THE NATIONAL ARCHIVES
LITTERA SCRIPTA MANET
1934
OF THE UNITED STATES

# FEDERAL REGISTER

VOLUME 22 NUMBER 115

*Washington, Friday, June 14, 1957*

## TITLE 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

DEPARTMENT OF THE AIR FORCE

Effective upon publication in the FEDERAL REGISTER, paragraph (e) (1) is added to § 6.107 as set out below.

§ 6.107 *Department of the Air Force.* * * *.

(e) *Air Research and Development Command.* (1) Scientific and professional research associate positions when filled on a temporary or intermittent basis by persons having a doctoral degree in physical science or related fields of study, for research activities of mutual interest to the appointee and the Command. Total employment under this provision may not exceed 20 positions at any one time. Employment under this provision shall not exceed one year in any individual case: *Provided,* That such employment may, with the approval of the Commission, be extended for not to exceed an additional year.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
*Executive Assistant.*

[F. R. Doc. 57-4856; Filed, June 13, 1957; 8:51 a. m.]

## TITLE 6—AGRICULTURAL CREDIT

### Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

Subchapter C—Export Programs

PART 483—WHEAT AND FLOUR

SUBPART—WHEAT EXPORT PROGRAM—PAYMENT IN KIND (GR-345) TERMS AND CONDITIONS

MISCELLANEOUS AMENDMENTS

EDITORIAL NOTE: In Federal Register Document 57-4675, published at page 4045 of the issue dated Saturday, June 8, 1957, the following editorial changes are made:

1. In amendatory paragraph 1, the new paragraphs added to § 483.105 should be designated as (f), (g), and (h).

2. In amendatory paragraphs 5 and 6, the references to § 483.105 (e) should read "483.105 (h)".

## TITLE 7—AGRICULTURE

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

[Elberta Peach Order 1]

PART 936—FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA

REGULATION OF SHIPMENTS

§ 936.557 *Elberta Peach Order 1*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 36, as amended (7 CFR Part 936), regulating the handling of fresh Bartlett pears, plums, and Elberta peaches grown in the State of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the Elberta Peach Commodity Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of Elberta peaches, 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 thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that, as hereinafter set forth, the time intervening between the date when information upon which this section is

(Continued on p. 4181)

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FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Federal Register Division, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U. S. C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

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## CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

## CODIFICATION GUIDE—Con.



based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than June 15, 1957. A reasonable determination as to the supply of, and the demand for, such peaches must await the development of the crop and adequate information thereon was not available to the Elberta Peach Commodity Committee until May 15, 1957; recommendation as to the need for, and the extent of, regulation of shipments of such peaches was made at the meeting of said committee on May 15, 1957, after consideration of all available information relative to the supply and demand conditions for such peaches, at which time the recommendation and supporting information was submitted to the Department; necessary supplemental data for consideration in connection with the specification of the provisions of this section were not available until June 7, 1957; shipments of the current crop of such peaches are expected to begin on or about June 20, 1957, and this section should be applicable to all shipments of such peaches in order to effectuate the declared policy of the act; and compliance with the provisions of this section will not require of handlers any preparation therefor which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a. m., P. s. t., June 15, 1957, and ending at 12:01 a. m., P. s. t., November 1, 1957, no shipper shall ship:

(i) Any package or container of Elberta peaches unless such peaches meet the requirements of the U. S. No. 1 grade: *Provided,* That (*a*) with respect to ripe Elberta peaches, the requirements of the U. S. No. 1 grade regarding freedom from damage, other than serious damage, caused by bruises need not be met; and (*b*) with respect to peaches which are of a size not smaller than the size that will pack, in accordance with the requirements prescribed for a standard pack, 55 peaches in a 12B California peach box or 60 peaches in either a No. 26 standard lug box or a No. 27 standard lug box, a tolerance of 5 percent for defects not causing serious damage is allowed in addition to the tolerances provided for such U. S. No. 1 grade;

(ii) Any package or container of Elberta peaches unless at least 85 percent, by count, of such peaches are well matured (as such term is defined in subparagraph (2) of this paragraph);

(iii) Any package or container of Elberta peaches containing more than one peach which is immature: *Provided,* That no lot of packages or containers of Elberta peaches may be shipped if more than one-half of one percent, by count, of the peaches in the lot are immature; or

(iv) Any package or container of Elberta peaches unless at least 90 percent of the Elberta peaches contained in such package or container measure not less than 2½ inches in diameter: *Provided,* That, Elberta peaches (*a*) when packed in a 12B California peach box, which are of the size that will pack, in accordance with the requirements prescribed for a standard pack, 65 peaches in said box or, (*b*) when packed in either a No. 26 standard lug box or a No. 27 standard lug box, which are of the size that will pack, in accordance with the requirements prescribed for a standard pack, 70 peaches in the respective lug box, shall be deemed to meet the said minimum diameter requirement: *And provided, further,* That for the purpose of determining whether ripe Elberta peaches meet the said standard pack requirements, such peaches may be fairly tightly packed rather than tightly packed.

(2) Peaches which are "well matured" means peaches which, at the time of picking; (i) are not hard; (ii) have shoulders and sutures well filled out; (iii) when ring cut, have flesh that separates from the pit readily and cleanly, and is red colored next to the pit; and (iv) have skin and flesh yellowish green to yellow in color. "Peaches which are not hard" yield to moderate pressure at least slightly at the suture and tip and at least very slightly elsewhere.

(3) Section 936.143 sets forth the requirements with respect to the inspection and certification of shipments of Elberta peaches. Such section also prescribes the conditions which must be met if any shipment is to be made without prior inspection and certification. Notwithstanding that shipments may be made without inspection and certification, each shipper shall comply with all grade and size regulations applicable to the respective shipment.

(4) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as given to the respective term in said amended marketing agreement and order; "U. S. No. 1," "bruises," "defects," "damage," "serious damage," "standard pack," "tightly packed," and "fairly tightly packed" shall have the same meaning as when used in the United States Standards for Peaches (§§ 51.1210 to 51.1223 of this title); "No. 26 standard lug box" and "No. 27 standard lug box," respectively, shall have the same meaning as set forth in section 828.4 of the Agricultural Code of California; "No. 12B California peach box" shall have the same meaning as set forth in section 828.25 of the Agricultural Code of California; and "diameter" shall mean the distance through the widest portion of the cross section of a peach at right angles to a line running from the stem to the blossom end.

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

Dated: June 11, 1957.

[SEAL] S. R. SMITH,
*Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[F. R. Doc. 57-4860; Filed, June 13, 1957; 8:51 a. m.]

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## PART 995—MILK IN NORTH CENTRAL OHIO MARKETING AREA

### ORDER AMENDING ORDER, AS AMENDED, REGULATING HANDLING

CLASSIFICATION



MINIMUM PRICES



HANDLER'S OBLIGATION AND UNIFORM PRICE



DETERMINATION OF ELIGIBLE MILK QUOTA



PAYMENTS



APPLICATION OF PROVISIONS



TERMINATION OF OBLIGATIONS



EFFECTIVE TIME, SUSPENSION OR TERMINATION



MISCELLANEOUS PROVISIONS



AUTHORITY: §§ 995.0 to 995.111 issued under sec. 5, 49 Stat. 753 as amended; 7 U. S. C. 608c.

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

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Lima, Ohio, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

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

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

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

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, three cents per hundredweight or such amount not to exceed three cents per hundredweight as the Secretary may prescribe, with respect to (a) producer milk (including any milk of such handler's own production); (b) other source milk allocated to Class I milk pursuant to § 995.46 (a) (3) and the corresponding step of § 995.46 (b); and (c) Class I milk disposed of in the marketing area by a distributing plant not a pool plant.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order, as amended, effective not later than July 1, 1957. Any delay beyond that date in the effective date of this order amending the order, as amended, will impair the proper operation of the order and will threaten the orderly marketing of milk in the North Central Ohio marketing area. The provisions of the said order are well known to handlers, the recommended decision having been issued by the Deputy Administrator, Agricultural Marketing Service, on April 11, 1957, and the final decision having been issued by the Acting Secretary of Agriculture on May 17, 1957. Therefore, reasonable time has been afforded persons affected to prepare for its effective date. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order, as amended, effective July 1, 1957, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (See section 4 (c), Administrative Procedure Act, 5 U. S. C. 1001 et seq.).

(c) *Determinations.* It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping milk covered by this order amending the order, as amended) of more than 50 percent of the milk covered by this order amending the order, as amended, which is marketed within the North Central Ohio marketing area refused or failed to sign the proposed marketing agreement regulating the handling of milk in the said marketing area and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign said proposed marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of this order amending the order, as amended, is the only practical means pursuant to the declared policy of the act of advancing the interests of producers of milk which is produced for sale in the marketing area; and

(3) The issuance of this order amending the order, as amended, is approved or favored by at least two-thirds of the producers who, participated in a referendum and who during the determined representative period April 1957, were engaged in the production of milk for sale in the said marketing area.

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

DEFINITIONS

§ 995.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C., 1946 ed. 601 et seq.).

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

§ 995.3 *Department.* "Department" means the United States Department of Agriculture.

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

§ 995.5 *North Central Ohio marketing area.* "North Central Ohio marketing area", called the "marketing area" in this part, means all the territory within the corporate limits of the Cities of Findlay, Marion and Tiffin and all the territory within the boundaries of the Counties of Allen and Richland, all in the State of Ohio.

§ 995.6 *Grade A milk.* "Grade A milk" means milk produced on a dairy farm which is approved by a duly constituted health authority for the production of milk for fluid disposition and which milk is permitted by the appropriate health authority in the marketing area to be labeled and disposed of as "Grade A" milk in the marketing area.

§ 995.7 *Distributing plant.* "Distributing plant" means a plant or other facilities where milk is processed or packaged and from which Grade A milk is disposed of as a fluid milk product in the marketing area either on the premises or to wholesale or retail stop(s), including sales through vendors.

§ 995.8 *Supply plant.* "Supply plant" means a milk plant, other than a distributing plant, which is a pool plant pursuant to § 995.9 (a), which is approved by the appropriate health authority in the marketing area to supply milk, skim milk or cream to a distributing plant(s) for disposition as Grade A milk in the marketing area and from which milk, skim milk or cream is transferred to a distributing plant(s) during the month.

§ 995.9 *Pool plant.* "Pool plant" means (a) a distributing plant, other than a plant operated by a producer-handler, from which more than 10,000 pounds of fluid milk products are disposed of in the marketing area during the month; and (b) a supply plant during any month in which shipments of milk, fluid skim milk or cream are made to a plant described in paragraph (a) of this section on seven days or more during the month: *Provided,* That a supply plant which qualifies as a pool plant for at least three of the four months of September through December, inclusive, may retain such status during the months of January through August, inclusive, next following, for the purposes of § 995.43 (d) without meeting the minimum delivery requirements described in paragraph (b) of this section.

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

§ 995.11 *Producer.* "Producer" means any person other than a producer-handler, who produces Grade A milk which is (a) received at a pool plant or (b) diverted from a pool plant to a nonpool plant pursuant to the conditions set forth in § 995.12: *Provided,* That this definition shall not include any such person with respect to milk produced by him which is subject to the pricing and payment provisions of another marketing order issued pursuant to the act.

§ 995.12 *Producer milk.* "Producer milk" means only that skim milk and butterfat contained in milk (a) received at a pool plant directly from producers, or (b) diverted for the account of the operator of a pool plant or a cooperative association to a nonpool plant during the months of January through September: *Provided,* That producer milk shall not include that milk of a producer which is diverted to a nonpool plant for more than one-third of the days of delivery during any month other than the months of March through June. Producer milk diverted shall be deemed to have been received at a pool plant at the same location as the pool plant from which it was diverted.

§ 995.13 *Handler.* "Handler" means (a) any person who operates a distributing plant or a supply plant, and (b) any cooperative association with respect to producer milk which is diverted by it in accordance with the conditions set forth in § 995.12.

§ 995.14 *Producer-handler.* "Producer-handler" means any person who operates both a dairy farm(s) and a distributing plant and who receives no milk from other dairy farmers: *Provided,* That the maintenance, care and management of the dairy animals and other resources necessary to produce milk and the processing, packaging and distribution of the milk handled are the personal enterprises of and at the personal risks of such person.

§ 995.15 *Cooperative association.* "Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association: (a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; (b) to have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members; and (c) to have all of its activities under the control of its members.

§ 995.16 *Fluid milk product.* "Fluid milk product" means the fluid form of milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cultured milk products, concentrated milk, sweet or sour cream, eggnog and any mixture in fluid form of skim milk and cream (except storage cream, aerated cream products, evaporated or condensed milk, and mixes for ice cream, custard and other frozen desserts).

§ 995.17 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in or represented by (a) receipts during the month in the form of fluid milk products except (1) producer milk, (2) fluid milk products received from other pool plants, and (3) inventory at the beginning of the month; and (b) products other than fluid milk products from any source, including those produced at the plant, which are reprocessed, repackaged or converted to another product in the plant during the month.

§ 995.18 *Eligible milk.* "Eligible milk" means the amount of milk received by a pool plant from a producer during each of the months of April through June which is not in excess of such producer's daily average quota computed pursuant to § 995.64 multiplied by the number of days for which such producer's milk was received by such pool plant during the month.

§ 995.19 *Ineligible milk.* "Ineligible milk" means the amount of milk received by a pool plant from a producer during each of the months of April through June which is in excess of eligible milk received from such producer during such months, and shall include all milk received from a producer for whom no daily average quota can be computed pursuant to § 995.64.

MARKET ADMINISTRATOR

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

§ 995.21 *Powers.* The market administrators hall have the following powers with respect to this part:

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

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

(a) Within 30 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond effective as of the date on which he enters upon such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 995.73:

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

(2) His own compensation; and

(3) All other expenses, except those incurred under § 995.74, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for herein, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the day upon which he is required to perform such acts, has not made (1) reports pursuant to § 995.30 or § 995.31, or (2) payments pur-

suant to §§ 995.70, 995.71, 995.73, 995.74, 995.75, or § 995.80;

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

(h) Audit records of all handlers to verify the reports and payments required pursuant to the provisions of this part;

(i) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each month as follows:

(1) On or before the 6th day after the end of such month the minimum prices for skim milk and butterfat for each class, computed pursuant to §§995.50 and 995.51 for each plant which was a pool plant during the preceding month, and the butterfat differentials computed pursuant to § 995.52; and

(2) On or before the 13th day after the end of such month, the uniform price(s) for each pool plant computed pursuant to § 995.61 and § 995.62 and the butterfat differential computed pursuant to § 995.72;

(j) On or before April 1 of each year, notify each producer and the handler receiving milk from such producer of the daily average quota established by such producer pursuant to § 995.64; and

(k) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such statistics and information concerning the operation of this part as do not reveal confidential information.

REPORTS, RECORDS AND FACILITIES

§ 995.30 *Monthly reports of receipts and utilization.* On or before the 8th day after the end of each month, each handler shall report to the market administrator, for each of his pool plants in the detail and on the forms prescribed by the market administrator the following:

(a) The total pounds of skim milk and butterfat contained in or represented by:

(1) Producer milk, including for the months of April through June the pounds of eligible and ineligible milk;

(2) Fluid milk products received from other pool plants;

(3) Other source milk; and

(4) Inventories of fluid milk products on hand at the beginning of the month;

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

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

§ 995.31 *Other reports.* (a) Each handler, who operates a pool plant, shall report to the market administrator in the detail and on the forms prescribed by the market administrator, on or before the 22d day after the end of each month, his producer payroll for the month which shall show, (1) the name of each producer, (2) the pounds of producer milk received from each producer and the percentages of butterfat contained therein, (3) the amounts and dates of payments to each producer or cooperative association, and (4) the nature and amount of each deduction or charge involved in the payments referred to in subparagraph (3) of this paragraph.

(b) Each handler who operates a supply or distributing plant, not a pool plant, shall report to the market administrator in the detail and on forms prescribed by the market administrator, at such time and in such manner as the market administrator may request.

§ 995.32 *Records and facilities.* Each handler shall maintain, and make available to the market administrator during the usual hours of business, such accounts and records of all of his operations and such facilities as, in the opinion of the market administrator, are necessary to verify reports, or to ascertain the correct information with respect to (a) the receipts and utilization of all skim milk and butterfat received, including all milk products received and disposed of in the same form; (b) the weights and tests for butterfat, and for other contents of all milk and milk products handled; and (c) payments to producers and cooperative associations.

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

CLASSIFICATION

§ 995.40 *Skim milk and butterfat to be classified.* The skim milk and butterfat required to be reported for each pool plant pursuant to § 995.30 shall be classified each month by the market administrator pursuant to the provisions of §§ 995.41 through 995.46.

§ 995.41 *Classes of utilization.* Subject to the conditions set forth in §§ 995.43 and 995.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat (1) disposed of in the form of a fluid milk product (other than as livestock feed), and (2) not accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat accounted for as (1) used to produce a product other than a fluid milk product, (2) inventory of fluid milk products on hand at the end of the month, (3) disposed of and used for livestock feeding or skim milk dumped, and (4) actual plant shrinkage of skim milk and butterfat allocated to producer milk and other source milk in fluid milk products pursuant to § 995.42 but not in excess of two percent of such receipts of skim milk and butterfat, respectively.

§ 995.42 *Shrinkage.* The market administrator shall allocate shrinkage at the handlers' pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, at such plant; and

(b) Prorate the resulting amounts between receipts of skim milk and butterfat, respectively, in producer milk and in other source milk received in the form of a fluid milk product in bulk.

§ 995.43 *Transfers.* Skim milk and butterfat disposed of by a handler from a pool plant shall be classified:

(a) As Class I milk if transferred in the form of a fluid milk product in consumer packages to another pool plant;

(b) As Class II milk, if transferred from a distributing plant in the form of a fluid milk product in bulk to another distributing plant which is a pool plant, up to an amount which is not in excess of the Class II utilization at such transferee plant after first assigning to Class II milk, (1) producer milk shrinkage, (2) other source milk pursuant to § 995.46 (a) (3) and the corresponding step of (b), and (3) Class II milk assigned to supply plants pursuant to paragraph (c) of this section. Any remaining amount of skim milk and butterfat so transferred shall be Class I milk;

(c) Except as provided in paragraph (d) of this section, skim milk and butterfat transferred in the form of a fluid milk product in bulk from a supply plant to a distributing plant which is a pool plant or another supply plant which is a pool plant shall be classified as claimed by the operators of both plants in their reports submitted pursuant to § 995.30: *Provided,* That the amount of transferred milk classified as Class I milk during the month shall not result in a higher proportion of the total producer milk at such supply plant being classified as Class I milk than the proportion classified as Class I milk at such distributing plant during the month.

(d) During each of the months of January through August, inclusive (beginning in 1958), a handler operating a distributing plant may assign Class I milk to a supply plant(s) which was a pool plant and which transferred milk to such distributing plant for at least three of the months of September through December, immediately preceding, even though such milk is not transferred physically to such distributing plant during the current month: *Provided,* That the pounds of Class I milk to be assigned to Class II milk in the distributing plant and the corresponding pounds of Class II milk to be assigned to Class I milk in any supply plant for the current month in the period January through August, inclusive, when added to any quantities actually transferred from such supply plant to such distributing plant during the current month and assigned to Class I milk pursuant to paragraph (c) of this

section shall not exceed the lesser of the following amounts:

(1) The monthly average number of pounds assigned to such supply plant as Class I milk from such distributing plant during the preceding period September through December, inclusive;

(2) An amount computed as follows: Determine the percentage which the volume of Class I milk described under subparagraph (1) of this paragraph bears to the monthly average pounds of Class I milk at such distributing plant for the preceding period September through December, inclusive, and multiply the total Class I milk at such distributing plant for the current month by such percentage; and

(3) The quantity of milk received from producers at such supply plant during the month;

(e) As Class I milk, if transferred or diverted to a nonpool plant in the form of milk, skim milk or cream in bulk, unless:

(1) The transfering or diverting handler claims classification as Class II milk in his report submitted pursuant to § 995.30 for the month;

(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 of such indicated utilization; and

(3) An equivalent amount of skim milk and butterfat was used in products in Class II milk at such nonpool plant; and

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

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

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 995.45 *Computation of the skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk at each pool plant: *Provided,* That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water normally associated with such solids in the form of whole milk.

§ 995.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 995.45, the market administrator shall determine the classification of producer milk received at each pool plant during the month as follows:

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

(1) Subtract from the total pounds of skim milk in Class II milk, the pounds of skim milk in producer milk shrinkage assigned to Class II milk pursuant to § 995.41 (b) (4);

(2) Subtract from the total pounds of skim milk in Class I milk, the pounds of skim milk in fluid milk products, received in consumer packages and disposed of in the same packages, as received, and which was classified and priced as Class I milk under another order issued pursuant to the act;

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk other than that subtracted pursuant to subparagraph (2) of this paragraph;

(4) Subtract from the remaining pounds of skim milk in each class, the skim milk in fluid milk products received from other pool plants according to the classification of such products as determined pursuant to § 995.43;

(5) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month; and

(6) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph and if the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II.

(b) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk remaining in each class pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 995.50 *Class I Milk prices.* Subject to the provisions of § 995.52, the minimum prices per hundredweight to be paid by each handler for producer milk of 3.5 percent butterfat content at his pool plant during the month which is classified as Class I milk, shall be determined by the market administrator as follows:

(a) Ascertain the Class I minimum price for milk of 3.5 percent butterfat content for the month as determined pursuant to the order, as amended, regulating the handling of milk in the Cleveland, Ohio, marketing area (Order No. 75; Part 975 of this chapter); and

(b) Deduct the location adjustment rate on Class I milk which would be applicable pursuant to Part 975 of this chapter at a pool plant pursuant to such part at the location of the pool plant pursuant to this part.

§ 995.51 *Class II milk prices.* The minimum prices per hundredweight to be paid by each handler for skim milk and butterfat in producer milk at his pool plant(s) during the month which is classified as Class II milk shall be the arithmetic average (computed by the market administrator to the nearest tenth of a cent) of basic or field prices per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following locations for which prices have been reported to the market administrator or to the Department on or before the 6th day after the end of the month by the companies listed below:

*Company and Location*

Defiance Milk Products Co., Defiance, Ohio.
Pet Milk Co., Coldwater, Ohio.
Nestles Milk Products Co. (uninspected milk price), Marysville, Ohio.
Fisher Dairy and Cheese Co., Wapakoneta, Ohio.
Chief Dairy Products Co., Upper Sandusky, Ohio.

*Provided,* That during each of the months of July through February, both inclusive, the Class II price pursuant to this section shall not be less than the Class III minimum price for milk of 3.5 percent butterfat content for the month as determined pursuant to the order, as amended, regulating the handling of milk in the Cleveland, Ohio, marketing area (Order No. 75; Part 975 of this chapter).

§ 995.52 *Butterfat differentials to handlers.* If the weighted average butterfat test of producer milk which is classified, respectively, in any class of utilization, pursuant to § 995.46, is more or less than 3.5 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization, for each one-tenth of one percent that such weighted average butterfat test is above or below, respectively, 3.5 percent, a butterfat differential (computed to the nearest tenth of a cent), calculated for each class of utilization as follows:

(a) *Class I milk.* Multiply the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported for the month by the Department by 0.130;

(b) *Class II milk.* Multiply the Chicago butter price described in paragraph (a) of this section by 0.115.

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

HANDLER'S OBLIGATION AND UNIFORM PRICE

§ 995.60 *Computation of net obligation for each handler.* The value of producer milk received during each month by each handler at each of his pool plants shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of producer milk in each class by the applicable class prices and add together the resulting amounts;

(b) Add an amount computed by multiplying overage deducted from each class pursuant to § 995.46 (a) (6) and the corresponding step of (b) by the applicable class price;

(c) Add the amount obtained in multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified in Class II less shrinkage during the preceding month, or the hundredweight of milk subtracted from Class I pursuant to § 995.46 (a) (5) and the corresponding step of (b), whichever is less;

(d) In the case of distributing plants, add an amount computed by multiplying the hundredweight of Class I milk assigned to a supply plant(s) from such distributing plant pursuant to § 995.43 (d) by the difference between the Class I price at such distributing plant and the Class I price applicable at the respective supply plant;

(e) Adjust the resulting amount by the sum of money used in adjusting the uniform price for the previous month to the nearest cent, pursuant to § 995.61 (c) or § 995.62 (d);

(f) Add or subtract, as the case may be, the amount necessary to correct errors in classifioation for previous delivery periods as disclosed by audit of the market administrator.

§ 995.61 *Computation of uniform prices.* For each of the months of July through March, the market administrator shall compute for each pool plant a "uniform price" per hundredweight, on the basis of 3.5 percent butterfat content, for producer milk received at such pool plant as follows:

(a) From the value of milk computed for such plant pursuant to § 995.60, deduct, if the weighted average butterfat test of all producer milk received at such plant is greater than 3.5 percent, or add, if the weighted average butterfat test of such milk is less than 3.5 percent, an amount computed by multiplying the total pounds of butterfat represented by the variance of such weighted average butterfat test from 3.5 percent by the butterfat differential computed pursuant to § 995.72 and multiply by 10;

(b) Divide the resulting value by the total hundredweight of producer milk received at such plant; and

(c) Adjust the resulting figure to the nearest cent.

§ 995.62 *Computation of prices for eligible and ineligible milk.* For each of the months of April, May and June, the market administrator shall compute for each pool plant a price for eligible milk and ineligible milk of 3.5 percent butterfat content as follows:

(a) Compute the value, subject to the conditions set forth in paragraph (b) of this section, of ineligible milk received at such pool plant by multiplying the hundredweight of such milk by the Class II price;

(b) Compute the value of eligible milk received at such pool plant by subtracting the value obtained pursuant to paragraph (a) of this section from the value of milk of 3.5 percent butterfat content at such plant computed pursuant to § 995.61 (a): *Provided,* That if such resulting value is greater than an amount computed by multiplying the hundredweight of such eligible milk by the Class I price, such value in excess thereof shall be added to the value of ineligible milk computed pursuant to paragraph (a) of this section to the extent that the ineligible milk price shall not exceed the eligible milk price. Any remaining value shall be prorated between the hundredweight of eligible and ineligible milk;

(c) Divide the value obtained pursuant to paragraph (a) of this section by the hundredweight of ineligible milk. This result less any fraction of a cent shall be the price per hundredweight for ineligible milk of 3.5 percent butterfat content at such pool plant; and

(d) To the value for eligible milk computed pursuant to paragraph (b) of this section, add the value represented by any fraction of a cent subtracted pursuant to paragraph (c) of this section and divide by the hundredweight of eligible milk received. This result less any fraction of a cent per hundredweight shall be the price for eligible milk of 3.5 percent butterfat content at such pool plant.

