who operates an other order plant described in § 1134.61; or

(f) A vendor (any person who does not operate a plant described in paragraph (a), (b), or (e) of this section but who engages in the business of receiving fluid milk products for resale and distributes to retail or wholesale outlets, via a mobile delivery vehicle, packaged fluid milk products received from such a plant).

2. Section 1134.13 is revised as follows:

§ 1134.13 Producer-handler.

"Producer-handler" means any person who is an individual partnership or corporation and 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 conditions 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 his sole risk and under his complete and exclusive management and control;

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

(3) Only he and no other person (except a member of his immediate family, or a stockholder in the case of a corporate farm) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(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: *Provided*, That:

(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) 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

(3) For the purpose of this section, all fluid milk products disposed of on routes or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at his plant; and the utilization for such plant shall include all such route and store dispositions; 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.

3. Section 1134.16 is revised as follows:

§ 1134.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, reconstituted milk or skim milk, fortified milk or skim milk (including "diet" foods), cream (sweet or sour), half and half, or any mixture in fluid form of milk or skim milk and cream (except ice cream mix, frozen dessert mixes, frozen cream, a product which contains 6 percent or more nonmilk fat or oil, aerated cream, eggnog, yogurt, cultured sour mixtures to which cheese or any food substance other than a milk product has been added in an amount not less than 3 percent by weight of the finished product), which are neither sterilized nor in hermetically sealed containers.

4. Section 1134.32 is revised as follows:

§ 1134.32 Other reports.

Each producer-handler, each handler pursuant to § 1134.11(f), each handler required to report under § 1134.61, and each handler making payments under § 1134.62(b) shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

5. Section 1134.44 is revised as follows:

§ 1134.44 Transfers.

Skim milk or butterfat in the form of a fluid milk product (or a Class II product moved between pool plants) shall be classified:

(a) At the utilization indicated in writing to the market administrator by the operators of both plants, on or before the seventh day after the end of the month within which such transfer occured, otherwise as Class I milk, if transferred 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 any class shall be limited to the amount thereof remaining in such class in the plant(s) of the transferee handler after computations pursuant to § 1134.46(a)(9) and the corresponding step of § 1134.46(b);

(2) If the transferor handler received during the month other source milk to be allocated pursuant to § 1134.46(a)(4) and the corresponding step of § 1134.46(b), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1134.46(a) (8) and (9) and the corresponding steps of § 1134.46(b), the skim milk and butterfat so transferred 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 other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler;

(c) As Class I milk, if transferred in consumer packages to a nonpool plant that is not an other order plant;

(d) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is not an other order plant or a producer-handler, unless the requirements of subparagraphs (1) and (2) of this paragraph

are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in subparagraph (3) paragraph in his report submitted to the market administrator pursuant to § 1134.30 for the month within which such transaction occurred;

(2) The operator of the nonpool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification; and

(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 such Class I utilization disposed of on routes 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 such Class I ulitization disposed of on routes 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 the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all plants subject to the classification and pricing provisions of this and other orders issued pursuant to the Act; 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 II milk to the extent of such uses at the plant and then as Class III milk; and

(e) As follows, if transferred or diverted to an other order plant in excess of receipts from such plants in the same category as decribed in subparagraphs (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 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 III 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 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 and skim milk and butterfat allocated to Class II under the other order shall be classified as Class III; 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 § 1134.41.

6. Section 1134.51(a) is revised as follows:

§ 1134.51 Class prices.

(a) *Class I milk.* The Class I milk price shall be the basic formula price for the preceding month plus $1.80 and plus 20 cents;

* * * * *

7. Section 1134.53(a) is revised as follows:

§ 1134.53 Butterfat differentials to handlers.

(a) *Class I milk.* Multiply the Chicago butter price for the preceding month by 0.120.

* * * * *

8. A new § 1134.63 is added as follows:

§ 1134.63 Obligation of a vendor on receipts from a producer-handler.

Each vendor shall pay the market administrator for the producer-settlement fund on or before the 25th day after the end of the month at the difference between the value of the skim milk and butterfat in fluid milk products received from a producer-handler during the month at the Class I price applicable at the location of the producer-handler's plant (but not less than the Class III price) and its value at the Class III price subject to the following conditions:

(a) The quantities of skim and butterfat in fluid milk products on which payments shall be made pursuant to this section shall not exceed the vendor's Class I disposition in the marketing area during the month; and

(b) This section shall not apply to a vendor whose total Class I disposition is obtained from a producer-handler, or whose total receipts and disposition of fluid milk products are considered as a part of the receipts and disposition of the producer-handler pursuant to § 1134.13(b)(3).

9. Section 1134.70(c) is revised as follows:

§ 1134.70 Computation of net pool obligation of each pool handler.

* * * * *

(c) Add the amounts computed under subparagraphs (1) and (2) of this paragraph:

(1) Multiply the difference between the appropriate Class III price for the preceding month and the appropriate Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I under § 1134.46(a)(6) and the corresponding step of § 1134.46(b), for the current month; and

(2) Multiply the difference between the appropriate Class III price for the preceding month and the appropriate Class II price for the current month by the hundredweight of skim milk and butterfat subtracted from Class II milk under § 1134.46(a)(6) and the corresponding step of § 1134.46(b);

* * * * *

10. Section 1134.71(a) is revised as follows:

§ 1134.71 Computation of uniform price.

* * * * *

(a) Combine into one total the values computed under § 1134.70 for all handlers who filed the reports prescribed by § 1134.30 for the month and who made the payments under § 1134.84 for the preceding month;

* * * * *

11. Section 1134.83 is revised as follows:

§ 1134.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers under §§ 1134.61, 1134.62, 1134.63, 1134.84, and 1134.86 and out of which he shall make all payments under §§ 1134.85 and 1134.86: *Provided,* That any payments due to any handler shall be offset by any payments due from such handler.

12. Section 1134.88 is revised as follows:

§ 1134.88 Expense of administration.

As his pro rate share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that classified under § 1134.43(b), but excluding, in the case of a cooperative association which is a handler under § 1134.11

(d), milk which was received at the pool plant of another handler) and such handler's own production;

(b) Other source milk allocated to Class I under § 1134.46(a) (4) and (8) and the corresponding steps of § 1134.46 (b);

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area which exceeds Class I milk received during the month at such plant from pool plants and other order plants; and

(d) Class I milk disposed of by a vendor in the marketing area on which a payment to the producer-settlement fund is due pursuant to § 1134.63.

13. A new § 1134.88a is added as follows:

§ 1134.88a Interest payments.

The unpaid obligation of a handler pursuant to §§ 1134.62, 1134.63, 1134.84, 1134.86, 1134.87, and 1134.88 shall be increased 1 percent for each month or portion thereof beginning with the third day following the date by which such obligation was payable: *Provided*, That:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously made pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

[F.R. Doc. 70-12884; Filed, Sept. 25, 1970; 8:50 a.m.]

[7 CFR Part 1136]

[Docket No. AO-309-A15]

MILK IN GREAT BASIN MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Great Basin 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 (7 CFR Part 900), at Salt Lake City, Utah, November 19-21, 1969, pursuant to notice thereof issued on October 22, 1969 (34 F.R. 17335).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on May 27, 1970 (35 F.R. 8572; F.R. Doc. 70-6811) and on August 18, 1970 (35 F.R. 13378; F.R. Doc. 70-11018), filed successively with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision and revised recommended decision, each containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the revised recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications under the subheading "2. *Application of the order to producer-handler operations*": Paragraphs 1, 2, 3, 17, and 18 are changed and a new paragraph is added between the 17th and 18th paragraphs.

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

1. The marketing area.
2. Application of order to producer-handler operations.
3. Modification of approved plant definition.
4. Exempting some distributing plants from regulation.
5. Diversion of producer milk.
6. Classification changes.
7. The Class I butterfat differential.
8. Location differentials.
9. Computation of net pool obligation.
10. Payments out of the producer-settlement fund.
11. Interest payments on overdue accounts.
12. Application of order to cooperative associations.
13. Administrative and conforming changes.

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

1. *Marketing area.* Preston and Malad City, Idaho, and the Utah counties of Rich and Cache (except the city of Logan) should be deleted from the marketing area.

The marketing area presently includes the 21 northernmost Utah counties, Elko and White Pine Counties in Nevada, two Idaho cities (Preston and Malad City) and the town of Evanston in Wyoming. The 1960 census population of the marketing area was 879,000.

The several proposals at the hearing would remove from the marketing area Preston and Malad City, Idaho, and the Utah counties of Cache and Rich and add to it eight counties in southern Utah. No testimony was presented at the hearing on the latter proposal. Hence, no action is taken on it in this decision.

Except for the city of Logan in Cache County, the territory proposed to be deleted from the marketing area is basically rural. Of the 39.8 thousand population in Cache County in 1960, 18.7 thousand were in Logan. In Rich County, the 1960 census population was 1.7 thousand. The 1960 census populations for Preston and Malad City were 3.6 and 2.3 thousand, respectively.

The proposal to remove Preston and Malad City from the marketing area was made by two Idaho distributors who rely primarily on their own production for their needs. The Class I distribution by these handlers is within a limited geographical area and a substantial portion of the total Class I sales in Preston and Malad City is from their plants. The remaining Class I distribution in these cities is from the plants of the two principal cooperatives under the order.

The proposal to remove Cache and Rich Counties from the marketing area was made by a group of handlers whose distribution is within these counties and who rely basically on their own-herd production as a source of supply. The proposal to drop these two counties and the two Idaho cities from the marketing area was opposed by the two major cooperatives in the market. Although the cooperatives have some distribution in all the territory herein proposed to be deleted from the marketing area, their sales in these places, except for the city of Logan, are relatively insignificant compared to their overall sales throughout the marketing area.

Cache and Rich counties and Preston and Malad City were added to the marketing area effective January 1, 1966. That action resulted from testimony presented at a hearing by the two major cooperatives under the order in support of the proposal submitted by them. The testimony at that hearing indicated that the cooperatives were, by a wide margin, the major distributors in each of these four geographical areas then proposed to be included in the marketing area. The handlers who now propose the exclusion of these areas from the marketing area claim that the cooperatives do not now have as high a proportion of the sales in these areas as indicated at the earlier hearing.

The handlers requesting the removal of proposed territory from the marketing area have relatively small operations. They rely basically on their own-herd production as a source of supply. The nature of their operations in the relatively sparsely populated areas wherein they operate is substantially different from that of the great majority of regulated handlers. The latter usually have their plants in the major cities in the marketing area or they distribute over a wider area.

Proponents claim that the order has worked a hardship on them because the procurement and marketing conditions under which the relatively small distributors in the area operate are significantly different from those that prevail in the remainder of the present marketing area. They claim further that regulation under an order is not necessary to maintain orderly marketing in this basically rural area.

Those who would be directly affected by the marketing area revision are those distributors who rely primarily on their own farm production for their needs. With the removal of the territory herein proposed from the marketing area they would have greater flexibility in their operations, which are principally local.

The testimony for removing Cache County from the marketing area was directed primarily to the more rural parts of the county wherein the proponents operate. Unlike the remaining portion

of Cache County, the city of Logan is served primarily by regulated handlers who are among the principal distributors in the remainder of the marketing area. No testimony was presented on the record to show that marketing conditions in Logan are in any way different from those in the remainder of the marketing area, which is served by the same handlers who are the principal distributors in Logan. Accordingly, there is no basis in this record to take Logan out of the marketing area.

2. *Producer-handler.* The quantities of fluid milk products that a producer-handler may receive from regulated plants should not be changed. He may now receive from Great Basin pool plants the larger of 3,000 pounds, or 5 percent of his Class I sales, during the month.

The producer-handler definition should, however, be rewritten to insure that producer-handler status is accorded only to a person who operates the farm(s) on which his "own-herd production" is produced at his sole risk and under his complete and exclusive management and control, who operates a plant at which the milk produced on his farm(s) is processed and packaged, and whose disposition of fluid milk products on his routes and at his stores includes only the milk produced on his farm(s) and allowable purchases from regulated plants.

To effectuate the above, a producer-handler should be defined as follows:

"Producer-handler" means any person who is an individual, partnership or corporation and 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 conditions 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 his sole risk and under his complete and exclusive management and control;

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

(3) Only he and no other person (except a member of his immediate family, or a stockholder in the case of a corporate farm) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(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: *Provided,* That:

(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) From pool plants or other order plants in an amount that is not in excess of the larger of 3,000 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

(3) For the purpose of this section, all fluid milk products disposed of on routes or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at his plant; and the utilization for such plant shall include all such route and store dispositions; 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.

There were a number of proposals considered at the hearing to change the producer-handler definition; no testimony was presented for retaining the present definition. The extensive record testimony was concerned basically with incorporating in the order a producer-handler definition that would be suitable under current conditions in the Great Basin market. It was particularly emphasized that such definition should be spelled out with greater specificity than the present definition.

The proposal of an association of about 40 producer-handlers would amend the present producer-handler definition to require that the milk produced by him as a dairy farmer is produced at a facility owned by him. The purpose of this proposal is to provide explicit language in the order to exclude the leasing of cows and other facilities for milk production as they relate to qualifying a distributor for producer-handler status.

A handler with own-farm production proposed that a producer-handler be permitted to buy fluid milk products from pool plants without limit. Proponent claimed that this would provide a producer-handler more flexibility in his processing operation and enable him to avoid the considerable cost of expanding his production facilities. A cooperative opposing this proposal contended that once a producer-handler develops "new" sales outlets with fluid milk products purchased from pool plants he would expand his own-herd production. As a consequence, the cooperative claimed, the Class I sales thereby gained by a producer-handler would be lost to the pool.

Another handler with own-farm production proposed that a producer-handler's source of supply be limited to his own-farm production, and that his distribution be limited to retail sales at the farm.

He contended that the present producer-handler definition, by unwarrantedly enabling some distributors with own-farm production to qualify as producer-handlers, has provided such distributors an advantage, in both procurement and sales, over regulated handlers.

A cooperative proposed that a producer-handler be limited in his purchases from pool plants to the lesser of 3,000 pounds, or 5 percent, of his monthly Class I sales. This would require a producer-handler to rely more than at present on his own resources to balance his production and Class I sales.

The spokesman for another cooperative proposed that producer-handler status be accorded only those who rely exclusively on own-farm production for their Class I needs. He also proposed that the producer-handler definition be limited to a "family operation." No proposed definition of a family operation was put forward at the hearing, however, and there is no basis in the record on which to define such term precisely.

The approximately 60 producer-handlers under the Great Basin order currently sell about 12 percent of the total Class I sales in the market, the same proportion that their sales have been of the total Class I sales in the market over the past several years.

The present order provisions make possible ready claims of producer-handler status by persons who may, or may not, meet the basic requirements for exempt status as such. Clarification of the order's producer-handler provisions was supported by both producers and handlers as a necessary step to remove any uncertainty as to the conditions which must be met by a handler to qualify as a producer-handler.

One problem arising from the present producer-handler definition concerns those handlers who have leased cows and other facilities for milk production. Another problem relates to receipts of fluid milk products from pool plants at locations other than the producer-handler's plant. Some handlers who had lost their exempt status as producer-handlers contend that the order is not clear about leasing arrangements and what are considered the receipts and dispositions of a handler to be used in determining his producer-handler status.

The present order provides, and should continue to provide, that the operation of a producer-handler's entire facilities for milk production, processing, and distribution shall be under his complete and exclusive control and at his sole risk. Experience in this market is that handlers have purchased milk from dairy farmers through the device of leasing arrangements on cows as a means of circumventing the order to obtain exempt status as producer-handlers. In such cases, it cannot be said that a "producer-handler" operates at his sole risk and under his complete and exclusive management and control his production facilities.

Thus, a producer-handler is required to furnish proof satisfactory to the market administrator that the full maintenance of milk-producing cows on his farm is his sole risk and under his complete and exclusive management and control. Further, each farm where his milk cows are maintained must be owned or operated by him, at his sole risk, and under his complete and exclusive management and control.

As a further safeguard, the definition should specify that (except for an individual who is a member of the producer-handler's immediate family or a stockholder in the case of a corporate farm) no individual employed on a farm of a producer-handler owns fully or partially either the cows producing the milk on the farm or the farm on which it is produced.

In conjunction with the changes herein proposed, the present limit on the quantity of fluid milk products (the larger of 3,000 pounds or 5 percent of his Class I sales) the producer-handler may receive from pool plants should be retained, but the producer-handler should be permitted to obtain such receipts from a pool plant under any order issued pursuant to the Act. This limit is reasonable under current conditions in the Great Basin market. There was no significant opposition to permitting a producer-handler to purchase some fluid milk products from pool plants.

Under some circumstances, it may be more practicable for a producer-handler to obtain fluid milk products from a plant regulated by another order instead of from a Great Basin pool plant. Since the fluid milk products thus obtained by the producer-handler must be accounted for and priced as Class I milk, the change herein provided would give him no advantage over other handlers. On the contrary, such a provision would tend to contribute to orderly marketing without in any way impairing the integrity of the regulation.

Following a producer-handler to receive from regulated plants up to 3,000 pounds or 5 percent of his monthly Class I sales will enable the relatively small distributors, who have historically operated as producer-handlers, to retain producer-handler status. Although such distributors rely primarily on own-farm production for their needs and handle their reserve supplies, some depend on regulated plants as a regular source of various fluid milk products (e.g., buttermilk, cream) that are not processed or packaged in their own plants. Also, these operations must occasionally, particularly in emergency situations, depend on regulated plants for supplemental supplies. The record does not show that enabling such handlers with own-herd production to obtain limited quantities of fluid milk products from regulated plants, as herein proposed, has adversely affected the competitive position of regulated handlers or producers.

Some handlers with own-herd production have engaged in procurement and distribution practices that enable them to obtain from pool plants more than the maximum quantities of fluid milk products (the larger of 3,000 pounds or 5 percent of his Class I sales) permitted a producer-handler in order to obtain exemption as a producer-handler.

The only sales outlet from the plant of at least one handler with own-herd production is a single vendor, who also receives packaged fluid milk products on a regular basis from a pool plant. Another handler distributes on routes not only the fluid milk products obtained from his own-herd production and processed at his plant, but also the packaged fluid milk products from pool plants that he receives at another location. The above are some representative practices which have been used by handlers to circumvent the order's provisions in attempting to achieve producer-handler status.

The various means whereby a handler with own-herd production may obtain exemption as a producer-handler by an arrangement with a vendor, and whereby a producer-handler may evade the intent of the regulation by receiving fluid milk products from pool plants at locations other than the pool plant and his own plant, tend to defeat the purpose for which the producer-handler provision is included in the order.

The total operation of a handler with own-farm production, whether conducted as one or more business units, should be taken into consideration in determining whether he qualifies as a producer-handler. Also, the fluid milk products handled at all stores operated by him, directly or indirectly, or by any vendor who controls, or is controlled by, him should be considered as a receipt and a disposition by the handler in determining his producer-handler status. Otherwise, a handler with own-farm production whose purchases of fluid milk products from pool plants exceed the maximum allowable to qualify as a producer-handler could unwarrantedly obtain producer-handler status by having such purchases made by a plant under his control established as a separate business unit, a store operated by him, or by a vendor who controls, or is controlled by, him.

Thus in determining whether a person qualifies as a producer-handler, all fluid milk products disposed of on routes or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest should be considered as having been received at his plant; and utilization for such plant should include all such route and store dispositions. Without such a provision the meaningfulness of the basic standards herein provided, and deemed appropriate, to qualify a person for producer-handler status in the Great Basin market would be seriously diminished.

The recommended decision provided for considering the total receipts and disposition of any vendor receiving any fluid milk products from a handler with own-farm production as a receipt and disposition by such a handler in determining his producer-handler status. The producer-handlers who filed exceptions to this provision contended that it could result in a person's losing his producer-handler status because of purchases made from other sources by a vendor over whose operation he has no control. They claimed that unless a handler with own-farm production is affiliated with or has a financial interest in a vendor's operation, he is not in a position to exercise any control over the quantities of fluid milk products that a vendor may obtain from other sources.

As indicated above, the total operation of a handler with own-farm production should be taken into consideration in determining whether he qualifies as a producer-handler. Unless a vendor is affiliated with the producer-handler operation, the fluid milk products obtained by the vendor from other sources may not appropriately be considered as part of the producer-handler's operation. In view of this, it is concluded that a vendor's receipts and disposition should be considered as a part of the receipts and disposition of a handler with own-farm production only if such handler has a financial interest in, or otherwise controls (or is controlled by) the vendor.

The exemption of a producer-handler from the pricing and pooling provisions of the order is based on the principle that he assumes the burden of disposing of that portion of his production that is surplus to his Class I needs. This enables the producer-handler to retain the full return from his Class I sales even though such sales are in competition with regulated handlers.

Inasmuch as a producer-handler's appropriate competitive relationship with other handlers and with other producers depends upon the producer-handler assuming the burden of his own surplus, an equitable relationship among the several groups would not be achieved if the producer-handler were allowed to dispose of his surplus and obatin the Class I price for such surplus. As long as the producer-handler has the advantage of enjoying the full benefit of his Class I use sales without sharing them in the pool with the Great Basin order producers, he should not also receive additional Class I benefits from the pool, at the expense of these producers, for his surplus production.

Because fluid milk products (in bulk or packaged form) disposed of by a producer-handler to another handler are deemed to be surplus to the producer-handler's operation, they are allocated to the lowest use class at the transferee handler's plant. The order provides for a payment into the producer-settlement fund at the difference between the Class I and Class III prices on such milk allocated to Class I by the receiving handlers. It is equally appropriate, under conditions in the Great Basin market, that such payment also apply to a producer-handler's surplus production disposed of to a vendor.