§ 995.63 *Notification.* On or before the 13th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing for such month:

(a) The amount and value of his producer milk in each class;

(b) The uniform price(s) for such handler computed pursuant to §§ 995.61 and 995.62, and the butterfat differential computed pursuant to § 995.72; and

(c) The amounts to be paid by such handler pursuant to §§ 995.73 and 995.74.

DETERMINATION OF ELIGIBLE MILK QUOTA

§ 995.64 *Determination of eligible milk quota for each producer.* Subject to the rules set forth in § 995.65, the market administrator shall determine the daily quota for each producer by dividing the total pounds of milk delivered by such producer during the immediately preceding period of October through December by the number of days from the date of first delivery to the end of such three-month period, but not less than 30.

§ 995.65 *Quota rules.* (a) Except as provided in paragraph (b) of this section, an eligible milk quota shall be assigned to the person for whose account that milk was delivered during the quota-forming period;

(b) An entire quota may be transferred during the period of April through June by notifying the market administrator in writing before the first day of any month that such quota is to be transferred to the person named in such notice, but under the following conditions only:

(1) In the event of the death of a producer, the entire daily quota may be transferred to a member of such producer's immediate family who carries on the dairy operation on the same farm; and

(2) If a quota is held jointly and such joint holding is terminated on the basis of written notice to the market administrator from the joint holders, the entire daily quota may be transferred to one of the joint holders, or divided in accordance with such notice between the former joint holders if they continue dairy farm operations.

PAYMENTS

§ 995.70 *Time and method of final payment.* On or before the 18th day after the end of each month, each handler shall pay to each producer, or to a cooperative association with respect to producer milk which was caused to be delivered to his pool plant(s) by such association either directly or from producers who have authorized such association to collect payment for them, for producer milk received from such producer or so delivered by such cooperative association, respectively, during such month not less than the uniform price(s) at such pool plant, adjusted by the butterfat differential pursuant to § 995.72, less the amount of payment made pursuant to § 995.71.

§ 995.71 *Partial payments.* On or before the last day of each month each handler shall pay to each producer, or to a cooperative association authorized to collect payment, for the milk received at his pool plant(s) from such producer or caused to be delivered to such plant by such cooperative association during the first fifteen days of each month at a rate computed as follows:

(a) Deduct 75 cents from the uniform price for such plant for the preceding month;

(b) Add or subtract any amount by which the Class I price differential pursuant to Order No. 75 (Part 975 of this chapter) for the current month is greater than or less than, respectively, such differential for the preceding month; and

(c) Round off the result to the nearest multiple of 10 cents: *Provided,* That in the event the producer discontinues shipping milk to a pool plant of such handler during the month, such partial payment need not be made and full payment for all milk received from such producer during such month shall be made pursuant to the provisions of § 995.70.

§ 995.72 *Producer butterfat differential.* In making payments pursuant to § 995.70 the uniform price for each pool plant shall be adjusted for each one-tenth of one percent of butterfat content in the milk of each producer above or below 3.5 percent, as the case may be, by a butterfat differential computed by multiplying the pounds of butterfat in producer milk at such pool plant allocated to Class I and Class II milk pursuant to § 995.46 (b) by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat and rounding the resulting figure to the nearest tenth of a cent.

§ 995.73 *Expense of administration.* As his pro rata share of expense incurred pursuant to § 995.22 (d), each handler shall pay the market administrator, on or before the 18th day after the end of each month, 3 cents per hundredweight of milk, or such amount not to exceed 3 cents as the Secretary may from time to time prescribe, with respect to re-

ceipts during such month, of (a) producer milk (including any milk of such handler's own production); (b) other source milk at a pool plant allocated to Class I milk pursuant to § 995.46 (a) (3) and the corresponding step of § 995.46 (b); and (c) Class I milk disposed of in the marketing area by a distributing plant, not a pool plant.

§ 995.74 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 995.70, with respect to all producer milk (except milk of such handler's own production) at a pool plant, not operated by a cooperative association of which such producer is a member, shall deduct 6 cents per hundredweight of milk, or such amount not to exceed 6 cents as the Secretary may from time to time prescribe, and on or before the 18th day after the end of such month shall pay such deductions to the market administrator. Such moneys shall be expended by the market administrator to verify weights, samples, and tests of milk of such producers and to provide such producers with market information, such services to be performed by the market administrator, or by an agent engaged by and responsible to him.

(b) Each cooperative association which is actually performing the services described in paragraph (a) of this section, as determined by the market administrator, may file with a handler a claim for authorized deductions from the payments otherwise due to its producer members for milk delivered to such handler. Such claim shall contain a list of the producers for whom such deductions apply, an agreement to indemnify the handler in the making of the deductions, and a certification that the association has an unterminated membership contract with each producer. In making payments to producers for milk received during the month, each handler shall make deductions in accordance with the association's claim and shall pay the amount deducted to the association within 18 days after the end of the month.

§ 995.75 *Errors in payments.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, or such handler from the market administrator, pursuant to § 995.73 or § 995.74 or (b) any producer or cooperative association from such handler pursuant to § 995.70 the market administrator shall promptly notify such handler of any such amount due; and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

APPLICATION OF PROVISIONS

§ 995.80 *Plants subject to other Federal orders.* The provisions of this part shall not apply to a distributing plant or a supply plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act, unless such plant qualified as a pool plant pursuant to § 995.9 and a greater volume of fluid milk products is disposed of from such plant to retail or wholesale outlets and to pool plants in the North Central Ohio, marketing area than in the marketing area regulated pursuant to such other order during the current month and each of the three months, immediately preceding: *Provided,* That the operator of a distributing plant or a supply plant which is exempted from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

§ 995.81 *Milk caused to be delivered by cooperative associations.* Milk referred to as received from producers by a handler shall include milk of producers caused to be delivered directly from the farm to the fluid milk plant of such handler by a cooperative association which is authorized to collect payment for such milk.

§ 995.82 *Producer-handler.* Sections 995.50 through 995.53, 995.60 through 995.66 and 995.70 through 995.75 shall not apply to the milk of a producer-handler.

TERMINATION OF OBLIGATIONS

§ 995.90 *Termination of obligations.* (a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producers or association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

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

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

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

EFFECTIVE TIME, SUSPENSION OR TERMINATION

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

§ 995.101 *When suspended or terminated.* Whenever the Secretary finds this part or any provision of this part obstructs or does not tend to effectuate the declared policy of the act, he shall terminate or suspend the operation of this part, or any such provision of this part.

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

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

be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

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

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

Issued at Washington, D. C., this 13th day of June 1957 to be effective July 1, 1957.

[SEAL] EARL L. BUTZ,
*Acting Secretary.*

[F. R. Doc. 57-4839; Filed, June 13, 1957; 8:48 a. m.]

# TITLE 8—ALIENS AND NATIONALITY

## Chapter I—Immigration and Naturalization Service, Department of Justice

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following amendments to Chapter I of Title 8 of the Code of Federal Regulations are hereby prescribed:

PART 214k—ADMISSION OF AGRICULTURAL WORKERS UNDER SPECIAL LEGISLATION

The first sentence of paragraph (c) of § 214k.4 *Compliance by employer* is amended to read as follows: "If a Mexican agricultural worker leaves his employment without proper authorization, the employer shall report such departure immediately or within five days thereof to the immigration officer in charge of the reception center where the worker was admitted."

PART 238—ENTRY THROUGH OR FROM FOREIGN CONTIGUOUS TERRITORY AND ADJACENT ISLANDS

The first sentence of paragraph (c) *Procedure when applicant is found to be admissible* of § 238.11 *Preexamination outside the United States* is amended to read as follows: "If the examining officer determines that the applicant being preexamined is admissible to the United States, he shall note that determination on the immigrant or nonimmigrant form prepared for or presented by the applicant and return the form to the applicant for presentation and surrender at the actual port of entry in the United States."

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. Paragraph (d) of § 242.2 *Apprehension, custody, and detention* is amended to read as follows:

(d) *Supervision.* Until an alien against whom a final order of deportation has been outstanding for more than six months is deported, he shall be subject to supervision by a district director or immigration officer acting for him and required to comply with the provisions of section 242 (d) of the act relating to his availability for deportation.

2. Paragraph (a) of § 242.19 *Notice of decision* is amended to read as follows:

(a) *Written decision.* A written decision shall be served upon the respondent and the examining officer, if any, by the district director together with the notice referred to in § 6.11 of this chapter. Service by mail is complete upon mailing.

3. Paragraph (c) of § 242.21 *Appeal* is amended to read as follows:

(c) *Time for taking appeal.* An appeal shall be taken within ten days after the mailing of a written decision or of a typewritten copy of an oral decision or the service of a summary decision on Form I-38 or I-39.

PART 246—RESCISSION OF ADJUSTMENT OF STATUS

1. Paragraph (b) of § 246.12 *Disposition of case* is amended to read as follows:

(b) *Answer filed; personal appearance.* Upon receipt of an answer asserting a defense to the allegations made in the notice without requesting a personal appearance, or if a personal appearance is requested or directed, the case shall be assigned to an immigration officer. Pertinent evidence, including testimony of witnesses, shall be incorporated in the record. At the conclusion of the interview, the immigration officer shall prepare a report summarizing the evidence and containing his findings and recommendation. The record, including the report and recommendation of the immigration officer, shall be forwarded to the district director who caused the notice to be served. The district director shall note on the report of the immigration officer whether he approves or disapproves the recommendation of the immigration officer. If the decision of the district director is that the matter be terminated, the alien shall be notified thereof and no further action shall be taken unless the case is certified to the regional commissioner as provided in § 7.1 (b) of this chapter. If the decision of the district director is that the adjustment of status should be rescinded, and the status of permanent resident was acquired through suspension of deportation under section 19 (c) of the Immigration Act of 1917 or under section 244 of the Immigration and Nationality Act, the district director shall serve a copy of his decision, including the report and recommendation of the immigration officer, upon the alien who shall be allowed ten days to file exceptions; thereafter, the record, including any exceptions filed by the alien, shall be forwarded to the regional commissioner for further action in accordance with section 246 of the Immigration and Nationality Act. If the status of permanent resident was acquired through adjustment of status other than through suspension of deportation, the district director shall enter a decision rescinding the adjustment of status previously granted. The alien shall be informed of the decision and of the reasons therefor. From the decision of the district director an appeal may be taken within 10 days from the receipt of notification of the decision as provided in Part 7 of this chapter.

2. Section 246.13 is amended to read as follows:

§ 246.13 *Decision by the regional commissioner.* When action has been completed by the regional commissioner, the record shall be returned to the district director who shall serve a copy of the decision upon the alien. If the decision of the regional commissioner is that adjustment of status, which was acquired through suspension of deportation, be rescinded, he shall report the case to Congress as provided in section 246 of the Immigration and Nationality Act.

PART 247—ADJUSTMENT OF STATUS OF CERTAIN RESIDENT ALIENS

1. The second sentence of paragraph (a) *Allegations admitted or no answer filed* of § 247.12 *Disposition of case* is amended to read as follows: "Form I-94A shall be delivered to the alien and shall constitute notice to him of such adjustment."

2. The tenth sentence of paragraph (b) *Answer filed; personal appearance* of § 247.12 *Disposition of case* is amended to read as follows: "Form I-94A shall be delivered to the alien."

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

The second sentence of § 248.2 *Application* is amended to read as follows: "If the application is granted, the alien's nonimmigrant status under such reclassification shall be subject to the terms and conditions applicable generally to such classification and to such other additional terms and conditions, including exaction of bond, which the district director deems appropriate to the case, and the district director shall cause a new set of Forms I-94 to be prepared and Form I-94A delivered to the applicant."

PART 252—LANDING OF ALIEN CREWMEN

The phrase "pay off and discharge" in paragraph (d) *Authorization to land* of § 252.1 *Examination of crewmen* is amended to read "pay off or discharge".

PART 263—REGISTRATION OF ALIENS IN UNITED STATES: PROVISIONS GOVERNING SPECIAL GROUPS

The first sentence of paragraph (b) of § 263.2 *Certain Canadian citizens and British subjects; agricultural workers* is amended to read as follows: "The duty imposed on aliens in the United States by section 262 of the act to apply for registration shall not be applicable to

nonimmigrant agricultural workers admitted to the United States during the time such workers maintain their status."

PART 264—REGISTRATION OF ALIENS IN THE UNITED STATES: FORMS AND PROCEDURE

1. Subparagraph (2) *Form 257a* of paragraph (c) *Forms constituting alien-registration receipt cards under the Immigration and Nationality Act* of § 264.1 *Alien registration receipt card* is revoked.

2. Subparagraph (3) of paragraph (c) *Forms constituting alien-registration receipt cards under the Immigration and Nationality Act* of § 264.1 *Alien registration receipt card* is amended to read as follows:

(3) *Form I–94A.* Except as otherwise provided in this part, an alien registered on Form AR–2 and, when applicable, AR–4 as provided in § 264.11 shall be given Form I–94A endorsed to show such registration and that form shall be the alien's registration receipt card.

3. Section 264.5 is amended to read as follows:

§ 264.5 *Replacement of alien registration receipt cards.* Any alien in the United States whose alien registration receipt card has been lost, mutilated, or destroyed, shall immediately apply for a new alien registration receipt card on Form I–90. Any alien lawfully in the United States for permanent residence whose name has been legally changed after registration or who is not in possession of Form I–151 may also apply on Form I–90 for a new alien registration receipt card. No appeal shall lie from the decision of the officer denying the application.

4. Section 264.6 *Reregistration; aliens other than those lawfully admitted for permanent residence whose alien-registration receipt cards have been lost, mutilated or destroyed* is revoked.

5. The second sentence of paragraph (a) *Duties of registration officers* of § 264.12 *Manner of registration* is amended to read as follows: "When an alien other than a lawful permanent resident is registered on Form AR–2, the registration officer shall issue Form I–94A or I–95A to the alien and shall endorse such form to show that he is registered under the act."

PART 299—IMMIGRATION FORMS

1. Section 299.1 *Prescribed forms* is amended by deleting the following form and reference thereto:

| Form No. | Title and description |
|---|---|
| FS–257 | Temporary Entry Permit, Application for Nonimmigrant Visa and Alien Registration, and Manifest Record of Alien Admitted. |

PART 316—GOOD MORAL CHARACTER

Paragraph (c) of § 316.1 *Good moral character; exceptions* is amended to read as follows:

(c) Former United States citizens who make application to regain citizenship under section 324 (c) of the act.

PART 330—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SEAMEN

1. Section 330.2 *Service on vessels deemed residence and physical presence in the United States and State* is revoked.

2. Paragraph (b) of § 330.3 *Proof of qualifications* is amended to read as follows:

(b) *Character, attachment, and disposition; State residence.* The records or certificates described in paragraph (a) of this section shall be accepted also as proof of good moral character, attachment to the principles of the Constitution, and favorable disposition to the good order and happiness of the United States for that portion of the service performed within the period of five years immediately preceding the date of the petition, as proof of residence within the State in which the petition is filed.

3. The first sentence of § 330.11 *Procedural requirements* is amended to read as follows: "A person claiming the benefits of § 330.1 shall submit to the Service an application to file a petition for naturalization, together with Supplemental Form N-400–B, in accordance with the instructions contained therein."

PART 331—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: ALIEN ENEMIES

Part 331 is revoked.

PART 332—PRELIMINARY INVESTIGATION OF APPLICANTS FOR NATURALIZATION AND WITNESSES

Paragraph (a) *Scope of investigation* of § 332.11 *Investigation preliminary to filing petition for naturalization* is amended by adding the following sentence: "During the interrogation of the applicant and at his request, his attorney or representative who has, when required, been admitted to practice in accordance with Part 292 of this chapter, may be permitted to be present and observe the interrogation and makes note but shall not otherwise participate therein."

PART 332a—OFFICIAL FORMS

1. Section 332a.2 *Official forms prescribed for use of clerks of naturalization courts* is amended by deleting the following forms and the references thereto:

| Form No. | Title and description |
|---|---|
| N–435 | Notice of Final Hearing by Clerk of Court (alien enemies). |
| N–435–1 | Continuation Sheet—Form N–435. |
| N–442 | Preliminary Form to take Oath of Allegiance (by former citizen, under Public Law 114, 82d Congress, as amended). |
| N–443 | Application to take the Oath of Allegiance and Form of Such Oath (by former citizen, under Public Law 114, 82d Congress, as amended). |

2. The references to the following forms in § 332a.2 *Official forms prescribed for use of clerks of naturalization courts* are amended to read as follows:

| Form No. | Title and description |
|---|---|
| N–480A | Order of Court granting Petitions for Naturalization. |
| N–484A | Order of Court denying Petitions for Naturalization. |
| N–492 | Regional Commissioner's Recommendation that Petitions be Granted (and Order of Court). |
| N–493 | Regional Commissioner's Recommendation that Petitions be Denied (and Order of Court). |

PART 338—CERTIFICATE OF NATURALIZATION

The seventh sentence of § 338.11 *Execution and issuance* is amended to read as follows: "The stub of the original shall be removed and retained by the clerk of court and filed in an upright card file, or in a three by five inch card drawer."

PART 341—CERTIFICATE OF CITIZENSHIP UNDER SECTION 341 OF IMMIGRATION AND NATIONALITY ACT

The first and last sentences of § 341.1 *Application* are amended to read as follows: "A person who claims to have derived United States citizenship through the naturalization of a parent or parents or through the naturalization or citizenship of a husband, or who claims to be a citizen at birth outside the United States under the provisions of any of the statutes or acts specified in section 341 of the act, or who claims to be a citizen at birth outside the United States under the provisions of section 309 (c) of the act, shall apply for a certificate of citizenship on Form N–600. * * * Thereafter, delivery of the original of the certificate shall be made to the applicant, or to his parent or guardian, either personally or by certified mail, and the recipient's signed receipt therefor shall be obtained."

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

1. The first sentence of paragraph (a) *New certificate issued* of § 343a.11 *Disposition of application* is amended to read as follows: "If an application for a new certificate of naturalization, citizenship, or repatriation is approved, the new certificate shall be issued by the district director and delivered in person upon the applicant's signed receipt therefor."

2. Paragraph (b) of § 343a.11 *Disposition of application* is amended to read as follows:

(b) *New declarations issued.* If an application for a new declaration of intention is approved, the new declaration of intention shall be issued by the district director on Form N–321 or Form N–325 and the original delivered to the applicant upon his signed receipt therefor.

3. The first sentence of paragraph (c) *New certified copy of repatriation proceedings issued* of § 343a.11 *Disposition of application* is amended to read as follows: "If an application for a new certified copy of the proceedings under the act of June 25, 1936, as amended, or

under section 317 (b) of the Nationality Act of 1940, or under section 324 (c) of the Immigration and Nationality Act is approved, there shall be issued by the district director a certified, positive photocopy of the record of the proceedings filed with the Service, whether such record be a duplicate of the court proceedings or a copy of the proceedings conducted at an embassy, legation, or consulate."

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PART 410—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: MEMBERS OR VETERANS OF UNITED STATES ARMED FORCES WHO SERVED AFTER JUNE 24, 1950, AND BEFORE JULY 1, 1955, WHO ARE WITHIN THE JURISDICTION OF A NATURALIZATION COURT

Part 410 is revoked.

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PART 411—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: MEMBERS OR VETERANS OF UNITED STATES ARMED FORCES WHO SERVED AFTER JUNE 24, 1950, AND BEFORE JULY 1, 1955, WHO ARE NOT WITHIN THE JURISDICTION OF A NATURALIZATION COURT

Part 411 is revoked.

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PART 499—NATIONALITY FORMS

Section 499.1 *Prescribed forms* is amended by deleting the following forms and the references thereto:

| *Form No.* | *Title and description* |
|---|---|
| N–424 | Notice of Waiver of 90 days' Notice. |
| N–434 | Notice of objection to Final Hearing. |
| N–435 | Notice of Final Hearing by Clerk of Court (alien enemies). |
| N–435–1 | Continuation Sheet—Form N–435. |
| N–436 | Application for Exception from the Classification of Alien Enemy. |
| N–438 | Exception from Classification of Alien Enemy. |
| N–442 | Preliminary Form to take Oath of Allegiance (by former citizen, under Pub. Law 114, 82d Cong. as amended). |
| N–443 | Application to take the Oath of Allegiance and Form of Such Oath (by former citizen, under Pub. Law 114, 82d Cong., as amended). |
| N–495 | Application to File Petition for Naturalization (under Act of June 30, 1953, Pub. Law 86, 83d Cong., by a member or former member of the armed forces). |
| N–496 | Petition for Naturalization (under Act of June 30, 1953, Pub. Law 86, 83d Cong., by a member or former member of the armed forces). |
| N–497 | Petition for Naturalization (under Act of June 30, 1953, Pub. Law 86, 83d Cong., by members of armed forces outside the United States). |
| N–498 | Certificate of Naturalization. |
| N–499 | Order of Designated Representative Denying Petition for Naturalization. |

The "Notes" entitled *Explanation of numbering system utilized in this subchapter* appearing before Part 204 of Subchapter B—Immigration Regulations and before Part 306 of Subchapter C—Nationality Regulations are revoked.

(Sec. 103, 66 Stat. 173; 8 U. S. C. 1103)

This order shall become effective on the date of its publication in the FEDERAL REGISTER. Compliance with the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C. 1003) as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the rules prescribed by the order, other than those which are editorial in nature or relieve restrictions and are clearly advantageous to persons affected thereby, relate to agency procedure.

Dated: June 11, 1957.

J. M. SWING,
*Commissioner of Immigration and Naturalization.*

[F. R. Doc. 57–4859; Filed, June 13, 1957; 8:51 a. m.]

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# TITLE 13—BUSINESS CREDIT AND ASSISTANCE

## Chapter II—Small Business Administration

PART 103—SMALL BUSINESS SIZE STANDARDS

NOTICE OF SIZE DETERMINATION, FOOD CANNING AND PRESERVING INDUSTRY

In accordance with § 103.2 (c) of the Small Business Size Standards Regulation, I have determined that concerns in the food canning and preserving industry may exclude agricultural employees as defined in the Internal Revenue Code (64 Stat. 532, 26 U. S. C. 1426) when computing the "Number of Employees" as defined in said § 103.2 (c). This determination shall become effective June 1, 1957 and remain in effect through December 31, 1957, unless sooner revoked.

Dated: May 31, 1957.

(Sec. 205, 67 Stat. 234, as amended; 15 U. S. C. 634)

WENDELL B. BARNES,
*Administrator.*

[F. R. Doc. 57–4844; Filed, June 13, 1957; 8:49 a. m.]

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# TITLE 15—COMMERCE AND FOREIGN TRADE

## Chapter III—Bureau of Foreign Commerce, Department of Commerce

### Subchapter B—Export Regulations

[8th Gen. Rev. of Export Regs. Amdt. 36 [1]]

PART 373—LICENSING POLICIES AND RELATED SPECIAL PROVISIONS

MISCELLANEOUS AMENDMENTS

1. In § 373.2 *Confirmation of country of ultimate destination and verification of actual delivery*, paragraph (a) (1) (ii) *Countries* is amended by deleting the footnote reference [3] after "Austria" and the related footnote, and by adding "Greece" following "Western sectors of Berlin".

[1] This amendment was published in Current Export Bulletin 786, dated June 13, 1957.

2. Section 373.41 *Nonferrous commodities, including ores, concentrates, or unrefined products* is amended in the following particulars:

a. Paragraph (c) *Copper ores, concentrates, unrefined copper, refined copper, cooper scrap, and copper-base alloy scrap* is amended by revising subparagraph (4) *Copper scrap and copper-base alloy scrap* to read as follows and by deleting subparagraph (7) *Time for submission of applications:*

(4) *Copper scrap and copper-base alloy scrap.* (i) License applications to export copper scrap (new and old containing 40 percent or more copper, Schedule B No. 641300 and copper-base alloy scrap (new and old) containing 40 percent or more copper and 5 percent or more nickel, including cupro-nickel and nickel silver (German silver) scrap, Schedule B No. 644000, shall disclose the foreign consumer as set forth in subparagraph (2) of this paragraph.

(ii) License applications covering copper scrap (new and old) containing less than 40 percent copper, Schedule B No. 641300, or copper-base alloy scrap (new and old) containing any percentage of copper, excluding nickel silver (German silver) scrap, Schedule B No. 644000, shall include information as to the copper and nickel content of the material.

(iii) License applications covering nickel silver (German silver) scrap, Schedule B No. 644000, shall include information as to the copper, nickel and zinc content of the material and shall be supported by evidence of commercial unsalability in the domestic market. This latter evidence may be in the form of a letter or other statement from the applicant, supplier, or persons to whom the nickel silver scrap was offered for sale. The evidence must be adequate to demonstrate that the scrap has been offered for sale without success in the normal domestic market at reasonable and competitive prices. It shall include, as a minimum, the names and addresses of the potential users to whom the scrap has been offered, the terms at which it has been offered, and the reason(s) for rejection of offers to sell.

(iv) (*a*) License applications to export copper-nickel alloy scrap, containing 40 percent or more copper and 5 percent or more nickel, excluding nickel silver (German silver) scrap, Schedule B No. 644000, will be considered for approval only where the scrap is to be exported under a conversion agreement providing that not less than 90 percent of the nickel content of the copper-nickel alloy scrap exported will be returned to the United States in the form of nickel metal.

(*b*) An applicant for a license to export copper-nickel alloy scrap, containing 40 percent or more copper and 5 percent or more nickel, excluding nickel silver (German silver) scrap, shall comply with the provisions set forth in paragraph (b) (1) (ii) and (iii) of this section.

b. Paragraph (d) *Aluminum scrap (new and old), aluminum remelt ingots, and aluminum metal and alloys in crude form* is deleted.

c. Paragraph (e) *Selenium metal powder, ferroselenium, and selenium metal* is deleted.

3. Section 373.56 *Selenium containing chemical compounds, including pigments* is deleted.

4. Section 373.66 *Austria* is deleted.

5. Section 373.81 is amended to read as follows:

§ 373.81 *Supplement 1; time schedules for submission of applications to export certain Positive List commodities.*

TIME SCHEDULES FOR SUBMISSION OF APPLICATIONS FOR LICENSES TO EXPORT CERTAIN POSITIVE LIST COMMODITIES

SECOND AND THIRD QUARTERS OF 1957

| Dept. of Commerce Schedule B No. | Commodity | Submission dates | |
|---|---|---|---|
| | | Second quarter, 1957 | Third quarter, 1957 |
| 601170 | Rerolling rails [1] | Apr. 1 to June 14, 1957 | July 1 to Sept. 14, 1957. |
| 630050 | Aluminum scrap (new and old) [2 3] | Apr. 1 to June 14, 1957 | (5). |
| 630070 | Aluminum remelt ingots [2 3] | | |
| 654502 | Nickel-copper alloy scrap (including monel scrap) [4] | Apr. 1 to June 14, 1957 | July 1 to Sept. 14, 1957. |

[1] See § 373.40 (e) for special licensing provisions.
[2] See § 373.41 (d) for special licensing provisions.
[3] License applications to export "offshore" aluminum scrap and aluminum remelt ingots may be submitted at any time.
[4] See § 373.41 (b) (1) for special licensing provisions.
[5] Beginning July 1, 1957 license applications may be submitted at any time.

NOTES

Return of unused quotas. As soon as a licensee determines that he will not export the entire licensed amount of a commodity subject to a quantitative quota he shall promptly submit to the Bureau of Foreign Commerce a request for an amendment reducing the quantity covered by the license to the amount he actually intends to export (see § 373.6). If none of the commodities covered by the license is to be exported, the license shall be returned to the Bureau of Foreign Commerce for cancellation.

Where no filing dates are announced. Applications for licenses to export commodities for which no specified filing dates are announced may be submitted at any time (see § 372.5 (c) of this chapter).

Intransit shipments. Export applications for commodities requiring a validated license when moving in transit through the United States may be submitted at any time and are not subject to specified filing dates (see Note following § 372.6 (d) of this chapter).

This amendment shall become effective as of June 13, 1957, except that the addition of "Greece" in part 1 hereof shall become effective as of July 29, 1957.

(Sec. 3, 63 Stat. 7, as amended; 50 U. S. C. App. 2023. E. O. 9630, 10 F. R. 12245, 3 CFR, 1945 Supp., E. O. 9919, 13 F. R. 59, 3 CFR, 1948 Supp.)

LORING K. MACY,
*Director,*
*Bureau of Foreign Commerce.*

[F. R. Doc. 57-4857; Filed, June 13, 1957; 8:51 a. m.]

# TITLE 16—COMMERCIAL PRACTICES

## Chapter I—Federal Trade Commission

### Subchapter A—Procedures, Rules of Practice, and Orders

[Docket 6674]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

GENERAL HOME IMPROVEMENT CO., INC., ET AL.

Subpart—*Advertising falsely or misleadingly:* § 13.150 *Premiums and prizes;* § 13.200 *Sample, offer or order conformance;* § 13.240 *Special or limited offers.*

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Cease and desist order, General Home Improvement Co., Inc., et al., Brooklyn, N. Y., Docket 6674, May 7, 1957]

*In the Matter of General Home Improvement Co., Inc., a Corporation, and Nathan Muroff, and Ruby Fiestat, Individually and as Officers of Said Corporation*

This proceeding was heard by a hearing examiner on the complaint of the Commission charging sellers in Brooklyn, N. Y., with "bait" advertising of aluminum storm windows by radio and television when actually the offer was made only to obtain leads to prospective customers; with falsely representing offers as limited "to only one home owner in each neighborhood"; and with representing falsely that those guessing the "mystery melody" on a radio program would receive a credit of $100 toward the purchase of their storm windows.

Following entry of an agreement for a consent order, the hearing examiner made his initial decision and order to cease and desist which became on May 7 the decision of the Commission.

Said order to cease and desist is as follows:

*It is ordered,* That respondents, General Home Improvement Co., Inc., a corporation, and its officers, Nathan Muroff and Ruby Friestat, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of aluminum storm windows, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that certain storm windows, or any other products, are offered for sale when such offer is not a bona fide offer to sell the storm windows or other products so offered.

2. Representing that a credit will be given, as the result of a contest program or otherwise, to a customer on his purchase of storm windows or any other products unless such "credit" is actually given to such purchaser and amounts to a reduction from the usual and customary price, in the amount of said "credit."

3. Representing, contrary to the fact, that any offer is limited to particular persons, or limited in any other manner.

By "Decision of the Commission", etc., report of compliance was required as follows:

*It is ordered,* That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: May 7, 1957.

By the Commission.

[SEAL] ROBERT M. PARRISH,
*Secretary.*

[F. R. Doc. 57-4858; Filed, June 13, 1957; 8:51 a. m.]

[Docket 6654]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

SEALED POWER CORP.

Subpart—*Discriminating in price under section 2, Clayton Act, as amended—* Price discrimination under 2 (a): § 13.755 *Pooling orders of chain stores and buying groups;* § 13.770 *Quantity rebates or discounts.*

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 2, 38 Stat. 730, as amended; 15 U. S. C. 13) [Cease and desist order, Sealed Power Corporation, Muskegon Heights, Mich., Docket 6654, May 3, 1957]

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a manufacturer of automotive parts in Muskegon, Mich., with discriminating in price in sales of its products under franchises providing for volume discounts on individual and group purchases which resulted in higher and less favorable net prices to some jobbers than to their competitors.

Following entry of an agreement containing a consent order, the hearing examiner made his initial decision including order to cease and desist which became on May 3, 1957, the decision of the Commission.

Said order to cease and desist is as follows:

*It is ordered,* That the respondent Sealed Power Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale to the jobbing trade for replacement purposes of automotive replacement parts, consisting of piston rings, piston products, cylinder sleeves, valve products, water pumps and parts, and other related items in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in the price of such products of like grade and quality:

1. By selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondent's products.

By "Decision of the Commission", etc., report of compliance was required as follows:

*It is ordered*, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: May 3, 1957.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 57-4842; Filed, June 13, 1957; 8:48 a. m.]

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**Subchapter B—Trade Practice Conference Rules**

[File No. 21-469]

## PART 18—COMMERCIAL DENTAL LABORATORY INDUSTRY

### MISCELLANEOUS AMENDMENTS

Due proceedings having been held under the trade practice conference procedure in pursuance of the Act of Congress approved September 26, 1914, as amended (Federal Trade Commission Act), and other provisions of law administered by the Commission;

*It is now ordered*, That the following amended "definition" of the Commercial Dental Laboratory Industry contained in the second paragraph of the "Statement by the Commission" preceding the rules heretofore promulgated for said industry (20 F. R. 8282, Nov. 4, 1955), together with amended §§ 18.1, 18.2, and 18.12 of such rules, as approved by the Commission, be promulgated June 14, 1957.

*Statement by the Commission.* Trade practice rules for the Commercial Dental Laboratory Industry, consisting of thirteen Group I rules preceded by a Statement by the Commission, were promulgated by the Federal Trade Commission under its trade practice conference procedure on November 4, 1955.

Thereafter, pursuant to petitions filed by proper parties under § 2.31 of the Commission's rules of practice, the Commission directed that a limited public hearing be held on February 4, 1957, for the purpose of considering amendment of the definition of the industry set forth in the second paragraph of the Statement by the Commission; of § 18.1, entitled "Deception (General)"; of § 18.2, entitled "Deceptive Demonstrations and Claims"; of §18.12, entitled "Prohibited Discrimination"; and for considering elimination of § 18.13, entitled "Exclusive Deals."

After full consideration of all views and information submitted relative to the proposed amendments and deletions, the Commission directed that the word "design" be deleted from the definition of the industry and specifically found and states that the purpose of the definition of the industry preceding trade practice rules is solely to identify individuals and concerns whose practices are subject to the rules, and that it is not necessary to include the word "design" in the definition of the industry for that purpose. The Commission directed that the words "design" and "occlusion" be eliminated from § 18.1, and the term "design" from § 18.2, for the reason that in the Commission's opinion these words are not necessary to the adequacy of the rules or to the accomplishment of the Commission's purpose in the promulgation of them. The Commission states that the above action does not constitute a decision by it as to the specific functions in these two respects, which are performed by industry members covered by the rules. The Commission further directs that paragraphs (c) and (d) of § 18.12 be deleted for the reason that there has been shown no need for the inclusion of these sections; and that the request for deletion of § 18.13 be denied for the reason that the same is in proper form and supplies needed rule coverage.

Set forth below is amended paragraph two of the Statement by the Commission, and amended §§ 18.1, 18.2, and 18.12, which are hereby approved and ordered promulgated. Amended §§ 18.1, 18.2, and 18.12 become operative thirty (30) days from the date of their promulgation and supersede rules bearing the same numbers and titles contained in the trade practice rules which were promulgated for the industry on November 4, 1955. All other rules promulgated for the industry on said date remain in effect.

*Amended paragraph two of the "Statement by the Commission."* The industry for which these rules are established is composed of persons, firms, corporations, and organizations engaged in the manufacture, processing, or repair of orthodontic corrective appliances, prosthetic dental appliances, ceramic or plastic teeth encapments, cast-metal dental appliances, dental inlays, dental bridges, and other types of oral restorations.

§ 18.1 *Deception (general).* It is an unfair trade practice to sell, offer for sale, or distribute any industry product, or promote the sale or distribution thereof, under any representation or by any method or under any circumstance or condition which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers:

(a) With respect to a process or technique used in the preparation or fabrication of any industry product; or

(b) With respect to the materials used in the fabrication of any industry product; or

(c) Which is false, misleading, or deceptive in any other material respect.

NOTE: Nothing in this section, nor in any of the other rules for this industry, is to be construed as relieving any industry member of the necessity of complying with the requirements of the Federal Food, Drug and Cosmetic Act, and regulations issued thereunder.

[Rule 1]

§ 18.2 *Deceptive demonstrations and claims.* (a) In the sale, offering for sale, or distribution of industry products, or in the promotion and distribution thereof, it is an unfair trade practice to demonstrate any of such products in a manner, or under circumstances, having the capacity and tendency or effect of creating a false impression in the minds of purchasers or prospective purchasers as to the actual benefits they will obtain as the result of their purchase and use of said products.

(b) It is an unfair trade practice for a member of the industry to represent, claim, or guarantee that his laboratory has the skill, ability, equipment, or personnel to construct, fabricate, or process a product of the industry under a specific technique or method, unless such representation, claim, or guarantee is made with the knowledge that complete and satisfactory accomplishment can be furnished with the facilities and personnel of such member laboratory.

(c) It is an unfair trade practice for any member of the industry to represent, claim, or guarantee that any technique or method of manufacture used is the equivalent of, or substitute for, any other method or technique, unless such is the fact. [Rule 2]

§ 18.12 *Prohibited discrimination*[1]—(a) *Prohibited discriminatory prices, rebates, refunds, discounts, credits, etc., which effect unlawful price discrimination.* It is an unfair trade practice for any member of the industry engaged in commerce, in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce, and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however:*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States, and are not purchased by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit, as supplies for their own use;

[1] As used in this section, the word "commerce" means "trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States.

(2) That nothing contained in this paragraph shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

NOTE: Cost justification under the above proviso depends upon net savings in cost based on all facts relevant to the transactions under the terms of subparagraph (2) of this paragraph. For example, if a seller regularly grants a discount based upon the purchase of a specified quantity by a single order for a single delivery, and this discount is justified by cost differences, it does not follow that the same discount can be cost justified if granted to a purchaser of the same quantity by multiple orders or for multiple deliveries.

(3) That nothing contained in this section shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing contained in this paragraph shall prevent price changes from time to time where made in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to obsolescence of seasonal goods, imminent deterioration of perishable goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned;

(5) That nothing contained in this section shall prevent the meeting in good faith of an equally low price of a competitor.

(b) *Prohibited brokerage and commissions.* It is an unfair trade practice for any member of the industry engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Inducing or receiving an illegal discrimination in price.* It is an unfair trade practice for any member of the industry engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this section.

(d) *Purchases by U. S. Government; applicability of Robinson-Patman Anti-discrimination Act to same.* In an opinion submitted to the Secretary of War under date of December 28, 1936, the U. S. Attorney General advised that the Robinson-Patman Antidiscrimination Act "is not applicable to Government contracts for supplies." (38 Opinions, Attorney General 539.) [Rule 12]

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46)

Promulgated by the Federal Trade Commission June 14, 1957.

Issued: June 11, 1957.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 57-4834; Filed, June 13, 1957; 8:47 a. m.]

## TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

### Chapter I—Veterans Administration

PART 17—MEDICAL

ADJUDICATION OF CLAIMS; PAYMENT OF FEDERAL AID

1. In § 17.140 paragraph (a) is amended to read as follows:

§ 17.140 *Adjudication of claims.* (a) Claims for reimbursement of expenses or payment for medical services obtained subsequent to March 19, 1933, without prior authorization of the Veterans Administration will be adjudicated in the office of the Chief Medical Officer serving the territory of the regional office which has claims folder jurisdiction, except as provided in paragraph (b) of this section.

2. Immediately following § 17.161 a new centerhead and a new § 17.165 are added as follows:

PAYMENT OF FEDERAL AID

§ 17.165 *Reduction in the payment of Federal aid to States because of deductions made by State homes from pension and compensation of members and deductions from other sources of income.* (a) Half of all amounts retained by the State or State homes from the pension or compensation of members of State homes, on whose account Federal aid payments are made, will be deducted from the amount of Federal aid payments of such States. (See Decision A-76027 dated July 15, 1936, of the Comptroller General of the United States.)

(b) For any sum or sums collected in any other manner from inmates of State homes to be used for the support of said homes, a like amount shall be deducted from Federal aid payments, except that this shall not apply to any State home into which the wives and widows of sodiers are admitted and maintained. (See Decision A-76027 dated July 15, 1936, of the Comptroller General of the United States.) When collections are made by State homes from proceeds of hospitalization insurance policies carried by members of State homes such amounts are "sums collected in any other manner from inmates of State homes" and a like amount will be deducted from the amount of Federal aid paid to the State, except in those cases where the State home admits and maintains wives and widows of veterans.

(c) The Veterans Administration is required to deduct from Federal aid otherwise due a State home the amount of a deceased member's estate collected by the State home except in those cases where the State home admits and maintains wives and widows of veterans.

(Sec. 5, 43 Stat. 608, as amended, sec. 2, 46 Stat. 1016, sec. 7, 48 Stat. 9; 38 U. S. C. 11a, 426, 707. Interpret or apply secs. 1, 6, 48 Stat. 9, 301, 53 Stat. 652, as amended; 38 U. S. C. 706, 706a)

This regulation is effective June 14, 1957.

[SEAL] JOHN S. PATTERSON, *Deputy Administrator.*

[F. R. Doc. 57-4843; Filed, June 13, 1957; 8:49 a. m.]

# PROPOSED RULE MAKING

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### [ 25 CFR Part 130 ]

FLATHEAD INDIAN IRRIGATION PROJECT, MONTANA

ORDER FIXING OPERATION AND MAINTENANCE CHARGES

Pursuant to section 4 (a) of the Administrative Procedure Act of June 11, 1946 (Public Law 404—79th Congress, 60 Stat. 238) and authority contained in the acts of Congress approved August 1, 1914; May 18, 1916; and March 7, 1928 (38 Stat. 583; 25 U. S. C. 385; 39 Stat. 142; and 45 Stat. 210; 25 U. S. C. 387) and by virtue of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs to the Area Director (Bureau Order No. 551, Amendment No. 1; 16 F. R. 5454-7), notice is hereby given of the intention to modify §§ 130.24, 130.26, and 130.28 of Title 25, Code of Federal Regulations, dealing with irrigable lands of the Flathead Indian Irrigation Project, Montana that are subject to the jurisdiction of the several irrigation districts, as follows:

Charges applicable to all irrigable lands of the Flathead Indian Irrigation Project that are included in the Irrigation District Organization and are subject to the jurisdiction of the three irrigation districts.

§ 130.24 *Charges.* Pursuant to a contract executed by the Flathead Irrigation District, Flathead Indian Irrigation Project, Montana, on May 12, 1928 as supplemented and amended by later contracts dated February 27, 1929; March 28, 1934; August 26, 1936, and April 5, 1950, there is hereby fixed for the season of

1958, an assessment of $240,002 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Flathead Irrigation District. This assessment involves an area of approximately 73,482 acres; does not include any land held in trust for Indians and covers all proper general charges and project overhead.

§ 130.26 *Charges.* Pursuant to a contract executed by the Mission Irrigation District, Flathead Indian Irrigation Project, Montana, on March 7, 1931, approved by the Secretary of the Interior on April 21, 1931, as supplemented and amended by later contracts dated June 2, 1934, June 6, 1936, and May 16, 1951, there is hereby fixed, for the season of 1958, an assessment of $44,872 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Mission Irrigation District. This assessment involves an area of approximately 13,659 acres; does not include any land held in trust for Indians and covers all proper general charges and project overhead.

§ 130.28 *Charges.* Pursuant to a contract executed by the Jocko Valley Irrigation District, Flathead Indian Irrigation Project, Montana, on November 13, 1934, approved by the Secretary of the Interior on February 26, 1935, as supplemented and amended by later contracts dated August 26, 1936, and April 18, 1950, there is hereby fixed, for the season of 1958, an assessment of $16,484 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Jocko Valley Irrigation District. This assessment involves an area of approximately 5,993 acres; does not include any lands held in trust for Indians and covers all proper general charges and project overhead.

Interested persons are hereby given opportunity to participate in preparing the proposed amendments by submitting their views, data or arguments in writing to Area Director, Bureau of Indian Affairs, 804 North 29th Street, Billings, Montana, within 30 days from the date of publication of this notice of intention in the daily issue of the FEDERAL REGISTER.

M. A. JOHNSON,
*Acting Area Director.*

[F. R. Doc. 57-4824; Filed, June 13, 1957; 8:45 a. m.]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration

### [ 21 CFR Part 130 ]

DRUGS EXEMPTED FROM PRESCRIPTION-DISPENSING REQUIREMENTS OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

NOTICE OF PROPOSED RULE MAKING

Notice is given that the Commissioner of Food and Drugs, in accordance with the Federal Food, Drug, and Cosmetic Act (secs. 503 (b) (3), 505 (c), 701 (a); 65 Stat. 649, 52 Stat. 1052, 1055; 21 U. S. C. 353 (b) (3), 355 (c), 371 (a)) and the authority delegated to him by the Secretary of Health, Education, and Welfare (21 CFR, 1956 Supp., 130.101 (b)) hereby offers an opportunity to all interested persons to submit their views in writing to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D. C., within 30 days from the date of publication of this notice in the FEDERAL REGISTER on the proposed amendment set forth below:

(__) Pramoxine hydrochloride (4-*N*-butoxyphenyl γ-morpholinopropyl ether hydrochloride) preparations meeting all the following conditions:

(i) The pramoxine hydrochloride is prepared, with or without other drugs, in a dosage form suitable for use in self-medication by external application to the skin, and containing no drug limited to prescription sale under the provisions of section 503 (b) (1) of the act.

(ii) The pramoxine hydrochloride and all other components of the preparation meet their professed standards of identity, strength, quality, and purity.

(iii) If the preparation is a new drug, an application pursuant to section 505 (b) of the act is effective for it.

(iv) The preparation contains not more than 1.0 percent of pramoxine hydrochloride.

(v) The preparation is labeled with adequate directions for use by external application to the skin for the temporary relief of pain or itching due to minor burns and sunburn, nonpoisonous insect bites, and minor skin irritations.

(vi) The directions for use recommend or suggest not more than four applications of the preparation per day, unless directed by a physician.

(vii) The labeling bears, in juxtaposition with the directions for use, clear warning statements against:

(*a*) Prolonged use.

(*b*) Application to large areas of the body.

(*c*) Continued use if redness, irritation, swelling, or pain persists or increases, unless directed by a physician.

(*d*) Use in the eyes or nose.

The proposed amendment will remove the drugs mentioned therein from the prescription-dispensing requirements of the Federal Food, Drug, and Cosmetic Act (sec. 503 (b) (1) (C), 52 Stat. 1052, 65 Stat. 649; 21 U. S. C. 353 (b) (1) (C)). The drugs were previously limited by an effective new-drug application to use under professional supervision because the scientific data establishing the toxic potential of the drugs and their intended use showed only that they were safe if used under professional supervision.

Pursuant to the regulations in § 130.101 (b) (21 CFR, 1956 Supp., 130.101 (b)), a petition has been submitted to remove the prescription restrictions from these drugs. Evidence now available through investigation and marketing experience shows that the drugs can be safely used by the laity in self-medication if they are used in accordance with the proposed labeling. The restriction to prescription sale is no longer necessary for the protection of the public health.

This action in removing the prior restriction limiting the drugs to prescription sale is taken under the authority of the Federal Food, Drug, and Cosmetic Act (secs. 503 (b) (3), 505 (c), 52 Stat. 1052, 65 Stat. 649; 21 U. S. C. 353 (b) (3); 355 (c)), which provides for and requires the removal of such restrictions if they are necessary for the protection of the public health.

Dated: June 7, 1957.

[SEAL] GEO. P. LARRICK,
*Commissioner of Food and Drugs.*

[F. R. Doc. 57-4837; Filed, June 13, 1957; 8:47 a. m.]

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### [ 7 CFR Parts 927, 990 ]

[Docket No. AO-71-A-32]

[Docket No. AO-284]

MILK IN NEW YORK METROPOLITAN MARKETING AREA AND IN NORTHERN NEW JERSEY

DECISION WITH RESPECT TO PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR 900), a public hearing was held at various locations in States of New York and New Jersey during the period June 18, 1956–March 29, 1957, pursuant to the notice of hearing issued on May 18, 1956 (21 F. R. 3527), and supplemental notices issued on May 29, 1956 (21 F. R. 3799), August 29, 1956 (21 F. R. 6680), and on February 26, 1957 (22 F. R. 1219).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on May 9, 1957 (22 F. R. 3318) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportuniity to file written exceptions thereto.

The material issues presented are concerned with:

I. Whether the handling of milk in additional territory in the States of New York and New Jersey (outside that currently regulated under Order No. 27) should be subject to Federal regulation, and if so;

1. What the boundaries of such additional territory should be,

2. Whether such additional regulation should be by means of (a) a separate new milk marketing order for Northern New Jersey as a separate marketing area and expansion of the present marketing area under Order No. 27 to include additional territory in Upstate New York, or (b) a single milk marketing order applicable to a single marketing area including the present Order No. 27 marketing area together with additional territory

in Northern New Jersey and Upstate New York, and if by means of such a single order, (c) whether it should be accomplished by issuance of a new milk marketing order or by amending Order No. 27, and

II. What the terms and provisions of such new or revised regulation (either by means of separate orders or under a single order) should be with respect to (1) the scope of regulation, (2) the classification of milk, (3) class prices and differentials, (4) distribution of proceeds to producers, and (5) administrative provisions; the issues with respect to such terms and provisions being more specifically defined hereinafter.

FINDINGS AND CONCLUSIONS

The findings and conclusions hereinafter set forth relative to the above listed issues are based upon the evidence presented at the hearing and in the record thereof.

*Issue No. I (need for, and form of, additional regulation).* It is concluded that:

1. The handling of milk in Northern New Jersey and Upstate New York should be brought under Federal regulation.

2. Such regulation should be by means of a single milk marketing order applicable to a single marketing area including the present Order No. 27 marketing area together with Northern New Jersey and Upstate New York, and

3. Such single milk marketing order should be Order No. 27 appropriately amended to apply to the expanded area.

The term "Northern New Jersey" means the territory within the boundaries of the New Jersey counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, Warren, and the northern half of Ocean County (the boundary in Ocean County being specifically set forth hereinafter in findings on specific boundaries).

The term "Upstate New York" means, in general terms (with exact boundaries set forth hereinafter in findings on specific boundaries), substantially all of the territory in Upstate New York that was proposed for consideration at the hearing, and consists of all or a part of 35 counties and includes the larger urban centers of Syracuse, Utica-Rome, the Capital District and Binghamton, and also such cities as Auburn, Catskill, Corning, Cortland, Elmira, Hudson, Ithaca, Kingston, Middletown, Newburgh, Oneonta, Oswego, Poughkeepsie, and Whitehall. Included also are such important resort areas as the Catskill and Lake George regions.

Defined in general terms another way, the territory consists of the following districts: (1) *The Nearby District* consisting of the counties of Rockland, Orange, Sullivan, Ulster and Greene on the western side of the Hudson River, and Putnam, Dutchess and Columbia on the eastern side of the Hudson River; (2) *The Capital District* consisting of the counties of Albany, Rensselaer, Saratoga, Schenectady, Warren, Washington and Essex; (3) *The Mohawk Valley District* consisting of the counties of Fulton, Montgomery, Herkimer and Oneida; (4) *The Syracuse District* consisting of the counties of Madison, Onondaga, Oswego, Cayuga, and Cortland; (5) *The Binghamton District* consisting of the county of Broome; (6) *The Elmira District* consisting of the counties of Tioga, Tompkins, Chemung, Schuyler, Yates, and that part of Steuben containing the townships of Corning, Erwin, and Addison; and (7) *The South Central District* consisting of the counties of Delaware, Schoharie, Otsego, and Chenango. The territory proposed and listed in the notices of hearing also included Hamilton County and three towns in Lewis County. This latter territory and certain fringe portions of some of the other above listed counties are excluded under later findings relating to the drawing of a specific boundary line.