A producer-handler supplying fluid milk products to a vendor who at the same time is obtaining fluid milk products from handlers regulated, fully or partially, by the Great Basin order or by another order is, in effect, disposing of the production in excess of his own Class I distributional needs to the vendor. If the producer-handler's production is adequate only for his needs, a vendor must obtain his full supply from regulated handlers. Such purchases are decreased during those periods when the excess production of the producer-handler is obtained by the vendor for his Class I distribution. As a consequence, the surplus production of the producer-handler displaces Class I sales from regulated plants, and the quantity thus displaced must be disposed of in the lowest-priced class. The producers supplying the handlers on whom the vendor depends for his Class I requirements in excess of that

received from the producer-handler thus must carry an additional burden of reserve supply. The producer-handler consequently gains Class I sales while not assuming the full risk of carrying his own surplus.

In view of the above, it is concluded that the disposition of the surplus production of a producer-handler to a vendor receiving fluid milk products from other handlers should be treated in the same manner as the disposition of a producer-handler's surplus to a regulated handler. This would be accomplished by providing that the vendor make payment to the producer-settlement fund at the difference between the Class I and Class III prices on such milk, as is now required of regulated handlers.

The above payment would not be applicable to the fluid milk products received from a producer-handler by a vendor who depends upon him for his total supply, or by one in whose operation the producer-handler has a financial interest, or who controls or is controlled by him. As provided by this decision, the total receipts and disposition of such a vendor are considered a part of the producer-handler's receipts and disposition. The fluid milk products supplied such a vendor by a producer-handler are an integral part of the producer-handler's operation. The provisions relating to this kind of relationship limit the purchases that may be made from pool plants by such producer-handler and his vendor.

A hearing completed at Memphis, Tenn., on May 24, 1968, considered whether a producer-handler handling reconstituted skim milk should lose his exempt status. Amendments were made in 62 orders, including the Great Basin order, effective January 1, 1970, on the basis of that record.

The findings in the October 13, 1969, decision (34 F.R. 16881) resulting from that hearing provide that the producer-handler definition of each order should preclude the use of reconstituted skim milk or unregulated milk in fluid milk products. The decision also finds that, since he is not subject to the pricing and pooling provisions of an order, a producer-handler using reconstituted skim milk or unregulated milk in any fluid milk product disposition thereby would disqualify himself from his exempt status as a producer-handler.

The findings in the aforesaid decision relative to precluding a producer-handler's using reconstituted skim milk in any fluid milk product are appropriate under current conditions in the Great Basin market and are reaffirmed and adopted in this decision.

As now provided in the order, a producer-handler may use limited quantities of nonfat milk solids to fortify, or to reconstitute into, fluid milk products. The addition of nonfat dry milk and similar products in fortified fluid milk products is a common practice among handlers. No purpose would be served by restricting producer-handlers in this regard, and they should be permitted to use nonfat milk solids in the fortification of fluid milk products without limit.

3. *Approved plant.* The more descriptive term "fluid milk plant" should replace "approved plant" in the order and should be defined to include any plant from which fluid milk products are disposed of on routes in the marketing area and any milk receiving or processing plant from which milk or skim milk is shipped to a plant with route disposition in the marketing area. The present requirement that a plant must either receive milk from dairy farmers or possess the approval of a duly constituted health authority for the processing or packaging of Grade A fluid milk products to qualify as an approved plant should be deleted from the order.

A cooperative proposed the fluid milk plant definition herein provided in order that any plant (including a manufacturing milk plant) from which fluid milk products are disposed of on routes in the marketing area would be required, as a handler, to report to the market administrator. The basis for the proposal was that some such plants could, without the knowledge of the market administrator, distribute fluid milk products obtained from unregulated sources outside the marketing area into the marketing area.

To insure the integrity of the regulation, it is essential not only that all plants from which fluid milk products are distributed in the marketing area report to the market administrator, but also that the market administrator be authorized to receive reports from a person with such disposition who does not operate a plant. At least one plant with Class I sales on routes in the marketing area is not, under the present provisions of the order, required to report to the market administrator.

Some persons who do not operate plants purchase packaged fluid milk products on a regular basis from producer-handlers or pool plants and, as vendors, resell them via their own delivery vehicles to retail and wholesale customers. The fluid milk products distributed by a vendor are considered as a route sale from the plant at which they were processed and packaged.

Including in the fluid milk plant category all plants from which any fluid milk products are distributed in the marketing area, as herein provided, would require them to report their receipts and utilization to the market administrator each month. Also, designating as a handler any person who does not operate a plant, but who distributes to retail or wholesale outlets packaged fluid milk products received from a fluid milk plant (as herein defined), would enable the market administrator to obtain reports from such person. Such changes are necessary in order that the market administrator can determine that all fluid milk products distributed in the marketing area from all plants and by distributors who do not operate plants during the month are accounted for and to carry out the other terms of the order.

In conjunction with his proposal to revise the approved plant definition, a spokesman for the cooperative emphasized the need of having the pooling requirements apply equally to all plants from which a significant amount of fluid milk products is distributed in the marketing area. This can best be accomplished by specifying in the pool plant definition that a fluid milk plant will qualify as a pool plant when not less than 50 percent of the fluid milk products (except filled milk) approved by a duly constituted health authority for fluid consumption that are physically received at such plant, or diverted as producer milk to a nonpool plant, is disposed of on routes.

As now provided in the order, there must be disposed of on routes not less than 50 percent of the receipts of producer milk (including that diverted to nonpool plants) and receipts of fluid milk products from pool supply plants. The requirement that at least 15 percent of such plant's total fluid milk products disposition must be on routes in the marketing area would not be changed. The change herein provided will insure that any plant from which a significant quantity of fluid milk products is distributed in the marketing area on routes would be subject to the order in the same manner as any other handler irrespective of the source from which the fluid milk products handled at his plant were received.

4. *Exempt distributing plant.* A proposal to provide exemption for a plant that distributes not more than an average of 100 pounds of Class I milk per day in the marketing area for the month should not be adopted. The proposal was made primarily to allow (free from regulation) the distribution of some yogurt in the marketing area if the product were classified as Class I under another proposal made by proponent. Since no action is taken in this decision on that proposal, the corollary proposal to exempt certain plants from regulation is denied.

5. *Diversion of producer milk.* A cooperative should be permitted to divert monthly to nonpool plants up to 25 percent of its producer members' deliveries to all pool plants in March through August and up to 20 percent in September through February. Similarly, a pool plant operator should be permitted to divert monthly to nonpool plants up to 25 percent of producer milk (exclusive of that received from producer members of a cooperative) physically received at his plant in March–August and 20 percent in September–February.

A cooperative may now divert up to 25 percent of its producer members' deliveries to all pool plants in any month. The operator of a pool plant may divert up to 25 percent of producer milk received from producers who are not members of a cooperative. In practice, however, the pool plant operator has been permitted to divert up to 33⅓ percent of the milk physically received at his plant. This resulted because the 25 percent diversion allowance is now applied against a total of the producer milk physically received at a pool plant plus that diverted to nonpool plants during the month.

Producers proposed a change in the base amounts to which the percentage

of producer milk that may be diverted by cooperatives for their members and by pool plant operators for nonmembers would be applied. They also proposed a revision in monthly percentages of producer milk physically received at a pool plant that may be diverted each month.

In the Great Basin market, the cooperatives representing a major portion of the producers on the market exercise responsibility for diverting their members' milk to nonpool plants. Milk not needed by handlers can, of course, be most economically handled by moving it directly from the farm to nearby manufacturing plants. The greatest efficiency in this regard is achieved by diverting the milk from the farms of producers nearest the manufacturing plants. This can be accomplished most practicably in this market if the diversion is in terms of a reasonable percentage of the aggregate quantity of milk delivered to pool plants by the cooperative, as herein provided.

A pool plant operator whose sole source of supply is principally from nonmember producers has no less need for diversion than a cooperative whose members supply other pool plants. It is appropriate, therefore, that such a handler be permitted to divert nonmember supplies on the same percentage basis as that allowed a cooperative.

The quantities of producer milk diverted to nonpool plants vary seasonally. They are usually greater in March through August, when production for the market relative to its Class I needs is significantly greater than in the remaining 6 months of the year, September through February. In the 12 months through September 1969, producer milk pooled averaged 37.2 million pounds monthly. Of that amount, 33 million pounds were delivered directly to pool plants; the remainder, 4.2 million pounds (13 percent of the milk delivered to pool plants) was diverted to nonpool plants. The amounts diverted in the 12-month period ranged from a high of 6.7 million pounds in July 1969 (20 percent of producer deliveries to pool plants) to a low of 2.3 million pounds in November 1968 (7 percent of producer deliveries to pool plants).

The major cooperatives in the market contend that the present diversion provisions are inappropriate under current conditions. These provisions, they claim, have encouraged the association of milk with the market solely for manufacturing purposes at the expense of producers who regularly supply the market and on whom the market depends for its Class I needs.

The two major cooperatives in the market maintain their own Class I operations and are the principal suppliers of handlers in the market, both by direct delivery from the farms of producer members and by transfer from the cooperatives' plants. Member milk not needed for Class I purposes is utilized by the cooperative for manufacturing purposes.

A substantial amount of the manufacturing of reserve supplies of milk by these cooperatives is at pool plants. Some is by transfer from pool plants to nonpool manufacturing plants. One cooperative indicated that its monthly diversions of producer milk to nonpool plants are about 4 percent of its member milk received at pool plants. No testimony was presented by the second cooperative regarding the quantity of producer milk it diverts to nonpool plants.

A handler who receives milk from nonmember producers opposed any change in the order that would reduce or limit the quantity of milk that may be diverted from pool plants. The handler operates a plant that is basically a Class I operation. He has associated with his plant substantial quantities of milk that are diverted directly from producers' farms to a manufacturing plant. The quantities of milk transferred or diverted from this plant to the manufacturing plant are between 45 and 50 percent of the producer milk pooled by the handler.

Permitting monthly diversions to nonpool plants of 25 percent in March–August, and 20 percent in September–February, of the milk physically received at pool plants will be fully adequate in insuring the maintenance of a reserve supply for the market. Also, it will tend to safeguard the pool from exploitation by handlers utilizing substantial quantities of milk only for manufacturing purposes, which supplies are not needed or intended for the Class I market and therefore are not part of the necessary reserve to meet fluctuating Class I requirements.

Unless it must be diverted for manufacturing purposes, producer milk should not include any milk moved from a farm directly to an other order plant. Such milk's eligibility to be included under a Federal order would more appropriately be determined at the other order plant where received. In fact, diversion to such plant, if permitted unconditionally, could result in the pricing and pooling of the same milk under two orders.

Providing for the diversion of producer milk to an other order plant for manufacturing purposes will contribute to orderly marketing. In some instances, a pool plant operator may find that his most desirable outlet for this purpose is an other order plant. Specifying under the order that such milk may be diverted if a Class III classification (or comparable utilization under the other order) is designated for such milk pursuant to the other order will tend to insure the integrity of both orders.

Only that milk from dairy farmers genuinely associated with the market by being received and utilized at a pool plant should be eligible for diversion to nonpool plants. Otherwise, it cannot be said that such dairy farmers are supplying the Class I needs of the market. Therefore, it is provided that at least 6 days' production of a producer must be received at a pool plant during the month to qualify any of his production in the same month for diversion within the limits described above. A producer shipping on an every-other-day basis would under this standard be required, in effect, to ship only 3 days. The requirement herein adopted is sufficient to establish a producer's continuing association with the fluid market and still permit the necessary flexibility in diverting milk not needed for fluid use.

At least three deliveries of a producer must now be received at a pool plant during the month to qualify any of his production for diversion in the same month. Since shipments from producers' farms to pool plants are usually on an every-other-day basis, deliveries on 3 days usually include the production for 6 days. It is more appropriate, therefore, to specify that not less than 6 days' production (instead of three deliveries) of a producer must be received at the pool plant to qualify his milk for diversion on other days of the month. Otherwise, the producer who ships on a daily basis would have an unwarranted advantage over the great majority of producers shipping on an every-other-day basis.

As proposed by cooperatives representing a major portion of producers in the market, that producer milk diverted to nonpool plants should be priced at the location of the plant to which diverted instead of at the location of the pool plant to which it is customarily delivered. Pricing milk at the pool plant from which diverted could, in effect, subsidize at the expense of producers generally the more distant producers when the latter's milk is diverted to distant manufacturing plants rather than delivered to the market center. This is because the distant producers would receive the f.o.b. (zero zone) market uniform price on milk which is not moved to the market and on which the full cost charge for the farm to market haul has not been incurred.

It would not be practicable to allow the diversion of milk to producer-handler plants or to exempt distributing plants. To do so would be inconsistent with the basis for exempting the operators of such plants from the provisions of the order.

A producer-handler depends primarily on his own-farm production and supplementary supplies from pool plants for his needs. A person with own-herd production who relies also on milk moved directly from the farm of a producer cannot be distinguished in his operations from other handlers who are fully regulated because they receive milk from producers.

Exempt distributing plants are not subject to any of the provisions of the order with respect to their sources of supply. Hence, milk moved from any farm directly to an exempt distributing plant would not be subject to the pricing and pooling provisions of the order.

As now provided in the order, any fluid milk products transferred from a pool plant to a producer-handler plant or an exempt distributing plant is classified as Class I. This provision, the basis for which was established at previous hearings, is continued in the order.

In addition to providing for diversion to a nonpool plant, the order now provides that producer milk may be diverted "to a receiving facility not approved for handling milk for fluid consumption located at another pool plant." A cooperative's spokesman testified that

since there are at present no such facilities in the market, this provision serves no purpose. Moreover, it is unlikely that the provision will prospectively serve any useful or desirable purpose in the order. It therefore is deleted from the producer milk definition.

6. *Classification changes.* (a) Month-end inventories of packaged fluid milk products (now in Class III) should be classified in Class I. The proposed classification, which usually conforms with the ultimate utilization of packaged fluid milk products in inventory, will result in fewer audit adjustments in classification and handler obligations than if classified in Class III, as now provided in the order. It will not result, however, in an increase in handlers' costs.

A handler who operates a plant that varies between nonpool and pool status from month-to-month will be required to allocate first to a lower-priced class the fluid milk products in inventory at the beginning of each month as they change from nonpool to pool status. This requirement and the classification of month-end inventories of packaged fluid milk products in Class I will provide sufficient safeguards to prevent the exploitation of the pool (by varying his month-end inventories) by the operator of the plant that may be a pool plant and a nonpool plant in successive months.

Month-end inventories of bulk fluid milk products should continue to be classified in Class III. In the following month, they would be subtracted under the allocation procedures from any available Class III milk. A higher use value of such fluid milk products allocated to Class I would be reflected in returns to producers in the following month.

Although packaged fluid milk products in inventory are items which have been prepared specifically for Class I disposition, the ultimate utilization of bulk fluid milk products in inventory may differ substantially between plants and even from month-to-month at the same plant. Under these circumstances, continuing to classify and price month-end inventories of bulk fluid milk products in Class III, as now provided in the order, will facilitate the accounting procedures in the handling of such month-end inventories.

The order should specify that all fluid milk products on hand at the beginning of the month at a plant which was a nonpool plant in the preceding month should be allocated to any available Class III utilization of the plant during the month. This procedure will preserve the priority of assignment to current receipts of producer milk to the current Class I utilization at the plant.

For the first month that the change herein proposed would be effective, packaged fluid milk products on hand at the beginning of the month at a plant that was a pool plant in the preceding month would be allocated to Class I, and bulk fluid milk products would be allocated to Class III. Since the order would have priced the packaged fluid milk products in Class III in the preceding month (as closing inventory), the order should provide that a handler's net pool obligation be increased in the amount by which the value at the Class I price for the current month of the fluid milk products in beginning inventory allocated to Class I exceeds the value of such products at the Class III price in the preceding month. The above adjustment will insure that all fluid milk products disposed of by a handler during the month will be priced at the Class I price applicable for the month, whether such fluid milk products originated as closing inventory in the preceding month or as a receipt at the handler's plant in the current month.

(b) No change should be made in the order provisions applicable to the classification of shrinkage at a pool plant.

The order now provides for classifying in Class III up to 2 percent of the skim milk and butterfat in fluid milk products received during the month from producers and from other plants. Shrinkage at a plant beyond the maximum allowed in Class III is Class I.

A cooperative which operates several pool plants proposed that shrinkage percentage be based on the total utilization at all pool plants of a handler instead of on a plant basis as now provided in the order. Proponent requested the proposed change because the manner in which the cooperative's records of interplant shipments are maintained may result in an overage at one plant and a shortage at another during the same month.

The shrinkage provisions in the order were established on the basis that a plant which is operated in a reasonably efficient manner and for which acceptable records of receipts and utilization are maintained should not have plant losses in excess of the maximum provided for classification in Class III. The allocation of shrinkage on a plant basis, which is commonly provided in Federal orders, is designed to strengthen the classified pricing scheme and encourages the maintenance of adequate records and the efficient handling of milk.

To allow the combining of plants for the computation of shrinkage would provide an unwarranted advantage to the multiple plant operator over the single plant operator. A handler operating several plants could avoid a Class I classification on excess shrinkage in one plant at which his utilization was not fully accounted for by offsetting the excess shrinkage against an overage at another plant, even though the respective condition at each plant resulted from unrelated actions.

Each handler, whether operating one or more plants, is required by the order to maintain complete and accurate records of the movements of fluid milk products between his plant(s) and other plants. Because two plants are owned by the same handler does not justify the maintenance of records that are less complete than those required of a single plant operator.

In connection with its proposal to allocate the shrinkage of a handler with two or more plants on a system (instead of on a plant) basis, the cooperative proposed that such handler file one report for his entire operations and that the allocation provisions be applied to his entire operation as a unit.

Since the order will continue to provide for the allocation of shrinkage on a plant basis, it is necessary to obtain a report of each pool plant's operation. The proposal to provide for one report for a multiple plant handler's total operation, instead of reporting for each of his pool plants, is therefore denied.

The order should provide, however, that the allocation provisions [and the computation of a handler's net pool obligation] be on a system basis. As now provided in the order, a handler's allocation is applied on a system basis only if fluid milk products received during the month from an unregulated supply plant or an other order plant are allocated to Class I. Otherwise, the order provides that each handler's allocation shall be on an individual plant basis.

Applying the allocation provisions on a system basis would not change the obligation of a multiple plant handler to the pool or otherwise provide him any advantage over other handlers. It would, however, simplify the application of the order provisions to a multiple plant handler and facilitate the market administrator's computation of the monthly uniform price. That is, such handler's total receipts at all his pool plants would be assigned in accordance with the allocation provisions of the order against the total utilization at such plants. In turn, one net pool obligation would be computed for the multiple plant handler on the basis of this single allocation.

(c) Skim milk and butterfat in fluid milk products delivered in bulk form to and used at a commercial food processing establishment (other than a milk plant) in the manufacture of bakery products, candy, or packaged food products (other than milk products) exclusively for consumption off the premises should be Class III.

The order now provides a Class III classification for skim milk and butterfat (1) disposed of in bulk to a commercial candy manufacturer who does not dispose of fluid milk products for consumption either on or off the premises, and (2) disposed of to a commercial bakery (solely for the purpose of processing into bakery products) in the form of a flavored cream-sugar product containing at least 8 percent by weight of sugar. The containers used in this latter disposition must bear the label "bakery cream."

A handler proposed allowing a Class III classification for "bakery cream" on such cream disposed of to any bakery instead of only to a "commercial bakery", as now provided in the order. The present provision, it was claimed, in effect gives special consideration to one outlet in the market and, as such is unwarranted.

As proposed by the handler, a Class III classification for bakery cream would be permitted on sales of such cream to any bakery whether it was operated separately or in connection with a commissary or restaurant. If the bakery were

operated in connection with a commissary or restaurant, the handler's proposal would have the "bakery cream" delivered to the restaurant classified in Class III and other fluid milk products delivered there classified in Class I.

The commercial food establishments included in this category can substitute concentrated milk products (e.g., condensed milk, butter, nonfat dry milk) in place of fluid milk products in their food operations. A Class III classification for fluid milk products delivered in bulk form to and used at commercial food processing establishments, as herein adopted, is basically the same as that provided for similar circumstances in a number of other Federal orders.

(d) The skim milk and butterfat used by a handler to produce frozen dessert mixes should be specifically designated as Class III milk.

Ice cream and ice cream mixes are among the named products now in the Class III category. Mixes used to produce frozen desserts such as ice milk and sherbets, although technically not ice cream mix, are usually characterized as such. The sales outlets for these frozen desserts are the same as for ice cream mixes, and they are customarily included in the same classification as ice cream mixes in the orders when utilized for commercial freezing.

A producer witness suggested designating explicitly a Class III classification in the Great Basin order for the skim milk and butterfat used to produce all frozen dessert mixes. Such a provision, as herein provided, will remove any uncertainty that may arise regarding the classification of frozen dessert mixes under the Great Basin order.

(e) The skim milk in cottage cheese dumped or disposed of for livestock feed should be Class III. All skim milk used to produce cottage cheese is now Class II.

Not all cottage cheese produced by a handler is sold. Some skim milk used to produce cottage cheese ends up in "spoiled batches" and as "route returns." Dumping such products or selling them for livestock feed usually represents the only means of disposing of such skim milk.

The skim milk in all fluid milk products dumped or disposed of for livestock feed is Class III, which classification is equally appropriate for the skim milk in cottage cheese so disposed of.

(f) No action should be taken at this time on the producers' classification proposals relating to yogurt and "sterilized products in hermetically sealed containers."

As proposed by producers, the term "sterilized products in hermetically sealed containers", as used in the order to exclude products so designated from the Class I classification, would be changed to "sterile products in hermetically sealed containers." The purpose of the proposal is to clarify the present terminology so that only fluid milk products in containers that can assure sterility could be classified other than as Class I.