The milk supply for the present marketing area is delivered by farmers to plants, mainly country plants, located primarily in the States of New York, New Jersey, and Pennsylvania, with a few in western Vermont. There were 385 such plants in December 1956. In New York, the plants are located throughout the State, except for the non-agricultural area in the Adirondack Mountains and in the western parts of the State surrounding Rochester and Buffalo. In Pennsylvania, the plants are located principally in five northeastern counties and in a group of south central counties. In New Jersey, the plants are located in the rural counties in the western part of the State and immediately surrounding the urban area in northeastern New Jersey. The territory in which these country plants currently supplying the defined New York metropolitan milk marketing area are located is frequently referred to as the "New York milkshed", and that term as used herein shall refer to that territory.

The New York milkshed not only supplies the requirements of the present marketing area, but also virtually the entire supply of milk for Northern New Jersey and numerous other urban areas throughout the milkshed. Northern New Jersey is the largest and most important of these urban areas. Ranking next in size and importance are those urban areas in that part of the State of New York presently being considered for inclusion in the marketing area.

The New York milkshed also supplies some milk for markets in New England and for Philadelphia, and occasionally for markets further south, but is not the principal source of milk for these markets. In addition, the milk sold to such markets on a regular basis comes mostly from the fringes of the milkshed, where at times, there is keen competition among plants for milk supplies.

The principal program for milk price regulation in the New York milkshed has been embodied in the orders regulating the handling of milk for the New York metropolitan milk marketing area (Federal Order No. 27 and New York State Revised Official Order No. 126). On occasion, plants in the milkshed have met the requirements for regulation by a Federal order in New England or in Philadelphia but such instances have been few in number and represent only a minute fraction of the total milk produced in the milkshed.

Production and marketing conditions which have developed in the milkshed while Order No. 27 has been in effect have been influenced to some degree, of course, by that regulation. Order No. 27 has been the only regulation applicable in the milkshed with provision for marketwide equalization, and the regulation under which minimum producer prices (both for Class I milk and uniform prices) have been established substantially above the value of milk for manufacturing purposes.

Under provisions for marketwide pooling, as in Order No. 27, payments to producers are made in accordance with the classification of all milk delivered by all producers under the order. Thus, the individual producer has only limited interest in the utilization of the particular handler by whom his milk is purchased. The individual handler does not find it necessary to limit his receipts from producers to correspond closely with his disposition of milk for fluid use since the handling of milk for other than fluid use results in no greater impact on the price paid to his producers than to producers generally. Provision for marketwide pooling, however, permits specialization of operations by plants with the reserve supply being handled by a relatively few handlers and with manufacturing facilities in a relatively few plants. On the other hand, individual-handler pooling tends to cause handlers to limit their receipts of milk from producers more closely in line with their requirements for fluid distribution in order to pay their producers prices which are favorable in relation to the price paid by other handlers.

Provisions of the order for determining the plants at which milk is subject to full regulation under the order (pool plants) have not resulted in the exclusion from regulation of milk in excess of fluid requirments for the marketing area. Any plant from which a specified minimum percentage of the milk received from farmers is shipped to the marketing are for fluid use may become subject to regulation under the order. In addition, any other plant in the milkshed may be designated as a pool plant if the plant and its producers meet the requirements of health authorities as a source of milk for the marketing area and the milk actually is made available for fluid uses in the marketing area. Thus, the provisions for marketwide pooling under Order No. 27 have been designed to insure supplies of milk from fully regulated sources adequate to meet the fluid requirements of the marketing area but have not constituted a means of restricting admission to the pool of milk in excess of fluid requirements of the marketing area.

When Order No. 27 was issued in 1938 the price for Class I–A milk was related directly to the value of milk for manufacturing purposes. Under these provisions the Class I–A prices during the period 1941 through 1948 did not advance percentage-wise as fast as the value of milk for manufacturing uses. During this period, however, the demand for

milk for fluid use was high relative to available supplies and during the low production seasons of some of these years considerable difficulty was experienced in obtaining milk supplies adequate to meet fluid requirements for the New York market and more particularly for other markets in the Northeast. This situation and other considerations led to the development of a formula for pricing Class I–A milk for the New York market (and to similar formulas for other northeastern markets) under which the price for Class I–A milk was no longer related directly to milk for manufacturing purposes. During the post-war decline in dairy product prices generally, beginning in 1949, Class I–A prices under provisions of the order then in effect declined slower than prices for milk for manufacturing purposes with a resulting increase in the difference between the price of milk for manufacturing purposes and Class I–A prices.

The need for regulation in additional territory as proposed depends in considerable measure on the milk production and marketing conditions which have developed under the regulation which has been in effect. Some of such conditions are as follows:

(1) The Order No. 27 minimum uniform price has become the minimum competitive price for all milk eligible for fluid use produced in the milkshed. Unregulated plants must pay at least this minimum price to their producers or the producers will shift their deliveries to a regulated plant. Unregulated plants with a fluid outlet for only a relatively small proportion of their supply have the choice of increasing their fluid sales outside the marketing area or of getting into the pool (if necessary by fluid sales in the marketing area) as a means of continuing to pay a competitive producer price.

(2) Because the Order No. 27 uniform price (resulting from a relatively high Class I–A price) is substantially above the value of milk for manufacturing purposes, dealers serving unregulated markets (within the milkshed or elsewhere) tend to avoid buying unregulated milk for which they have no fluid milk outlet. This is accomplished by one or more of the following means:

(a) When more milk is needed for fluid sales they pay premiums to attract producers from pool plants. When less milk is needed for fluid sales they drop producers who then return to pool plants;

(b) When they become short of milk they may buy part of the production of pool producers for a temporary period;

(c) They buy directly from producers only that milk which they can use for fluid purposes in the months of high milk production and supplement these receipts by buying Class I–C milk from pool plants during other months of the year;

(d) They pay premiums to attract from among a large number of nearby producers those whose seasonal variation in production most nearly coincides with their seasonal requirements for fluid use; and

(e) If the operation is that of a multiple plant operator, those plants equipped to manufacture reserve supplies associated with fluid sales are operated as pool plants, leaving unregulated those plants which are used primarily for fluid sales outside the marketing area.

(3) Milk produced under conditions which permit its use only for manufacturing purposes has practically disappeared from the milkshed. The uniform price has been enough higher than the value of milk for manufacturing so that substantially all dairy farmers in the milkshed already have made the necessary investments to improve their production facilities and have taken other steps necessary to meet requirements of various health authorities for the production of milk for fluid use.

(4) There has been a general and continuing increase during the past few years both in total milk production and in deliveries of milk by producers to dealers' plants. From 1948 to 1955 total milk production in the States of New York, New Jersey, and Pennsylvania increased 22 percent and deliveries to dealers increased 30 percent. During the same period, the number of producers delivering to pool plants increased from 45,047 to 49,331, an increase of 9.5 percent; average deliveries per day per dairy increased from 338 pounds to 451 pounds, an increase of 33.4 percent, with the result that the total volume of pool milk increased from 5.7 billion pounds in 1948 to 8.1 billion pounds in 1955, an increase of 42 percent. For the year 1955, the percentage of pool milk utilized in Class I (A, B, and C) was 46.9 compared to 61.4 in 1948. Since the increase in the number of producers delivering to pool plants occurred during a period coincident with a general trend toward fewer and larger farms in the milkshed, it is apparent that a substantial part of the increased volume of pool milk was due to a shift into the pool by 1955 of plants and producers not in the pool in 1948.

(5) Producers and producer organizations have developed an interest in, and have submitted proposals for, the extension of milk price regulation to apply to a greater proportion of the milk in the milkshed. Extension of regulation has been proposed in various forms. Organizations representing a large majority of the producers whose milk is now regulated under Order No. 27 have proposed expansion of that order to bring under regulation that portion of the production in the milkshed which is currently unregulated and which is utilized primarily for fluid purposes outside the present marketing area.

Other producer groups representing producers of milk for urban areas throughout the milkshed for which the supply of milk is now unregulated or only partially regulated have proposed that separate regulation be adopted as a means of obtaining a price at least as high as the Class I–A price under Order No. 27 for a higher percentage of their milk than is possible for producers generally throughout the milkshed. Such latter proposals contemplate some means of preventing the flow of milk from the lower priced market to the higher priced market and the general equalization of returns to producers throughout the milkshed.

Proposals also have been made for "tightening" the pool plant provisions under Order No. 27 for the purpose of excluding from regulation a portion of the milk now regulated under the order in excess of that used for fluid purposes, thus bringing about a higher minimum uniform price to producers under the order. Such proposals appear to contemplate excluding the milk of certain producers (so far without identification of those to be so excluded) from regulation under the order, and appear to contemplate a situation under which a portion of the producers whose milk is now in the pool would no longer share in returns from the sale of fluid milk in any market.

*Analysis—Northern New Jersey.* The population of the 13 Northern New Jersey counties for which regulation is proposed is about 4.1 million, which is about 78 percent of the total for the State and is equivalent to about 40 percent of the population of the present Order No. 27 marketing area. Over 95 percent of the population is in the nine counties in the northeastern portion of the area. Ocean County and the three western counties of Sussex, Warren, and Hunterdon are more sparsely populated, the latter three counties constituting the area in Northern New Jersey in which most of the milk is produced.

There were 839 million pounds of milk received from producers at plants in Northern New Jersey in 1955. There were 2,855 producers in Northern New Jersey in 1955 with 1,313 delivering to Order No. 27 pool plants and 1,542 delivering to other plants. About 373 million pounds of milk was received from producers at 16 Order No. 27 pool plants in 1955. These plants were all located in the western portion of the area, four in Sussex County, seven in Warren County, four in Hunterdon County, and one in Somerset. A substantially larger proportion of the production in Northern New Jersey was received at pool plants in 1955 than in 1951. Receipts from producers at pool plants increased from 198 million pounds in 1951 to 373 million pounds in 1955. During the same period receipts from producers in nonpool plants declined from 583 million pounds to 466 million pounds. Likewise, from 1951 to 1955 the number of producers in Northern New Jersey delivering to pool plants increased from 864 to 1,313 while those delivering to nonpool plants declined from 2,277 in 1951 to 1,542 in 1955.

The 839 million pounds of milk received in 1955 from producers at plants in Northern New Jersey is equivalent to about 65 percent of the total fluid sales of 1,282 million pounds in Northern New Jersey. However, only a portion of the 839 million pounds was used for fluid sales in Northern New Jersey. About 75 percent of the 373 million pounds of milk received at pool plants in Northern New Jersey was utilized outside Northern New Jersey, primarily in the present marketing area. Some of the milk received at nonpool plants in Northern New Jersey also was used for other than fluid sales in Northern New Jersey. Evidence in the record is somewhat contradictory and

inconclusive as to the proportion of the milk received at nonpool plants in Northern New Jersey which was used for fluid sales in Northern New Jersey. If, as appears to be the case, about 83 percent or 387 million pounds of the 466 million pounds received at nonpool plants in Northern New Jersey was used for fluid sales in Northern New Jersey, there were 895 million pounds or about 70 percent of the milk for fluid use in Northern New Jersey which came from other sources and to which minimum prices established by the New Jersey Office of Milk Industry did not apply. Milk from Order No. 27 pool plants, mostly located in New York and Pennsylvania, classified as being used for fluid use in Northern New Jersey (Class I–C) amounted to 367 million pounds, an amount equivalent to about 29 percent of the total fluid sales in Northern New Jersey. Shipments of fluid milk to Northern New Jersey were about 276 million pounds from nonpool plants in the State of New York and about 273 million pounds from nonpool plants in Pennsylvania, these volumes constituting an amount equivalent to 42 percent of the total fluid milk sales in Northern New Jersey. In addition, a relatively small volume of fluid milk (about 89 million pounds) came into Northern New Jersey from plants in Delaware and Maryland, from Pennsylvania plants not regularly shipping to Northern New Jersey and from plants subject to the Philadelphia order (No. 61). These aggregate volumes, totaling about 1,392 million pounds, exceed the 1,282 million pounds of fluid sales in Northern New Jersey by 110 million pounds, and is the apparent volume of milk in Northern New Jersey from these sources which was disposed of either in nonfluid use or for fluid sales outside Northern New Jersey.

During the period 1951–1955 a considerable shift occurred in relative importance of the various sources of milk for fluid use in Northern New Jersey. During this period, in terms of percentages of fluid milk sales in Northern New Jersey (1) receipts at non-Order No. 27 plants in Northern New Jersey declined from 51 percent to 36 percent, (2) Order No. 27 milk for fluid use in Northern New Jersey (Class I–C) increased from 20 percent to 29 percent, and (3) milk from unregulated sources outside New Jersey increased from 29 percent to 35 percent. Even if all of the Northern New Jersey produced milk subject to pricing by the Office of Milk Industry is allocated to fluid sales in Northern New Jersey, the volume of out-of-State unregulated milk and Order No. 27 I–C milk as sources of milk for fluid use was 247 million pounds greater in 1955 than in 1951, a volume equivalent to about 20 percent of the total fluid sales in Northern New Jersey in 1955.

Milk for fluid use in Northern New Jersey was obtained from 17 nonpool plants in the State of New York. Milk was received at these plants from about 1,650 producers and was virtually all (99 percent) disposed of for fluid use, 90 percent of it (276 million pounds) being in Northern New Jersey.

Nonpool plants in Pennsylvania supplying milk for fluid use in Northern New Jersey include five plants in the Allentown-Easton area receiving milk from about 1,200 producers and 15 to 20 plants in central and northeastern Pennsylvania receiving milk from 2,000 to 2,500 producers. These plants in Pennsylvania received about 500 million pounds of milk from producers in 1955 of which about 88 percent was disposed of for fluid use. The plants in the Allentown-Easton area disposed of about 72 percent of their receipts from producers for fluid use, 13 percent being in Northern New Jersey. Other nonpool plants in Pennsylvania shipping milk to Northern New Jersey utilized about 98 percent of their receipts from producers for fluid use, 83 percent being in Northern New Jersey.

Although a high percentage of the milk received from producers at these nonpool plants in New York and Pennsylvania shipping milk into Northern New Jersey was all for fluid use, the prices received by farmers delivering milk to these plants (except those in the Allentown-Easton area) were about the same as the Order No. 27 uniform price in the same locality. These nonpool plants in New York and Pennsylvania from which milk is shipped into Northern New Jersey are scattered generally throughout the same area in which Order No. 27 pool plants are located and both types of plants compete directly for supplies of producer milk. In the Allentown-Easton area, prices received by farmers are comparable with or slightly higher than prices paid both at pool and nonpool plants in Northern New Jersey with which they are in competition for milk. In 1955 the price received by producers at nonpool plants in the western counties of Northern New Jersey exceeded the Order No. 27 uniform price by 36 to 39 cents. However, premiums over the minimum uniform prices were paid by pool handlers at plants in these Northern New Jersey counties in amounts bringing actual payments to producers to about the same level as at nonpool plants in the same counties.

Milk shipped from unregulated plants in New York and Pennsylvania into Northern New Jersey for fluid use not only constitutes a relatively high percentage of receipts from producers at those plants but also the seasonal pattern of such shipments closely corresponds to the seasonal pattern of receipts from producers. Milk sold for fluid use in Northern New Jersey from nonpool plants in the State of New York in 1955 varied from a low of 16 million pounds in August to 29.5 million pounds in May. Milk sold for fluid use in Northern New Jersey from unregulated plants in Pennsylvania in 1955 varied from a low of about 16 million pounds in November to approximately 24 million pounds in March. However, some of the unregulated plants outside the State of New Jersey utilize a relatively large proportion of their receipts for fluid use outside of Northern New Jersey in regular and uniform volumes and ship into Northern New Jersey only that milk which is in excess of that regularly sold for fluid use outside Northern New Jersey. Such shipments into Northern New Jersey vary in amount seasonally depending upon seasonal variation of receipts from producers and constitute a method of dumping seasonal surpluses onto the Northern New Jersey fluid market.

The relatively uniform seasonal requirements for fluid use in Northern New Jersey are balanced from supplies obtained from Order No. 27 pool plants. The seasonal pattern of sales of Class I–C milk for fluid use in Northern New Jersey varies inversely with the seasonal pattern of receipts from producers and of shipments to Northern New Jersey from unregulated plants. In 1955 sales of I–C milk in Northern New Jersey ranged from a low of 21 million pounds in May to a high of nearly 41 million pounds in August and averaged 38 million pounds during the period August through November. In this manner, the seasonal surplus for Northern New Jersey is borne largely by Order No. 27 producers. Not only does the absence of effective regulation in Northern New Jersey result in a wide variation in the price at which milk is obtainable for fluid use, but also in an uneven distribution among producers of the burden of surplus associated with fluid sales in Northern New Jersey.

One of the large sources of disorderly marketing conditions in Northern New Jersey is the wide variation in prices at which milk is available for fluid use in Northern New Jersey. The New Jersey Office of Milk Industry's Class I price applicable to a portion of the supply for fluid use in Northern New Jersey averaged $5.58 in 1955. Order No. 27 handlers account for milk for fluid use in Northern New Jersey at the Class I–C price which in 1955 averaged $4.16 for 3.5 milk in the 201–210 mile zone. For milk received at unregulated plants in New York and Pennsylvania and sold for fluid use in Northern New Jersey producers are paid a price equivalent to, or slightly above, the Order No. 27 uniform price which in 1955 averaged $3.96 for 3.5 milk in the 201–210 mile zone. This wide variation in prices at which milk is available for fluid use in Northern New Jersey has resulted, as previously indicated, in the procurement of increasing proportions of the milk supply for Northern New Jersey from the lowest priced sources and in a corresponding reduction in the volume of milk for which a full Class I–A price is returned to producers.

Northern New Jersey (and similarly Upstate New York is discussed elsewhere herein) consumes large quantities of milk all of which comes from a common production area serving both Northern New Jersey and the present marketing area, either from pool plants or from nonpool plants with which pool plants are intermingled throughout the production area. The present program of milk regulation in the New York milkshed involves establishment of a relatively high price for fluid milk disposed of in the present marketing area while at the same time does not provide a means of establishing a similar price for milk disposed of for fluid use in other centers of urban population, the largest of which is Northern New Jersey, which depend

upon the New York milkshed for a supply of milk. Regulation in Northern New Jersey is necessary in order that the entire cost of the milk regulatory program for the maintenance of orderly marketing conditions in the entire area is paid not only by consumers in the present marketing area while the benefits of such a program accrue equally to the consumers in other urban centers of population depending upon a common milkshed for its supply of milk.

The marketing conditions (herein described) which have developed and prevailed both in Northern New Jersey and in Upstate New York detract from the effectiveness of the milk price regulatory program for the milkshed and tend to preclude full and complete effectuation of its purposes. The adoption of effective regulation in Northern New Jersey is justified not only for the purpose of correcting existing disorderly conditions in Northern New Jersey but as a means of more effectively accomplishing the purposes and objectives of the present program of regulation in the New York area.

A substantial part of the milk supply for Northern New Jersey moves into Northern New Jersey from plants in several other States in the region. Packaged milk is distributed in Northern New Jersey from plants in New York and Pennsylvania and into the State of New York from plants in Northern New Jersey. In addition, there are several handlers engaged in distribution both in Northern New Jersey and in the presently defined marketing area under Order No. 27. The handling of all of the milk in Northern New Jersey which is proposed to be regulated clearly is in the current of interstate commerce, or substantially affects interstate commerce in milk and its effective regulation.

One of the issues under consideration at the hearing was whether a spearate milk marketing order should be issued for Northern New Jersey (if there is need for any regulation) or whether regulation in Northern New Jersey should be accomplished under a single milk marketing order applicable both to Northern New Jersey and to the present marketing area under Order No. 27, together with additional territory in the State of New York. Evidence was presented at the hearing with respect to terms and provisions of a separate order for Northern New Jersey and also on terms and provisions of a single order applicable to the entire territory for which regulation was proposed.

The territory consisting of Northern New Jersey, the present Order No. 27 marketing area and additional territory in Upstate New York possesses the essential characteristics of one market for milk, rather than two or more. The densely populated region consisting of New York City and surrounding urban territory together with the major cities and their environs in Northern New Jersey constitute a contiguous urban area from the standpoint of general economic integration and interdependence. Milk for this entire territory is produced in a common production area. Plants and producers supplying milk for all parts of the territory are extensively intermingled and to a substantial degree the milk is interchangeable between the various portions of the territory. Applicable health authority requirements for milk are substantially uniform throughout the area with no variations of sufficient magnitude to require a division of the territory for purposes of price regulation. The same distributors are extensively engaged in milk distribution in Northern New Jersey, in the present marketing area and in Upstate New York. Members of cooperative associations of producers in the production area, including the majority of producers in Northern New Jersey, deliver milk to plants supplying milk to all parts of the consuming area.

Orderly milk marketing conditions, the establishment and maintenance of which is the primary purpose of Federal milk marketing orders issued pursuant to the Agricultural Marketing Agreement Act, may be insured only by establishment of minimum class prices for milk which are uniform among handlers and by provision for equitably sharing among producers the returns from fluid sales together with the lower returns obtainable for both the long-time and seasonal reserve supplies.

The proposal of the proponents of a regulatory program by means of separate orders does not constitute an acceptable program for attainment of the basic purposes of regulation both for the presently regulated marketing area and for the proposed separate Northern New Jersey area. The separate order proposed for Northern New Jersey together with the proposed coordinating amendments to Order No. 27 did not insure close alignment of minimum class prices under the two orders and did not provide for equitable sharing of the returns from the sale of fluid milk and from reserve supplies equitably among all producers in the territory supplying both Northern New Jersey and the present New York marketing area. The separate order program proposed for Northern New Jersey was drawn in a manner which would limit the volume of reserve supplies of milk in the pool to a greater extent than they were proposed to be limited under Order No. 27, and thus would tend to accentuate rather than to eliminate the existing inequitable distribution of returns to producers in the milkshed. The condition presently prevailing is that the long-time reserve supplies of milk both for the present marketing area urban territory in Upstate New York and for Northern New Jersey as well as the short-time reserve supplies are carried in the Order No. 27 pool.

Stable and orderly marketing conditions throughout the common production area serving a single market require provisions of a regulatory program providing for a degree of uniformity of pricing and pooling readily obtainable under a single order but not obtainable under the separate orders proposed for consideration at the hearing. Such separate orders dividing a basically single market for purposes of regulation inevitably would create incentives for uneconomic handling of milk supplies in the production area to the ultimate disadvantage both of producers and consumers, and inevitably would result in the creation of artificial "intermarket" and interorder problems and in continuing endless controversies over such artificial problems which under a single order would not exist. Administrative problems would be significantly greater if the regulation was in the form of separate orders rather than in the form of a single order. The objectives of regulation are susceptible of accomplishment more surely and effectively under a single order than under separate orders.

There is no sound economic justification for regulation providing for differences in prices to neighboring producers in the common production area with such differences depending solely upon whether the milk is for consumption in Northern New Jersey or in New York City, or upon whether the handler operating a particular plant chooses to operate in a manner making the milk subject to one order rather than the other.

It was argued by proponents of a separate order for Northern New Jersey that the present Order No. 27 pool contains unneeded and unwanted reserve supplies of milk, the burden of which should in no way be borne by producers supplying milk for Northern New Jersey. However, there is no basis in the record for determining that the existing reserve supplies are any less associated with Northern New Jersey than with the present Order No. 27 marketing area or other urban consuming centers in the milkshed. The increase in the supply of milk in the milkshed relative to total fluid milk sales in the entire region which has developed since 1948 has been accumulated in the Order No. 27 pool as a logical economic development resulting from the absence of any comparable regulation for Northern New Jersey with provisions for marketwide equalization. During this period of time, deliveries of milk to dealers' plants have increased both in Northern New Jersey and in the production area outside New Jersey from which milk is supplied both for Northern New Jersey and the Order No. 27 marketing area. From 1948 to 1955 deliveries of milk to handlers' plants in Northern New Jersey increased 26 percent compared to increases in the State of New York (outside the Rochester and Buffalo areas) and in the State of Pennsylvania of 27.5 and 32.6, respectively. During the same period average deliveries per day per dairy in Northern New Jersey increased 44 percent compared to an increase of 33 percent for all producers delivering to Order No. 27 pool plants and 51 percent for producers delivering to plants under the Philadelphia Order (No. 61).

One of the reasons advanced by proponents for a separate order for Northern New Jersey was that otherwise the interests of New Jersey producers would receive only incidental and secondary consideration since they were a small minority of the total number of producers whose milk would be subject to regulation under a single order for the combined New York-New Jersey area. It was argued that under a single order proposals advanced by New Jersey producers for order provisions designed to

protect the interests of such producers would be likely to be voted down in a milkshed-wide referendum. The facts in this connection are that provisions of a milk marketing order are those found by the Secretary to be justified on the basis of evidence in the record of public hearings irrespective of whether such facts are presented by a majority or minority group of producers or are presented by other interested parties. The vote of producers whose milk is subject to regulation under an order is controlling as to whether or not an order containing the terms and provisions found to be justified by the Secretary is to be issued, but not as to specific terms and provisions of the order.

This argument for a separate order for Northern New Jersey appears to have been based primarily on the conception of Northern New Jersey as a separate production area rather than as a consuming area. Production conditions in Northern New Jersey have been compared in connection with this argument with production conditions in the territory in which milk is produced under Order No. 27. Actually under a separate order for Northern New Jersey, a majority of the milk subject to regulation under such an order would be produced on farms located outside the State of New Jersey, and unless a substantial adjustment in the present marketing pattern occurred, the milk of a majority of the producers located in Northern New Jersey would be regulated under provisions of Order No. 27. The legitimate interests of resident New Jersey producers are much more comparable with the interests of nearby producers whose milk is presently regulated under Order No. 27 than they are with the majority of the producers whose milk currently is being marketed in Northern New Jersey.