Skim milk and butterfat used to produce yogurt is now classified as Class III under the Great Basin order. Producers argued that yogurt should be Class I because it is Class I in some Federal orders.

Producers indicated that they expect to request a hearing on a national or regional basis to consider a uniform classification plan for all orders on all dispositions of skim milk and butterfat. Moreover, producers stated that their contemplated hearing for all orders would provide a more appropriate record as a basis for considering yogurt and sterilized products in hermetically sealed containers than the limited testimony presented on the record of the Great Basin hearing.

(g) A handler's proposal to classify cream in Class II (instead of Class I) should be denied. The change was requested primarily to improve the handler's position in selling cream in competition with cream substitutes.

Elsewhere in this decision, provision is made for lowering the Class I butterfat differential from 13.5 to 12 percent of the butter price. This will result in a substantial reduction in the cost to handlers of cream sold for fluid use. Any reclassification of milk for fresh cream would more appropriately be considered at a general hearing on the classification of cream and related products in all their forms.

(h) The mileage limitation on the transfer of fluid milk products to nonpool plants should be deleted from the order. A Class I classification is now applicable on such transfers to nonpool plants that are more than 525 miles from Salt Lake City. The cooperative proposing the change contended that although the provision may have once served a purpose, it is neither a useful nor desirable provision under current market conditions.

In the past, the provision was a means of insuring the classification of fluid milk products transferred to plants without requiring the market administrator to travel long distances to verify their use. Currently, it is not unusual to ship fluid milk products for manufacturing purposes to nonpool plants at distant locations from the market. With better roads and improved facilities for moving large quantities of milk in bulk, plants at distant locations from the market are, at times, the most practicable and economically feasible outlets for fluid milk products that are not needed in the market for Class I purposes. Moreover, there are now other Federal order markets within which, or close to which, any nonpool plant to which a shipment might be made from the Great Basin market would be located. In such case, verification of the utilization could be made in cooperation with the market administrator of the nearest order.

Removing the mileage limitation provision as it applies to the classification of milk moved from pool plants to nonpool plants, as herein proposed, will facilitate the marketing of milk that is not needed for fluid purposes, thereby contributing to orderly marketing.

7. *Class I butterfat differential.* The butterfat differential applicable to Class I milk should be 12 percent of the butter price for the preceding month (instead of 13.5 percent as now provided).

In proposing a lower Class I butterfat differential, producers contended that the values now assigned to butterfat and skim milk in Class I products were instituted in the order a number of years ago and do not currently reflect the values of these components of milk.

In recent years the proportion of solids not fat in the fluid milk products in Class I has increased, and the proportion of butterfat has decreased. This has been evidenced by the increasing sales of skim milk items (plain, fortified, and flavored skim and part skim milk, buttermilk, etc.) while sales of whole milk and cream have been declining. The change in butterfat differential gives recognition to the changing value of butterfat in fluid milk products in Class I.

In the 12 months through September 1969 the proposed differential would have averaged 8.1 cents. The actual average butterfat differential for the same period was 9.1 cents. In the 12 months through September 1969, when the Class I price averaged $6.58, the value of 3.5 pounds of butterfat in a hundred pounds of milk was $3.185 (35 times 9.1 cents). The skim milk portion of such hundred pounds of milk was valued at $3.395.

The proposed butterfat differential of 12 percent of the butter price would have valued the butterfat in a hundred pounds of milk in the 12 months through September 1969 at $2.835 (35 times 8.1 cents). This is 35 cents less than the value of 3.5 pounds of butterfat in a hundred pounds of milk under the Great Basin order in the same period. Had such a differential been in effect, the value of the skim milk portion of the milk would have been increased by 35 cents.

As a corollary change to the reduction in Class I butterfat differential adopted herein, the Class I differential should be reduced 3 cents. This will maintain the price of Class I milk, at its average butterfat test, at its present level.

While the butterfat content in producer milk is relatively close to the average butterfat content of whole milk sold as Class I, it is substantially above the average test of all Class I milk. This is because fluid skim milk and low fat milk items are an increasing proportion of Class I sales at the expense of whole milk and cream.

In the 12 months through September 1969 producer milk deliveries averaged 3.65 percent butterfat. In the same period the butterfat in producer milk classified in Class I averaged 3.2 percent.

The order price for the Class I milk of 3.2 percent butterfat sold by handlers in the 12 months through September 1969 averaged $6.307. This is computed by subtracting from the average $6.58 Class I price for 3.5 percent milk, 3 points of butterfat at 9.1 cents per point. At the lower butterfat differential adopted in this decision, the adjustment for butterfat would have been 8.1 cents per point for such period. The reduction of 3 cents in the Class I differential offsets the change in butterfat adjustment, keeping the Class I price at the same level.

The handler who proposed that the Class I price differential be adjusted to give consideration to the change in the Class I butterfat differential also proposed that the Class I pricing formula of the order be changed so that the Class I price would be moved upward or downward only in brackets of stated amounts, such as 15 or 20 cents. This proposal was not opposed by producers. However, both proponent and producers indicated that since a national hearing is considering such a bracketing system for all orders, no action should be taken on the proposal at this time.

8. *Location differentials.* The plant location differential provisions should be changed to establish Ogden and Provo, Utah, as the basing points for computing the differentials. Under the proposed change, Elko, Nev., and Price, Vernal and Richfield, Utah, would be discontinued as basing points.

The order now provides for reducing the Class I and uniform prices at plants 100 or more miles from the nearest of the city halls in Ogden, Price, Richfield, and Vernal, Utah, and Elko, Nev., at the rate of 15 cents at plants within 100–110 miles, plus an additional 1.5 cents for each additional 10 miles. The present basing points for computing location differentials are established on each of the four sides of the marketing area near the perimeter, that is, at Price and Vernal on the eastern side; at Ogden on the northern side; at Elko, Nev., on the western side; and at Richfield, Utah, on the southern side.

A cooperative proposed to remove Elko, Nev., and Price and Vernal, Utah, as basing points for computing location adjustments, and further proposed that Roosevelt, Utah, be added as a basing point along with Ogden and Richfield, Utah. Roosevelt is about 30 miles west of Vernal. Such proposal would provide also for no adjustment within 200 miles of a basing point, a minus adjustment of 30 cents per hundredweight for plants located 200–210 miles distant, plus 1.5 cents for each additonal 10 miles. Under a corollary proposal considered at the hearing, any diverted producer milk would be priced at the location of the plant to which diverted.

In proposing that Elko, Nev., be removed as a basing point for computing location differentials, proponent contended that it is too far away from the center of the market to function effectively as a basing point. The reason given for deleting Price and Vernal as basing points was that no pool plants are located there.

The problem of location pricing at hand is essentially one of recognizing the need for basing points that will assist in pricing milk to meet the need for supplies at main centers of the market where the great bulk of the supply is processed for Class I distribution.

Fluid milk products are bulky and perishable, and incur a relatively high transportation cost when they are moved a considerable distance. The location differential provisions should facilitate economic movement when milk is received for Class I purposes from plants located a distance from the center of the market where the milk is processed. The rates applicable to such movement should be applied from appropriate basing points to accomplish this objective, and to assist in bringing about uniformity in prices to all handlers. Such adjustment to prices reflect the lesser value (place utility) of milk when such milk is moved a considerable distance to the market from an outlying plant, or when it is diverted to an outlying location as producer milk in lieu of being brought to the market center.

Since location differentials, sometimes called "zone differentials," apply only to plant locations, no differential is applicable when the milk is received directly from the farm at the processing plant in the market center. The transportation or hauling cost on the latter milk is paid for by the individual producer through negotiation with haulers. The hauling rate is not fixed by the order.

As previously stated, when milk is received at a plant located a considerable distance from the market, the handler rather than the producer incurs the additional cost of moving that milk from the outlying plant to the central market for processing. Under these conditions, and in the absence of an opportunity cost created elsewhere for the milk, the value of producer milk delivered to a plant located at a distance from the market is reduced in proportion to the distance, and the cost of transporting such milk, from the plant of first receipt to the plant at the market center.

An important aspect of establishing basing points for computing location differentials is to identify the major consumption centers in the marketing area. Population for the Great Basin marketing area is centered on a north-south axis primarily between Ogden and Provo, Utah. The 1960 population for the Utah portion of the marketing area (the major component) was about 837,000.[1] The north-south axis from Cache County south through Sevier County accounted for about 652,000, or 78 percent of the total. More significantly, about 76 percent of the population for the marketing area is concentrated in the Ogden, Salt Lake City, and Provo, Utah, area which comprises Weber, Davis, Salt Lake City, and Utah Counties. Salt Lake City is the principal population center of the marketing area.

The cities of Ogden, Salt Lake City, and Provo, Utah, are the principal centers from which fluid milk products are regularly distributed by handlers within a radius of 150 miles in various directions. Ogden is about 35 miles north of Salt Lake City and Provo is 43 miles south of Salt Lake City. They represent the north-south extremities, respectively, of the heaviest population area within which the bulk of the market's fluid milk sales are made to consumers. For this reason, these cities should be established as basing points in place of those now provided in the order. No adjustment would apply at any outlying plant within 150 miles of these cities because this is an area within which it is more feasible to receive direct-ship milk for Class I use rather than to receive it first at a supply plant or receiving station. Virtually all milk regularly received at Class I processing plants in this market is received as direct-ship milk.

At one time there was a pool distributing plant at Winnemucca, Nev., in the extreme western part of the marketing area, about 327 miles from Ogden. Official notice is taken of the market administrator's monthly uniform price announcements since April 1969, which make clear that the Winnemucca plant discontinued its pool plant status some months ago. No other Nevada plants are pool plants under this order. There being no regulated disposition into the marketing area from the Winnemucca area, and such area being essentially rural, the basing point at Elko, Nev., does not serve the basic purpose indicated and should be discontinued. Its continued use as a basing point would distort the place value of producer milk at outlying points in relation to the price level at the centers of consumption.

For milk received at a plant located 150–160 miles from the nearer of the city halls of Ogden or Provo, Utah, the Class I and uniform prices should be reduced 22 cents per hundredweight. The present rate of 1.5 cents for each 10 miles or fraction thereof, beyond the 160 miles herein provided, should be retained. This rate reasonably represents the cost of transporting milk over long distances in substantial amounts. Location adjustments (or zone differentials) should assure that needed milk will move to bottling plants but at the same time not encourage uneconomic handling of milk at the expense of the pool.

During the past year, a regulated handler operating a pool plant at Salt Lake City has bought milk from Idaho producers associated with a cooperative association at Meridian, Idaho. Such milk sometimes is received at a distant plant by diversion from the Salt Lake City plant when not needed there. When diverted the milk continues to be included in the Great Basin pool as producer milk. On diversion, the milk is received either at the Boise plant or Caldwell plant which are about 236 miles and 262 miles respectively from Elko, Nev., in Idaho. Under proponent's proposal to remove Elko, Nev., as a basing point, any location differential applicable to milk diverted to plants at Boise and Caldwell would be computed from Ogden, Utah, which is about 327 miles from Boise, Idaho.

Because this diverted milk would be priced at the location of the plant to which diverted and the adjustment would be computed from the Ogden basing point, the effect of the revised provisions would be to apply to the minimum uniform price applicable to milk diverted to the Boise location an adjustment of about 47 cents. Such distant supplies of milk when diverted to a plant close to the source of production do not incur

[1] Official notice is taken of the U.S. Census of Population, 1960 for Utah, issued by the Bureau of the Census, U.S. Department of Commerce.

transportation cost to market and therefore should not receive a price as if delivered to the market center.

In view of the change provided herein for the "no differential" zone, it is not necessary to establish Roosevelt, Utah, as a basing zone for computing location differentials.

9. *Computation of net pool obligation.* The net pool obligation computation applicable to receipts from unregulated supply plants should be modified.

A pool plant operator's obligation to the producer-settlement fund includes a payment on fluid milk products received from unregulated supply plants that are allocated to Class I. The handler's payment is determined by charging him at the Class I price and crediting him at the uniform price. The prices used are those applicable at the location of the unregulated supply plant, except that an adjustment to the uniform price is limited so that it may be not less than the Class III price. No such limitation applies in adjusting the Class I price by the location adjustment applicable at the location of the unregulated supply plant.

A cooperative proposed that the adjustment to the Class I price be limited in the same way as is the adjustment to the uniform price.

Under certain conditions (e.g., when the unregulated supply plant is at a great distance from the marketing area), the unlimited Class I price adjustment could result in the pool plant operator receiving a payment from the producer-settlement fund on Class I milk obtained from the unregulated supply plant. This would occur when the location adjustment applicable at a distant supply plant was greater than the difference between the Class I and Class III prices. In this circumstance, producers under the order would be paying from the pool, an unwarranted subsidy to the pool plant operator for importing milk from a distant plant. A payment out of the pool on such milk would be contrary to the intent of the compensatory payment on unregulated milk for the purpose of protecting the classified pricing plan by maintaining reasonable price parity between fully regulated milk and milk not so regulated.

The same limitation should apply to the uniform price when adjusted for the location of the unregulated supply plants from which fluid milk products are received at a pool plant. This would be accomplished by providing that, for the purpose of computing a pool plant operator's obligation on receipts from unregulated supply plants, the location adjustments to both the Class I and uniform prices shall be limited so that they may be not less than the Class III price.

No net pool obligation charge should be made on fluid milk products received at a pool plant from an unregulated supply plant when such fluid milk products have been priced as Class I under this or any other Federal order. When an unregulated supply plant makes Class I purchases from a regulated plant under any order, the obligation to the order pool at the Class I price has been met; and there is no justification for an additional charge. On any unpriced milk received from an unregulated supply plant, the Great Basin order will continue to provide for payment to the producer-settlement fund at the difference between the Class I and uniform prices.

10. *Payments out of the producer-settlement fund.* The order provisions applicable to payments from the producer-settlement fund should not be changed.

A cooperative proposed that any handler who receives payment from the fund, and in turn fails to pay his producers the full uniform price value for their milk, should receive no further payments from the fund in the event he does not complete his payments to producers in a prior month for which he received payment from the producer-settlement fund.

The basic purposes of the order are to fix minimum prices that all handlers must pay for producer milk in accordance with the manner in which it is used and to return to producers the uniform price based on the utilization of all producer milk in the market.

Money is paid into the producer-settlement fund by those handlers whose obligation for producer milk received during the month is more than the amount they are required to pay producers for such milk at the uniform price. A handler whose utilization is below the average for the market, and whose obligation for producer milk received during the month is therefore less than the uniform price value, receives payment of the difference from the producer-settlement fund. This equalization process enables all handlers to pay their producers the uniform price for milk delivered.

No testimony was presented to show that any handler who received payment from the producer-settlement fund had failed to pay his producers the full uniform price value for their milk. If a handler fails to pay his producers the full uniform price value for their milk by the dates specified in the order, he is in violation of the order. Should this occur, whether he receives payment from, or makes payment to, the producer-settlement fund, he is subject to customary legal procedures to obtain compliance.

While ostensibly the proposed change might serve an enforcement function under certain conditions, it is difficult to conclude that the withholding by the market administrator of monies due producers (through a handler) in the current month necessarily would aid producers. The proposal also involves points of enforcement procedure which were not explored on the record. In matters of enforcement, the facts of each case bear on the nature of the violation, the extent of the violation, and the appropriate means of correcting it. The proposal therefore is denied.

11. *Interest payments on overdue accounts.* The unpaid obligation of a handler to the market administrator should be increased one percent for each month or portion thereof beginning with the third day following the date by which such obligation is payable.

A handler proposed that handlers be required to pay interest on overdue accounts whether owed to the producer-settlement fund, the marketing services fund or for the expense of administration.

Prompt payment of monies due the market administrator, whether to the producer-settlement fund, for expense of administration or for marketing services, is essential to the operation of the order.

As herein provided, interest on unpaid obligations would be charged at the rate of 1 percent for each month or portion thereof beginning with the third day following the due date of an obligation and would be applied until the obligation is paid. The 3-day interval between the due date of an obligation and the time from which interest would be computed is a reasonable period of time to use as a basis for the payment of interest on overdue accounts.

The current scarcity of money and the relatively high rates of interest on commercial loans could provide an incentive for handlers to delay payments to the market administrator in lieu of borrowing needed money from other sources unless the current rate is increased. Commercial loans in the area are available only at about 12 percent per annum on a secured loan. The rate adopted is reasonable in consideration of today's financial markets.

The interest payable on overdue accounts should be computed monthly on the unpaid balance, including any accrued interest. A handler who has not made payment when due to the market administrator has use of such money for the time beyond which it was due.

Some handlers may have unpaid obligations due the market administrator when the provision herein proposed would become effective. In consideration of the main purpose of the interest provision, i.e., to obtain prompt payments for producers, there is no basis for differentiating between unpaid obligations resulting from milk handled in preceding months or in a future month. It is intended that the unpaid obligation of a handler at the time the interest payment provision herein proposed would become effective will be treated in the same manner as any unpaid obligation subsequently incurred by the handler.

If a handler refuses or fails to file a report from which his obligation is computed, interest should be charged on any payments due the market administrator as though the report was filed when due. Otherwise, handlers would be provided an incentive to be delinquent in filing their reports.

A handler suggested that the market administrator be required to pay interest on any unpaid obligation to a handler. The order sets forth clearly the dates by which the market administrator must pay handlers any amount due them from the producer-settlement fund. He has no authority to delay such payments, the due dates of which are set forth in the order. There is no indication that the market administrator has at any time failed to make payments as required pursuant to the order and there would be

no reason for him to make late payments if all handlers comply with order terms. Moreover, any such interest payments could come only from monies paid by other handlers for administrative purposes. The proposal is denied.

12. *Application of order to cooperative associations.* The order's provisions as they apply to cooperative associations should not be changed.

A handler proposed that the order be revised so that the order would not differentiate between a cooperative association marketing the milk of its members and a proprietary handler in the representation of producers. A principal purpose of the proposal is to enable a handler to act on behalf of his producers in the same manner as if the handler was a cooperative association acting on behalf of its members.

The provisions in the Great Basin order applicable to cooperative associations were established on the basis of testimony substantiating the inclusion of these provisions in the order. Although the proponent proposed removing the various references to "cooperative association" from the order, he provided no basis for changing any specific provisions now applicable to a cooperative association.

The handler stated that the order provisions relative to cooperative associations in the order are not in accordance with law. Section 608c(15)(A) of the Act provides specific procedures that must be followed by a handler in challenging the legality of an order provision. Proponent's contention, that the provisions of the order as they refer to cooperative associations are illegal, is appropriately resolved in accordance with such section of the Act rather than through public hearing procedure.

13. *Miscellaneous and conforming changes.* In §§ 1136.31 and 1136.32 reference is made to "the second proviso of § 1136.11(a)." The latter provision is no longer in the order, and the reference to it in the aforesaid sections should be deleted.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings, and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

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

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate and 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 order regulating the handling of milk in the Great Basin marketing area 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 procedure approval and representative period. July 1970 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Great Basin marketing area, is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on September 22, 1970.

RICHARD E. LYNG,
Assistant Secretary.

Order[1] Amending the Order, Regulating the Handling of Milk in the Great Basin Marketing Area

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 Great Basin 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; 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 activities specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Great Basin 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:

The provisions of the proposed marketing agreement and order amending the order contained in the revised recommended decision issued by the Deputy

[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.

Administrator, Regulatory Programs, on August 18, 1970, and published in the FEDERAL REGISTER on August 21, 1970 (35 F.R. 13378; F.R. Doc. 70–11018), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein subject to the following modifications in §§ 1136.8, 1136.9, 1136.42, 1136.44, 1136.70, and 1136.88.

1. Section 1136.6 is revised as follows:

§ 1136.6 Great Basin marketing area.

"Great Basin marketing area" hereinafter called the "marketing area" means all the territory, including all Government reservations and installations and all municipalities, within the places listed below:

UTAH COUNTIES

Box Elder.	Morgan.
Cache (city of Logan only).	Salt Lake.
Carbon.	Sanpete.
Daggett.	Sevier.
Davis.	Summit.
Duchesne.	Tooele.
Emery.	Uintah.
Grand.	Utah.
Juab.	Wasatch.
Millard.	Weber.

NEVADA COUNTIES

Elko.	White Pine.

WYOMING COUNTY

Uinta (town of Evanston only).

2. Section 1136.8 is revised as follows:

§ 1136.8 Producer-handler.

"Producer-handler" means any person who is an individual, partnership or corporation and 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 conditions 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 his sole risk and under his complete and exclusive management and control;

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

(3) Only he and no other person (except a member of his immediate family or a stockholder in the case of a corporate farm) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(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: *Provided,* That:

(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) From pool plants in an amount that is not in excess of the larger of 3,000 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

(3) For the purpose of this section, all fluid milk products disposed of on routes or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at his plant; and the utilization for such plant shall include all such route and store dispositions; 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.

3. Section 1136.9 is revised as follows:

§ 1136.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more (1) pool plants, (2) partially regulated distributing plants, or (3) other fluid milk plants described in § 1136.10(a);

(b) Any cooperative association with respect to milk diverted for its account as described in § 1136.13;

(c) A cooperative association with respect to the milk of its member producers 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, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it wishes to be the handler for the milk. In this case the milk is received from producers by the cooperative association; and

(d) A vendor (any person who does not operate a plant described in paragraph (a) of this section but who engages in the business of receiving fluid milk products for resale and distributes to retail or wholesale outlets, via a mobile delivery vehicle, packaged fluid milk products received from such a plant).

4. Section 1136.10 is revised as follows:

§ 1136.10 Fluid milk plant.

"Fluid milk plant" means a plant:

(a) In which milk or milk products (including filled milk) are processed or packaged and from which any fluid milk product is disposed of during the month on routes in the marketing area, or

(b) In which milk is received or processed and from which milk or skim milk is shipped during the month to a plant described in paragraph (a) of this section.