*Analysis—Upstate New York.*[1] The territory in Upstate New York proposed to be included in the marketing area (herein defined as "Upstate New York") is all within the New York milkshed. There are one or more pool plants in each of 28 of the 35 counties in Upstate New York. The seven counties (Albany, Schenectady, Saratoga, Warren, Fulton, Rockland, and Putnam) in which there are no pool plants are largely urban or resort areas, and in each case adjoin two or more counties containing pool plants near their borders. In 1955 about 20,000 producers delivered milk to Order No. 27 pool plants in the territory, and less than 5,000 producers delivered milk to plants of local distributors. Population of the area is approximately 3,100,000 and the volume of fluid milk sales in the area in 1955 amounted to 915,817,000 pounds. The figures for both population and milk consumption are about 30 percent of the corresponding figures for the present marketing area. Of the milk consumed in the area, 181,292,000 pounds, about 20 percent, was Class I–C from Order No. 27 pool plants, and 33,980,000 pounds, or about 4.0 percent, was from nonpool New Jersey or New England approved plants located in the New York milkshed. The remainder, or 76 percent, was from local producers delivering to local pasteurizing and bottling plants. Of the milk received from local producers in 1955, 83 percent was used as fluid milk (including 3 percent sold out of the State) and 17 percent was used for other purposes, including fluid cream.

The seasonal pattern of receipts of milk from producers at plants of local dealers tended to be more uniform than the average receipts from producers delivering to pool plants in the vicinity. In general, the number of producers delivering to local plants was smaller in the surplus season than in the season of short production or at times when the local population was increased in the resort area. A reverse seasonal variation prevailed in the number of producers at pool plants in the same district. Prices paid to producers for the local Upstate markets generally have followed the Order No. 27 uniform price as far as major changes are concerned, but in most districts some premiums over the uniform price have been paid with variations in amount between districts.

The majority of producers for Upstate local markets are not members of milk marketing cooperatives. Those cooperatives with membership serving local markets also have producer members at Order No. 27 pool plants. The producer organization with the largest number of members, both under Order No. 27 and in Upstate local markets is the Dairymen's League Cooperative Association, Inc. Another large producer cooperative is Crowley's Milk Producers Cooperative Association, all of whose milk is received at pool plants, but much of which is distributed in various Upstate markets. The New York State Guernsey Breeders' Cooperative, Inc. operates a pool plant at Syracuse at which milk is received from its members and also from which milk is shipped in bulk to the present marketing area and also is distributed locally in Syracuse. This cooperative also operates a pool plant at West Coxsackie from which milk is sold for distribution in the present marketing area and in Northern New Jersey.

Dealers distributing milk in the Upstate areas are to a considerable extent also handlers under Order No. 27. The Dairymen's League Cooperative Association, Inc., is an important handler with distribution facilities in all parts of the Upstate area as well as in the present marketing area. Members of that association deliver milk directly for distribution in local Upstate markets and also deliver to pool plants supplying Class I–C milk to various parts of the area. That association also transfers producers back and forth between pool and local nonpool plants in the process of balancing supplies and fluid requirements in local Upstate markets.

There are 14 pasteurizing and bottling plants in the Upstate area which are Order No. 27 pool plants. Some of these plants distribute milk locally and ship bulk milk to the present marketing area and to manufacturing plants. Others supply bottled milk both to local markets and to New Jersey, and also to the present marketing area.

Sanitary requirements for the production and handling of milk for fluid use are generally uniform throughout the milkshed. Provisions of the Sanitary Code of the State of New York applicable to milk and cream (Chapter III) apply in all parts of the State except the city of New York, and are applicable to the counties of Nassau, Suffolk, and Westchester in the present marketing area. Even though the State Sanitary Code does not apply to the city of New York, a high degree of similarity is apparent since in many instances plants and producers are approved both by the New York City Department of Health and by Upstate health authorities. Supply sources are interchangeable to a high degree throughout the present and proposed extended marketing area. Provision of New York State law under which local health authorities may approve only those plants and producers which are approved by the Commisisoner of Agriculture and Markets are not construed so as to result in restricting the interchange of milk supplies among various areas of the State within a marketing area in which the handling of milk is regulated under a marketing order providing for uniform producer prices and equalization.

All 17 of the nonpool country receiving stations and country bottling plants in the State of New York which are approved for sale of milk in New Jersey (these plants are hereinafter referred to as New Jersey approved plants) are located in the Upstate area under con-

[1] [In connection with the following analysis, it should be noted that:

(1) Milk received by local dealers from pool plants and classified as Class I–C, and milk received from nonpool plants approved for and engaged primarily in serving either New Jersey or New England, has been considered to have been used as fluid milk by the local dealer. This results in the maximum possible allocation of local producer milk to uses other than for distribution as fluid milk.

(2) Shipments of milk from local dealers in one district to local dealers in another district have not been considered. Accordingly, the determined volume of milk used in any one district for other than fluid use may be slightly inaccurate. For example, shipments of milk from the Mohawk Valley District to dealers in the South Central District will appear as "other uses" or "surplus" in Mohawk Valley District. Such milk has not been treated as a receipt in the South Central District, and thus the amount of "other uses" in that district may be understated if such milk actually was used for fluid distribution.

(3) Premiums paid in 1955 by local dealers were computed by adding the weighted average premium for other than butterfat to the simple average base price for 3.5 milk paid by local dealers and subtracting the simple average Order No. 27 uniform price for 3.5 milk in the 201–210 mile zone adjusted for a representative location in the district.

(4) Prices paid by local dealers for milk purchased from farmers other than on the basis of a butterfat test were not considered in calculating premiums paid.

(5) Milk of dealers own herds has been added to purchases from producers in calculating the total volume of milk received from producers.

(6) Special problems relating both to flat price purchases and to producer-dealer or own herd milk will be considered at a later point.]

sideration. These plants are scattered throughout the Upstate territory and are located in six of the seven districts as follows: Four are in the Nearby District, two are in the Capital District, two are in the Syracuse District, three are in the Binghamton District, two are in the Elmira District, and four are in the South Central District. Only in the Mohawk Valley District (Utica-Rome being the largest urban center) are there no New Jersey approved plants.

Prices paid by these New Jersey approved plants were about the same as the prices paid at Order No. 27 pool plants in the vicinity although practically all (over 99 percent) of the milk received from farmers at these plants was disposed of for fluid use. Of the milk disposed of for fluid use, 90 percent was in New Jersey; 8.0 percent in Upstate New York and 2.0 percent in other areas.

Practically all of the sales in the State of New York from these New Jersey approved plants were in the proposed marketing area extension and were equivalent to about 14 percent of the Class I–C milk sold in the same area. Two of the plants are pasteurizing and bottling plants from which packaged milk is sold in Upstate New York as well as in New Jersey, and probably account for a high percentage of the milk sold in Upstate New York by this group of plants as a whole.

There are nine nonpool plants in the Upstate New York area which are engaged primarily in supplying markets in New England. Seven of these were formerly Order No. 27 plants and two are currently Boston pool plants. In contrast to the New Jersey approved plants which are scattered throughout the Upstate area, these New England approved plants are concentrated in the eastern portion of the milkshed. Seven of the nine plants are in districts bordering New England, and six of the nine are in counties bordering New England. The three plants not in counties bordering New England are operated by the Dairymen's League Cooperative Association, Inc., with one plant in each of the counties of Greene, Herkimer, and Oneida. The Oneida County plant was an Order No. 27 pool plant in 1955 except for one month. The Herkimer County plant was in the pool in 1955 except for four months.

Approximately 88 percent of the milk received from producers at these New England approved plants in 1955 was disposed of for fluid use and 12 percent for other uses. This 12 percent, however, was mainly, if not entirely, milk pooled under the Boston order. Less than 1.0 percent of the fluid milk sold was for other than New England markets, the major part of which was sold in the Nearby District, and the balance in the Capital District and was equivalent in volume to about 1.0 percent of the Class I–C milk sold in these districts.

All parts of the territory in Upstate New York proposed for inclusion in the marketing area bear the same general relationship to the metropolitan New York market as does the territory as a whole, but the importance of different factors varies to some degree among the districts.

1. *Nearby District.* The Nearby District consists of the counties of Rockland, Orange, Sullivan, Ulster, and Greene on the western side of the Hudson River and Putnam, Dutchess, and Columbia Counties on the eastern side of the river. This territory contains the cities of Poughkeepsie, Hudson, and Beacon on the eastern side of the river; and the cities of Kingston, Newburg, Middletown, and Port Jervis on the western side. Rockland County, the nearest to New York City, is largely urban in character and an integral part of the New York-New Jersey metropolitan area. The major part of the Catskill Mountains resort area is also included in this district. The total population of the district is 665,800.

This district is an important milk production region. There are in the neighborhood of 2500 producers delivering milk to pool plants in the area, and this is the area where most of the farms delivering milk directly to the present marketing area are located. There were less than 400 producers delivering milk to nonpool local plants in the district in 1955. Fluid sales in the district amounted to 202,439,000 pounds in 1955. Of this, 112,841,000 pounds, or 56 percent, was Class I–C milk from Order No. 27 plants. This Class I–C milk also represented about 56 percent of the total Class I–C milk disposed of in the State of New York. A maximum of 16 percent of the milk received from farmers at local nonpool plants in the district was used as other than fluid milk.

This area is one in which location differentials under the order are applicable to part and not applicable to other parts. Consequently, it is difficult to determine the exact amount of premiums applicable to local milk as compared with pool milk. In the district as a whole, local dealers apparently paid about 20 cents more than pool plants paid.

In general, premiums over the Order No. 27 uniform price were paid at pool plants. Prices paid by local dealers over the Order No. 27 uniform price varied widely within the district.

In Columbia County in 1955, the price paid by local dealers was about the same as the Order No. 27 uniform price. In Sullivan County the price paid was about 13 cents above the uniform price. In Ulster and Dutchess Counties, local dealers paid about $1.00 more than the Order No. 27 uniform price. In Orange County they paid about 65 cents over the Order No. 27 uniform price. In the area east of the Hudson River, the local dealers and the pool plant operators both are competing for producers with Connecticut buyers. In the area west of the Hudson, New York dealers are competing with New Jersey buyers.

The district contains eight Order No. 27 pool plants which pasteurize and bottle milk, six of these being on the west side of the Hudson and two on the east side. In addition, there is on the west side one nonpool plant which is primarily a pasteurizing and bottling plant for Northern New Jersey but which also supplies bottled milk for local distribution. Some of the primarily local distributors also have some distribution in Northern New Jersey.

The pasteurizing and bottling plants in four counties west of the Hudson nearest to New Jersey (Rockland, Orange Sullivan, and Ulster) supply about equal amounts of milk to Northern New Jersey and for local distribution. They supply the present marketing area with less than half as much milk as they supply for Northern New Jersey or for local distribution. Not taken into consideration in this computation, of course, is the utilization of milk by Order No. 27 country receiving and shipping plants in the district.

A contention was advanced at the hearing to the effect that most of the problems with which the hearing on the Upstate New York extension was concerned would be solved by expanding the marketing area to include only the nearby counties. While the problem of pricing a considerable part of the present Class I–C milk in New York State would disappear under such an amendment, a substantial part of the broader problem of more equitably distributing among all producers in the milkshed and among the important milk consuming areas depending on the New York milkshed for their supplies of milk the burdens and benefits of a milk price stabilization program would remain unsolved.

2. *Capital District.* This district consists of the counties of Albany, Rensselaer, Saratoga, Schenectady, Warren, Washington, and Essex. In it is the metropolitan area of Albany-Troy-Schenectady, and the resort areas to the north. Milk production is important only on the fringes of the area. There are two regular and two occasional pool plants in Washington County and one regular pool plant in Rensselaer County. The record does not reveal the number of producers delivering to these pool plants in 1955. In 1954, however, there were nearly 500 producers delivering to pool plants in Washington County. There are three pool plants in Essex County. As will be shown later, a substantial part of this county is not closely associated with the balance of the Capital District from the standpoint of milk supplies and distribution. There were over 1700 producers delivering milk to local dealers in the Capital District in 1955. The record does not indicate precisely where all of these farmers are located, but some are located in the district and some in the rural areas immediately to the west and south. In 1955, 1058 producers delivered milk to pool plants in Schoharie County which borders Albany County on the west and which might be considered to be a part of the Capital District. Columbia and Greene Counties to the south each contain pool plants and producers, as does Montgomery County to the west of Schenectady. Although precise figures are not available it appears probable that within the area from which the milk supply for the Capital District is produced the number of producers delivering milk to pool plants is about double the number delivering to local plants in the Capital District.

The Capital District has a population of 762,300, the largest of any of the districts involved. Milk sales locally in the district amounted to 231,018,000 pounds in 1955. The sales of Class I–C milk

amounted to only 1.0 percent of these sales. Milk from New England or New Jersey approved unregulated plants accounted for only 0.1 percent of sales. The balance came from local producers. About 20 percent of such local producer milk was used other than for distribution as fluid milk, a percentage slightly higher than for the Nearby District and about the same as for the Mohawk Valley District to the west.

Producers are shifted back and forth between pool plants and nonpool plants in greater numbers and as a larger percentage of total producers involved than in any other district except the Nearby District.

Average deliveries per producer in the Capital District increased 36 percent from the low month to the high month. Pool producers in the same district increased deliveries by 56 percent.

Prices paid producers in the Capital District generally followed the uniform price but at a higher level. In the years 1948 through 1954, the premiums ranged from a low of 9 cents to a high of 61 cents and averaged 32 cents. In 1955, the premium was about 34 cents.

The Capital District draws upon the Order No. 27 pool for Class I–C milk less than other districts in the Upstate area. Balancing from pool supplies, however, is accomplished by shifting producers between pool and nonpool plants and by paying relatively high premiums to obtain the most desirable producers from the point of view of seasonal variation in production.

3. *Mohawk Valley District.* This district consists of the counties of Fulton, Montgomery, Herkimer and Oneida and includes the metropolitan area of Utica-Rome and the cities of Amsterdam, Johnstown, and Gloversville. The rural areas included in it are important dairy areas of the milkshed. The population is 417,000. Sales of fluid milk in the district amounted to 130,083,000 pounds in 1955.

More than 4,000 producers delivered milk to pool plants in the district while 750 producers delivered milk to local dealers in 1955. Seven percent, or 8,750,000 pounds of the fluid milk sales was New York Class I–C milk. Less than 1.0 percent was from New Jersey or New England approved plants and the balance was from local receipts. Of the milk received from producers, 20 percent was used as other than local or out-of-state fluid sales.

In the eastern section of the district prices to producers for the period 1949–1954 averaged nine cents over the minimum Order No. 27 uniform price. The producers delivering to local plants increased production from the low month to the high month by 29 percent as compared to an increase of 63 percent at pool plants in that section. In the western section of the district the price paid to local producers averaged 3 cents per hundredweight over the Order No. 27 uniform price. Deliveries per producer by local producers increased 40 percent from low month to high month, while pool producers increased deliveries by 76 percent.

Local dealers in this district with a much larger number of nearby producers to choose from were able to attract the more desirable producers by paying a much lower premium than could dealers in the more densely populated Capital District. In 1955, the premium paid in the Mohawk District amounted to about 8 cents per hundredweight.

4. *Syracuse District.* This district consists of the counties of Madison, Onondaga, Oswego, Cayuga, and Cortland. It contains the metropolitan area of Syracuse in its center and the cities of Oswego, Auburn, and Cortland on its fringes. It is one of the important dairy areas of the State. The population is 622,400, the third largest of the Upstate districts. Fluid milk sales in 1955 amounted to 175,748,000 pounds. More than 4,500 producers delivered to pool plants in the district and 1,053 delivered to local dealers.

Seven percent of the fluid milk sales, or 12,544,000 pounds, was Class I–C milk. Only a fraction of 1.0 percent was milk from unregulated New Jersey approved plants. The balance was from local producers. About 18 percent of the milk from local producers was used for other than fluid milk sales. A plant of one of the larger distributors of milk in this area is an Order No. 27 pool plant.

In the period 1949 through 1954, the price paid to local producers averaged 4 cents more than the Order No. 27 uniform price. In 1955, the premium paid to local producers amounted to 15 cents per hundredweight. Average daily deliveries by local producers in 1955 increased by 32 percent from the low month to the high month. Deliveries of pool producers in 1955 increased by 59 percent from the low month to the high month. Here again, the premium to get the more even producers was low as compared with the Capital District.

On the petition of the Syracuse Milk Producers Bargaining Agency (made up of three cooperatives, two of which are members of Mutual Federation of Independent Cooperatives, Inc., a qualified federation under Order No. 27) hearings were held during the period 1954–1956 by the New York State Department of Agriculture and Markets on a State order for the Syracuse area (somewhat smaller in size than the area defined herein). On February 22, 1956, a meeting of producer leaders of the milk industry in New York, including representatives of Mutual met with State officials in the Governor's office. This group proposed that a hearing be held to consider including the Upstate area in one order with the New York metropolitan area, but that issuance of a State order for Syracuse should not be deferred pending Federal-State action on the basis of such a hearing. Subsequently, the New York Commissioner of Agriculture and Markets issued an order for Syracuse to become effective on August 1, 1956. Before that date, he was stayed by New York Courts from making the order effective on the basis of an action started by Syracuse milk dealers, who at this hearing opposed the issuance of Federal-State regulation for the area.

The district is quite typical of the whole Upstate area. There is nothing in the situation which distinguishes it from other parts of the Upstate area, except for the formal consideration of a separate State order. If the design of a separate order is to provide a means for the local producers carrying less than their fair share of the milkshed reserve, it is incompatible with the objective of regulating the Upstate areas.

If it is designed to yield about what would be expected under one regulation through a competitive balancing of supplies through a constant shifting of producers back and forth, the separate regulation might cause unsettled marketing conditions rather than orderly marketing.

The fact is that a State order for Syracuse has not become effective. While it may have been understood that a State order for Syracuse would not be held up pending action on proposed Federal-State regulation, there appears to be no basis for deferring Federal-State regulation pending disposition of litigation on the State order.

It is concluded that the Syracuse District should be regulated together with other parts of the Upstate New York area.

5. *Binghamton District.* This district consists of Broome County and contains the Binghamton metropolitan area. The population is 200,600. Total fluid milk sales in the district were 67,593,000 pounds in 1955. Pool plants in the district received milk from over 700 producers and local dealers received milk from less than 300 other producers.

The largest distributor of milk in this district is Crowley's Milk Company. Its Binghamton distribution plant is an Order No. 27 pool plant as are the several country receiving plants of this handler. In addition, the Dairymen's League is a principal distributor and supplier of milk in this district. In 1955, 27,086,000 pounds of Class I–C milk were marketed here. This was 40 percent of the total distribution of fluid milk. An additional 1.0 percent of the distribution was milk from unregulated New Jersey approved plants in the milkshed. Of the 27 million pounds of milk received from local producers, only 10 percent was for other than fluid uses.

In the period 1951–1954, the price paid to local producers in the Binghamton District averaged 4 cents over the Order No. 27 uniform price at plants in the area. In 1955, a premium of about 22 cents was paid. One cent of this was the result of a higher base price and 21 cents was a stated premium.

6. *Elmira District.* This district includes the counties of Tioga, Tompkins, Chemung, Schuyler, and Yates, and that part of Steuben County adjoining Elmira and including Corning. In addition to Elmira and its suburbs the district also includes the cities of Ithaca and Penn Yan. The population is 247,700. Fluid milk sales amounted to 69,473,000 pounds in 1955. Dairying is the principal type of agriculture of the area, and the area contains at least 12 pool plants receiving milk from more than 1500 producers. (There were 750 pool producers delivering to the five pool plants in the counties of Tioga and Chemung. The exact number of producers delivering milk to the remaining seven pool plants in the

district is not indicated in the record.) There were less than 300 producers supplying local dealers in the district.

In 1955, 16 percent of the fluid sales were New York Class I–C milk. About a quarter of 1.0 percent was milk from unregulated New Jersey approved plants and the balance from local producers. The Dairymen's League is one of the principal distributors or suppliers of bottled milk in the area, and a considerable part of their supply is from unregulated sources. Of the milk received from local producers, only about 7 percent was used for other than fluid milk.

In that part of the district consisting of the city of Elmira and its environs, local producers during the period 1949–1953 were paid an average of 14 cents per hundredweight over the uniform price. In 1955, there was practically no difference between the Order No. 27 uniform price and the prices paid by local handlers. The production of local producers varied seasonally only slightly less than did that of pool producers in the district, the variation being 47 percent for local producers and 53 percent for pool producers.

7. *South Central District.* This district consists of the counties of Delaware, Schoharie, Otsego, and Chenango. The district is distinctly rural, the largest city being Oneonta with a population of 14,300. Chenango, Delaware, and Otsego Counties are considered to be in the Binghamton trading area and Schoharie is considered to be in the Capital District trading area. The total population is only 166,300 and the fluid sales were only 39,463,000 pounds in 1955. There were about 6500 producers in 1955 who delivered milk to pool plants in the district and only an average of 176 producers who delivered milk to local distributors.

While only 6,529,000 pounds of Class I–C milk were sold in this district, the quantity was equivalent to 16 percent of the fluid milk sales. Nearly one-half as much was received from nonpool New Jersey approved plants. Practically all of the milk of local producers was used for fluid purposes.

Local producers received an average of 25 cents over the Order No. 27 uniform price in 1955. Of this, 22 cents was paid to the farmer as a stated premium and 3 cents as a higher base price. The basis for this premium was not indicated in the record.

*Summary*—All Upstate New York Districts. All of the above described districts are in the territory from which milk is shipped to the New York metropolitan marketing area. A majority of the farmers in each of the districts delivers milk to Order No. 27 pool plants with a relatively small minority delivering milk to local unregulated plants.

Each of the districts depends to a substantial degree on Order No. 27 pool plants for its long-time reserve supply and for much of its supply for seasonal balancing. Milk distributors accomplish this by one or more of the following methods:

(1) Buying milk directly from producers only to the extent that it can be used almost entirely for fluid milk in the period of flush production and supplementing this with Class I–C milk from the pool in times of short supply.

(2) Taking on producers from pool plants at times when the dealer is short of milk and dropping them when the milk is not needed (this being supplemented at times by taking a part of the production of certain pool producers, and thus, reducing the volume delivered to the pool plant, but not the number of producers).

(3) Operating a country plant so as to be in the pool for part of the year and out of the pool serving outside markets the remainder of the year.

(4) Selecting from the available producers at pool plants those whose seasonal production most nearly meets the requirements of the particular dealer.

The Order No. 27 uniform price is the principal price-making factor in paying producers selling to dealers in the Upstate area and accounts for all of the major and many of the minor price fluctuations. In each of the districts some premium over the Order No. 27 minimum uniform price is paid, the amounts being determined by special price-making factors in various areas. In the area near New York City, which is the source of direct delivered milk to the present marketing area, and which is an area in which buyers of milk for Connecticut and New Jersey are competing for direct delivered supplies, the premiums are relatively high. These same factors, however, affect the actual paying prices at pool plants in the area.

Premiums paid by local dealers also are relatively high in the Capital District although not as high as in parts of the Nearby District. Large urban cities in the Capital District are a considerable distance from areas of intensive milk production and a relatively large proportion (about one-third) of the producers near enough for easy direct delivery of milk are required to provide the regular milk supply for the district. In other districts where intensive milk producing areas are closer to urban centers, and where a smaller proportion of the producers near enough for easy direct delivery are needed, the premiums paid by local dealers are relatively small.

Except for the South Central District, a relatively high proportion of the territory in all districts is urban or suburban in character and the urban population constitutes a relatively large proprotion of the total population. The South Central District is more rural in character. Rural territories need not be excluded as a matter of principle. From a practical operating point of view, however, rural areas may contribute little to the purposes or effectiveness of the regulation and present an administrative problem out of proportion to the benefits to be gained. The South Central District is almost completely surrounded by the balance of the territory proposed for inclusion in the marketing area, the only gap consisting of three townships on the southern boundary of the district bordering the New York-Pennsylvania State line. Exclusion of the South Central District from the marketing area would increase the length of the extended marketing area boundary significantly by increasing by about 40 the number of townships in the area touching the boundary of the marketing area. Lengthening the boundary line to that extent also presents administrative and operating problems inevitably encountered in drawing marketing area boundary lines. On balance, a reduction in the length of the boundary line resulting from inclusion of the South Central District is desirable in the interest of minimizing boundary line problems.

Those portions of the New York milkshed in the State of New York outside that proposed for inclusion in the marketing area bear the same general relationship to the New York market and to the milkshed as do those proposed for inclusion. Such territory, however, includes few large centers of urban population, and its inclusion in the marketing area would not bring under regulation a significant additional volume of fluid sales. The largest city in western New York within the milkshed is Jamestown with a population of 44,400, and the largest in northern New York is Watertown with a population of 35,400.

All handling of milk proposed to be regulated in Upstate New York is in the current of interstate commerce or substantially affects interstate commerce in milk and its effective regulation.

*New or Amended Order.* On the question of whether a single marketing order should be issued in the form of an entirely new marketing order or by amending Order No. 27, it is concluded that the existing provisions of Order No. 27 constitute a suitable frame-work for appropriate regulation for the expanded area under a single order. Findings and conclusions are set forth elsewhere herein regarding terms and provisions of the order which should be amended and with respect to provisions which should be added to provide appropriate regulation for the expanded area. The provisions of Order No. 27, which over a period of nearly 20 years have proved to be satisfactory both from the standpoint of attaining the principal objectives of regulation and from the standpoint of administration, should not be abandoned or ignored. The dissatisfaction with the present regulatory program under existing provisions of Order No. 27 and the degree to which it has failed to promote orderly marketing conditions is associated with the fact that it has been applicable to the handling of milk only for a portion of the consuming area which relies upon the milkshed for a supply of milk. The absence of regulation applicable to the entire supply for Northern New Jersey is the major milk marketing problem which has existed in the New York-New Jersey area for a considerable period of time. Expansion of the marketing area as herein provided will eliminate the basic cause of dissatisfaction among producers and of such disorderly conditions as currently prevail.