§§ 1136.11, 1136.12, 1136.16 [Amended]

4a. In §§1136.11, 1136.12, and 1136.16, "approved plant" is changed to "fluid milk plant" in each place it appears in such sections.

5. In § 1136.11(a), "equal to not less than 50 percent of the receipts during the month at such plant of producer milk, producer milk diverted therefrom by the plant operator and receipts at the plant of fluid milk products, except filled milk, from plants described pursuant to paragraph (b) of this section," is changed to "of not less than 50 percent of the fluid milk products approved by a duly constituted health authority for fluid consumption that are physically received at such plant or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13."

6. Section 1136.13 is revised as follows:

§ 1136.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk from producers (in an amount determined by weights and measurements for individual producers, as taken at the farm in the case of milk moved from the farm in a tank truck) which is:

(a) Received from the producers at a pool plant but not including milk of producers for which another person is the handler pursuant to § 1136.9(c): *Provided,* That milk received at a pool plant by diversion from a plant at which such milk would be fully subject to pricing and pooling under the terms and provisions of another order issued pursuant to the Act shall not be producer milk;

(b) Received by a cooperative association which is defined as a handler pursuant to § 1136.9(c);

(c) Diverted from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant or an exempt distributing plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the location of the plant to which diverted;

(2) Not less than 6 days' production of the producer whose milk is diverted is physically received at a pool plant;

(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 producer milk;

(4) A cooperative association may divert for its account only the milk of member producers: *Provided,* That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at all pool plants from member producers in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;

(5) The operator of a pool plant other than a cooperative association may divert for his account only the milk of producers who are not members of a cooperative association: *Provided,* That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant from producers who are not members of a cooperative association in any month of

March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to subparagraphs (4) and (5) of this paragraph. If the handler fails to make such designation, no milk diverted by him shall be producer milk;

(7) Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their members if each association has filed such a request in writing with the market administrator on or before the 1st day of the month the agreement is effective. This request shall specify the basis for assigning overdiverted milk to the producer members of each cooperative association according to a method approved by the market administrator; or

(d) Diverted from a pool plant to an other order plant if a Class III classification (or its equivalent) 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. The conditions described in subparagraphs (1) through (7) of paragraph (c) of this section shall apply to this paragraph as if set forth in full herein.

7. Section 1136.15 is revised as follows:

§ 1136.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, cream (sweet or sour) except frozen cream, concentrated milk (fresh or frozen), fortified milk or skim milk, reconstituted milk or skim milk or any mixture in fluid form of milk, skim milk and cream (except ice cream, ice cream and other frozen dessert mixes, eggnog, a product which contains six percent or more nonmilk fat (or oil), aerated cream, evaporated or condensed milk (plain or sweetened, and sterilized products in hermetically sealed containers).

§ 1136.22 [Amended]

8. In § 1136.22(l), the reference to "§ 1136.44(a)(8)" is changed to "§ 1136.44(a)(10)."

9. Section 1136.31 is revised as follows:

§ 1136.31 Other reports.

(a) Each producer-handler and each handler pursuant to § 1136.9(d) shall make reports to the market administrator at such time and in such manner as the market administrator shall request.

(b) Each handler who operates another order plant with disposition of fluid milk products on routes in the marketing area shall report such disposition to the market administrator on or before the seventh day after the end of each month.

* * * * *

10. In § 1136.32, the introductory text is revised as follows:

§ 1136.32 Payroll reports.

Each handler, except one exempt pursuant to § 1136.61 or one making payment pursuant to § 1136.62(b), shall report to the market administrator as follows:

* * * * *

11. Section 1136.41 is revised as follows:

§ 1136.41 Classes of utilization.

Subject to the conditions set forth in §§ 1136.42 through 1136.45, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of from a plant in the form of a fluid milk product except:

(i) Those classified pursuant to paragraph (c) (3), (4), and (7) of this section; and

(ii) Any product fortified with added solids shall be Class I in an amount equal only to the weight of an equal volume of a like unmodified product of the same butterfat content;

(2) In packaged fluid milk products in inventory on hand at the end of the month; and

(3) Not otherwise specifically accounted for as Class II or Class III utilization.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (except that classified pursuant to paragraph (c) (3) and (4) of this section) used to produce cottage cheese.

(c) *Class III milk.* Class III milk shall be all skim and butterfat:

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

(2) Contained in inventory of bulk fluid milk products on hand at the end of the month;

(3) Contained in the skim milk portion only of fluid milk products and cottage cheese disposed of for livestock feed;

(4) Contained in the skim milk portion only of fluid milk products and cottage cheese dumped after prior notification to and opportunity for verification by the market administrator;

(5) In shrinkage of skim milk and butterfat, respectively, at each pool plant, or a handler pursuant to § 1136.9(c), assigned pursuant to § 1136.45(b)(1), but not to exceed the following:

(i) Two percent of producer milk (except diverted milk); plus

(ii) One and one-half percent of milk received in bulk tank lots from other pool plants; plus

(iii) One and one-half percent of milk received from a handler pursuant to § 1136.9(c) (except that if the handler operating the pool plant 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); plus

(iv) One and one-half percent of receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class III utilization was requested by the operator of such plant and the handler; plus

(v) One and one-half percent of receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class III utilization was requested by the handler; less

(vi) One and one-half percent of milk disposed of in bulk tank lots to other pool plants (except when the exception specified in subdivision (iii) of this subparagraph applies, the applicable percentage shall be 2 percent);

(6) In shrinkage assigned pursuant to § 1136.45(b)(2);

(7) In fluid milk products delivered in bulk form to and used at a commercial food processing establishment (other than a milk plant) in the manufacture of bakery products, candy, or packaged food products (other than milk products) exclusively for consumption off the premises; and

(8) Contained in any fortified fluid milk product in excess of the pounds classified as Class I milk pursuant to paragraph (a)(1)(ii) of this section.

12. Section 1136.42 is revised as follows:

§ 1136.42 Transfers.

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

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred in the form of a fluid milk product 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 any class shall be limited to the amount thereof remaining in such class in the plant(s) of the transferee handler after computations pursuant to § 1136.44(a)(10) and the corresponding step of § 1136.44(b);

(2) If the transferor handler received during the month other source milk to be allocated pursuant to § 1136.44(a)(5) and the corresponding step of § 1136.44(b), the skim milk and butterfat so transferred shall be classified so as to allocate the lowest possible classification to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1136.44(a) (9) and (10) and the corresponding steps of § 1136.44(b), the skim milk and butterfat so transferred shall be classified so as to assign to producer milk the greatest possible Class I utilization at both plants;

(b) As Class I milk, if transferred in the form of a fluid milk product from a pool plant to a producer-handler or to an exempt plant pursuant to § 1136.60a;

(c) As Class I milk, if transferred or diverted in bulk in the form of a fluid milk product to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt 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 requests classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1136.30 for the month within which such transaction occurred;

(2) The operator of the nonpool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification; and

(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 such Class I utilization disposed of on routes 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 such Class I utilization disposed of on routes 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 the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all plants subject to the classification and pricing provisions of this and other orders issued pursuant to the Act; and

(iv) Class II utilization shall next be assigned to remaining receipts in the sequence provided in subdivision (iii) of this subparagraph (3). Skim milk and butterfat transferred or diverted from pool plants to which neither Class I nor Class II utilization has been assigned pursuant to this subparagraph shall be classified as Class III milk; and

(d) 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 (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 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 III 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 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 and skim milk and butterfat allocated to Class II under the other order shall be classified as Class III; 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 § 1136.41.

13. Section 1136.43 is revised as follows:

§ 1136.43 Computation of skim milk and butterfat in each class.

For each month the market administrator shall correct for mathematical and other obvious errors, the reports of receipts and utilization submitted pursuant to § 1136.30. 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 of the water originally associated with such solids. The market administrator shall compute the skim milk and butterfat in each class at all pool plants of such handler, exclusive of any classification based upon movements between such plants, and allocation pursuant to § 1136.44 and computation of obligation pursuant to § 1136.70 shall be based upon the combined utilization so computed. Producer milk for which a cooperative association is the responsible handler pursuant to § 1136.9 (b) or (c) shall be treated separately from the operations of any pool plant(s) operated by such cooperative association for the purpose of allocation pursuant to § 1136.44 and computation of obligation pursuant to § 1136.70.

14. Section 1136.44 is revised as follows:

§ 1136.44 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1136.43, the market administrator shall determine each month the classification of milk received from producers by each cooperative association handler pursuant to § 1136.9 (b) and (c) which was not received at a pool plant and the classification of milk received from producers and from cooperative association handlers pursuant to § 1136.9 (c) by each handler as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1136.41(c)(5);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in fluid milk products received in packaged form from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers under this or any other 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 under this or any other order;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (5)(iv) 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 pursuant to § 1136.41(c)(8) plus 2 percent of such receipts (weight of an equal volume of a like unmodified product of the same butterfat content);

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

(iii) In the event that packaged other order milk receipts (including filled milk) are in excess of the total amount subtracted pursuant to subdivisions (i) and (ii) of this subparagraph the remaining quantity shall be subtracted from the utilization remaining in Class III and then Class II;

(4) Except for the first month that this subparagraph is effective, subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in inventory of packaged fluid milk products on hand at the beginning of the month: *Provided*, That this subparagraph shall not be applicable to a pool plant in any month immediately following a month in which such plant was not fully subject to the pooling and pricing provisions of this order;

(5) 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;

(ii) Receipts of fluid milk products (except filled milk) not qualified for fluid

consumption and receipts of fluid milk products from unidentified sources;

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

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants that were not subtracted pursuant to subparagraph (2) of this paragraph; 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;

(5a) Subtract from the pounds of skim milk remaining in Class II and Class III, beginning with Class II, receipts from pool plants of other handlers in the form of cottage cheese;

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

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraphs (2) and (5)(iv) of this paragraph, for which the handler requests Class III utilization;

(ii) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraphs (2) and (5)(iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I by 1.25; and

(b) Subtract from the result the sum of the pounds of skim milk in producer milk, in receipts from pool plants of other handlers, and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (5)(v) of this paragraph;

(iii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (5)(v) of this paragraph, in excess of similar transfers to such plant, if Class III utilization was requested by the transferee handler and the operator of the transferor plant requests the lowest class utilization under the other order;

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III milk, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month that were not subtracted pursuant to subparagraph (4) of this paragraph;

(8) Add to the remaining pounds of skim milk in Class III milk 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 plants which were not subtracted pursuant to subparagraph (2), (5)(iv), or (6) (i) or (ii) 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 plants, in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraph (5)(v) or (6)(iii) 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 § 1136.22(l) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk at the pool plant 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 received in fluid milk products from pool plants of other handlers according to the classification assigned pursuant to § 1136.42(a);

(12) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class 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.

15. Section 1136.50(a) is revised as follows:

§ 1136.50 Class prices.

* * * * *

(a) *Class I milk price.* The price for Class I milk shall be the basic formula price for the preceding month plus $2.02 and plus 20 cents.

* * * * *

16. Section 1136.52(a) is revised as follows:

§ 1136.52 Butterfat differentials to handlers.

* * * * *

(a) *Class I milk.* Multiply the butter price for the preceding month by 1.20, divide the result by 10, and round to the nearest one-tenth cent.

* * * * *

17. Section 1136.53(a) is revised as follows:

§ 1136.53 Location differentials to handlers.

(a) For milk which is received from producers at a pool plant, or is diverted therefrom, or is delivered by a cooperative association pursuant to § 1136.9(c) to a pool plant and which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section and for other source milk for which a location adjustment is applicable, the price computed pursuant to § 1136.50(a) shall be reduced as follows:

	Rate per hundredweight (cents)
Distance (miles):	
150 but not more than 160	22.0
For each additional 10 miles or fraction thereof in excess of 160	1.5

Such distance to be measured from the plant to the nearer of the city halls in Ogden or Provo, Utah;

* * * * *

§ 1136.61 [Amended]

18. In § 1136.61(d)(2), add immediately following "other order plant" the following: "(but the adjusted price not to be less than the Class III price)".

19. Section 1136.62(b)(2) is revised as follows:

§ 1136.62 Obligation of handler operating a partially regulated distributing plant.

* * * * *

(b) * * *

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

(i) As 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) 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 under this or any other 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 under this or any other order;

* * * * *

20. In § 1136.62(b)(5), add immediately following the second reference therein to "Class I price applicable at the location of the nonpool plant" the following: "(but the adjusted price not to be less than the Class III price)".

21. A new § 1136.63 is added as follows:

§ 1136.63 Obligation of a vendor on receipts from a producer-handler.

Each vendor shall pay the market administrator for the producer-settlement fund on or before the 25th day after the end of the month at the difference between the value of the skim milk and butterfat in fluid milk products received from a producer-handler during the month at the Class I price applicable at the location of the producer-handler's plant (but not less than the Class III price) and its value at the Class III price, subject to the following conditions:

(a) The quantities of skim milk and butterfat in fluid milk products on which

payments shall be made pursuant to this section shall not exceed the vendor's Class I disposition in the marketing area during the month; and

(b) This section shall not apply to a vendor whose total Class I disposition is obtained from a producer-handler, or whose total receipts and disposition of fluid milk products are considered as a part of the receipts and disposition of the producer-handler pursuant to § 1136.8 (b) (3).

22. Section 1136.70 is revised as follows:

§ 1136.70 Computation of the net pool obligation of each pool handler.

The net pool obligation of each pool handler and of each cooperative association handler pursuant to § 1136.9 (b) and (c) shall be a sum of money computed each month by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class as computed pursuant to § 1136.44(c) by the applicable class price;

(b) Add the amount obtained from multiplying the overage deducted from each class pursuant to § 1136.44(a) (12) and the corresponding step of § 1136.44 (b) by the applicable class price;

(c) Add the amount obtained from multiplying the Class III price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1136.44 (a) (7) and the corresponding step of § 1136.44(b) for the current month;

(d) Add an amount equal to the difference between the Class I and Class III price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1136.44(a) (5) and the corresponding step of § 1136.44(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1136.44(a) (5) (iv) and (v) and the corresponding step of § 1136.44(b) the Class I price shall be adjusted to the location of the transferor plant (but the adjusted price not to be less than the Class III price); and

(e) 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 the adjusted price not to be less than the Class III price) of the skim milk and butterfat subtracted from Class I pursuant to § 1136.44(a) (9) and the corresponding step of § 1136.44(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 handlers under this or any other 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 under this or any other order.

23. Section 1136.81 is revised as follows:

§ 1136.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1136.61, 1136.62, 1136.63, 1136.82, and 1136.84, and out of which he shall make all payments pursuant to §§ 1136.83 and 1136.84: *Provided,* That any payments due to any handler shall be offset by any payments due from such handler.

24. Section 1136.86 is revised as follows:

§ 1136.86 Expense of administration.

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 14th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including that classified pursuant to § 1136.40(b) but excluding, in the case of a cooperative association which is a handelr pursuant to § 1136.9(c), milk which was received at the pool plant of another handler) and such handler's own production.

(b) Other source milk allocated to Class I pursuant to § 1136.44(a) (5) and (9) and the corresponding steps of § 1136.44(b);

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants; and

(d) Class I milk disposed of by a vendor in the marketing area on which a payment to the producer-settlement fund is due pursuant to § 1136.63.

25. A new § 1136.88 is added as follows:

§ 1136.88 Interest payments.

The unpaid obligation of a handler pursuant to §§ 1136.62, 1136.63, 1136.82, 1136.84, 1136.86, and 1136.87 shall be increased 1 percent for each month or portion thereof beginning with the third day following the date by which such obligation was payable: *Provided,* That:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously made pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

[F.R. Doc. 70-12885; Filed, Sept. 25, 1970; 8:50 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 70-WE-70]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amendments to Part 71 of the Federal Aviation Regulations that would alter the descriptions of the Portland, Oreg., control zone and transition area.

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace and Program Standards Branch, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Avenue, Los Angeles, Calif. 90045.

A review of the terminal airspace requirements for Portland, Oreg., has revealed the need for designation of additional control zone and 700-foot transition area. The additional controlled airspace designation is required by the application of the U.S. Standard for Terminal Instrument Procedures (TERPS). The additional control zone designation will provide controlled airspace protection for aircraft executing prescribed instrument approach procedures while operating below 1,000 feet above the surface. The additional 700-foot transition area is required to provide controlled airspace protection for aircraft executing procedure turns at the Sauvies radio beacon and the Lake LOM.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.171 (35 F.R. 2054) the description of the Portland, Oreg., control zone is amended to read as follows:

PORTLAND, OREG.

Within a 5-mile radius of Portland International Airport (latitude 45°35'20" N., longitude 122°35'35" W.); within a 3-mile radius of the Troutdale Airport (latitude 45°33'00" N., longitude 122°23'50" W.); within 2 miles each side of the Portland VORTAC 180° radial, extending from the 5-mile radius zone to 3.5 miles south of the VORTAC; within 2.5 miles each side of the Portland Runway IOR ILS localizer northwest course, extending from the 5-mile radius zone to 1 mile northwest of the LOM, and within 3 miles each side of the 119° and 299° bearings from the Lake LOM, extending from the 5-mile radius to 8 miles southeast of the LOM, excluding the portion within the Troutdale, Oreg., control zone when the Troutdale, control zone is effective.

In § 71.181 (35 F.R. 2134) the description of the Portland, Oreg., transition area, as amended by (35 F.R. 9921), is further amended by deleting all before "* * *; that airspace extending upward from 1,200 feet * * *" and substituting therefor: "That airspace extending upward from 700 feet above the surface within a 23-mile radius of the Portland International Airport (latitude 45°35'20" N., longitude 122°35'35" W.), within a 5-mile radius of Kelso-Longview, Washington Airport (latitude 46°07'12" N., longitude 122°53'58" W.), within 2 miles each side of the 012° bearing from the Kelso, Wash., RBN (latitude 46°09'14" N., longitude 122°54'40" W.) extending from the 5-mile radius area to 8 miles north of the RBN, within 5 miles northeast and 11 miles southwest of the 299° bearing from the Sauvies RBN, extending from the 23-mile radius to 25 miles northwest of the RBN, and within 4.5 miles northeast and 9.5 miles southwest of the 199° bearing from the Lake LOM, extending from the 23-mile radius area to 18.5 miles southeast of the LOM; * * *".

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Los Angeles, Calif., on September 17, 1970.

WILLIAM R. KRIEGER,
Acting Director, Western Region.

[F.R. Doc. 70-12845; Filed, Sept. 25, 1970; 8:46 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 70-WE-72]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Twentynine Palms, Calif., transition area.

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace and Program Standards Branch, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangement for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Avenue, Los Angeles, Calif. 90045.

A new instrument approach procedure has been developed for Bermuda Dunes, Calif., airport utilizing the 324° T (309° M) radial of the Thermal VORTAC for the final approach course. The procedure turn would be made southwest of the 144° T (129° M) radial of the Thermal VORTAC.

The proposed additional 700 foot transition area will provide controlled airspace protection for aircraft executing the prescribed instrument procedure while operating between 700 feet and 1,200 feet above the surface. The additional 1,200-foot transition area is required for aircraft executing the procedure turn.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.181 (35 F.R. 2134) the description of the Twentynine Palms, Calif., transition area is amended to read as follows:

TWENTYNINE PALMS, CALIF.

That airspace extending upward from 700 feet above the surface within a 3-mile radius of Thermal Airport (latitude 33°37'40" N., longitude 116°09'45" W.), within 2 miles each side of the Thermal VORTAC 140° radial extending from the 3-mile radius area to 8 miles southeast of the VORTAC, within 2 miles each side of the Thermal VORTAC 122° radial, extending from the 3-mile radius area to 5 miles southeast of the VORTAC, and that airspace within 3 miles each side of the Thermal VORTAC 324° radial, extending from the 3-mile radius area to 16 miles northwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at latitude 34°17'00" N., longitude 115°25'00" W., to latitude 33°28'00" N., longitude 115°25'00" W., to latitude 33°28'00" N., longitude 116°18'00" W., to latitude 34°17'00" N., longitude 116°18'00" W., thence to point of beginning, excluding the portions within R-2501 and R-2507, and within 3 miles northeast and 9.5 miles southwest of the Thermal VORTAC 144° radial, extending from the southeast edge of V460 to a line 5 miles southeast of and parallel to the Julian VOR 055° radial.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Los Angeles, Calif., on September 17, 1970.

WILLIAM R. KRIEGER,
Acting Director, Western Region.

[F.R. Doc. 70-12846; Filed, Sept. 25, 1970; 8:46 a.m.]

[14 CFR Part 77]

[Docket No. 10601; Notice 70-38]

RULES OF PRACTICE FOR HEARINGS

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Part 77 of the Federal Aviation Regulations to simplify the procedure for conducting hearings, held by the Federal Aviation Administration under titles I, III, and X of the Federal Aviation Act of 1958 (49 U.S.C. subchapters I, III, and X) on proposed construction or alteration that affects the use of the navigable airspace.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify this regulatory docket or notice number and be submitted in duplicate to the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, D.C. 20590. All communications received on or before November 25, 1970, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments, by the Rules Docket for examination by interested persons.

The procedures currently prescribed in Part 77 for the conduct of public hearings have been in effect since July 1963. In that period of time the FAA has conducted 11 public hearings on construction proposals. In these hearings, the elapsed time from the date of granting the hearing by the Administrator to the date of issuance of the Administrator's order stating his final decision regarding the proposal, has ranged from 2 months to 41 months, with an average elapsed time of more than 1 year.