*Specific boundary lines.* The boundary line of the territory which should be added to the present marketing area is one which is contiguous to the present marketing area and which includes the 13 counties in the State of New Jersey and the counties and townships in the

State of New York comprising the seven districts heretofore defined, except for the following parts of such counties which should not be included:

A. In the State of New York:

1. All of Essex, except the townships of Moriah, Schroon, Crown Point, and Ticonderoga.

2. In Warren, the townships of Johnsburg, Thurman, and Stony Creek.

3. In Saratoga, the townships of Day, Edinburg, and Providence.

4. In Fulton, the township of Stratford.

5. In Herkimer, the townships of Webb, Ohio, and Salisbury.

6. In Oneida, the townships of Forestport, Boonville, Ava, and Florence.

7. In Oswego, the townships of Redfield and Boylston.

8. In Cayuga, the townships of Sterling, Victory, Conquest, and Montezuma.

9. In Yates, the townships of Potter, Middlesex, and Italy.

B. In the State of New Jersey:

1. In Ocean, the townships of Lacey, Ocean, Union, Stafford, Eagleswood, Little Egg Harbor, and Long Beach including all boroughs set off therein.

(Other territory listed in the notices of hearing which should not be included consists of Hamilton County and the townships of Lewis, Leyden, and West Turin in Lewis County. These boundaries are those proposed at the hearing by the major proponents with the exception of the southern part of Ocean County, New Jersey, and in addition, include all of the South Central District and the remainder of Washington County in the State of New York.)

This boundary line has been drawn in a manner designed to constitute a line which (1) is specific and easily recognizable both by those who may be regulated and by the market administrator, and (2) minimizes competition between regulated and unregulated handlers on retail or wholesale distribution routes, either distribution inside the area by unregulated handlers or distribution outside the area by regulated handlers.

Proponents recommended that only the townships of Fort Ann, Kingsbury, Fort Edward, Greenwich, and Easton in Washington County be included in the marketing area. It appears, however, that presently regulated handlers, or handlers who will be regulated, and who are licensed for these townships and villages in Washington County are also licensed for sales in other townships and villages in the county. If only the above named townships were included in the area, regulated handlers would be in competition, either on their own routes or through sales to subdealers, with unregulated dealers in other parts of the county. Accordingly, it is concluded that all of Washington County should be included, thus eliminating competition between regulated and unregulated dealers in that county and preventing the possible loss by regulated dealers of present sales to subdealers who otherwise might choose to purchase from unregulated sources.

The northern and western marketing area boundary line in Essex, Warren and Saratoga Counties (excluding the previously listed townships in those counties) appears to be one resulting in the least amount of competition between regulated and unregulated dealers. The inclusion of all of Essex County would include territory which is predominantly rural and mountainous, and would extend the line to a point where a greater degreee of competition would exist with dealers who primarily serve the counties of Clinton, Franklin, and St. Lawrence to the north but who also distribute down into the northern part of Essex County.

Well over half of the described boundary line consists of the State line between the State of New York and the States of Connecticut, Massachusetts, Vermont, and Pennsylvania and between the States of Pennsylvania and New Jersey. The balance consists of county lines and township lines. All such lines are specific and easily recognizable.

The eastern boundary line extending from the northeast corner of Westchester County north along the New York State line to the northeast corner of Moriah Township in Essex County closely approaches the ideal from the standpoint of minimizing competition between regulated and unregulated handlers. There is little distribution across the State line into New England from plants in the State of New York and there are only three dealers east of the line (one in Connecticut and two in Vermont) who are licensed to distribute in the State of New York. Dealers' routes or sales to subdealers overlap county lines to a considerable degree, however, between the counties in the State of New York along the eastern border from Westchester north into Essex. A line extending west from any point on the eastern boundary south of Moriah Township in Essex County would result in considerable competition between regulated and unregulated handlers.

Sales by dealers located in the Glen Falls area extend north into those townships in Essex and Warren Counties proposed to be included, into Washington County to the east and into Saratoga County to the west and south where they overlap with sales of handlers located in the Albany, Schenectady, Troy, Amsterdam area. The three omitted townships in Saratoga County are essentially rural and the only dealers licensed to sell there are those who will be regulated. The three omitted townships in Warren County are also rural, and regulated handlers will compete there with producer-dealers and an unregulated dealer who purchases some or all of his supply from sources which will be regulated. Since the terrain of the surrounding area is mountainous, the procurement of milk for these towns from other than regulated sources seems unlikely.

Westward from Saratoga County, the northern boundary of the marketing area includes the more populous portions of Fulton, Herkimer, Oneida, and Oswego Counties (omitting the townships of Stratford in Fulton County, Salisbury, Ohio, and Webb, in Herkimer County; Forestport, Boonville, Ava, and Florence in Oneida County; and Redfield and Boylston in Oswego County). This line is the northern boundary of the territory in which the vast majority of sales are made by dealers located in the Syracuse and Utica areas. If the proposed area were extended farther north (within the limits of the notices of hearing) the marketing area would include territory which is predominately rural and sparsely populated, and which is served by dealers whose sales are primarly in counties outside those included in the notices of hearing. For example, inclusion of the townships of Forestport and Boonville in Oneida County would necessitate including Leyden, West Turin and Lewis Townships in Lewis County since dealers located in these townships are also licensed for Forestport and Boonville. Dealers in the Lewis County townships are in competition with dealers located farther north in Lewis County and outside the scope of the hearing. Ava and Florence Townships are very sparsely populated with no reason indicated for inclusion in the area. Dealers in the Syracuse area have distribution extending northward into Oswego County in competition with Oswego County dealers except in Boylston and Redfield Townships. The line across Oswego County is the line of least competition with routes of dealers running south from Jefferson County to the north and also outside the scope of the hearing.

The western boundary line of the marketing area extending from the western border of Oswego County irregularly south to the Pennsylvania line just west of Elmira also is the line of least competition between dealers east of the line and those who are primarily associated with centers of population west of the line. The townships in Cayuga County west of the boundary line are sparsely populated. There are no dealers licensed for two of the excluded towns and the only dealer licensed for the remaining two is located in the city of Oswego and would be regulated. To include all of Cayuga County would extend the line to a point where there would be a greater degree of overlapping of routes with dealers in Wayne County.

The townships of Potter, Middlesex and Italy in Yates County which are omitted are not heavily populated (1950 population of 455; 765; and 833, respectively). A dealer located in Canandaigua (Ontario County and outside the scope of the hearing) is licensed for Potter and Middlesex. There are no dealers licensed for Italy Township. The remaining townships in Yates County should be included in the marketing area as they are served by routes and subdealers of handlers who also have sales in the Elmira district. The boundary line in Yates County may result in some overlapping of distribution between regulated handlers and dealers in Ontario County, but appears to be the line across which there is the minimum amount of such overlapping.

The western border of Schuyler and Chemung Counties appears to meet the requirements for the marketing area boundary except that the townships of Addison, Erwin, and Corning in Steuben County also should be included in the marketing area. Some of the handlers located in these townships and who have

sales there also distribute in Elmira, and handlers who are located in Elmira also have distribution in these three townships. Dealers licensed for the townships of Tuscarora, Thurston, Campbell, Hornby, Bradford, and Wayne will all be regulated. Only one dealer, who is located in Canisteo, is licensed for Rathbone Township. Extension of the line farther west in Steuben County would encounter difficulties with crossing of routes of dealers located in that area and who are primarily associated with areas to the west rather than with the Elmira district.

The marketing area boundary from east to west should be the State line between the the States of New York and Pennsylvania from the point of intersection of the western boundary of Chemung County, New York, with the Pennsylvania State line to the point of intersection of the State lines of New York, Pennsylvania, and New Jersey. This line properly reflects the point of least competition between regulated and unregulated dealers. There is some distribution by dealers in the Elmira and Binghamton Districts across the State line into Pennsylvania. This appears to present no serious problem, however, since milk sold by Pennsylvania dealers in Pennsylvania is subject to regulation by the Pennsylvania Milk Control Commission. There are relatively few dealers in Pennsylvania who are licensed to distribute in the State of New York. One dealer in Matamoras and one in Sayre, Pennsylvania, are licensed for New York State. One dealer in Troy, Pennsylvania, is licensed to sell only to other dealers in New York State.

As previously indicated, the marketing area boundary line is drawn so as to include the South Central District (eight townships in Madison County, five townships in Cortland County, and one township in Broome County). Presently regulated handlers, or handlers who will be regulated, have route sales and sales to subdealers in varying volumes throughout this district. For example, two large handlers, one in Binghamton and another in Homer are engaged in such distribution in much of the territory within the South Central District.

The township of Sanford in Broome County is served by one dealer who will be regulated and by one producer-dealer who also distributes in Delhi in Delaware County. Failure to include the South Central District would jeopardize the competitive position of regulated handlers with distribution there, particularly with regard to their sales to subdealers.

From the point of intersection of the State lines of New York, New Jersey and Pennsylvania, the marketing area boundary should be the State line between the States of Pennsylvania and New Jersey south to the point where the boundary line between Hunterdon and Mercer Counties in New Jersey intersects with the Pennsylvania-New Jersey State line. Sussex, Warren, and Hunterdon Counties should be included in the marketing area as there is considerable competition for sales in the three counties between handlers and subdealers who have sales throughout the area in New Jersey proposed for regulation. Pasteurizing and bottling plants located in the three counties also have routes extending into other Northern New Jersey counties. Omitting Sussex, Warren, and Hunterdon Counties from the marketing area would result in placing the boundary at a point at which greater overlapping of routes would occur between regulated and unregulated handlers. There is some overlapping of routes of handlers located in New Jersey with those of handlers located in the State of Pennsylvania. However, the Pennsylvania-New Jersey State line appears to be the point of least competition between handlers who are expected to be regulated and those who are expected to be unregulated.

From the point of intersection of the Hunterdon-Mercer County line with the New Jersey-Pennsylvania State line, the marketing area boundary should extend eastward irregularly to the Atlantic Ocean and should then extend northward along the Atlantic Ocean-New Jersey coastline to the point of intersection with the present marketing area at the New York-New Jersey State line. This line consists of county boundary lines between Mercer County and Hunterdon, Somerset, Middlesex, and Monmouth Counties and between Burlington County and Monmouth and Ocean Counties to the point at which the northern boundary of Lacey Township in Ocean County intersects with the Burlington-Ocean County line. From this point of intersection the marketing area boundary should follow the northern boundary of Lacey Township in Ocean County to the point where said line intersects with Cedar Creek and along Cedar Creek, which is the northeastern boundary of Lacey Township, to Barnegat Bay. From this point the marketing area boundary should extend to the center of Barnegat Inlet where it joins the Atlantic Ocean.

There is some overlapping of routes along this proposed southern marketing area boundary between handlers located south of the line and handlers located north of the line. Most of such overlapping occurs between handlers located in Mercer County who have routes extending into Northern New Jersey and handlers located in Northern New Jersey who have routes extending southward into Mercer County. It appears, however, that the majority of such competition will occur between regulated handlers or between such handlers and those regulated by the New Jersey Office of Milk Industry. Within the scope of the notices of hearing, the marketing area boundary as drawn is at the point where the least competition occurs between handlers who will be regulated and those who will be unregulated.

The southern part of Ocean County is served substantially both by dealers in Northern New Jersey and by dealers who are associated with markets in Southern New Jersey and who are expected to remain unregulated if the southern part of Ocean County is not included in the marketing area. Routes of these Southern New Jersey dealers extend northward only to the line as drawn with the exception of one route which extends north into the proposed marketing area. Accordingly, including all of Ocean County in the marketing area would extend regulation to a point where there is a greater degree of overlapping of routes and would extend regulation to dealers who otherwise would be unregulated.

The marketing area extension herein defined is one in which regulated handlers have sales on routes, and sales to subdealers who have routes, that overlap in varying degrees throughout the districts previously defined in the State of New York and throughout the counties in Northern New Jersey. Regulated handlers have distribution in each of the six nearby counties and extend to the north into Greene and Columbia Counties. Routes of dealers in the Capital District run south into Greene and Columbia Counties. Dealers in the Capital District also have sales on routes and sales to subdealers to the west, where they overlap with those extending east from the Mohawk District. Utica dealers compete with dealers from Syracuse in the area between these two urban areas. Syracuse dealers' sales extend into Cayuga County where they overlap with those from Auburn dealers and also extend into Cortland County where their distribution overlaps with that of dealers in Homer and in Binghamton. Distribution of route sales and sales to subdealers also overlap between Elmira and Binghamton dealers. A dealer in Homer has sales to subdealers who have wholesale and retail routes in Sullivan County, in the Nearby District.

Handlers who are presently regulated also have extensive sales of varying volumes throughout the proposed marketing area in Northern New Jersey and throughout the area proposed for regulation in Upstate New York. Also, several dealers located in Orange and Rockland Counties in New York process and package substantial volumes of milk for distribution throughout the Northern New Jersey area through subdealers. Likewise, several dealers in the New Jersey counties process and package milk for distribution in New York State through subdealers. In addition, there are some wholesale and retail routes which extend across the New York-New Jersey State line. One handler located at Homer, Cortland County, in the western part of the proposed extended marketing area in Upstate New York processes, packages and ships milk to subdealers in Northern New Jersey who distribute the milk throughout the Northern New Jersey counties.

The complete marketing area herein defined is a practicable one for effective regulation consistent with carrying out the declared policy of the act.

*Issue No. II (terms and provisions).* In view of the findings and conclusions on Issue No. I, the material issues relating to terms and provisions are concerned with amending the existing terms and provisions of Order No. 27 relating to the following:

1. Conditions under which milk is to be fully subject to the pricing and pooling provisions of the order (pool plant provisions), and provisions applicable to milk disposed of in the marketing area from sources not fully subject to pricing

and pooling under the order (peripheral milk and compensatory payments).

2. Provisions for the pricing of Class I–A milk, particularly as to changes in the present pricing formula:

(a) To reflect properly conditions resulting from extension of the marketing area and from the pooling of receipts and sales in the territory added to the marketing area; and

(b) To establish a price for Class I–A milk in the territory within the State of New York which is added to the marketing area at a lower level than for Class I–A milk elsewhere in the marketing area,

3. The classification and pricing of milk for fluid use outside the marketing area.

4. The classification and pricing of milk used for fluid cream (and other uses presently in Class II) both in the present marketing area and in territory added to the marketing area.

5. Whether provision should be made in connection with classification and pricing of Class III milk for, (a) establishing a price for Class III utilization at pasteurizing and bottling plants in Upstate New York lower than the price at other plants for such uses, (b) extending to all months (from March through July as presently provided) the classification in Class III under specified conditions of milk used in food products packed in hermetically sealed containers, and (c) separate pricing of skim milk used for nonfat dry milk depending upon the process used in manufacture.

6. Skim milk to which the fluid skim milk differential should apply and the amount of such differential.

7. Location differentials and mileage zones particularly as to:

(a) The method of determining mileage zones;

(b) Whether the present schedule of transportation differentials should be changed either as applied to class prices or to producer payments.

(c) Whether provision should be made for special location differentials (not directly related to differences in cost of transportation) for milk depending upon (1) location of the farms where it is produced, (2) location of the plant where it is first received, (3) whether it is delivered in cans or in bulk tank, or (4) whether or not delivery is made directly from farms to pasteurizing and bottling plants, and (5) the extent, if any, to which such differentials should be paid out of the pool rather than by the handlers who receive the milk.

8. Special pricing provisions relating to milk received on farm bulk tank pickup routes.

9. The basis of classification, particularly concerning (a) the plant at which classification is to be determined, and (b) allocation among sources and classifications.

10. Whether the order should be amended to provide for use of a base rating plan in making payments to producers, and if so, the terms and provisions of such plan.

11. The extent, if any, to which producer-dealers and milk from a handler's own farm should be exempt from regulation.

12. How regulation, particularly as to pricing and pooling, should be applied to milk purchased from producers on a flat price basis without testing for butterfat.

13. Whether provisions of the order for cooperative payments should be amended to provide such payments for a cooperative representing the interests only of nearby producers.

14. Such other amendments, incidental to those related to specific issues or for administrative purposes, as may be necessary to properly coordinate provisions of the order in its entirety.

Findings and conclusions with respect to these issues are as follows:

1. *Pool plants and compensatory payments.* The basic features of the present pool plant provisions of the order should be retained but should be modified to provide that:

a. Plants which presently are expressly designated as pool plants continue to be so designated until such designation is cancelled pursuant to terms of the order.

b. Any other plant, upon application of the operator, be initially expressly designated as a pool plant if 50 percent or more of the milk received directly from farmers during the period April 1956–March 1957 was disposed of for fluid use in any part of the extended marketing area, or if the plant was a pool plant on any basis in each of the months of April 1956 through March 1957.

c. Any plant not expressly designated initially be eligible to make application to the Secretary to be expressly designated only, (1) after it had been a pool plant on the basis of supplying the market for a period of 12 consecutive months immediately prior to the date of application, and (2) if such plant is located in one of the States of New York, New Jersey, or Pennsylvania, except that if located in Pennsylvania within 200 miles of Philadelphia, the plant is located either in a county adjacent to the marketing area or nearer to New York City than to Philadelphia.

d. Pool plant designations be cancelled at any time at the option of the handler but that no such plant could be a pool plant on any basis thereafter until it had remained a nonpool plant through a continuous period of April through June.

e. Any plant which is a pool plant in April, May, or June on the basis of supplying the market would continue to be a pool plant in any of the months of July through March following in which 60 percent or more of the receipts from producers is classified in Class I–A or Class I–B, except that any such plant would not be a pool plant in any such month upon advance notice to the market administrator, and thereafter could not be a pool plant on any basis until after it had remained a nonpool plant through a continuous period of April through June.

f. Any plant at which milk is packaged and from which such milk is distributed in the marketing area, but which does not otherwise qualify as a pool plant, may at the option of the handler operating such plant be a pool plant in any month in which 55 percent or more of the milk received at such plant directly from farmers is classified in Class I–A or Class I–B, except that for a plant which otherwise would be subject to the provisions of another Federal order, the option of being a pool plant under this order could be exercised only if the percentage of its milk in Class I–A exceeds the percentage of its milk in Class I–B disposed of in the marketing area defined under the other Federal order.

Pool plant provisions of the order provide for identification of and determination by the market administrator of those plants at which milk received from farmers is to be fully subject to the pricing and pooling provisions of the order as distinguished from those plants at which milk received from farmers is to be entirely unregulated or is to be partially regulated by being subject to compensatory payments in the event of fluid disposition in the the marketing area. All milk received from producers at pool plants is classified, priced and included in the computation of the uniform price. Handlers are subject to payments into or out of the producer settlement fund. Those handlers with a large percentage of fluid milk sales outside the marketing area try to keep such milk from being pooled to avoid payments into the producer settlement fund, and those with a high percentage of their milk in manufacturing uses frequently want such milk pooled in order to be able to receive payments from the producer settlement fund.

Pool plant provisions of the order for the expanded area should continue to provide for plants being determined to be pool plants either (1) on a continuing basis by being expressly designated (frequently referred to as reserve or permanent pool plants), or (2) on a month-to-month basis depending upon whether specified percentages of the milk from such plants is disposed of for fluid use in the marketing area (frequently referred to as shipping plants or temporary pool plants).

Those plants expressly designated as pool plants should include those presently so designated, since they constitute sources of the regular and reserve supply associated with the present marketing area, and in addition should include those plants constituting sources of supply regularly associated exclusively with new territory being included in the marketing area or with the combination of that territory and the present marketing area. Thus, provision is made herein for expressly designating plants supplying the market in a substantial way during the year ending with March 1957.

Present provisions of the order relating to expressly designated plants do not impose requirements on such plants for shipping to or supplying the market with specified quantities of milk for fluid use, and no such provision should be added at this time. The designation of such plants, however, should continue to be subject to suspension and cancellation if the milk is not made available to the market when needed, and the necessary safeguards should be provided to avoid including plants in the pool which actually are engaged in handling reserve supplies of milk for other markets.

A substantial number of the plants which have become pool plants under the order during the past few years were

formerly associated with other markets and at no previous time were sources of supply for the New York marketing area. A total of 56 plants were designated as reserve pool plants during the years 1949 through 1956. Of this total number, 21 of these plants had been pool plants sometime prior to 1949, but had been withdrawn from the pool to supply other markets during the period of generally short supply in the Northeast prior to 1949. The remaining 35 plants are plants which had not been pool plants at any time prior to 1949. Forty-four of the fifty-six plants entering the pool since 1948 are located in New York, New Jersey, or northern Pennsylvania. Twelve of these plants are either located in Northern New Jersey or operated by handlers primarily engaged in supplying milk for Northern New Jersey. While the precise number is not indicated, others of this group of plants also were engaged in supplying fluid milk for Upstate New York and New Jersey. Thus, it is apparent that expansion of the marketing area as herein provided will eliminate a substantial part of the problem heretofore experienced of including plants in the pool which constitute actual or reserve sources of supply for consuming areas outside the marketing area.

While provisions should be made to guard against inclusion in the pool of reserve supplies for other markets, it also is important to provide for including in the pool on a expressly designated basis all plants which actually constitute the reserve supply for the market. Reserve supplies are of two types, one being the seasonal reserve needed only during the season of the year when production is the lowest but not needed at other times, and the second type being the long-time reserve supply which may be needed in some years and not in others. The handling and processing of the reserve supply of milk for the New York-New Jersey area takes place in a relative small number of plants. This pattern has developed because of the economy realized from specialization in the handling and processing of milk in nonfluid uses. The specialization which has developed in the handling and processing of reserve supplies of milk has developed in a number of different ways. The relatively few plants which are equipped for specialized manufacturing operations normally receive milk from a number of other feeder plants during the season of high production relative to fluid requirements of the market. As production decreases seasonally, the milk from feeder plants is diverted from the manufacturing plants to the market for fluid use while at the same time the milk received directly from producers at the manufacturing plants continues to be manufactured unless and until that milk also is needed for fluid use. In some instances, this specialization in the manufacture of reserve supplies of milk takes place in only one or a few of several plants operated by a multiple plant operator. In other instances, the operations of a particular handler may consist of specialized operations utilizing reserve supplies of milk for manufacturing purposes and from which milk is sold for fluid use to other handlers only when the milk is needed for fluid use.

The economies associated with specialization in the handling and processing of reserve supplies for the market should not be destroyed by provisions under which plants are permitted to participate in the pool only if specified percentages of milk received from producers is disposed of for fluid use. Such provisions are illogical and unrealistic in this market where the milk supply is received from farmers at more than 400 plants in the production area. The imposition of rigid fluid shipping requirements applicable to all plants would leave plant operators no choice except to meet such requirements, and thus, such requirements would be ineffective in excluding milk from the pool, but would result merely in a less economical system of handling reserve milk supplies for the market. High shipping requirements also could induce destructive and disorderly price cutting among supply plants in a scramble to meet such requirements.

During the past several years plants located in New England and which formerly were pool plants under Order No. 27 have been withdrawn from the pool. Plants located in New England no longer constitute either actual or reserve sources of supply of milk for the marketing area. Accordingly, plants located in New England no longer should be eligible to be expressly designated under the order but, of course, may become pool plants if they choose to supply the market with milk for fluid use.

There are a number of plants in central and southern Pennsylvania which for a considerable period of time have been associated with the New York market and have been expressly designated pool plants. Other plants in that area, and also in Maryland and Delaware, have regularly supplied milk for fluid use in Northern New Jersey. These plants should be eligible to be expressly designated as pool plants initially and should continue as such until the designation is cancelled by a request of the handler or for failure to supply the market with fluid milk when needed.

Plants located in Delaware or Maryland other than those eligible to be initially expressly designated have neither been regular sources of supply for Northern New Jersey nor have they been pool plants under Order No. 27 since the present pool plant provisions of the order became effective in 1945. Such plants were not regular supply sources for any part of the expanded marketing area prior to 1949 during the period of relatively short milk supplies in relation to fluid sales. It is to be expected that, as in the past, the milk from such plants, in the event of a recurrence of relatively short milk supplies, would be utilized for fluid purposes in consuming areas nearer to those plants rather than in the New York-Northern New Jersey marketing area. Accordingly, except for those plants in Maryland and Delaware eligible to be expressly designated initially, the area in which plants eligible to be expressly designated may be located should not be expanded to include Delaware and Maryland.

The same rule should apply, and for substantially the same reasons, to plants located in southern and central Pennsylvania within 200 miles from Philadelphia unless such plants are located in a county adjacent to the marketing area or nearer to New York City than to Philadelphia. Supply plants for the Philadelphia market are located in this central and southern Pennsylvania territory some of which are as much as 200 miles from Philadelphia, but closer to Philadelphia than to New York City. Numerous smaller centers of urbanized population scattered throughout this area also draw upon plants in the area for their fluid milk supplies. Plants located in this territory, as in the case of plants in Maryland and Delaware and other than those eligible to be expressly designated initially, would be expected to constitute sources of supply for local markets in that area and for Philadelphia or other markets farther south rather than for the New York-Northern New Jersey marketing area in the event of a recurrence of relatively short milk supplies generally in the Northeast. Plants in this area (except as noted) accordingly are not plants which may reasonably be expected to constitute a reserve supply for the New York-Northern New Jersey marketing area and should consequently be included in the pool only on the basis of actually supplying the marketing area with fluid milk. As earlier indicated, there has been a tendency for plants in this portion of Pennsylvania to become pool plants under the order during the period of increased milk supply relative to fluid sales since 1948. A provision applicable to this territory in Pennsylvania precluding the express designation of additional plants is appropriate in view of past practices and in view of the fact that provision is made under the New York-Northern New Jersey order for marketwide equalization while no such provision is made under other regulation, including that for Philadelphia, applicable to milk in this area. Under such circumstances, there is a tendency for the reserve supply for such markets to be included in the only available marketwide pool.

Proponents of a single order for the entire New York-Northern New Jersey area proposed that plants expressly designated as pool plants be limited to those designated initially, and on a rather restrictive basis, and that thereafter no plants could be so designated. Proponents of a separate order for New Jersey and for amendment to Order No. 27 proposed that all plants under the Northern New Jersey order be required to meet relatively high fluid utilization requirements, and that additional expressly designated plants under the New York order be limited to those with a history of fluid disposition in the marketing area sufficiently large to have contributed to the pool over a 12-month period.