A review of transcripts of the hearings indicates that the delay, in large part, can be attributable to the hearing procedures, particularly the taking of testimony. Even though the public hearings under Part 77 are fact finding in nature

and nonadversary, a basically adversary technique is followed. Testimony is elicited by questioning, objections are allowed as to relevancy, and cross-examination is allowed, frequently followed by re-direct and re-cross-examination. A large amount of the cross-examination has been directed to the qualifications and integrity of witnesses. These procedures have resulted in an elaborate, expensive and time-consuming public hearing. In view of the fact that these hearings do not produce a binding, enforceable, final order, the proceedings appear to be overly complex.

In contrast, the hearing procedures involved with airspace rule making in Part 11 of the Federal Aviation Regulations are uncomplicated and informal. The hearings are relatively brief. Oral testimony is elicited by allotting time for persons interested in the proposed rule making to make an unsworn presentation, as far as possible, without interruption. Questions are permitted after initial statements have been made by all designated parties. Arguments and oral statements are limited to the subject of the proposed rule making. Experience has shown these procedures to be an ample tool to assure adequate protection of private and public interests in the rule making process. The procedures are more flexible than those presently prescribed under Part 77. In view of the outcomes under both Part 11 and Part 77 procedures, the FAA is of the opinion that a simplification of Part 77 procedures, making them similar to Part 11 hearings, would be of benefit to all concerned parties.

In consideration of the foregoing, it is proposed to amend Part 77 of the Federal Aviation Regulations as follows:

1. By amending § 77.45 as follows:

§ 77.45 Presiding officer.

* * * * *

(b) The Presiding Officer:

(1) Gives notice of the date and location of the hearing and of any prehearing conference that may be held;

(2) Designates parties to the hearing;

(3) Makes an opening statement which states the issue and limits the scope of the hearing to the issue;

(4) Obtains, in the form of a public record, the pertinent and relevant facts relating to the subject matter of the hearing;

(5) Regulates the course and conduct of the hearing;

(6) May deviate from the procedures prescribed in this subpart as necessary to assure a more complete and informative record.

2. By amending § 77.47 to read as follows:

§ 77.47 Legal officer.

The General Counsel designates a member of his staff to serve as Legal Officer at each hearing under this subpart. The Legal Officer assists and advises the presiding officer on all legal questions related to the hearing.

3. By amending § 77.51 as follows:

§ 77.51 Parties to the hearing.

* * * * *

(b) Any person who stated a substantial aeronautical objection to the proposed construction or alteration in an aeronautical study.

(c) Any person who has a substantial aeronautical objection to the proposed construction or alteration but was not given an opportunity to state it.

4. By amending § 77.53 as follows:

§ 77.53 Prehearing conference.

* * * * *

(b) At the direction of the presiding officer, each party shall submit a brief written statement of the evidence he intends to present at the hearing, in enough copies to provide three for the FAA and one to each other party.

* * * * *

5. By amending § 77.55 to read as follows:

§ 77.55 Hearing procedure.

The procedure in hearings held under this subpart is as follows:

(a) The Presiding Officer makes the opening statement.

(b) The Presiding Officer allots enough time to each party on an equal basis so that his position may be expressed fully and placed on the record, with the petitioner speaking first, followed by the other parties, initial statements being made as far as possible without interruption, and questions permitted after initial statements have been made by all designated parties.

(c) Arguments and oral statements are limited to the scope of the hearing as determined by the Presiding Officer. Testimony and exhibits that are irrelevant or unduly repetitious will be excluded.

(d) Written information, views, arguments, briefs and written recommendations of the parties for a final decision to be made by the Administrator may be offered for the record, but may not be accepted after the hearing unless good cause is shown or the submission is requested by the presiding officer.

§§ 77.57, 77.59, 77.65, 77.69 [Deleted]

6. By deleting § 77.57 *Evidence.*

7. By deleting § 77.59 *Subpoenas of witnesses and exhibits.*

8. By deleting § 77.65 *Recommendations by parties.*

9. By deleting § 77.69 *Limitations on appearance and representation.*

These amendments are proposed under the authority of sections 307, 313, and 1101 of the Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354, and 1501), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

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

WILLIAM M. FLENER,
Director, Air Traffic Service.

[F.R. Doc. 70-12844; Filed, Sept. 25, 1970; 8:46 a.m.]

[14 CFR Part 139]

[Docket No. 10607; Notice 70-39]

AIRPORT OPERATING CERTIFICATES

Advance Notice of Proposed Rule Making

The Federal Aviation Administration is considering the issue of regulations to provide for the issue of airport operating certificates to airports serving air carriers certificated by the Civil Aeronautics Board, and minimum safety standards for the operation of those airports. The proposed rules would be placed in a new Part 139 of the Federal Aviation Regulations.

This advance notice of proposed rule making is being issued in accordance with the FAA's policy for the early institution of public proceedings in actions related to rule making. An "advance" notice is issued when it is found that the resources of the FAA and reasonable inquiry outside of the FAA do not yield a sufficient basis to identify and select a tentative course or alternate courses of action, or where it would be helpful to invite public participation in the identification and selection of a course or alternative courses of action with respect to a particular rule-making problem. The subject matter of this notice involves a situation contemplated by that policy.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, D.C. 20590. All communications received on or before October 26, 1970, will be considered by the Administrator before taking action upon the proposed rule. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Section 51 of the Airport and Airway Development Act of 1970 added to the Federal Aviation Act of 1958 a new section 612 that authorizes the Administrator to issue airport operating certificates to airports serving air carriers certificated by the Civil Aeronautics Board, and to establish minimum safety standards for the operation of those airports. Under section 612 such terms, conditions, and limitations as are reasonably necessary to assure safety in air transportation must be prescribed, including those relating to the installation, operation, and maintenance of adequate air navigation facilities, and to the operation and maintenance of adequate safety equipment. Any person desiring to operate an airport of the kind involved may apply to the Administrator for an airport operating certificate, and the Administrator is directed to issue the certificate if he finds, after investigation,

that that person is properly and adequately equipped to conduct a safe operation. The 1970 Act also added to section 610(a) of the Federal Aviation Act of 1958 a provision prohibiting any person from operating an airport of the kind involved without an airport operating certificate, or in violation of the terms of the certificate. This prohibition is effective May 21, 1972, 2 years after its enactment.

The FAA has met twice with representatives of the airport industry and associations of persons using airports as air carriers and flight crewmembers, to discuss the minimum safety standards that should be established for the operation of the airports involved. At those conferences a number of airport elements, conditions, equipment, and activities (listed below) were discussed, for which specific minimum safety standards appear to be necessary for the proper implementation of FAA's responsibilities under section 612 of the Act. However, it is considered that the subject warrants further in-depth exploration. The FAA is therefore issuing this advance notice of proposed rule making to obtain wide public participation, before undertaking further rule making, in order to give all interested persons an opportunity to put forward their relevant arguments, data, and evidence on the listed items and any further items for which they may consider minimum safety standards are necessary, and on the safety standards that should be established for those items.

The following are the airport elements, conditions, equipment, and activities for whose installation, operation, and maintenance minimum safety standards are now being considered by the FAA for rule making:

1. Pavement areas: Cleanliness of operating surfaces, and serviceability and effectiveness for braking action; identification and marking of unserviceable and construction areas, and closing them to operations; provision of a measurement of coefficient of friction; and requirement of antihydroplaning runway surfaces.

2. Safety area: Areas that abut runways, taxiways, and aprons; identification and marking of construction areas.

3. Marking and lighting of runways, taxiways, and aprons: Conspicuous marking to FAA standard configuration, supplying ground guidance signs, and retention of reliability of light signals.

4. Fire and rescue facilities, and extinguishing agents.

5. Handling and storage of dangerous material.

6. Traffic and wind direction indicators.

7. Emergency plan: For rapid and orderly response to any unusual situation, including material on security problems such as sabotage and unlawful interference with operations on airports.

8. Self-inspection: Program covering equipment, personnel, training, frequency of inspections, communications, recordkeeping, reporting, and corrective action, as related to areas where minimum safety standards apply. Also, obtaining and disseminating information as to construction and maintenance; slush, water, and slipperyness; hazards; lighting deficiencies; and other unusual conditions.

9. Ground vehicles: Communications between emergency vehicles and the control tower; and guidance for operation of airport maintenance and other authorized vehicles on and in the vicinity of aircraft movement areas.

10. Drainage systems: To minimize ponding of water on operating surfaces, safety areas, and extended runway safety areas.

11. Control tower visibility: Unobstructed view of final approaches, landing areas and associated taxiway, and entire traffic pattern.

12. Airport lights: Prevention of blinding and hindering of traffic control or aircraft operations.

13. Obstructions: Airport control of construction of obstructions, and marking and lighting of obstructions in accordance with FAA standards.

14. Air navigation facilities on airport: Maintenance of airport-owned facilities, and protection of all facilities from damage and interference with signal performance.

15. Line of sight along and between runways.

16. Security fencing: At gate and other access areas, and elsewhere to prevent wildlife from wandering onto runways.

17. Smoke control: To prevent adverse effects on visibility.

18. Bird hazard control.

Under consideration also is the manner in which the airport will show the FAA how it complies with the safety standards prescribed by the regulations. A method under consideration is the development of a document (such as an airport manual) by airport management. The FAA would specify the content, and review the document.

The FAA solicits the views of all interested persons, by means of this advance notice of proposed rule making, on the items and the minimum safety standards that should be established for the installation, operation, and maintenance of airports serving air carriers certificated by the Civil Aeronautics Board, as well as on the manner in which the airports should show compliance with the regulations.

At the meetings of the FAA with representatives of the airport industry and airport users, several problems were raised as to the scope of the proposed regulations, the resolution of which could helpfully guide the nature of the comments made in response to this notice. Thus, it was asked whether air taxi operators or foreign air carriers would be taken into account in determining whether an airport is one serving "air carriers certificated by the Civil Aeronautics Board." As was then stated, air taxi operators are not so certificated, but instead operate under exemptions issued by that Board. Also as was then stated, "air carriers" by definition must be citizens of the United States, under the Federal Aviation Act of 1958. Therefore, air taxi operators and foreign air carriers would not come within the concept of air carriers certificated by the Civil Aeronautics Board for the purposes of this rule-making action.

Related questions raised at the meetings concerned the application of the proposed rules to alternate, provisional, and military airports serving air carriers certificated by the Civil Aeronautics Board, and to airports serving charter flights made by such air carriers that usually operate in air transportation on a regular basis. The FAA solicits the views of all interested persons on what items and minimum safety standards should be established with respect to these airports.

This advance notice of proposed rule making is issued under the authority of sections 313(a) and 612 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a); Public Law 91-258, 84 Stat. 234, 235).

Issued in Washington, D.C., on September 23, 1970.

CLYDE W. PACE, Jr.,
Acting Director, Airports Service.

[F.R. Doc. 70-12998; Filed, Sept. 25, 1970; 10:29 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES 6767; Survey Group 148]

FLORIDA

Notice of Filing of Plat of Survey

1. The plat of the dependent resurvey and survey of omitted lands, described below, will be officially filed in the Eastern States Land Office, Silver Spring, Md., effective at 10 a.m. on October 19, 1970:

TALLAHASSEE MERIDIAN

T. 50 S., R. 25 E.,
Sec. 35, lot 6;
Sec. 36, NE¼SE¼, NW¼SE¼, lots 10 to 16, inclusive.

The area described aggregates 329.47 acres.

2. This plat represents a retracement and re-establishment of a portion of the east boundary, subdivision lines, and meanders, designed to restore the corners to their true original locations according to the best available evidence, and a survey of land erroneously omitted from the original survey.

3. The land omitted from the original survey is similar in every respect to the land included in the original surveyed area, and the timber growth thereon attests to the fact that the area was land in place in 1845, when Florida was admitted into the Union, and at all times since. The omitted land area designated as the NE¼SE¼, NW¼SE¼, and lots 11, 12, 14, and 15 Sec. 36 was found to be over 50-percent swamp in character within the interpretation of the Swamp Land Grant Act of September 28, 1850. Title to these lands inured to the State of Florida as of that date, and these lands are, therefore, open only to selection by the State under that Act.

4. Except for valid existing rights, lot 6 Sec. 35 and lots 10, 13 and 16 Sec. 36 will not be open to any applications for use or disposition under the public land laws, including the mining and mineral leasing laws, until they have been classified and a further order is issued.

5. All inquiries relating to these lands should be sent to the Manager, Eastern States Land Office, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Md. 20910.

DORIS A. KOIVULA,
Manager.

SEPTEMBER 17, 1970.

[F.R. Doc. 70-12869; Filed, Sept. 25, 1970; 8:48 a.m.]

Office of the Secretary

[Order No. 2934]

NATIONAL FOREST RESERVATION COMMISSION AND MIGRATORY BIRD CONSERVATION COMMISSION

Delegation of Authority

SEPTEMBER 22, 1970.

This notice amends the delegations of authority published at 30 F.R. 7725 regarding the National Forest Reservation Commission and the Migratory Bird Conservation Commission. The delegation pertaining to the Virgin Islands Corp. is rescinded.

SECTION 1. *Delegation.* (a) The Under Secretary of the Interior, and Assistant Secretary of the Interior, or the Director, Bureau of Outdoor Recreation, upon designation by me, may exercise the authority of the Secretary of the Interior as Member, National Forest Reservation Commission;

(b) The Under Secretary of the Interior or the Assistant Secretary for Fish and Wildlife and Parks, upon designation by me, may exercise the authority of the Secretary of the Interior as Chairman, Migratory Bird Conservation Commission.

SEC. 2. *Redelegation.* (a) The authority delegated by section 1 of this order may not be redelegated except as provided in (b) below.

(b) The Director or the Assistant Director, Administration and Engineering, of the Bureau of Sport Fisheries and Wildlife, may exercise the Authority of the Secretary of the Interior as Chairman, Migratory Bird Conservation Commission for the audit and order of payment of the expenses of said Commission and its members, not to exceed $7,500 annually.

SEC. 3. *Revocation.* This order supersedes Order No. 2889 (30 F.R. 7725).

(Sec. 2, Reorganization Plan No. 3 of 1950)

WALTER J. HICKEL,
Secretary of the Interior.

SEPTEMBER 22, 1970.

[F.R. Doc. 70-12841; Filed, Sept. 25, 1970; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

THOMSON STOCK YARD, INC., ET AL.

Notice of Changes in Names of Posted Stockyards

It has been ascertained, and notice is hereby given, that the names of the livestock markets referred to herein, which were posted on the respective dates specified below as being subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), have been changed as indicated below.

Original name of stockyard, location, and date of posting	*Current name of stockyard and date of change in name*
GEORGIA	
Thomson Stockyard, Thomson, June 2, 1959	Thomson Stock Yard, Inc. Apr. 1, 1970.
MICHIGAN	
Hart-Scottville Livestock Sales, Scottville, May 14, 1959.	Scottville Livestock Sales Apr. 1, 1969.
MISSOURI	
Bowling Green Livestock Market, Inc., Bowling Green, May 8, 1959.	Pike County Livestock Market Aug. 3, 1970.
OHIO	
Sugar Creek Livestock Auction, Sugarcreek, September 14, 1959.	Sugarcreek Livestock Auction September 1, 1970.
OKLAHOMA	
Apache Livestock Sales Co., Apache, February 7, 1958.	Apache Livestock Sale Co. July 1, 1970.
TEXAS	
Hico Commission Company Ltd., Hico, September 11, 1961.	Hico Commission Company Jan. 1, 1970.

Done at Washington, D.C., this 23d day of September 1970.

G. H. HOPPER,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[F.R. Doc. 70-12882; Filed, Sept. 25, 1970; 8:50 a.m.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ASSISTANT SECRETARY FOR RENEWAL AND HOUSING MANAGEMENT

Delegation of Authority

SECTION A. *Authority delegated.* The delegations of authority to the Assistant Secretary for Renewal and Housing Management published June 29, 1966 (31 F.R. 8964, 8967); Jan. 7, 1967 (32 F.R. 158); May 15, 1968 (33 F.R. 7174); April 11, 1969 (34 F.R. 6399); Oct. 18, 1968 (34 F.R. 17041); and Feb. 7, 1970 (35 F.R. 2746, 2747, 2748), are further amended to provide that the Assistant Secretary may redelegate to employees of the Department the authority delegated to him except the authority to issue rules and regulations: *Provided,* That the authority vested in the President by statute, delegated by him to the Secretary under section 1 of Executive Order 11196, and redelegated by the Secretary in sections A,2 and A,3, of the delegation published June 29, 1966 (31 F.R. 8967) shall be redelegated only to Regional Administrators, Deputy Regional Administrators, Area Directors, and Deputy Area Directors.

SEC. B. *Exercise of redelegated authority.* Redelegations of final authority pursuant to this amendment of delegation shall not be construed to modify or otherwise affect the administrative and supervisory powers of the Regional Administrator, Area Director, and HUD–FHA Insuring Office Director, and their respective deputies, to whom a delegate is responsible, and these supervisors shall, in addition to any other authority delegated to them, have the same final authority redelegated to their subordinates.

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Effective date. This amendment is effective as of September 1, 1970.

GEORGE ROMNEY,
Secretary of Housing and Urban Development.

[F.R. Doc. 70–12872; Filed, Sept. 25, 1970; 8:49 a.m.]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGFR 70–122]

GULF INTRACOASTAL WATERWAY, CAMERON, LA.

Notice of Public Hearing Concerning Operation and Obstructive Characteristics of Three Pontoon Bridges

Notice is hereby given that a public hearing will be held to determine the need for special operation regulations and the degree of obstructive characteristics of three pontoon bridges across the Gulf Intracoastal Waterway located in Cameron Parish, La. The hearing will be held by the Commander, Eighth Coast Guard District at the Police Jury Building, Police Jury Meeting Room, at Cameron, La., and will start at 9 a.m. on October 28, 1970.

One purpose of the hearing is to consider an application dated June 7, 1968, from the Cameron Parish Police Jury to establish special operating regulations for these three pontoon highway bridges across the Gulf Intracoastal Waterway at miles 219.9, 234.1 and 243.8, all west of Harvey Lock. Interested parties were given an opportunity to submit written comments on the application to the Commander, Eighth Coast Guard District by Public Notice No. 8–11–69 dated August 29, 1968. The bridges presently operate under regulations requiring the spans to be opened upon signal from a vessel and the applicant requested that the opening and closing of the spans be alternated during periods of congested highway and waterway traffic not to exceed 20 minutes in the open position and 20 minutes in the closed position. This hearing is to gather additional information from the public on this proposal.

The other purpose is to consider a resolution by the Cameron Parish Police Jury which requested a public hearing be held to determine if these bridges constitute unreasonable obstructions to navigation and if alterations are needed to render navigation through the spans reasonably free and unobstructed. Information as to whether or not these bridges constitute unreasonable obstruction to navigation will be accepted for consideration at this public hearing. Authority for this action is set forth in section 5, 28 Stat. 362, as amended (33 U.S.C. 499); section 3 of the Act of June 21, 1940 (Truman-Hobbs Act), 54 Stat. 498 (33 U.S.C. 513); sections 6(g)(2) and 6(g)(3) of the Department of Transportation Act, 80 Stat. 937 (49 U.S.C. 1655 (g)(2) and (g)(3)); 33 CFR 116.20; 49 CFR 1.46 (c)(5) and (c)(6).

All interested persons may present data, views, and comments orally, or in writing at the public hearing concerning these proposals and on the impact of the bridges on land and water transportation, potential commercial development and on the environment, including but not limited to the impact of the bridges as they relate to recreational areas, wildlife and waterfowl refuges, public parks, and historical sites which are of national, State or local significance as determined by the Federal, State or local officials having jurisdiction thereof.

The hearing will be an informal one conducted by a representative of the Commandant. Interested persons will then have an opportunity to present their oral statements. Additional procedures for conduct of the hearing will be announced at the hearing. A transcript of the hearing will be made and anyone may buy a copy of the transcript from the reporting service.

Interested persons who are unable to attend this hearing may also participate in this consideration by submitting written data, views, arguments, or comments as they may desire on or before November 12, 1970. All submissions should be made in writing to the Commander, Eighth Coast Guard District, Customhouse, New Orleans, La. 70130. It is requested that each submission state the subject to which it is directed, the reason for any recommendations and the name, address, and firm or organization, if any, of the person making the submission. Each communication received within the time specified will be fully considered and evaluated before final action is taken on the proposal in this document. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Eighth Coast Guard District.

After the time set for the submission of comments by the interested parties, the Commander, Eighth Coast Guard District will forward the record, including all written submissions and his recommendations with respect to the proposals and the submissions, to the Commandant, U.S. Coast Guard, Washington, D.C. The Commandant will thereafter make a final determination with respect to these proposals.

Dated: September 23, 1970.

T. R. SARGENT,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

[F.R. Doc. 70–12932; Filed, Sept. 25, 1970; 8:50 a.m.]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50–89, 50–163, 50–227]

GULF ENERGY & ENVIRONMENTAL SYSTEMS, INC.

Notice of Amendments for Corporate Name Change of Facility Licenses

The Atomic Energy Commission has issued, effective as of the date of issuance, amendments to Facility License Nos. R–38, R–67, and R–100 to change the corporate name of the holder of these licenses to Gulf Energy & Environmental System, Inc. The licenses were previously issued to Gulf General Atomic Inc., for authorization to possess, use and operate the TRIGA reactors located on the corporation's Torrey Pines Mesa site in San Diego, Calif.

By letter dated August 4, 1970, Gulf General Atomic Inc. (GGA), advised that the corporate name had been changed to Gulf Energy & Environmental Systems, Inc. (GEES). GGA has become an operating division of GEES. By application dated August 28, 1970, GEES requested that the Facility License Nos. R–38, R–67, and R–100 be amended to reflect this change. There are no changes to the operating staff for the facilities or in the uses which will be made of the facilities.