Although apparently designed for that purpose, these and other similar proposals regarding pool plant provisions do not constitute an effective means of limiting pool volume. Any reasonable requirement for pool participation can and will be met if the incentive is suf-

ficient. There is no authority for a provision which prohibits the sale of fluid milk in the marketing area from any plant. In a supply area as large as that required for the New York-Northern New Jersey market (or for either considered individually), producers can readily shift or be shifted from a plant not meeting pool plant requirements to one that does. To a significant extent, if necessary, milk can be shipped for fluid use from nonpool plants in sufficient volume to qualify them as pool plants while at the same time withholding milk from expressly designated plants and, as previously indicated, uneconomic handling of milk both for fluid and nonfluid uses would result from the imposition of high fluid utilization requirements applicable to all plants. Accordingly, pool plant provisions should be designed more particularly as a means of preventing disorderly in-and-out movement of plants and producers and to avoid the pooling of supplies not truly constituting a part of the actual or reserve supply for the market, rather than as a means of attempting to prevent participation in the pool of plants and producers so located that they reasonably may be expected to find a way to participate in the pool under any reasonable or defensible provision.

The order presently provides for the automatic cancellation of the designation of any plant as of August 1 which was not approved by a marketing area health authority on June 15. Such plants, however, may reapply prior to August 1, thus providing for a review by the Secretary once a year of the pool status of such plants. In order to continue such annual review, but at the same time to avoid subjecting such a plant to all of the requirements of a new applicant, the provision for automatic cancellation has been changed to automatic suspension. This will provide the plant operator an opportunity to avoid cancellation if he can show that he is maintaining sanitary control even though not actually approved on June 15. If no such showing is made, however, and actual cancellation follows suspension, the plant then would become eligible for redesignation only under the same conditions as a plant applying to be expressly designated for the first time. No basis is found for favoring one type of plant over the other.

The amendments herein provided are designed to prevent continuation of some of the disorderly practices employed under present provisions of the order. The present provision permitting the cancellation of the designation of expressly designated plants at the option of the handler during the months of April through July has resulted in the practice of cancelling such designations immediately after the season of heaviest production. The amendment permitting cancellation of the designation of expressly designated plants at any time on condition that following such cancellation the plant could not be a pool plant on any basis until it had remained a nonpool plant through a continuous period of April through June is designed to discourage continuation of this practice.

Likewise, under present provisions of the order relating to the designation of plants on the basis of supplying the market with specified proportions of receipts from producers, the practice has developed of operating such plants so as to be pool plants in some months of the year and not in others. During the year 1956, the number of plants in the pool on the basis of supplying the market was higher during the months of April, May, June, October, November, and December than during other months. There were 18 plants in the pool on this basis in May and June and only 15 during the months of March, August, and September, and 12 in January and February. This in-and-out movement of plants constitutes one means of pooling the maximum amount of surplus milk handled at the plant and of keeping out of the pool the maximum amount of milk sold for fluid use in other markets. Practices of this type which result in the inclusion in the pool during a portion of the year of the reserve supplies for other markets should be discouraged.

Amendments provided for herein which are designed for that purpose are those:

(1) Requiring any plant included in the pool on the basis of supplying the market in the surplus months of April, May, and June to continue to be a pool plant in any of the months of July through March following when a substantial proportion of the milk from such plant is being used for fluid use in other markets, or in the alternative excluding such plant from the pool until after the next period of highest seasonal production, and

(2) Requiring that a plant be in the pool on the basis of supplying the market for a 12-month period before being eligible to be expressly designated as a pool plant.

These provisions under which plants would be excluded from participation in the pool under specified conditions for a limited period do not mean, of course, that the disposition of such milk for fluid use in the marketing area would be prohibited. It could mean, however, that at least for a temporary period, milk disposed of from these plants for fluid use in the marketing area would be subject to compensatory payments if classified in Class I-A.

Compensatory payments are payments to the producer settlement fund on milk disposed of in the marketing area from plants which are not pool plants. They are designed to bring substantial equity between the handler and producer of pool milk and the handler and producer of nonpooled milk with respect to sales in the marketing area. The provision for partial regulation through compensatory payments makes it possible for a handler operating outside the marketing area to use the facilities of fully regulated plants for disposing of surplus milk not needed for markets outside of the area without imposing the financial burden of such surplus on producers in the marketwide pool. Compensatory payments also make it possible for a handler outside the marketing area to maintain small amounts of regular sales in the marketing area without subjecting his outside sales to full regulation.

One objective in drawing boundary lines of the marketing area is to minimize the amount of sales in the area from distributors whose primary business is outside of the area, and also to minimize the amount of distribution outside of the marketing area from plants located within the area whose business is primarily within the marketing area. Complete elimination of such competition, however, is impossible for the New York-Northern New Jersey area regardless of where the line is drawn. As a result, there will be located outside of the marketing area a number of handlers who primarily are supplying customers outside of the marketing area but who historically have served a few customers located within the area. These handlers usually have a relatively high percentage of their milk in fluid milk utilization. To the extent that they are selling milk within the area, they are competing for sales with handlers located within the area who are fully regulated by the order with respect both to pricing and pooling. Outside of the area, they are competing for sales primarily with handlers located outside of the area who are not regulated by the order. Such handlers located near the borders of the proposed marketing area who receive milk directly from farmers compete for producers with fully regulated handlers some of whose plants are located within the boundaries of the marketing area. Some of such handlers operating plants in the marketing area also have a fluid milk utilization considerably higher than the average utilization for the market as a whole.

Requiring such outside handler to be fully regulated would mean that he would be required to account to the pool at the full Class I-B price for all of the milk sold outside of the marketing area which is in competition with milk not subject to regulation under the order. Such a requirement for a dealer, whose business primarily is outside of the marketing area, could readily induce him to abandon his sales in the marketing area. Permitting a handler to continue to sell milk to customers in the marketing area without any form of price regulation would give such handler a competitive advantage as compared to the handler whose primary business is within the area and who consequently is fully regulated.

A proposal was made that such handler outside the marketing area be required only to pay to his producers the utilization value of milk according to the class prices established under the order. That is, that he be required to pay for his milk on a handler pool basis rather than on a marketwide basis. It was contended that such a provision would provide equality between the pool handler and the nonpool handler because their required class prices would be the same. The handler in the area, however, has to equalize his utilization with other handlers, and his producers are paid on

the basis of a uniform price reflecting the utilization in the market as a whole rather than the utilization of his handler. It would be inequitable to a handler in the marketing area to require him to equalize his utilization while letting a handler outside the marketing area avoid equalization on milk sold in the area. An unfair advantage would accrue to the nonpool handlers in competition for producer supplies, and the entire program of marketwide equalization would be in jeopardy. Although it is not the purpose of the order to bring complete equality between regulated and unregulated handlers, it should at least provide equity between such handlers with respect to milk sold in the marketing area both as to class prices and as to payments to producers.

Another proposal made was that the handler outside the marketing area be required to pay full compensatory payments provided for under the order on nonpooled milk sold in the marketing area. This would return to such handler a price which would enable him to pay his producers for that particular milk sold in the marketing area about what he could pay if he sold such milk to a manufacturing outlet. It would not, however, affect what he could return to his producers for the balance of his milk. In order not to give the handler located outside the marketing area and distributing a small amount of milk in the marketing area an advantage over the fully regulated handler, and at the same time, to avoid placing such handler the major portion of whose sales is outside of the marketing area in competition with unregulated milk, at an undue disadvantage with his major competition, the order should provide that the outside handler have a choice of either pooling his entire receipts or of paying the full compensatory payment on his sales within the marketing area. The fully regulated handler in the marketing area is protected in either case, and the handler outside the marketing area is placed in a position of selecting whichever alternative is more favorable in his particular situation. Unless safeguarded, there is danger of this provision constituting a means of pooling surplus milk for other markets through token sales to the marketing area. Accordingly, only those handlers disposing of a substantial percentage of their milk for fluid use should be eligible to exercise the option of being fully regulated. Inasmuch as handlers, not presently regulated under the order and who distribute milk in the marketing area from plants outside the area, have relatively high fluid utilization a percentage requirement of 55 percent in Class I (Class I–A and I–B combined) will not disturb the status of handlers currently selling small amounts of milk in the marketing area, but will eliminate the danger resulting in token sales in the marketing area from plants not engaged primarily in the distribution of fluid milk. This option should not constitute a means by which plants otherwise regulated under another Federal order could jump back and forth between orders to obtain advantages over other handlers under one or both orders because of temporary price differences or to take advantage of differences in pooling provisions of the orders involved. Accordingly, the operator of a plant which except for this option would be regulated under another Federal order should be eligible to exercise the option only if the percentage of its milk in Class I–A exceeds its percentage of Class I–B milk disposed of in the marketing area defined under the other Federal order.

All handlers located outside the defined marketing area who sell milk in the marketing area would not be required, of course, to choose one of the alternatives heretofore described. Many dealers outside the marketing area who distribute milk in the area are operators of pasteurizing plants, or buy milk from pasteurizing plants whose source of milk is country plants rather than direct receipts from farmers. Some of this country plant milk is milk purchased from plants which will be fully regulated under the New York-Northern New Jersey order. Under the accounting procedure to be employed, milk received by the pasteurizing plants from pool plants will be allocated first to Class I–A milk distributed in the marketing area. Unless sales in the marketing area by the outside dealer exceeded receipts from pool sources, neither full regulation of the outside dealer nor an obligation to make compensatory payments would result.

Exceptions were taken to failure to eliminate provision for compensatory payments pursuant to the proviso of § 927.83 (b) (1). In support of the exception it was contended that the circumstances under which provision was made in 1953 for such payments (and the companion provision of Order No. 61) no longer exist primarily because of the marketing area expansion herein provided. It is found, on the contrary, that expansion of the marketing area or other changed conditions does not eliminate the need or basis for such payments. Discontinuance of provision for such payments would invite the resumption of practices and consequences prevailing prior to adoption of such provision. The factual situation most material in this connection is that the provision continues for marketwide pooling under Order No. 27 and for individual handler pooling under Order No. 61. Accordingly, such exceptions are denied.

2. *Class I–A price.* The major proponents of a single order proposed that no change be made in the present formula for pricing Class I–A milk and estimated the result to be an increase in the Class I–A price of about 49 cents per hundredweight due to an expected increase in the percentage of total Class I milk in the pool. Other proposals were made that the formula be changed to reflect the expected increase in fluid utilization in such a way that the level of the Class I–A price would remain unchanged.

Concerning the level of the Class I–A price, it is found:

(1) That the Class I–A price level and the wholesale price level in relation to the cost of production index are within the ranges specified in the order, which ranges, if exceeded for more than three consecutive months, require the calling of a hearing to consider those and other economic conditions relating to the pricing of Class I–A milk, or a determination by the Secretary that such a hearing should not be held together with reasons therefor.

(2) That the Class I–A price in excess of the Midwest condensary price has been running close to the specified limit of $2.50 for the past several months, averaging $2.17 for the year 1956, and actually exceeded such limit in November and December 1956 and in January 1957.

(3) That the supply of milk in relation to fluid sales appears more than adequate for the foreseeable future. Milk for all Class I uses and for fluid cream in the marketing area accounted for 55 percent of receipts from producers for the year 1956, and for 74 percent in November, the month of lowest production.

(4) Both the Class I–A price and the uniform price in recent months have been substantially above the same months a year earlier. Such increases in the Class I–A price ranged from 31 cents in November 1956 to 56 cents in March 1957, and increases in the uniform price ranged from 23 cents in October 1956 to about 50 cents for the months of November 1956 through February 1957.

(5) The returns to producers under the amended order, due to factors other than a higher Class I–A price, are expected to be substantially higher than they otherwise would be. Proponents of a single order estimated an increase of 23 cents had the amended order been in effect for the year 1955.

It is concluded that adjustments should be made in the Class I–A price formula to prevent any substantial increase in the general level of the Class I–A price resulting solely from expansion of the marketing area.

There appear to be three possible ways of accomplishing that result; (1) suspending operation of the formula and fixing specified Class I–A prices for a period of one year or more pending availability of receipts and utilization data under the amended order, (2) adjusting the base utilization percentage to reflect what would have been the situation in 1948 had the territory now being added to the marketing area been included in the marketing area in 1948, or (3) changing the formula so that the factors used therein are based on conditions in 1955 rather than in 1948. The third alternative has the advantage of being the only one for which adequate data are contained in the record.

The simple average of Class I–A prices for 1948 was $5.66, the base price used in the formula. The simple average of Class I–A prices in 1955 was $5.20. Accordingly, the $5.66 base price used in the formula should be changed to $5.20.

For the year 1955, the weighted average of monthly percentages of pool milk in Class I (A, B, C) was 47.0 and the simple average was 48.1. The weighted average, had the order covered the expanded area, would have been 55.1, or 8.1 points higher than the actual.

The simple average of monthly Class I utilization percentages in 1948 was 63.6 and the weighted average was 61.4. The simple average for 1948 is used as the base factor in the formula. With the expanded pool yielding an increase of 8.1 points in the weighted average a similar increase would be expected in the simple average. A factor of 56.2, therefore (48.1 plus 8.1), should be substituted for the 63.6 in the formula. The utilization percentages for any of the 36 months used in the formula for months prior to the effective date of the amendment herein provided should be increased by 8.1 points.

The wholesale commodity price index as issued on a 1947–1949 base should be converted to a 1955 base rather than to a 1948 base as at present.

The cost of production index for use in measuring the adequacy of the Class I–A price should be the index computed by the New York State College of Agriculture at Cornell University adjusted to a 1955 base. Adjustments for specified costs in Pennsylvania and Vermont should be eliminated pending further consideration at a hearing. In the meantime, the Cornell index should be satisfactory for the purpose for which it is used since it is currently 84 percent of the weight in the index currently used. New York State will continue to supply the major part of the milk in the new pool for the expanded area. The provision for using only 90 percent of the cost index in paragraph (b) (2) of the formula should be eliminated inasmuch as the reasons for that percentage are eliminated when the index is changed from a 1948 to a 1955 base.

There is no need for using the adjusted Class I–A pricing formula in computing Class I–A prices for the first two months following the effective date of amendments herein set forth since the computation of such prices will not involve the use of utilization percentages under the amended order for the expanded marketing area. Accordingly, as a means of more surely and effectively implementing the foregoing stated objective relating to change in the level of the Class I–A price, the Class I–A formula provisions in effect for the month immediately prior to the effective date of other amendments provided for herein should be used in computing Class I–A prices for the first two months following the effective date of such other amendments.

Handlers contended that the shift of basing points for mileage zones from Columbus Circle to an arc of basing points would increase the level of Class I–A prices by about 2 cents. On the other hand, a shift from country plant to city plant classification will decrease somewhat the over-all volume of Class I–A to which the Class I–A price applies. Changing transportation differentials will change Class I–A costs for every zone execpt one, and in most zones by more than 2 cents. Considering the offsetting effect of these two minor factors, and the possible minor effect on the level of the Class I–A price of shifting to a 1955 base, it is concluded that no special adjustment in the price should be made to recognize the change in price resulting from the use of the arc of basing points.

As to part (b) of this issue (No. 2) as above listed, it is concluded that no provision should be made establishing for Class I–A milk distributed in the Upstate extension of the marketing area a price lower than for Class I–A milk shipped to the present marketing area.

A proposal was made by a group of "Upstate dealers" that for a period of one year the price for Class I–A milk distributed in the Upstate extension of the marketing area should be 40 cents less than for other Class I–A milk in order to reduce the impact of higher resale prices reported to be contemplated coincident with extension of the marketing area. It was not established that payment of the full Class I–A price would have any significant effect on fluid milk sales, or that not having been regulated previously constitutes a sound reason for fixing a lower Class I–A price. Establishment of the proposed lower Class I–A price in the Upstate area would be inconsistent with the principle of uniform prices to all handlers for the same use, and would tend to defeat the basic purposes of the marketing area extension.

3. *Milk for fluid use outside the marketing area.* It is concluded that fluid milk sold outside of the marketing area should be classified as Class I–B and that the present Class I–C classification be eliminated.

At the present time, fluid milk sold outside the marketing area, with the exception of that sold in the State of New York and in Northern New Jersey, is classified as Class I–B and priced at the Class I–A price. Fluid milk sold in the State of New York outside of the present marketing area and in Northern New Jersey is classified as Class I–C and priced at 20 cents per hundredweight higher than the uniform price.

Handlers contended that by extending regulation to include Northern New Jersey and Upstate New York, a substantial number of dealers who heretofore have been unregulated will be regulated and that these dealers have substantial fluid sales in bulk outside the area as well as in consumer packages on routes which extend out of the proposed marketing area in Upstate New York and along the southern marketing area boundary in Northern New Jersey. They pointed out that unless the Class I–C price is continued for fluid sales in Upstate New York outside the extended marketing area and that, unless the I–C price is established for other fluid sales outside of the extended marketing area, regulated handlers would lose these sales to unregulated dealers who would be in a position to undersell regulated handlers with the result that milk presently sold as fluid would be utilized in manufactured products. Dealers also contended that unregulated handlers could obtain additional supplies needed to take care of an increase in their fluid sales by obtaining additional producers on a year-round basis or by taking producers from pool handlers when they needed additional milk and releasing them during periods in which fluid sales decreased, and that pricing provisions of an order should not price regulated handlers out of markets that they are qualified to serve.

About 97 percent of the total Class I–C milk sold in 1955 was sold in that territory being added to the marketing area. Only about 18.4 million pounds were sold outside that territory; 7.7 million pounds in northern New York and 10.7 in western New York. Sales of Class I–C milk during the vacation months of July and August accounted for 45 and 37 percent, respectively, of these totals for the year. The amounts in northern New York varied from a low of 131 thousand pounds in the month of May to a high of 1,781,000 pounds in the month of July. In western New York, the variation was from a low of 120 thousand pounds in May to 2,051,000 pounds in the month of August.

Extension of the marketing area in Upstate New York as herein provided will result in a substantial reduction in the number of unregulated handlers and plants from which to obtain supplies of milk for fluid use outside the marketing area. Many plants supplying milk for use outside the extended area in Upstate New York also have substantial sales within the area and would be regulated. Also, unregulated handlers in the territory outside the marketing area in Upstate New York presently have a high percentage of their milk in fluid use, and consequently, would not be in a position to increase their fluid sales, particularly during periods of highest Class I–C sales, without increasing their receipts from farmers. There appears to be little incentive for the abandonment of sales within the marketing area (thus avoiding regulation) in order to be in a position to supply unregulated milk in relatively small volumes to the widely scattered outlets in northern and western New York. Any plant operator, however, will have the choice of operating either in a manner so that he will be regulated or so that he will not be regulated.

Extending the marketing area to include Northern New Jersey will regulate dealers not previously regulated who have some fluid bulk and consumer packaged route sales extending into southern New Jersey from plants inside the marketing area. To a considerable extent, this competition outside the marketing area in southern New Jersey will be with handlers with plants located in southern New Jersey but from which milk also is distributed within the marketing area, and consequently, will also be regulated. In addition, the milk supplies of other dealers in southern New Jersey with whom regulated handlers may be in competition will be subject to regulation either by the New Jersey Office of Milk Industry or under the Philadelphia order (No. 61).

Many presently unregulated out-of-State sources of supply for southern New Jersey also have substantial outlets in Northern New Jersey, and thus will become regulated upon extension of the marketing area. The number of unregulated sources of milk for southern

New Jersey will be substantially smaller than at present.

The pricing of milk for fluid use outside the marketing area has been a major problem since issuance of Order No. 27 in 1938. The centers of population in which substantially all of the Class I–C milk now is sold have relied for a long period of time for a substantial part of their fluid milk requirements upon sources of supply in the same production area as those upon which the defined marketing area depends for its supply of fluid milk. Upon issuance of the order in 1938, many of these common sources of supply became subject to regulation under the order. Instead of including such other consuming centers (principally Northern New Jersey and Upstate New York) in the defined marketing area under the order as originally promulgated, special pricing provisions were adopted recognizing the historical dependence both of such excluded areas and the defined marketing area upon a common source of supply. Such special pricing provisions were in recognition of the absence of effective regulation applicable to the entire supply of milk for all areas in which sales were made by regulated handlers and to avoid disruption of long established patterns and practices of handling and distribution involving substantial volumes of milk.

When the order first became effective, milk for fluid use in such territory outside the marketing area was excluded from the pricing provisions of the order. This practice was soon found to be unsatisfactory, and since July 1, 1941 milk for such out-of-area fluid use has been classified as Class I–C and priced at the uniform price, plus 20 cents.

Thus, provisions of the order as originally promulgated deviated from the usual pattern and basic policy otherwise applied in pricing milk for fluid use in markets under Federal regulation. There is no other Federal order containing provisions comparable to the Class I–C pricing provision under Order No. 27. Elsewhere, milk disposed of for fluid use both inside and outside the marketing area is regarded as a primary use and priced to bear its full share of the extra production and marketing costs associated with assuring an adequate and dependable supply of milk for fluid use. This pricing policy was not followed in the New York market because of the conditions and circumstances cited.

However, expansion of the marketing area to include Northern New Jersey and Upstate New York as herein provided eliminates the basic reasons for Class I–C pricing in the first instance, and removes any acceptable basis for continuation of a provision under which milk for fluid use outside the marketing area is priced lower than for fluid use in the marketing area. Special pricing provisions are no longer justified for the relatively small and highly irregular volume of milk which may be sold outside the expanded marketing area.

A proposal was made that milk disposed of for fluid use outside the marketing area (other than in packaged form on routes from regulated plants) during the months of July through December be accounted for at the Class I–A price, plus 10 percent. This proposal was designed either to exclude from the pool sources of milk for fluid use outside the marketing area or to provide for compensating the pool for carrying the reserve supply associated with such out-of-area sales. Such a provision would be inconsistent with the established practice of establishing the same price for milk for fluid use both within and outside the marketing area and could result in milk being used in Class III which otherwise would be sold for fluid use outside the marketing area at the full Class I–A price. The need for such a provision was not established as a means of accomplishing the purpose for which it was proposed particularly in view of the amendments herein provided relating to the designation and cancellation of pool plants under the order for the expanded marketing area. Adoption of this proposed provision should be deferred at least until the extent of and manner in which pool milk is utilized for fluid use outside the marketing area can be ascertained and analyzed.

4. *Fluid cream.* Producer proponents of a single order proposed that milk used for fluid cream and disposed of in the present marketing area be classified as Class II–A and continue to be priced at the Class II level and that milk used for fluid cream and disposed of in the areas proposed for regulation in Upstate New York and in Northern New Jersey be classified as Class II–B and priced at the present Class III level.

Dealers proposed that the Class II classification in Order No. 27 be eliminated and that milk used for fluid cream and disposed of in all portions of the area under regulation, including the present marketing area, be classified as Class III and be priced at the present Class III level.

Northern New Jersey is an "open cream market" with applicable health regulations not requiring cream to be obtained only from those sources approved as sources of milk for fluid use. Accordingly, cream for fluid use in Northern New Jersey will be available from unregulated sources at open market prices. Prices established by the New Jersey Office of Milk Industry for milk used for fluid cream are similar to the Class III price under Order No. 27.

Regulations of the Department of Health of the State of New York require that cream for fluid use be obtained only from sources approved as sources of fluid milk. It was proposed, however, that milk used for fluid cream in the Upstate area be classified in Class III on the basis that (1) the price presently established (Class II) for milk for fluid cream is too high even in the present marketing area, (2) milk used for fluid cream in the Upstate area is presently priced at the Class III level, and (3) that a substantial increase in the price of fluid cream in the Upstate territory probably would result in a substantial reduction in fluid cream sales.

For the year 1955, the Class II price averaged 82.5 cents higher than the Class III price, and it was estimated that increasing the price of milk used for fluid cream from the Class III to the Class II level would result in an increase in the price to consumers of 6 cents per half pint of heavy cream.

In 1955, the volume of milk used for fluid cream in Upstate New York amounted to 175 million pounds and 230 million pounds in Northern New Jersey. This is an important outlet not only for milk presently regulated under the order but also for milk of handlers which are presently unregulated, but to most of whom regulation for the expanded area will apply.

The proposed reduction from the Class II to the Class III level in the price of milk used for fluid cream in the present marketing area was on the basis that (1) the Class II price for fluid cream is too high in relation to the prices established for milk used for fluid cream in other nearby Federally regulated markets, (2) the volume of pool milk used for fluid cream in the marketing area had declined substantially during the period since the order became effective, and (3) the present Class II price encourages consumers to purchase available substitutes.

There is no basis for determining to what extent, if any, the sale of fluid cream in the present marketing area would increase as a result of reducing to the Class III level the price of milk used for that purpose. Consequently, it is impossible to determine whether the increased volume would be sufficient to offset the reduction in returns to producers resulting from a reduction in the price. The per capita consumption of fluid cream in the present marketing area is higher than in most other nearby markets.

It is concluded that, at least for the present, milk used for fluid cream (and other uses presently in Class II) disposed of outside the present marketing area should be priced at the Class III level and that milk used for fluid cream disposed of in the present marketing area should continue to be priced at the Class II level. The establishment of a new classification (Class II–B) as proposed to give identity to milk used for fluid cream outside the present marketing area, as distinguished from other Class III uses, is not necessary since volumes of milk used for fluid cream outside the marketing area will continue as at present to be appropriately identified in the statistical data published by the market administrator.

5. *Class III classification and pricing.* It is concluded that there should be no special price for milk in Class III for local uses at pasteurizing and bottling plants in the Upstate extension of the marketing area.

Upstate dealers proposed that the Class III price at Upstate pasteurizing and bottling plants be 20 cents lower than the price applicable at other plants on the basis that their facilities for handling surplus milk are limited and that their costs of manufacturing would be higher than for larger volume specialized manufacturing plants.