The Commission has found that the application for the amendments complies with the requirements of the Atomic

Energy Act of 1954, as amended ("the Act"), and the Commission's regulations published in 10 CFR Chapter I. The Commission had made the findings required by the Act and the Commission's regulations which are set forth in the amendment, and has concluded that the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

Within fifteen (15) days from the date of publication of the notice in the FEDERAL REGISTER, the applicant may file a request for a hearing and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the Commission's rules of practice in 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) the licensee's letter of August 4, 1970, and application for license amendment dated August 28, 1970, and (2) the amendments to the facility licenses which are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. Copies of the amendment may be obtained upon request sent to the Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 16th day of September 1970.

For the Atomic Energy Commission.

DONALD J. SKOVHOLT,
Assistant Director for Reactor Operations, Division of Reactor Licensing.

[F.R. Doc. 70-12827; Filed, Sept. 25, 1970; 8:45 a.m.]

[Docket No. 50-166]

UNIVERSITY OF MARYLAND

Extension of Completion Date of Construction Permit

University of Maryland having filed a request dated September 1, 1970, for extension of the latest completion date specified in Construction Permit No. CPRR-108, which authorizes the installation of a new reactor console and a TRIGA Mark III control and instrumentation (C&I) system as a replacement for the present reactor console and C&I system in the existing reactor located on the University's campus at College Park, Md., and good cause having been shown for extension of said date, pursuant to section 185 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.55 of the Commission's regulations:

It is hereby ordered, That the latest completion date for Construction Permit No. CPRR-108 is extended from September 30, 1970, to November 30, 1970.

Date of issuance: September 16, 1970.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[F.R. Doc. 70-12826; Filed, Sept. 25, 1970; 8:45 a.m.]

[Docket No. 50-271]

VERMONT YANKEE NUCLEAR POWER CORP.

Notice of Availability of Environmental Report and Request for Comments From State and Local Agencies

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in appendix D of 10 CFR Part 50, notice is hereby given that the Vermont Yankee Nuclear Power Corp. has submitted an environmental report, dated September 1, 1970, which discusses environmental considerations relating to the proposed operation of the Vermont Yankee Nuclear Power Station. A copy of the report is being placed in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and in the office of the Chairman of the Board of Selectmen in Vernon, Vt. Vermont Yankee Nuclear Power Corp. has applied for an operating license for its Vermont Yankee plant, located at the applicant's site in the town of Vernon, Windham County, Vt.

The Commission hereby requests, within 60 days of publication of this notice in the FEDERAL REGISTER, from State and local agencies of any affected State (with respect to matters within their jurisdiction) which are authorized to develop and enforce environmental standards, comments on the proposed action and on the report. If any such State or local agency fails to provide the Commission with comments within 60 days of publication of this notice in the FEDERAL REGISTER, it will be presumed that the agency has no comments to make.

Copies of Vermont Yankee Nuclear Power Corp.'s report, dated September 1, 1970, and the comments thereon of Federal agencies (whose comments are being separately requested by the Commission) will be supplied to such State and local agencies upon request addressed to the Director, Division of Reactor Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Dated at Bethesda, Md., this 23d day of September 1970.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[F.R. Doc. 70-12958; Filed, Sept. 25, 1970; 8:50 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 18559, etc.; FCC 70R-325]

UNITED TELEVISION CO., INC. (WFAN-TV), ET AL.

Memorandum Opinion and Order Enlarging Issues

In regard applications of United Television Company, Inc. (WFAN-TV) Washington, D.C., Docket No. 18559, File No. BRCT-585, for renewal of license; United Television Company, Inc. (WFAN-TV) Washington, D.C., Docket No. 18561, File No. BPCT-3917, for construction permit; United Broadcasting Company, Inc. (WOOK) Washington, D.C., Docket No. 18562, File No. BR-1104, for renewal of license; and Washington Community Broadcasting Co., Washington, D.C., Docket No. 18563, File No. BP-17416, for construction permit for new standard broadcast station.

1. The Commission designated the instant applications for hearing on a variety of issues by Memorandum Opinion and Order, 18 FCC 2d 363, 16 RR 2d 621 (1969). By subsequent Memorandum Opinion and Order, 70R-246, ____ FCC 2d ____, released July 16, 1970, the Review Board enlarged the proceeding to include an issue as to whether the programing of Station WOOK had been meritorious, particularly with regard to public service programs. Now before the Review Board is a petition for enlargement of issues, filed July 24, 1970, by United Television Co., Inc. (hereinafter "United"),[1] seeking the addition of an issue to permit the adduction of evidence relating to the allegedly meritorious programing of Station WFAN-TV in mitigation of any evidence which may be introduced adversely to the basic qualifications of United to operate WFAN-TV as a Commission licensee.

2. In its petition, United explains that because its petition for severence and grant of television applications was pending before the Board at the same time as were the pleadings which eventuated in the Board's Memorandum Opinion and Order, FCC 70R-246, supra, petitioner did not previously refer to the programing performance of Station WFAN-TV. So to do, advances petitioner, would have been premature. Now, however, urges United, the Review Board's adverse ruling on United's petition for severance and grant of television applications renders timely and appropriate a petition requesting adduction of evidence concerning the meritorious programing performance of Station WFAN-TV.[2] The

[1] Also before the Board are comments on the petition, filed July 31, 1970, by the Broadcast Bureau.

[2] By Memorandum Opinion and Order, FCC 70R-253, ____ FCC 2d ____, released July 22, 1970, the Review Board denied United's petition for severance and grant of television applications.

Broadcast Bureau endorses petitioner's request but would have the showing restricted to the period before United's renewal application for WFAN–TV fell into jeopardy.

3. The Review Board will add an issue permitting United to adduce evidence in support of an asserted past record of meritorious programing on Station WFAN–TV. Such evidence may be received in mitigation of any adverse findings which may result from resolution of the qualifying issues. See Chronicle Broadcasting Co., 18 FCC 2d 120, 16 RR 2d 494 (1969); and Midwest Radio-Television, Inc., 18 FCC 2d 1011, 16 RR 2d 987 (1969). The requested issue will not, as the Bureau suggests, be limited—as in Chronicle and Midwest—to programing instituted before the licensee received notice that the Commission was contemplating action against it. Such a restriction will not here be imposed "because, unlike the earlier case, at least part of the alleged misconduct occurred since this case was designated for hearing." United Television Co., Inc., FCC 70R–246, supra. The Board would also indicate, however, that the requested issue will be added "without prejudice to the rights of the parties to argue, subsequently, regarding the weight which should be accorded to the evidence adduced under the issue." Id.

4. *Accordingly, it is ordered,* That, the petition for enlargement of issues, filed on July 24, 1970, by United Television Co., Inc., is granted, and that the issues in this proceeding are enlarged by addition of the following issue: to determine whether the programing of Station WFAN–TV has been meritorious, particularly with regard to public service programs.

5. *It is further ordered,* That the burdens of proceeding with the introduction of evidence and of proof on the issue herein added shall be on United Television Co., Inc. (WFAN–TV).

Adopted: September 18, 1970.

Released: September 21, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 70–12870; Filed, Sept. 25, 1970; 8:48 a.m.]

FEDERAL MARITIME COMMISSION

ALASKA STEAMSHIP CO., AND FOSS ALASKA LINE, INC.

Notice of Agreement Filed

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

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed for approval by:

Edward G. Lowry, III, Bogle, Gates, Dobrin, Wakefield & Long, 14th Floor Norton Building, Seattle, Wash. 98104.

Agreement No. T–2452 between Alaska Steamship Co. (Alaska Steam), and Foss Alaska Line, Inc. (Foss), provides that Alaska Steam will lease to Foss for a term of 10 years, certain marine terminal facilities in the city of Juneau, Alaska, to be operated by Foss as a public marine terminal. As rental, Foss and affiliated corporations will pay Alaska Steam all revenues collected under Alaska Steam's tariff up to $2 per weight ton. Foss may retain any revenues over $2 per weight ton. On other than Foss or its affiliated corporations' cargo, Alaska Steam will be paid 50 percent of all revenues collected.

Dated: September 21, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70–12828; Filed, Sept. 25, 1970; 8:45 a.m.]

HAPAG-LLOYD AKTIENGESELLSCHAFT AND DEUTSCHE DAMPFSCHIFFFAHRTS GESELLSCHAFT HANSA

Notice of Agreement Filed

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

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. F. J. Barry, General Traffic Department, Hapag-Lloyd AG, United States Navigation, Inc., agent, 17 Battery Place, New York, N.Y. 10004

Agreement No. 9898 provides for the interchange of cargo containers and/or related equipment between Hapag-Lloyd Aktiengesellschaft and Deutsche Dampfschifffahrts Gesellschaft Hansa, both operating regular services between U.S. ports and various foreign countries, in accordance with the terms and conditions set forth therein.

Dated: September 23, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70–12874; Filed, Sept. 25, 1970; 8:49 a.m.]

PHILADELPHIA PORT CORP. AND DELAWARE RIVER TERMINAL & STEVEDORING CO., INC.

Notice of Agreement Filed

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

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide

[1] Review Board Member Pincock not participating.

a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularly. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed for approval by:

Robert A. Peavy, Esq., Morgan, Lewis & Bockius, 1140 Connecticut Avenue NW., Washington, D.C. 20036

Agreement No. T-2455 between Philadelphia Port Corp. (Corporation) and Delaware River Terminal & Stevedoring Co., Inc. (DRTS) is a 5-year lease agreement with renewal options covering Berths 4 and 5 of the Tioga Terminal and approximately 22 acres of contiguous land at Philadelphia, Pa. DRTS will use the premises as a marine terminal and as rental will pay Corporation an annual rental based upon the number of containers handled with a minimum payment as specified, plus certain rents and taxes. The agreement provides (1) that rates charged for container handling at this facility and at a proposed Packer Avenue container terminal shall be equal and subject to Corporation's approval and (2) rental terms for the container berths at both Packer Avenue Terminal and at the Tioga Terminal will be equal.

Dated: September 22, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-12829; Filed, Sept. 25, 1970; 8:45 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CI71-187 etc.]

PHILLIPS PETROLEUM CO.

Notice of Application

SEPTEMBER 23, 1970.

Take notice that on August 31, 1970, Phillips Petroleum Co. (Applicant), Bartlesville, Okla. 74004, filed in Docket No. CI71-187 and CI69-160 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to transport for exchange quantities of natural gas pursuant to a gas exchange agreement among Natural Gas Pipeline Co. of America (Natural), Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin), and Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application states that Applicant, Natural and Michigan Wisconsin have entered into a gas exchange agreement dated July 17, 1970, which provides that until October 3, 1974, Applicant will deliver up to 60,000 Mcf per day of natural gas to Michigan Wisconsin for the account of Natural at the outlet of Applicant's Sherman Plant located in Hansford County, Tex., which gas will be returned by Natural to Applicant. Further, in the event that Natural's deliveries to Applicant exceed 60,000 Mcf per day, then Applicant will deliver such excess volumes to Natural at existing delivery points in Beaver County, Okla., and Gray County, Tex. The application states that all gas volumes so exchanged shall be adjusted for B.t.u. content and all gas deliveries shall be on a volume-weighted average B.t.u. basis. In additon, for each 1,000 Mcf of exchange gas delivered to Michigan Wisconsin, Applicant will deliver 30 Mcf of gas as make-up of fuel and shrinkage used by Michigan Wisconsin in the compression and dehydration of such exchange volumes. Further, Applicant will pay to Michigan Wisconsin $12.50 for each 1,000 Mcf of exchange gas delivered to Michigan Wisconsin as compensation of other costs incurred in compression and dehydration.

The application states that the proposed exchange will produce operating efficiencies for the companies involved.

On August 31, 1970, in Dockets Nos. CP71-50 and CP69-31, Natural filed its application for authorization for its part of the exchange. On September 3, 1970, in Docket No. CP71-54, Michigan Wisconsin likewise filed its application for authorization for its part of the exchange.

In order that the instant application may be considered by the Commission concurrently with the applications filed in Dockets Nos. CP71-50 and CP71-54, any person desiring to be heard or to make any protest with reference to the instant application should on or before October 5, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commisison will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

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

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

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-12902; Filed, Sept. 25, 1970; 8:50 a.m.]

FEDERAL RESERVE SYSTEM

HOUSTON BANK AND TRUST CO.

Order Approving Merger of Banks

In the matter of the application of Houston Bank and Trust Company, Houston, Tex., for approval of merger with Citizens Bank, Houston, Tex.

There has come before the Board of Governors, pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), an application by Houston Bank and Trust Company, Houston, Tex. ("Houston Bank"), a member State bank of the Federal Reserve System, for the Board's prior approval of the merger of that bank and Citizens Bank, Houston, Tex., under the charter of Houston Bank and the name Houston-Citizens Bank and Trust Co. Under the proposal, the only office of Citizens Bank would be closed, branching being prohibited by State law. Notice of the proposed merger, in form approved by the Board, has been published pursuant to said Act.

In accordance with the Act, the Board requested reports on the competitive factors involved from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The Board has considered all relevant material contained in the record in the light of the factors set forth in the Act, including the effect of the proposal on competition, the financial and managerial resources and prospects of the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Houston Bank ($111 million deposits) and Citizens Bank ($70 million deposits) are located 1 mile apart in the business section of downtown Houston. There are 15 other banks located in the downtown area, 12 of which are located in the area intervening the two banks. The 17 downtown banks are among 95 banks in Harris County, which encompasses Houston and portions of its suburban periphery. Houston Bank and Citizens Bank are, respectively, the sixth and 12th largest of these, and the resulting bank would rank fifth in size. The President of Houston Bank recently acquired a controlling interest in Citizens Bank; even in the absence of this relationship, it does not appear that competition would be

significantly reduced by consummation of the proposal, in view of the relative size of the merging banks and the large number of alternative sources of banking services in the area involved.

The increased size of the resulting bank would permit it to meet a larger portion of the credit needs of the area, and to provide a more effective alternative to the area's four larger banks, which range in deposit size from $266 million to $1 billion. Although Citizens Bank's office would be closed as a result of the merger, it does not appear that customers in the immediate area would be seriously inconvenienced, in view of the number of readily accessible alternatives. Considerations relating to the banking factors provide some additional support for approval of the proposal, in that it would assure a permanent solution to financial difficulties which Citizens Bank had prior to its recent change in ownership. It is the Board's judgment that consummation of the proposal would be in the public interest, and that the application should be approved.

It is hereby ordered, On the basis of the findings summarized above, that said application be and hereby is approved, provided that the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Dallas pursuant to delegated authority.

By order of the Board of Governors,[1] September 22, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-12824; Filed, Sept. 25, 1970; 8:45 a.m.]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN MALAYSIA

Entry or Withdrawal From Warehouse for Consumption

SEPTEMBER 23, 1970.

On September 8, 1970, the U.S. Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, concluded a new comprehensive bilateral cotton textile agreement with the Government of Malaysia concerning exports of cotton textiles and cotton textile products from Malaysia to the United States over a 4-year period beginning on September 1, 1970, and extending through August 31, 1974. Among the provisions of the agreement are those establishing an aggregate limit for the 64 Categories, group limits, and within the group limits specific limits on certain Categories.

Within the group limit for Group II (the Apparel Categories) specific export limitations are established for Categories 45, 46, 49, 50, 51, 53, 55, and 60.

Previously, the Chairman of the President's Cabinet Textile Advisory Committee issued a series of directives, pursuant to Article 3 of the Long-Term Arrangement Regarding International Trade in Cotton Textiles, limiting imports of cotton textiles and cotton textile products in various Categories from Malaysia. The letter published below cancels and supersedes these directives.

Accordingly, there is published below a letter of September 22, 1970, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, directing that the amounts of cotton textiles in Categories 45, 46, 49, 50, 51, 53, 55, and 60 produced or manufactured in Malaysia which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning September 1, 1970, and extending through August 31, 1971, be limited to the designated levels. The letter published below and the actions pursuant thereto are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

SEPTEMBER 22, 1970.

DEAR MR. COMMISSIONER: This directive cancels and supersedes the directives issued to you on the following dates by the Chairman, President's Cabinet Textile Advisory Committee, regarding imports of cotton textiles and cotton textile products in the following categories produced or manufactured in Malaysia:

Date of P.C.T.A.C. directive	*Categories*
Dec. 9, 1969	26 (other than duck).[1]
Dec. 23, 1969	46.
Dec. 24, 1969	19, 26 (duck only)[1] and 60.
Jan. 19, 1970	51.
Feb. 28, 1970	49, 55.
Mar. 20, 1970	50.
Apr. 27, 1970 (amended May 20, 1970).	Part of Category 64 (Only T.S.U.S.A. Nos. 366.4500, 366.4600 and 366.4700).
May 20, 1970	22.

[1] The T.S.U.S.A. Nos. for duck fabric are:
320...01 through 04, 06, 08
321...01 through 04, 06, 08
322...01 through 04, 06, 08
326...01 through 04, 06, 08
327...01 through 04, 06, 08
328...01 through 04, 06, 08

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of September 8, 1970, between the Governments of the United States and Malaysia, and in accordance with Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed to prohibit, effective as soon as possible, and for the 12-month period beginning September 1, 1970, and extending through August 31, 1971, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 45, 46, 49, 50, 51, 53, 55, and 60 produced or manufactured in Malaysia, in excess of the following levels of restraint:

Category:		*12-month levels of restraint*[2]
45	dozen	90,000
46	do	20,000
49	do	15,000
50	do	25,000
51	do	25,000
53	do	15,000
55	do	18,000
60	do	28,000

[2] These levels have been adjusted to reflect any entries made on or after September 1, 1970.

Cotton textiles in Categories 45, 46, 49, 50, 51, 53, 55 and 60 produced or manufactured in Malaysia and which have been exported prior to September 1, 1970, shall not be subject to this directive.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of September 8, 1970, between the Governments of the United States and Malaysia which provide, in part, that within the aggregate limit and group limit, the limitations on Categories 45, 46, 49, 50, 51, 53, 55, and 60 may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter from the Chairman of the Interagency Textile Administrative Committee.

Cotton textile products which have been released from the custody of the Bureau of Customs under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 17, 1968 (33 F.R. 582), and amendments thereto on March 15, 1968 (33 F.R. 4600).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Malaysia and with respect to imports of cotton textiles and cotton textile products from Malaysia have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553 (Supp. V, 1965-69). This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

MAURICE H. STANS,
Secretary of Commerce, Chairman, President's Cabinet Textile Advisory Committee.

[F.R. Doc. 70-12879; Filed, Sept. 25, 1970; 8:49 a.m.]

[1] Voting for this action: Chairman Burns and Governors Robertson, Brimmer, and Sherrill. Absent and not voting: Governors Mitchell, Daane, and Maisel.

SECURITIES AND EXCHANGE COMMISSION

[812-2636]

EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES AND SEPARATE ACCOUNT A OF THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

Notice of Application for Exemption

SEPTEMBER 21, 1970.

Notice is hereby given that The Equitable Life Assurance Society of the United States ("Equitable"), a mutual life insurance company organized under the laws of the State of New York, and Separate Account A of Equitable ("Account A") (herein collectively called "Applicants"), 1285 Avenue of the Americas, New York, N.Y. 10019, have filed an application pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order of exemption, to the extent noted below, from the provisions of section 22(d) of the Act. Equitable established Account A on August 1, 1968, pursuant to the provisions of section 227 of the New York Insurance Law to afford a medium for equity investments for variable annuity contracts issued by Equitable in connection with particular tax-deferred retirement programs. Account A is an open end, diversified investment company registered under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Section 22(d) provides, in pertinent part, that no registered investment company or principal underwriter shall sell any redeemable security to the public except at a current offering price described in the prospectus. This section has been construed as prohibiting variations in the sales load except on a uniform basis.

Variable annuity contracts are currently being offered by Equitable under which purchase payments are made annually or more frequently until the annuitant's selected retirement date or his prior death. If payments are discontinued under one of these variable annuity contracts, the contract remains in effect as a paid-up deferred annuity and payments may be resumed at any time before the retirement date or before the contract is surrendered for redemption. In addition to these contracts, Equitable proposes to offer variable annuity contracts funded through Account A which will be purchased by a single payment ("single payment contracts").

The single payment variable annuity contracts proposed to be offered are of two general kinds: variable immediate annuity contracts and variable deferred annuity contracts. The single payment for either an immediate or deferred annuity contract will be subject to deductions for sales expenses of 5.5 percent of the payment and for administrative expenses of 2 percent of the first $5,000 of the payment. When the contract is purchased under a life insurance policy or an annuity contract issued by Equitable, the deduction for sales expenses will be 2.665 percent of the payment and for administrative expenses will be 2.06 percent of the first $5,000 of the payment. No deductions for administrative expenses will be made from the amount of payment in excess of $5,000. However, the right to purchase a single consideration variable annuity contract may not be exercised by a participant by applying funds credited to him which are allocated to an Equitable separate account.

The application states that the variation in the rate of deduction does not arbitrarily or unfairly discriminate between different categories of investors. With respect to single payment variable annuity contracts purchased under a life insurance policy or an annuity contract issued by Equitable, Applicants state that the latter policies and contracts have previously been subjected to sales charges, and substantial savings will be realized in sales costs when single payment variable annuity contracts are purchased pursuant thereto because no direct sales expenses will be incurred. Applicants consider the imposition of a full sales load on single payment variable annuity contracts so purchased unwarranted and not in the public interest or consistent with protection of investors.

Applicants request that an exemption from the provisions of section 22(d) be granted pursuant to section 6(c) of the Act to permit the variation in the rate of deductions as between the single payment variable annuity contracts purchased under life insurance policies or an annuity contract issued by the Equitable and the single payment variable annuity contracts otherwise purchased.

Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is hereby given that any interested person may, not later than October 5, 1970, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-12852; Filed, Sept. 25, 1970; 8:47 a.m.]

[811-1993]

UNITED CONTINENTAL ACCUMULATIVE FUND, INC.

Notice of Filing of Application for Order Declaring Company Has Ceased To Be an Investment Company

SEPTEMBER 18, 1970.

Notice is hereby given that United Continental Accumulative Fund, Inc. (Applicant), 20 West 9th Street, Kansas City, Mo. 64105, a Delaware corporation registered as an open-end diversified management investment company under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 8(f) of the Act for an order declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicant registered as an investment company under the Act on December 31, 1969. Its Registration Statement under the Securities Act of 1933 on Form S-5 was also filed with the Commission on that date.

Applicant states that it at present has no shareholders and that no public offering or sale of securities has been or is intended to be made. Applicant also states that for these reasons an application for the withdrawal of its Registration Statement under the Securities Act of 1933 pursuant to Rule 477 thereunder also has been filed with the Commission.

Section 3(c)(1) of the Act excludes from the definition of an investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities.

Section 8(f) of the Act provides that when the Commission, upon application, finds a registered investment company has ceased to be an investment company, it shall so declare by order, which

may be made upon appropriate conditions necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than October 9, 1970, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in the case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing thereon shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70–12833; Filed, Sept. 25, 1970; 8:45 a.m.]

[70–4913]

WISCONSIN GAS CO. AND AMERICAN NATURAL GAS CO.

Notice of Proposed Issue and Sale of Debentures at Competitive Bidding and Issue, Sale and Acquisition of Common Stock

SEPTEMBER 21, 1970.

Notice is hereby given that American Natural Gas Co. ("American Natural"), Suite 4950, 30 Rockefeller Plaza, New York, N.Y. 10020, a registered holding company, and its subsidiary company, Wisconsin Gas Co. ("Wisconsin"), 626 East Wisconsin Avenue, Milwaukee, Wis. 53201, have filed an application-declaration and an amendment thereto with this Commission, pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6, 7, 9, 10, and 12(f) and Rules 43 and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, as amended, which is summarized below, for a complete statement of the proposed transactions.

Wisconsin proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, $15 million principal amount of __ percent debentures due October 15, 1990. This interest rate (which shall be a multiple of ⅛ of 1 percent) and the price, exclusive of accrued interest (which shall be not less than 98½ percent or more than 101½ percent of the principal amount), will be determined by competitive bidding. The debentures are to be issued under an indenture, dated as of October 15, 1970, between Wisconsin and First National City Bank, New York, N.Y., as trustee, which contains a prohibition until October 15, 1975, against refunding the issue with the proceeds of funds borrowed at a lower cost of money.

Wisconsin also proposes (a) to amend its articles of incorporation so as to increase the number of its authorized shares of common stock, par value $12 per share, from 5,530,079 shares to 5,946,746 shares, and (b) to issue and sell 416,667 shares of such common stock to American Natural for a cash consideration of $5,000,004, which is equal to the aggregate par value thereof. American Natural, which owns all of Wisconsin's outstanding common stock, proposes to acquire the 416,667 shares.

Wisconsin will use the net proceeds from the sale of the debentures and common stock to retire $3,720,000 of Wisconsin's 3⅜ percent Sinking Fund Debentures, due November 1, 1970, and the balance will be applied toward the retirement of bank loan notes, due November 13, 1970, of which $14 million are expected to be outstanding on the date the debentures are sold, and the balance of the proceeds is to be applied toward Wisconsin's 1970 construction program estimated at $20,800,000. The bank loan notes were used to partially finance Wisconsin's 1969 and 1970 construction program.

The Public Service Commission of Wisconsin has authorized the proposed transactions, and no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the sale of the debentures are estimated at $86,000, including legal fees of $23,000 and accounting fees of $8,000. The fees and expenses for the issuance of the common stock are estimated at $11,500, including legal fees of $1,000. The fees and expenses of counsel for the underwriters to be paid by the successful bidders, will be supplied by amendment.

Notice is further given that any interested person may, not later than October 8, 1970, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70–12851; Filed, Sept. 25, 1970; 8:47 a.m.]

SMALL BUSINESS ADMINISTRATION

AMERICAN COMMERCIAL FINANCE CORP.

Notice of Surrender of License of Small Business Investment Company

Notice is hereby given that American Commercial Finance Corp. (ACFC), 26 Fellowship Road, Cherry Hill, N.J. 08034, has surrendered its license to operate as a small business investment company pursuant to § 107.105 of the regulations governing small business investment companies (33 F.R. 326, 13 CFR Part 107).

ACFC was licensed as a small business investment company on April 26, 1961, to operate solely under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C., 661 et seq.), and the regulations promulgated thereunder.

Under the authority vested by the Act, and pursuant to the cited regulation, the surrender of the license is hereby accepted and all rights, privileges, and franchises derived therefrom are canceled and terminated.

A. H. SINGER,
Associate Administrator for Investment.

SEPTEMBER 14, 1970.

[F.R. Doc. 70–12854; Filed, Sept. 25, 1970; 8:47 a.m.]

COUNTRY CAPITAL CORP.

Notice of Surrender of License of Small Business Investment Company

Notice is hereby given that Country Capital Corp. (Country), 60 Broad Hollow Road, Melville, N.Y. 11749, has, pursuant to § 107.105 of the regulations governing small business investment companies (33 F.R. 326, 13 CFR Part 107), surrendered its license to operate as a small business investment company.

Country was incorporated January 31, 1962, under the laws of the State of New York, and issued License No. 02/02-0189 by the Small Business Administration on April 9, 1962.

Country was licensed to operate solely under the Small Business Investment Act of 1958, as amended (15 U.S.C., 661 et seq.).

Under the authority vested by the Small Business Investment Act of 1958, as amended, and the regulations promulgated thereunder, the surrender of the license of Country is hereby accepted and, accordingly, it is no longer licensed to operate as a small business investment company.

A. H. SINGER,
Associate Administrator for Investment.

SEPTEMBER 16, 1970.

[F.R. Doc. 70-12855; Filed, Sept. 25, 1970; 8:47 a.m.]

NORTH AMERICAN CORP.

Notice of Surrender of License of Small Business Investment Company

Notice is hereby given that North American Corp. (NAC), 110 East 59 Street, New York, N.Y. 10022, has, pursuant to § 107.105 of the regulations governing small business investment companies (33 F.R. 326, 13 CFR Part 107), surrendered its license to operate as a small business investment company.

NAC was incorporated May 11, 1960, under the laws of the State of New York, and issued License No. 02/02-0019 by the Small Business Administration on July 14, 1960.

NAC was licensed to operate solely under the Small Business Investment Act of 1958, as amended (15 U.S.C., 661 et seq.).

Under the authority vested by the Small Business Investment Act of 1958, as amended, and the regulations promulgated thereunder, the surrender of the license of NAC is hereby accepted and, accordingly, it is no longer licensed to operate as a small business investment company.

A. H. SINGER,
Associate Administrator for Investment.

SEPTEMBER 14, 1970.

[F.R. Doc. 70-12856; Filed, Sept. 25, 1970; 8:47 a.m.]

[Declaration of Disaster Loan Area 786]

ARIZONA

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of September 1970, because of the effects of certain disasters, damage resulted to residences and business property located in Maricopa County, Ariz.;

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

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

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

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the offices below indicated from persons or firms whose property situated in the aforesaid county and adjacent areas, suffered damage or destruction resulting from floods occurring during September 5 to 7, 1970.

OFFICES

Small Business Administration District Office, 112 North Central Avenue, Phoenix, Ariz. 85004.

Small Business Administration Post-of-Duty Station, 155 East Alameda Street, Tucson, Ariz. 85701.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to March 31, 1971.

Dated: September 7, 1970.

HILARY SANDOVAL, Jr.,
Administrator.

[F.R. Doc. 70-12857; Filed, Sept. 25, 1970; 8:47 a.m.]

[Declaration of Disaster Loan Area 786, Amdt. 1]

ARIZONA

Declaration of Disaster Loan Area; Amendment

Declaration of Disaster Loan Area 786 dated September 7, 1970, for Arizona, is hereby amended as follows:

1. By adding "and Navajo" after "Maricopa" and deleting "County" and substituting "Counties" before "Arizona" in the first "Whereas" clause.

2. In paragraph number 1, line 4, delete the word "County" and substitute "Counties" after the word "aforesaid".

Dated: September 16, 1970.

HILARY SANDOVAL, Jr.,
Administrator.

[F.R. Doc. 70-12858; Filed, Sept. 25, 1970; 8:47 a.m.]

[Declaration of Disaster Loan Area 787]

IOWA

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of September 1970, because of the effects of certain disasters, damage resulted to residences and business property located in the State of Iowa;

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

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

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

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in all areas affected in the aforesaid State, suffered damage or destruction resulting from windstorms occurring on September 9, 1970.

OFFICE

Small Business Administration District Office, 210 Walnut Street, Des Moines, Iowa 50309.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to March 31, 1971.

Dated: September 14, 1970.

HILARY SANDOVAL, Jr.,
Administrator.

[F.R. Doc. 70-12859; Filed, Sept. 25, 1970; 8:47 a.m.]

[Declaration of Disaster Loan Area 785]

UTAH

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of August 1970, because of the effects of certain disasters, damage resulted to residences and business property located in Sevier County, Utah;

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

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

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

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may

be received and considered by the office below indicated from persons or firms whose property situated in the aforesaid County, suffered damage or destruction resulting from floods occurring on August 20 and 26, 1970.

OFFICE

Small Business Administration District Office, 125 South State Street, Salt Lake City, Utah 84111.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to March 31, 1971.

Dated: September 7, 1970.

HILARY SANDOVAL, Jr.,
Administrator.

[F.R. Doc. 70-12860; Filed, Sept. 25, 1970; 8:48 a.m.]

[Amdt. 1 to Delegations of Authority Nos. 30-C through 30-F and 30-H; Amdt. 2 to Delegations of Authority Nos. 30-B and 30-G; Amdt. 4 to Delegation of Authority No. 30-A]

REGIONAL DIRECTORS, REGIONS I THROUGH X

Delegation of Authority To Conduct Program Activities in Field Offices

Delegations of Authority Nos. 30-A, to Region IX (34 F.R. 18836) as amended (34 F.R. 20076, 35 F.R. 1073, and 35 F.R. 12683); 30-B, to Region V (34 F.R. 19842) as amended (35 F.R. 1073); 30-C, to Regions VI, VII, and X (35 F.R. 2840); 30-D, to Region VIII (35 F.R. 5144); 30-E, to Region III (35 F.R. 6033); 30-F, to Region I (35 F.R. 6386); 30-G, to Region IV (35 F.R. 9955) as amended (35 F.R. 12630); and 30-H, to Region II (35 F.R. 11603) are hereby amended by adding Item I.D.3, to read as follows:

I. *Regional Director, Regions I Through X.* * * *

D. *Procurement and management assistance program.* * * *

3. To take all necessary actions in connection with the administration and management of grants, agreements, and contracts executed by the Associate Administrator for Procurement and Management Assistance under the authority granted in section 406 of the Economic Opportunity Amendments of 1967, except changes, amendments, modifications, or termination of the original grant, agreement, or contract.

* * * * *

Effective date: September 14, 1970.

EINAR JOHNSON,
Deputy Administrator.

[F.R. Doc. 70-12830; Filed, Sept. 25, 1970; 8:45 a.m.]

[Delegation of Authority No. 30-A (Region IX), Amdt. 2]

REGIONAL DIVISION CHIEFS ET AL., REGION IX

Delegation of Authority To Conduct Program Activities

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30-A (34 F.R. 18836), as amended (34 F.R. 20076, 35 F.R. 1073, and 35 F.R. 12683), Delegation of Authority No. 30-A (Region IX) (35 F.R. 3133), as amended (35 F.R. 4794), is hereby further amended by revising Item I.J. to read as follows:

I. *Regional Division Chiefs, Regional Counsel, and staffs.* * * *

J. *Chief, Procurement and Management Assistance Division.* 1. To enter into contracts, not exceeding $100,000 on behalf of the Small Business Administration with the U.S. Government and any department, agency, or officer thereof having procurement powers obligating the Small Business Administration to furnish articles, equipment, supplies, or materials to the Government and agreeing as to the terms and conditions of such contracts;

2. To certify to any officer of the Government having procurement powers that the Small Business Administration is competent to perform any specific Government procurement contract not exceeding $100,000 to be let by any such officer; and

3. To arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Small Business Administration to perform such contracts.

* * * * *

Effective date: August 28, 1970.

DONALD MCLARNAN,
Regional Director,
San Francisco, Calif.

[F.R. Doc. 70-12861; Filed, Sept. 25, 1970; 8:48 a.m.]

[Delegation of Authority No. 30-C; Region VI, Disaster 763]

MANAGER AND SUPERVISORY LOAN OFFICER, ARANSAS PASS DISASTER BRANCH OFFICE

Delegation of Authority Relating to Financial Assistance Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30-C, 35 F.R. 2840, the following authority is hereby redelegated to the positions as indicated herein:

A. *Manager, Aransas Pass Disaster Branch Office.* 1. To approve or decline disaster direct and immediate participation loans up to the total SBA share of (a) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and (b) $350,000 on disaster business loans except to the extent of refinancing of a previous SBA disaster loan; to approve disaster guaranteed loans up to $350,000, and to decline disaster guaranteed loans in any amount.

2. To execute loan authorizations for Central, regional, and district office approved loans and disaster loans approved under delegated authority, said execution to read as follows:

(*Name*), *Administrator,*
By ----------
Manager,
Disaster Branch Office.

3. To cancel, reinstate, modify, and amend authorizations for disaster loans approved under delegated authority.

4. To disburse unsecured disaster loans.

5. To extend the disbursement period on disaster loan authorizations or undisbursed portions of disaster loans.

B. *Supervisory Loan Officer, Aransas Pass Disaster Branch Office.* 1. To approve unsecured disaster loans up to $2,500 (SBA share).

II. The authority delegated herein may not be redelegated.

III. All authority delegated herein to a specific position may be exercised by an SBA employee designated as acting in that position.

Effective date: August 4, 1970.

JAMES R. WOODALL,
Acting Regional Director,
Dallas, Tex.

[F.R. Doc. 70-12862; Filed, Sept. 25, 1970; 8:48 a.m.]

[Delegation of Authority No. 30-C; Region VI, Disaster 763]

MANAGER AND SUPERVISORY LOAN OFFICER, CORPUS CHRISTI DISASTER BRANCH OFFICE

Delegation of Authority Relating to Financial Assistance Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30-C, 35 F.R. 2840, the following authority is hereby redelegated to the positions as indicated herein:

A. *Manager, Corpus Christi Disaster Branch Office.* 1. To approve or decline disaster direct and immediate participation loans up to the total SBA share of (a) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in additon to the foregoing limits for amounts up to $50,000; and (b) $350,000 on disaster business loans except to the extent of refinancing of a previous SBA disaster loan; to approve disaster guaranteed loans up to $350,000, and to decline disaster guaranteed loans in any amount.

2. To execute loan authorizations for Central, regional, and district office approved loans and disaster loans approved under delegated authority, said execution to read as follows:

(Name) Administrator,

By _____
Manager,
Disaster Branch Office.

3. To cancel, reinstate, modify, and amend authorizations for disaster loans approved under delegated authority.

4. To disburse unsecured disaster loans.

5. To extend the disbursement period on disaster loan authorizations or undisbursed portions of disaster loans.

B. *Supervisory Loan Officer, Corpus Christi Disaster Branch Office.* 1. To approve unsecured disaster loans up to $2,500 (SBA share).

II. The authority delegated herein may not be redelegated.

III. All authority delegated herein to a specific position may be exercised by an SBA employee designated as acting in that position.

Effective date: August 4, 1970.

JAMES R. WOODALL,
Acting Regional Director,
Dallas, Tex.

[F.R. Doc. 70-12863; Filed, Sept. 25, 1970; 8:48 a.m.]

[Delegation of Authority No. 30-C; Region VI, Disaster 763]

MANAGER AND SUPERVISORY LOAN OFFICER, MATHIS DISASTER BRANCH OFFICE

Delegation of Authority Relating to Financial Assistance Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30-C, 35 F.R. 2840, the following authority is hereby redelegated to the positions as indicated herein:

A. *Manager, Mathis Disaster Branch Office.* 1. To approve or decline disaster direct and immediate participation loans up to the total SBA share of (a) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and (b) $350,000 on disaster business loans except to the extent of refinancing of a previous SBA disaster loan; to approve disaster guaranteed loans up to $350,000, and to decline disaster guaranteed loans in any amount.

2. To execute loan authorizations for Central, regional, and district office approved loans and disaster loans approved under delegated authority, said execution to read as follows:

(Name), Administrator,

_____

By _____
Manager,
Disaster Branch Office.

3. To cancel, reinstate, modify, and amend authorizations for disaster loans approved under delegated authority.

4. To disburse unsecured disaster loans.

5. To extend the disbursement period on disaster loan authorizations or undisbursed portions of disaster loans.

B. *Supervisory Loan Officer, Mathis Disaster Branch Office.* 1. To approve unsecured disaster loans up to $2,500 (SBA share).

II. The authority delegated herein may not be redelegated.

III. All authority delegated herein to a specific position may be exercised by an SBA employee designated as acting in that position.

Effective date: August 4, 1970.

JAMES R. WOODALL,
Acting Regional Director,
Dallas, Tex.

[F.R. Doc. 70-12864; Filed, Sept. 25, 1970; 8:48 a.m.]

[Delegation of Authority No. 30-C; Region VI, Disaster 763]

MANAGER AND SUPERVISORY LOAN OFFICER, ROBSTOWN DISASTER BRANCH OFFICE

Delegation of Authority Relating to Financial Assistance Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30-C, 35 F.R. 2840, the following authority is hereby redelegated to the positions as indicated herein:

A. *Manager, Robstown Disaster Branch Office.* 1. To approve or decline disaster direct and immediate participation loans up to the total SBA share of (a) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and (b) $350,000 on disaster business loans except to the extent of refinancing of a previous SBA disaster loan; to approve disaster guaranteed loans up to $350,000, and to decline disaster guaranteed loans in any amount.

2. To execute loan authorizations for Central, regional, and district office approved loans and disaster loans approved under delegated authority, said execution to read as follows:

(Name), Administrator,

By _____
Manager,
Disaster Branch Office.

3. To cancel, reinstate, modify, and amend authorizations for disaster loans approved under delegated authority.

4. To disburse unsecured disaster loans.

5. To extend the disbursement period on disaster loan authorizations or undisturbed portions of disaster loans.

B. *Supervisory Loan Officer, Robstown Disaster Branch Office.* 1. To approve unsecured disaster loans up to $2,500 (SBA share).

II. The authority delegated herein may not be redelegated.

III. All authority delegated herein to a specific position may be exercised by an SBA employee designated as acting in that position.

Effective date: August 4, 1970.

JAMES R. WOODALL,
Acting Regional Director,
Dallas, Tex.

[F.R. Doc. 70-12865; Filed, Sept. 25, 1970; 8:48 a.m.]

[Delegation of Authority No. 30-C; Region VI, Disaster 763]

MANAGER AND SUPERVISORY LOAN OFFICER, ROCKPORT DISASTER BRANCH OFFICE

Delegation of Authority Relating to Financial Assistance Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30-C, 35 F.R. 2840, the following authority is hereby redelegated to the positions as indicated herein:

A. *Manager, Rockport Disaster Branch Office.* 1. To approve or decline disaster direct and immediate participation loans up to the total SBA share of (a) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and (b) $350,000 on disaster business loans except to the extent of refinancing of a previous SBA disaster loan; to approve disaster guaranteed loans up to $350,000, and to decline disaster guaranteed loans in any amount.

2. To execute loan authorizations for Central, regional, and district office approved loans and disaster loans approved under delegated authority, said execution to read as follows:

(Name), Administrator,

By _____
Manager,
Disaster Branch Office.

3. To cancel, reinstate, modify, and amend authorizations for disaster loans approved under delegated authority.

4. To disburse unsecured disaster loans.

5. To extend the disbursement period on disaster loan authorizations or undisbursed portions of disaster loans.

B. *Supervisory Loan Officer, Rockport Disaster Branch Office.* 1. To approve unsecured disaster loans up to $2,500 (SBA share).

II. The authority delegated herein may not be redelegated.

III. All authority delegated herein to a specific position may be exercised by an SBA employee designated as acting in that position.

Effective date: August 4, 1970.

JAMES R. WOODALL,
Acting Regional Director,
Dallas, Tex.

[F.R. Doc. 70-12866; Filed, Sept. 25, 1970; 8:48 a.m.]

[Delegation of Authority No. 30-C; Region VI, Disaster 763]

MANAGER AND SUPERVISORY LOAN OFFICER, SINTON DISASTER BRANCH OFFICE

Delegation of Authority Relating to Financial Assistance Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30-C, 35 F.R. 2840, the following authority is hereby redelegated to the positions as indicated herein:

A. *Manager, Sinton Disaster Branch Office.* 1. To approve or decline disaster direct and immediate participation loans up to the total SBA share of (a) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and (b) $350,000 on disaster business loans except to the extent of refinancing of a previous SBA disaster loan; to approve disaster guaranteed loans up to $350,000, and to decline disaster guaranteed loans in any amount.

2. To execute loan authorizations for Central, regional, and district office approved loans and disaster loans approved under delegated authority, said execution to read as follows:

(Name), Administrator,
By ----------
Manager,
Disaster Branch Office.

3. To cancel, reinstate, modify, and amend authorizations for disaster loans approved under delegated authority.

4. To disburse unsecured disaster loans.

5. To extend the disbursement period on disaster loan authorizations or undisbursed portions of disaster loans.

B. *Supervisory Loan Officer, Sinton Disaster Branch Office.* 1. To approve unsecured disaster loans up to $2,500 (SBA share).

II. The authority delegated herein may not be redelegated.

III. All authority delegated herein to a specific position may be exercised by an SBA employee designated as acting in that position.

Effective date: August 4, 1970.

JAMES R. WOODALL,
Acting Regional Director,
Dallas, Tex.

[F.R. Doc. 70-12867; Filed, Sept. 25, 1970; 8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 592]

MOTOR CARRIER TRANSFER PROCEEDINGS

SEPTEMBER 22, 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-72298. By order of September 11, 1970, the Motor Carrier Board approved the transfer to Becker Trucking Co., a corporation, Newton Falls, Ohio, of the operating rights in Permit No. MC-127924 issued June 26, 1967 to Emil Becker, doing business as Becker Trucking Co., Newton Falls, Ohio, authorizing the transportation of slag from points in Lawrence County, Pa., to specified areas in Ohio and from points in Mahoning and Trumbull Counties, Ohio to specified areas in Pennsylvania and New York. Richard H. Brandon, 79 East State St., Columbus, Ohio, attorney for applicants.

No. MC-FC-72359. By order of September 18, 1970, the Motor Carrier Board approved the transfer to Gookstetter Horse Van Service, Inc., Post Office Box 241, Coeur d'Alene, Idaho 83814, of the operating rights in Certificate Nos. MC-119426 (Sub-No. 1), MC-119426 (Sub-No. 4), MC-119426 (Sub-No. 5), and MC-119426 (Sub-No. 6) issued June 6, 1962, August 10, 1964, January 6, 1965, and April 26, 1967, respectively, to Gookstetter Horse Van Service, Post Office Box 241, Coeur d'Alene, Idaho 83814, authorizing the transportation of horses, other than ordinary, stable supplies and equipment, mascots, and the personal effects of attendents between points in Washington, Idaho, Montana, Arizona, Oregon, California and Kentucky.

No. MC-FC-72370. By order of September 21, 1970, the Motor Carrier Board approved the transfer to Data Transportation Sales Co., Inc., San Jose, Calif., of License No. MC-12465 issued November 10, 1949, to Joseph A. Mollerup and Marvin J. Mollerup, a partnership, doing business as Mollerup Moving and Storage Co. and Mollerup Van Lines, 2900 South Main Street, Salt Lake City, Utah 84115, authorizing the holder to engage in operations as a broker, at Salt Lake City, Utah, and Los Angeles, Calif., in arranging for the transportation of: Household goods, as defined by the Commission, between points in Utah, Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Washington, and Wyoming, on the one hand, and, on the other, points in the United States. Elliott Bunce, 1111 E Street NW., Washington, D.C. 20004, attorney for transferee.

No. MC-FC-72375. By order of September 18, 1970, the Motor Carrier Board approved the transfer to Petroleum Products, Inc., New Haven, Conn., of the operating rights in Certificate No. MC-83726 (Sub-No. 1) issued February 7, 1962, authorizing the transportation of brick, from Berlin, Windsor Locks, Hartford, and East Windsor Hill, Conn., to Pawtucket, R.I., points in that part of New York on and south of U.S. Highway 44, and on and east of the Hudson River, points in Providence, Kent, and Washington Counties, R.I., Taunton, Milford, and New Bedford, Mass., and that part of Massachusetts on and west of Massachusetts Highway 12; and from East Windsor Hill, Conn., to points in Maine, New Hampshire, and Vermont, points in Massachusetts east of Massachusetts Highway 12 (except Taunton, Milford, and New Bedford), points in New York within 25 miles of Albany, and points in Rhode Island (except Pawtucket and points in Providence, Kent, and Washington Counties). Thomas W. Murrett, 342 North Main Street, West Hartford, Conn. 06117, attorney for applicants.

No. MC-FC-72376. By order of September 18, 1970, the Motor Carrier Board approved the transfer to N.J. & N.Y. Airport Limousine, Inc., care of J. A. Curtis, 657 High Street, Newark, N.J. 07102, of Certificate No. MC-128823 issued May 16, 1969, to Robert C. Bell, Jr., doing business as N.J. & N.Y. Airport Limousine, care of J. A. Curtis, 657 High Street, Newark, N.J. 07102, authorizing the transportation of: Passengers and their baggage, and pets, in a limousine service, serving airports and specifically described areas in New Jersey and New York.

[SEAL] ROBERT L. OSWALD,
Acting Secretary.

[F.R. Doc. 70-12875; Filed, Sept. 25, 1970; 8:49 a.m.]

[Notice 593]

MOTOR CARRIER TRANSFER PROCEEDINGS

SEPTEMBER 23, 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–72322. By order of September 18, 1970, the Motor Carrier Board approved the transfer to McGary Transfer, Inc., Petersburg, Ill., of Certificate of Registration No. MC 58216 (Sub-No. 1) issued March 17, 1964, to Luther L. McGary, doing business as McGary Transfer, Petersburg, Ill., evidencing a right to engage in transportation in interstate commerce as described in Certificate No. 3687 MC, dated August 19, 1954, issued by the Illinois Commerce Commission. Jefferson Lewis, Petersburg, Ill., 62675, attorney for applicants.

No. MC–FC–72360. By order of September 18, 1970, the Motor Carrier Board approved the transfer to W. D. Smith Truck Line, Inc., De Queen, Ark., of the operating rights in Certificates Nos. MC 103498, MC 103498 (Sub-No. 11), MC 103498 (Sub-No. 13), and MC 103498 (Sub-No. 17), issued July 24, 1964, March 7, 1963, February 11, 1965, and October 14, 1969, to W. D. Smith, doing business as W. D. Smith Truck Line, De Queen, Ark., collectively, authorizing the transportation of various specified commodities from, to or between points in 20 specified States. Louis Tarlowski, 914 Pyramid Life Building, Little Rock, Ark. 72201, attorney for applicants.

No. MC–FC–72380. By order of September 18, 1970, the Motor Carrier Board approved the transfer to Luther S. Good, doing business as Good Transportation Co., Reading, Pa., of Certificate No. MC 52962, issued October 16, 1950, to Nyquist Transportation Co., a corporation, Reading, Pa., authorizing the transportation of: Packinghouse products, fruits, meats, seafood, and machinery, parts, and tables, used for sewing machines, between specified points and areas in New York, New Jersey, Maryland, Delaware, and Pennsylvania. Paul H. Edelman, Sixth and Washington Streets, Reading Pa. 19601, attorney.

[SEAL] ROBERT L. OSWALD,
Acting Secretary.

[F.R. Doc. 70–12876; Filed, Sept. 25, 1970; 8:49 a.m.]

[Notice 593A]

MOTOR CARRIER TRANSFER PROCEEDINGS

SEPTEMBER 23, 1970.

Application filed for temporary authority under section 210(a)(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC–FC–72378. By application filed September 21, 1970, FRED C. DENURE TOURS LIMITED, Box 238, 165 Colborne Street, West Lindsey, Ontario, Canada, seeks temporary authority to lease the operating rights of R. J. DENURE TRAILWAYS LIMITED, 117 Ridgewood, Peterborough, Ontario, Canada, under section 210a(b). The transfer to FRED C. DENURE TOURS LIMITED, of the operating rights of R. J. DENURE TRAILWAYS LIMITED, is presently pending.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Acting Secretary.

[F.R. Doc. 70–12877; Filed, Sept. 25, 1970; 8:49 a.m.]

[No. 35301]

WEST VIRGINIA INTRASTATE FREIGHT RATES, 1970

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 14th day of September 1970.

By joint petition filed July 13, 1970, The Baltimore and Ohio Railroad Co., Beech Mountain Railroad Co., The Chesapeake and Ohio Railway Co., The Kanawha Central Railway Co., Kelley's Creek and Northwestern Railroad Co., Norfolk and Western Railway Co., Penn Central Transportation Co., Western Maryland Railway, West Virginia Northern Railroad Co., and Winifrede Railroad Co., all of the carriers by railroad operating within the State of West Virginia, aver that the Public Service Commission of West Virginia has (1) refused to permit increases in intrastate rates and charges on property moving within that State corresponding to increases maintained by the carriers on like property moving in interstate commerce as authorized by this Commission in Ex Parte No. 262, Increased Freight Rates, 1969, 337 ICC 436, and (2) suspended requested increases in intrastate rates and charges on property moving within the State corresponding to increases maintained by the carriers on like property moving in interstate commerce as authorized by this Commission in Ex Parte No. 265, Increased Freight Rates, 1970 (final report pending);

It appearing, that petitioners allege that they are not certain they can fulfill the cost evidence requirements of the Public Service Commission of West Virginia either in a renewed proceeding in connection with the sought corresponding Ex Parte No. 262 increases or in the now pending corresponding Ex Parte No. 265 increase proceeding before said State Commission; that the failure of the Public Service Commission of West Virginia to permit comparable increases in rates and charges on intrastate traffic within the State of West Virginia as authorized on interstate traffic by this Commission causes and results in the petitioners being required to maintain rates and charges on intrastate traffic which are unjustly discriminatory against and an undue burden upon interstate commerce and depriving them of urgently needed revenue, and, whereby, the intrastate traffic in West Virginia is not "shouldering" its share of the transportation burden; thus, petitioners request an investigation, under section 13 of the Interstate Commerce Act, of the West Virginia intrastate freight rates and charges and an order removing the alleged unlawfulness;

And it further appearing that there have been brought in issue by the said petition matters sufficient to require an investigation of the intrastate freight rates and charges made or imposed by the State of West Virginia;

Wherefore, and good cause appearing:

It is ordered, That the petition be, and it is hereby, granted, and that an investigation be, and it is hereby, instituted under section 13 of the Interstate Commerce Act to determine whether the said rates and charges of carriers by railroad, or any of them, operating in the State of West Virginia for the intrastate transportation of property made or imposed by authority of the State of West Virginia cause or will cause, by reason of the failure of such rates and charges to include increases corresponding to those permitted by this Commission for interstate transportation in Ex Parte No. 262, Increased Freight Rates, 1969, supra, and Ex Parte No. 265, Increased Freight Rates, 1970, supra, any undue or unreasonable advantage, preference, or prejudice, as between persons or locations in intrastate commerce, on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce; and to determine what rates and charges, if any, or what maximum, or minimum, or maximum and minimum rates and charges shall be prescribed to remove the unlawful advantage, preference, discrimination, or undue burden, if any, that may be found to exist.

It is further ordered, That all persons who wish actively to participate in this proceeding and to file and to receive copies of pleadings shall make known that fact by notifying this Commission in writing on or before November 2, 1970. Although individual participation is not precluded, to conserve time and to avoid unnecessary expense, persons having common interests should endeavor to consolidate their presentation to the

greatest extent possible. The Commission desires participation only of those who intend to take an active part in the proceeding.

It is further ordered, That as soon as practicable after the date for indicating a desire to participate in the proceeding has past, the Secretary will serve a list of the names and addresses of all persons upon whom service of all pleadings must be made.

It is further ordered, That a copy of this order be served upon each of the said petitioners; and that the State of West Virginia be notified of the proceeding by sending copies of this order and of said petition by certified mail to the Governor of West Virginia, Charleston, W. Va., and to the Public Service Commission of West Virginia at Charleston; and that further notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, Washington, D.C., for publication in the FEDERAL REGISTER;

And it is further ordered, That this proceeding be assigned for hearing as may hereafter be designated.

By the Commission, Division 2.

[SEAL] ROBERT L. OSWALD,
Acting Secretary.

[F.R. Doc. 70-12878; Filed, Sept. 25, 1970; 8:49 a.m.]

CUMULATIVE LIST OF PARTS AFFECTED—SEPTEMBER

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during September.

3 CFR

Page

PROCLAMATIONS:

3998 ... 13819
3999 ... 14053
4000 ... 14187
4001 ... 14251
4002 ... 14535
4003 ... 14679
4004 ... 14681
4005 ... 14979

EXECUTIVE ORDERS:

July 15, 1875 (see PLO 4889) ... 14317
July 13, 1892 (revoked in part by PLO 4909) ... 14778
Mar. 4, 1896 (revoked in part by PLO 4909) ... 14778
1032 (revoked in part by PLO 4898) ... 14775
1619 (revoked in part by PLO 4900) ... 14775
5727 (revoked by PLO 4911) ... 14981
9979 (see EO 11555) ... 14191
10695-A (revoked by EO 11556) ... 14193
10705 (amended by EO 11556) ... 14193
10995 (revoked by EO 11556) ... 14193
11051 (amended by EO 11556) ... 14193
11084 (revoked by EO 11556) ... 14193
11191 (amended by EO 11556) ... 14193
11360 (see EO 11555) ... 14191
11490 (amended by EO 11556) ... 14193
11508 (amended by EO 11560) ... 14899
11546 (amended by EO 11557) ... 14375
11554 ... 14189
11555 ... 14191
11556 ... 14193
11557 ... 14375
11558 ... 14683
11559 ... 14687
11560 ... 14899
11561 ... 14981

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:

Memorandum of Aug. 21, 1963 (amended by EO 11556) ... 14193

5 CFR

213 ... 14055, 14125, 14197, 14299, 14377, 14435, 14691, 14763, 14827, 14983
531 ... 14377
630 ... 14763
713 ... 14917

5 CFR—Continued

Page

752 ... 14918
771 ... 14918

PROPOSED RULES:

890 ... 14092

7 CFR

10 ... 13822
51 ... 14605
52 ... 13822, 14060, 14606
53 ... 14497
58 ... 14827
210 ... 14061
215 ... 14435
220 ... 14827
245 ... 14065
319 ... 14497
401 ... 14253
724 ... 14068
725 ... 14377
729 ... 14299
775 ... 14498
777 ... 14379
813 ... 14299
841 ... 14498
850 ... 14253
874 ... 14827
905 ... 14499, 14500, 14607
906 ... 14254, 14607
908 ... 13969, 14255, 14435, 14537, 14698, 14831
909 ... 13875
910 ... 13825, 14121, 14435, 14647, 14983
911 ... 14537
913 ... 14255
915 ... 14764
924 ... 14901
932 ... 13877, 14380, 14381, 14436
944 ... 14537, 14538
945 ... 14072
946 ... 14300
948 ... 14072
958 ... 14437
966 ... 14764
967 ... 14608
980 ... 14539
981 ... 14073
987 ... 14764, 14984
993 ... 13969, 14300
1006 ... 14699
1007 ... 14831
1012 ... 14708
1013 ... 14717
1033 ... 14539
1036 ... 14539
1099 ... 13826

7 CFR—Continued

Page

1133 ... 14985
1138 ... 13826
1421 ... 13969, 13971, 14121, 14501, 14540, 14832
1601 ... 14608
1822 ... 14437, 14901, 14913
1841 ... 13972
1890 ... 13972
1890a ... 13974
1890b ... 13975
1890c ... 13977
1890d ... 13979
1890e ... 13980
1890f ... 13980
1890g ... 14442
1890h ... 14914
1890i ... 14914
1890j ... 14916

PROPOSED RULES:

46 ... 14728
722 ... 14462
730 ... 14620
906 ... 13887
912 ... 14266
924 ... 14220
926 ... 14511
927 ... 14555
929 ... 14085
931 ... 14462
932 ... 14266
981 ... 14085
987 ... 14087, 14266
989 ... 14555, 14556
1001 ... 14324, 14998
1002 ... 14998
1004 ... 14655, 14998
1006 ... 13843, 14998
1007 ... 14998
1011 ... 14998
1012 ... 13843, 14998
1013 ... 13843, 14998
1015 ... 14998
1030 ... 14998
1032 ... 14998
1033 ... 15998
1036 ... 14998
1040 ... 14998
1043 ... 14998
1044 ... 14998
1046 ... 14998
1049 ... 14998
1050 ... 14998
1060 ... 14998
1061 ... 14846, 14998
1062 ... 14406, 14998

7 CFR—Continued

PROPOSED RULES—Continued

8 CFR

PROPOSED RULES:

9 CFR

PROPOSED RULES:

10 CFR

PROPOSED RULES:

12 CFR

13 CFR

14 CFR

PROPOSED RULES:

15 CFR

PROPOSED RULES:

16 CFR

PROPOSED RULES:

17 CFR

18 CFR

PROPOSED RULES:

19 CFR

PROPOSED RULES:

20 CFR

PROPOSED RULES:

21 CFR

PROPOSED RULES:

21 CFR—Continued

Page

PROPOSED RULES—Continued

130 ... 14784
144 ... 14221
146a ... 13998
146c ... 13998
146d ... 13998
191 ... 13887, 14934

22 CFR

22 ... 14218

24 CFR

41 ... 14307
1914 ... 13882, 14213, 14616, 14927
1915 ... 13883, 14215, 14617, 14928

25 CFR

41 ... 14394
80 ... 14652
221 ... 14839

26 CFR

1 ... 14546, 14770
31 ... 14840
201 ... 14549
211 ... 14394
213 ... 14394
301 ... 13989, 14546

PROPOSED RULES:

1 ... 14403, 14405, 14784
31 ... 14992
44 ... 14138
45 ... 14138
48 ... 14845, 14992
301 ... 14138

28 CFR

0 ... 14770

29 CFR

70 ... 14771
520 ... 13884
870 ... 14314

PROPOSED RULES:

541 ... 14268

30 CFR

PROPOSED RULES:

70 ... 14557
75 ... 14146
80 ... 14146

32 CFR

125 ... 14130
518 ... 14384
564 ... 14384
766 ... 14451
809c ... 14771
902 ... 14078
1250 ... 14695
1499 ... 14258
1604 (see EO 11555) ... 14191

33 CFR

110 ... 14506
117 ... 14133, 14258, 14551
126 ... 14315
207 ... 14926, 14987

PROPOSED RULES:

110 ... 14269, 14407
117 ... 14139, 14408, 14558, 14848

36 CFR

7 ... 14133

36 CFR—Continued

Page

PROPOSED RULES:

1 ... 14995
12 ... 14995
55 ... 14995

39 CFR

126 ... 14259, 14653
531 ... 13831

PROPOSED RULES:

151 ... 14003

41 CFR

1–8 ... 14989
1–12 ... 14726
1–15 ... 14133
1–19 ... 13989
4–1 ... 14929
4–4 ... 14931
5–1 ... 14990
5A–2 ... 14501
5A–7 ... 13885
9–3 ... 14653
9–4 ... 14653
9–5 ... 14259
50–203 ... 14839
101–45 ... 14134
101–47 ... 14134

PROPOSED RULES:

50–201 ... 14511

42 CFR

73 ... 13922, 13989
81 ... 14135, 14460, 14506, 14727, 14842

PROPOSED RULES:

81 ... 14087, 14406, 14728–14730

43 CFR

2 ... 14697
5430 ... 14135

PUBLIC LAND ORDERS:

306 (see PLO 4899) ... 14775
1027 (amended and revoked in part by PLO 4902) ... 14776
1810 (revoked in part and modified by PLO 4905) ... 14777
1985 (revoked in part by PLO 4894) ... 14774
2302 (revoked in part by PLO 4901) ... 14775
2407 (revoked in part by PLO 4891) ... 14551
3192 (see PLO 4902) ... 14776
4575 (amended by PLO 4903) ... 14777
4582:
Modified by PLO 4884 ... 13821
Modified by PLO 4885 ... 14083
4667 (revoked by PLO 4892) ... 14551
4682 (amended by PLO 4903) ... 14777
4821 (amended by PLO 4890) ... 14317
4884 ... 13821
4885 ... 14083
4886 ... 14316
4887 ... 14317
4888 ... 14317
4889 ... 14317
4890 ... 14317
4891 ... 14551
4892 ... 14551
4893 ... 14551
4894 ... 14774
4895 ... 14774
4896 ... 14774
4897 ... 14774
4898 ... 14775
4899 ... 14775

43 CFR—Continued

Page

PUBLIC LAND ORDERS—Continued

4900 ... 14775
4901 ... 14775
4902 ... 14776
4903 ... 14777
4904 ... 14777
4905 ... 14777
4906 ... 14777
4907 ... 14777
4908 ... 14778
4909 ... 14778
4910 ... 14778
4911 ... 14988

PROPOSED RULES:

1725 ... 14220
1850 ... 13887

45 CFR

121 ... 13885
505 ... 14456
506 ... 14457
507 ... 14457
508 ... 14459
509 ... 14459

46 CFR

PROPOSED RULES:

11 ... 14559

47 CFR

0 ... 14078
2 ... 13990, 14259, 14317
87 ... 14552
89 ... 14507
97 ... 13990

PROPOSED RULES:

2 ... 13999, 14269, 14328
25 ... 14328
67 ... 14092
73 ... 13890, 14000, 14094, 14095, 14270, 14512, 14561, 14563, 14997
81 ... 14096, 14462
87 ... 13999
89 ... 14512
91 ... 14328
93 ... 14328

49 CFR

1 ... 14509
170 ... 13834
171 ... 13834
172 ... 13834, 13837
173 ... 13834, 13837, 14402
174 ... 13834
175 ... 13834
176 ... 13834
177 ... 13834
178 ... 13834
179 ... 13834, 14216
Ch. III ... 14842
393 ... 14619
571 ... 14135, 14778
1033 ... 13837, 13838, 14217
1048 ... 14552, 14553, 14931
1204 ... 13991

PROPOSED RULES:

170–189 ... 14090
173 ... 14511
571 ... 14091, 14731, 14786, 14936, 14940, 14941
Ch. X ... 14470
1048 ... 13890
1201 ... 13844

50 CFR

Page

10 ..... 14055, 14619, 14842
17 14932
28 ..... 13992, 14059
32 ..... 13883–13842, 13992–13995, 14059, 14060, 14137, 14218, 14219, 14263–14265, 14318–14322, 14384, 14461, 14509, 14553, 14554, 14698, 14783, 14843, 14844, 14933, 14990
33 14991
240 14137
250 13996

PROPOSED RULES:

12 ..... 14845, 14846
25 14995
29 14995
31 14995
32 13998
33 14995