The Class III price under the order is a price designed to provide the maximum return to producers and at the same time result in complete utilization of all milk in excess of fluid requirements. It was

not shown that the attainment of these objectives required a reduction of 20 cents in the price of Class III milk at pasteurizing and bottling plants in the Upstate territory. Since all Class III milk is being adequately handled, no sound purpose would be served by a shift of milk from plants where it currently is manufactured to other plants, particularly when such a shift involves a reduction in handling efficiency and in returns to producers.

The order presently provides, subject to specified conditions, for classification in Class III during the months of March through July of milk delivered in bulk to an establishment (other than a plant) outside the marketing area at which food products are processed and packed in hermetically sealed containers. Under present provisions, milk so utilized during the months of August through February would be in Class I–C. With the marketing area extended, however, to include Upstate New York territory and Northern New Jersey and with the elimination of Class I–C pricing, all milk so utilized would be in Class I–A since the food processing establishments referred to are located in the Upstate extension of the marketing area. Evidence presented indicates the desirability of continuing the classification of such milk in Class III. This should be accomplished by amending § 927.37 (e) (4) of the order by eliminating reference to "outside the marketing area" the months of March through July, thus providing for classification of such milk in Class III during all months.

Dealer representatives proposed that milk lost in transit for any reason or destroyed at a plant by fire, flood, riots or similar casualty should be classified and priced as Class III upon proof of such loss to the satisfaction of the market administrator. They pointed out that such losses of milk resulted in producers being paid the Class I–A price for milk which was not utilized as fluid and for which the handler receives no remuneration.

Producers shoud not be expected to assume the risks involved in milk handling after the milk has been delivered by producers to the handler's plant. Since insurance relating to such losses is available to handlers, it is unnecessary to provide for the proposed lower price to producers.

It was proposed at the hearing that milk used in the manufacture of roller processed nonfat dry milk be priced separately from milk used in the manufacture of spray process nonfat dry milk. Proponents contended, (1) the Commodity Credit Corporation treats roller powder and spray powder as two different commodities and supports spray at higher prices than roller, (2) the support price generally sets the market prices for these supported products in a free market, and (3) continuation of the same pricing for milk used in both processes will force regulated handlers to install spray equipment and become large manufacturing handlers.

Dairy product prices and yield factors employed in the Class III formula are designed primarily to reflect changes in the market value of products made from Class III milk, and purport to constitute only an approximation of the actual returns to handlers from the sale of products made from Class III milk. Since actual product yields and product prices obtained by handlers may be either higher or lower than the yield factors and product prices used in the formula, it follows that only by coincidence is the handler's operating margin between the amount received for products and the producer price for Class III milk equal to the handling and manufacturing allowance specified in the formula. Proposals to use only market prices for roller process nonfat dry milk solids in pricing Class III milk from which the skim milk is used to make that particular product run counter to the concept of pricing here employed. Product prices are used in the formula to reflect changes in the general market value of milk for a variety of uses, with the choice of uses being exercised by those handling the milk. It is neither economically sound or administratively feasible to attempt to establish a separate minimum producer price for milk used in each one of the considerable number of products for which Class III milk may be utilized.

It is concluded that no change should be made in the nonfat portion of the formula for the pricing of Class III milk and that milk used in the manufacture of spray and roller nonfat dry milk should continue to be priced as at present.

The order presently requires the addition of three cents to the average butter price used in computing the Class III price for the months of August through February whenever the utilization adjustment percentage used in computation of the Class I–A price is 92 or higher. The figure 92 is no longer appropriate because of the increase in fluid utilization under the order associated with expansion of the marketing area and because of the change from 1948 to 1955 in the base period used in computation of the Class I–A price. Due to these other changes the utilization adjustment figure of 107.5 is comparable with the present figure of 92 and, accordingly, should be substituted therefor.

6. *Fluid skim differential.* The fluid skim differential provisions should be applied in the expanded marketing area to the same products and at the same rate as presently applicable in the marketing area.

The producer proponents of the single order proposed such extension. The proponents of a separate order for New Jersey proposed that the products covered by the fluid skim differential be classified as Class I. Dealers proposed that the provisions be eliminated from the order.

The products covered by the fluid skim differential are essentially fluid milk products having generally a butterfat content about the same as or less than whole milk. (Half and half, which is essentially the product which would result from the mixture of equal parts of whole milk and light cream is an exception, but the differential applies to only part of the skim milk in this product.) The application of the fluid skim differential is a method of attaching a fluid milk price to the skim milk used in these products. The reasons for expanding the marketing area to obtain a Class I–A price for all of the fluid milk in such marketing area are equally valid for supporting the application of the fluid skim differential to the products covered thereby throughout such marketing area.

The principal objections advanced by dealers to the fluid differential were as follows:

(1) New Jersey dealers may reconstitute fluid skim milk from nonfat dry milk and water. Such a product, however, must be labeled "reconstituted". There was no evidence either as to the extent of such reconstitution or the consumer acceptance of such a product.

(2) There has been a great increase in the sale of packaged nonfat dry milk to consumers. There was no evidence, however, that such sales have displaced sales of fluid skim milk either in the present or expanded marketing area. Loss of such sales will not reduce the return to producers below the level which dealers propose to return to producers for such sales.

(3) If the present Class II price were eliminated as proposed by the dealers, and the differential were based on the difference between the present Class III price and the Class I–A price, the differential would be too high. Since the present Class II price is not being eliminated, the increased rate objected to will not be applicable.

7. *Location differentials and mileage zones.* The order should be amended to provide for the following location differentials:

(1) Differentials which are applicable to class prices and which are paid by handlers on Class I–A, Class I–B, and fluid skim milk should be graduated on a basis of 1.4 cents per ten-mile zone throughout the milkshed. Differentials applicable to other classes should not be changed,

(2) The transportation differentials applied in making payments to producers at the uniform price should be the same as for Class I–A milk,

(3) Provisions for special differentials to be paid out of the pool in connection with payments to nearby producers should be modified so that such differentials are paid by mileage zones on the basis of the location of farms. The rate of such differentials should vary by zones and with the percentage of pool milk utilized in Classes I–A and I–B (on an annual basis). When such utilization is between 55 and 60 percent, the rates should range from 40 cents in the 1–50 mile zone to 5 cents in the 111–120 mile zone. The rates should decline with higher fluid utilization and be completely eliminated when fluid utilization exceeds 80 percent. Likewise, the rates should increase with lower utilization and range from 64 cents in the 1–50 mile zone to 8 cents in the 111–120 mile zone when utilization is below 45 percent. The rate also should decline if the production of milk subject to the differential increases in relation to total Class I sales,

(4) Direct delivery differentials should be paid by handlers based on the location of plants by mileage zones in relation to

metropolitan New York-Northern New Jersey, and at certain locations in Upstate New York. Such differential related to the metropolitan district should be 25 cents per hundredweight in the 1 to 10 mile zone, and should decline 5 cents for each 20 miles thereafter until they are eliminated in the 71–80 mile zone.

Several proposals were made for differentials related to the location of the farm where the milk is produced; the geographical location of the plant to which the milk is delivered; the operations carried on at the plant where the milk is delivered, and the method of delivery by producers.

Order No. 27 now provides for a special location differential which is paid to producers delivering to plants located in counties in or near the present marketing area. The major part of the differential of 30 cents per hundredweight for deliveries to plants in the marketing area and 20 cents per hundredweight for deliveries to plants in the counties outside the marketing area is paid out of the pool. An additional five-cent differential is paid by handlers. There is a variation of this general provision with respect to farmers delivering milk by bulk tank under which the differential is based on the location of the farm or the history of the farm as well as on the location of the plant to which the milk is delivered.

The principal location factor influencing the economics of pricing milk in the New York-New Jersey milkshed is location of the farm or the location of the plant to which milk is delivered in relation to metropolitan New York-Northern New Jersey. In order to obtain sufficient milk to supply the needs of this metropolitan area, milk must be obtained from as far as 400 miles from the area. It is this necessity of reaching such long distances to obtain supplies that provides the chief price differential factor for milk produced throughout the milkshed whether consumed in the metropolitan area or elsewhere. Urban and rural areas throughout the milkshed obtain their supplies from the same general sources as the metropolitan area. Demand for milk for local use in the milkshed does not materially change the price of milk in local markets in relation to other parts of the milkshed because such markets usually require a small percentage of the milk produced in the vicinity. The supplying of local markets, however, forces the metropolitan area to reach farther for its needs, and thus effects the price level of the milkshed as a whole. Location differentials, therefore, must be based primarily upon the location of farms and plants in relation to the metropolitan New York-New Jersey area.

The center of population of metropolitan New York-New Jersey is within the boundaries of New York City. Thus, the focal point for the location of plants and producers should be within New York City. Under the present order, distances are determined from Columbus Circle.

Producer proponents of a single order proposed that distance be measured from an arc of basing points approximately 15 miles from New York City. The Milk Dealers Association of Metropolitan New York, Inc., recommended that distances be measured from a single point in New York City. Proponents of a separate order for Northern New Jersey recommended that the basing point under that order be at Newark, a city in the metropolitan area, but approximately 13 miles from Columbus Circle.

The focal point of the proposed arc of basing points is located approximately at Columbus Circle. The milkshed is so situated that any milk transported from the milkshed to the center of population would have to pass through or near one of the basing points on the proposed arc. The relationship between various plants in the milkshed, therefore, would be approximately the same whether the distance is measured from the focal point in New York City or from the arc of basing points outside of the City.

The proposed arc would have certain advantages. It would point up the fact that it is the relationship of location to the metropolitan area as a whole rather than to a specific point in the metropolitan area that is important. Milk produced and delivered to plants in the State of New Jersey would be zoned on the basis of distance to a New Jersey basing point. Plants in Westchester County, previously included arbitrarily in the 1–10 mile zone, would continue to be in a nearer zone.

The major objection of the dealers to the arc of basing points is their contention that its use would increase the price of Class I–A milk. Since any effect of the change in basing points on the Class I–A price, or other class prices, would be relatively uniform throughout the milkshed, it is a factor to be considered in determining the level of class prices rather than in connection with the method used in zoning plants and producers.

Dealers also requested that the method of measuring mileage be revised to give recognition to those routes which milk trucks use rather than recognizing only routes with the shortest highway mileage. They contend that use of larger trucks requires use of better roads, and that many of the highways now used for purposes of zoning under the order are impractical. The use of better highways and larger trucks results in bringing distant areas economically closer to the market. However, the fact that an improved highway is available for more efficient hauling of milk by tank truck, but which results in a longer haul from plant to market than would be the case in the absence of such improved highway, does not justify a conclusion that the plant using such route should be considered farther from market than it would in the absence of such improved highway. Distance is only one of the factors affecting hauling rates. The use of mileage zones is designed to establish general relationships between prices to be paid at plants in the milkshed, and is not designed to establish truck routes to be used in transporting milk or to precisely equate the cost of milk to handlers throughout the milkshed.

It is therefore concluded that (1) The arc of basing points should be used in determining the location of country plants, (2) The method of determining highway mileage should continue as provided in Order 27, and that (3) Because of the decline in the transportation of milk by rail, and because of the use of the arc of basing points, the alternative method of determining distance by railroad mileage to New York City terminals should be eliminated.

Location differentials will be discussed herein under three headings as follows:

1. *Transportation differentials.* Differentials applicable both to class prices paid by handlers and to uniform prices received by producers which are designed primarily to recognize the differing values because of the cost of transporting milk and milk products from country plants to metropolitan New York-New Jersey.

2. *Nearby differentials.* Differentials paid out of the pool, applicable to the uniform price to producers located relatively near the metropolitan New York-New Jersey area, and which reflect factors other than the cost transportation.

3. *Direct delivery differentials.* Differentials paid by handlers directly to producers delivering milk to specified locations reflecting factors other than those associated with varying transportation costs.

*Transportation differentials.* The most important factor affecting the value of milk at different locations in the New York-New Jersey milkshed is the difference in the cost of hauling milk, or its products, to the New York-New Jersey metropolitan area from the plant where it is received from farmers.

When Order No. 27 was promulgated in 1938, the differences in the value of milk for fluid purposes and differences in the uniform price were based on differences in railroad tank car rates from plants to New York City terminals. At that time, the tank car rate was 31 cents per hundredweight from a plant in the 201–210 mile zone. The differential for the 1–10 mile zone was 15 cents more than that for the 201–210 mile zone. This indicates that the fixed charge for transportation was 16 cents per hundredweight and the variable charge was approximately ¾ of a cent per 10-mile zone. No change since promulgation of the order has been made in the differentials applicable to the uniform price or the Class I–A price.

Tank trucks have become the most important means of hauling milk from country plants to metropolitan New York-New Jersey. Rates for hauling milk from the 201–210 mile zone to New York City by tank truck vary but average approximately 38 cents per hundredweight. This represents a fixed cost for hauling of 10 cents per hundredweight and a variable cost of 1.4 cents per ten miles.

Differentials to reflect the expected differences in value of fluid milk (Classes I–A and I–B) because of transportation costs to the metropolitan area should be set so that class prices vary by 1.4 cents for each 10-mile zone. Using the 201–210 mile zone as the base zone, differentials should increase the base prices by 1.4 cents for each zone between the 201–210 mile zone and the 1–10 mile zone. Likewise, the differentials for zones beyond the 201–210 mile zone

should decrease the prices by 1.4 cents for each ten miles from the base zone.

It was proposed in the hearing that the differential applicable to Class I prices be tapered off so that such prices beyond the 250-mile zone would be reduced less rapidly than at the rate of 1.4 cents per zone. The reason given for such tapering was that sufficient milk is produced within 250 miles of metropolitan New York-New Jersey to meet the requirements for fluid milk. This is true at present but a considerable amount of more distant milk has been required in the short production months of earlier years when supplies were less abundant relative to fluid sales. Furthermore, the practice in the milkshed, even with the present tilt in favor of nearby milk, has been to obtain milk for fluid use from all zones. In November of 1956, about 20 percent of milk for fluid use was received at plants beyond the 250-mile zone. In the interest of uniformity among handlers and sources, the differential rate of 1.4 cents per 10-mile zone should apply throughout the milkshed.

The most distant plant in the milkshed approved either for the marketing area or for Northern New Jersey is presently between the 401–425 mile zone (and two zones nearer under revised zoning); the differentials do not need to be carried beyond this point. Therefore, the table of differentials should be so limited that the last zone is 401 and over, rather than 491 and over as at present.

There were three proposals with respect to transportation differentials applicable to Class II and Class III milk. The proponents of the single order proposed that such differentials be adjusted upward in areas relatively close to metropolitan New York-New Jersey to discourage the use of nearby milk for Class II and Class III purposes. A handler with a manufacturing plant located relatively near the metropolitan district proposed that differentials on Class II and Class III milk be reduced so that the cost of Class II and Class III milk in the nearby zones would be approximately the same as in distant zones. It was contended that nearby plants could not handle Class II and III milk in competition with distant plants. Proponents of separate orders proposed a reduction in the differentials on Class II and Class III milk to more accurately reflect differences by zones in the cost of transporting products made from such milk. When a greater spread in Class I prices based on distance is being established, the use of nearby milk for Class II and III purposes should not at the same time be encouraged by decreasing the differentials applicable to milk in those classes. However, the justification for increasing such differentials in the nearby zones, thus increasing the price of Class II and Class III milk to handlers operating plants relatively close to the metropolitan district, was not established. Such differentials should remain unchanged.

The order presently provides for transportation differentials applicable to the uniform price which are the same as those applicable to the Class I–A price. The proponents of the single order for the entire area and the separate order for Northern New Jersey poth proposed that the uniform price differential be the same as the Class I–A differential, except that the proponents of the single order proposed that minus differentials for zones beyond the 201–210 mile zone be midway between those currently in effect and the full minus differentials resulting from the use of 1.4 cents per zone. Others proposed that the present schedule of transportation differentials not be changed. Differences in the uniform price by zones are properly related to the cost of transporting fluid milk rather than some manufactured dairy product. A producer who wished to deliver to a plant in the metropolitan area or nearer than the plant in his vicinity would be required to pay for hauling whole milk. The prices to producers sharing in returns from fluid sales should reflect differences in its value for that purpose depending upon location. Accordingly, the 1.4-cent differential rate per zone should apply to the uniform price throughout the milkshed.

*Nearby differentials.* Order No. 27 has always provided for special location differentials applicable to milk in the counties relatively near the metropolitan area. These differentials traditionally have applied to milk delivered to plants in such areas, but with the coming of bulk farm tank delivery, the location differentials with respect to that type of delivery have been based on location of the farm and the history of the farm in relation to such differentials as well as on the location of the plant to which the milk was delivered. The latter method of application was designed as a temporary measure to handle an emergency problem which arose under the original location differential provisions.

Special location differentials (except for bulk tank delivery) have been paid on the basis that the location of the plant also indicates with sufficient accuracy the location of the farms serving such plant. Because of the increasing length of haul from farm to plant due primarily, but not entirely, to the development of bulk farm tank pickup, the proponents of a single order for New York-New Jersey proposed that nearby location differentials be applied on the basis of the location of the farm from which milk is delivered rather than on the basis of the location of the plant to which such milk is delivered.

Several factors and considerations have been advanced in support of nearby location differentials among which are (1) increased cost of production in the area, (2) they have been paid historically, (3) the inherent value of nearby milk to the market because of its availability and the high quality of such milk, (4) the more intimate relation between producer and dealer, (5) they compensate nearby producers for a relatively more even seasonal production, and (6) they compensate the nearby producers for the reduction in his share of the fluid market resulting from participation in a marketwide pool.

Cost of production is a criterion for establishing prices under an order only to the extent that it affects the supply of milk for the market. Orders do not guarantee a price equal to or exceeding the cost of production, and therefore, producers generally should not be required to pay a minority an increased return because of high production costs. Accordingly, it is concluded that factor (1) above does not provide a legitimate basis for nearby location differentials. A history of paying nearby location differentials (factor (2) above) has merit only if the historical basis for such differentials is found to be sound, and therefore, must be considered in the light of other factors.

Factors (3) and (4) above, to the extent that they are valid, are related to the extra value of such milk to the handler who buys it rather than to producers generally and are, therefore, appropriate for consideration in connection with direct delivery differentials payable by handlers rather than out of the pool.

Factors (5) and (6) of those listed above are the only ones representing values for which compensation appropriately may be derived from the pool rather than directly from the handler receiving the milk.

The seasonal pattern of milk production in the nearby area is more uniform throughout the year than for the milkshed as a whole, and thus is a possible basis for location differentials payable out of the pool. However, because of the existence of considerable variation in the seasonal pattern of production among individual producers in all sections of the milkshed, it was proposed that a base rating plan be adopted as a more equitable plan of apportioning returns to producers to compensate for uniform seasonal production.

Historically, the percentage of the milk produced nearest to metropolitan New York-New Jersey which is used for fluid purposes is higher than the percentage of more distant production which is used in fluid form. Over 92 percent of the milk received in 1956 at pool plants within 125 miles was for fluid use. Nearby producers have been able to get a price higher in relation to more distant producers than can be accounted for by the advantage in the cost of transportation to market. When milk is pooled on a marketwide basis, the nearby producer is paid on the basis of the average utilization of all milk in the milkshed rather than according to the utilization of his milk. Together with equalization, however, he obtains the benefit of an established Class I price which may be higher than in the absence of regulation, and is protected to some extent from the loss of a market because of competition of cheap milk from more distant sources. The distant producer also benefits from an established Class I price, and in addition gains a larger share of the fluid market than is likely without equalization.

In order to provide benefits of more nearly equal value both to nearby and distant producers, some form of special location differential is needed, the effect of which is to give the nearby producer a somewhat greater share of the high-priced Class I–A milk than he would obtain through marketwide pooling without

such a differential, but a smaller share than he would be expected to obtain under an order with handler pools.

The share of the fluid market that the nearby producer gives up through marketwide pooling depends not only on how his milk is actually used, but also upon the fluid utilization of all milk in the pool. If fluid milk utilization in the marketwide pool is high, the nearby producer is giving up little through marketwide pooling. If, on the other hand, the fluid utilization is low, the nearby producer is contributing a considerable amount of the fluid market for the benefit of the entire pool. Accordingly, location differentials constituting an equalization adjustment payable to nearby producers should be at rates varying inversely with the percentage of Class I milk in the pool.

Producer organizations constituting the major proponents of a single order proposed a schedule of nearby differentials varying by zones and by utilization percentages as follows:

| Mileage zone of the farm | Percentage utilization in Classes I–A and I–B | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Under 45 | 45 and over, but under 50 | 50 and over, but under 55 | 55 and over, but under 60 | 60 and over, but under 65 | 65 and over, but under 70 | 70 and over, but under 75 | 75 and over, but under 80 | 80 and over |
| | Dollars per hundredweight | | | | | | | | |
| 1–50 | 0.64 | 0.56 | 0.48 | 0.40 | 0.32 | 0.24 | 0.16 | 0.08 | 0 |
| 51–60 | .56 | .49 | .42 | .35 | .28 | .21 | .14 | .07 | 0 |
| 61–70 | .48 | .42 | .36 | .30 | .24 | .18 | .12 | .06 | 0 |
| 71–80 | .40 | .35 | .30 | .25 | .20 | .15 | .10 | .05 | 0 |
| 81–90 | .32 | .28 | .24 | .20 | .16 | .12 | .08 | .04 | 0 |
| 91–100 | .24 | .21 | .18 | .15 | .12 | .09 | .06 | .03 | 0 |
| 101–110 | .16 | .14 | .12 | .10 | .08 | .06 | .04 | .02 | 0 |
| 111–120 | .08 | .07 | .06 | .05 | .04 | .03 | .02 | .01 | 0 |

The above rates appear reasonable and adequate for the purpose indicated. Other producer representatives proposed either that location differential provisions not be changed or that they be eliminated entirely. If the nearby location differential rates currently in effect under Order No. 27, which are substantially the same as those established in 1938, accurately reflected the proper apportioning of the pool to nearby and distant producers in 1938, the rates now proposed appear reasonable in view of increased level of prices. The rates are tapered off by mileage zones for the purpose of providing a gradual and orderly reduction from the rates applicable to milk from farms located nearest the metropolitan area to those applicable to milk from farms located in the 111–120 mile zone, beyond which no location differentials are applicable.

Two proponents of a separate order for Northern New Jersey proposed relatively high location differentials applicable to that area. Because the volume of nearby milk would be a relatively large proportion of total pool milk under the proposed separate order for Northern New Jersey, such differential would have resulted in a substantial decrease in the returns otherwise received by distant producers and in a relatively small net increase in returns to producers near the market. Under a single order, however, the volume of nearby milk will be a considerably smaller proportion of total pool milk. Consequently, location differentials may be provided under a single order which substantially increase returns to nearby producers without reducing the uniform price significantly. Specific rates of location differentials under the separate order, therefore, are not comparable in effect with the same rates under a single order.

In order to minimize the administrative problems involved in determining zones for individual farms, zones for each township or other minor civil division should be determined by the market administrator by the same method generally as that prescribed in determining zones for plants, with the zone for each farm considered to be in the same zone as the township in which the farm milkhouse is located.

A straight line differential based on distance alone would provide location differentials for some producers who previously delivered milk to a plant at which location differentials were not applicable and at the same time would reduce or eliminate payments to producers who have traditionally received such payments. Farms in the latter category are located in the Hudson and Harlem Valleys and deliver milk to plants in Columbia County and the eastern half of Greene County, or to the present marketing area. Distance alone does not account for the traditional payment of location differentials since it does not take into account such factors as the development of urban population in the Hudson and Harlem Valleys and the historical association of certain production areas with the metropolitan market.

A straight line mileage differential, therefore, should be modified in the Hudson Valley by extending the differentials further than would result from a strict adherence to the proposed table based on distance. The rates for farms located in Columbia County; the eastern half of Greene County; Albany County; and Rensselaer County should be as follows: for farms in the 91–120 mile zone, the rate for the 91–100 mile zone: for farms in the 121–130 mile zone, the rate for the 101–110 mile zone; and for farms in the 131–140 mile zone, the rate for the 111–120 mile zone.

Application of straight line mileage to farms located in New Jersey would fail to recognize that farms located in New Jersey outside the marketing area are as favorably located marketwise as farms located within the marketing area and within the 1–50 mile zone. Farms located in New Jersey, therefore, should all be considered to be in the 1–50 mile zone for nearby differential purposes.

Nearby differential rates applicable each month should be related to the average of the percentages of pool milk classified in I–A and I–B for the 12 months immediately preceding. This figure will be known and can be announced by the market administrator in sufficient time to be used by handlers in reporting their net pool obligations for the month. Basing the differential rate on such a 12-month average will avoid month-to-month changes and substantial seasonal variation in the rates which otherwise would occur and which were not shown to be desirable.

Actual utilization percentages under the amended order for a 12-month period will not be available, however, for the first 12 months after it becomes effective. During this period the differential rates should be those applicable when utilization is between 55 and 60 percent. This appears to be a reasonable and realistic estimate of actual utilization in view of the estimated percentage of 55.1 for the year 1955 and the trend in recent months toward higher utilization under the present order.

If nearby producers increase their production in relation to the volume of Class I–A milk in the pool, they will be contributing to a lower percentage of fluid utilization for the pool as a whole. In order that they may not become eligible for higher differentials solely because of their own increased production, provision should be made for an automatic reduction in the rates in the event that the volume of milk subject to the nearby differential increases in relation to total Class I–A milk in the pool. The determination as to whether production of milk to which the nearby differential applies has increased in relation to total Class I–A sales should be made, for the first time following the thirteenth month (and in similar fashion each month thereafter) for which the amended order for the expanded area is in effect, by calculating the difference between the ratios of (1) production of nearby milk to Class I–A sales in the first 12 months, and (2) production of nearby milk to Class I–A sales in the most recent 12-month period. Then the nearby differential rates should be reduced 10 percent for each point by which the latter ratio exceeds the former.

Nearby differentials of this type are designed to reflect the fact that under competitive conditions milk produced in this area has a traditional outlet as fluid milk at plants located in the nearby area, and therefore, should be paid only on milk so delivered. Producers choosing to deliver milk to a plant further from the metropolitan area and outside the 111–120 mile zone should not be eligible for this differential.

*Direct delivery differentials.* Proponents of a single order and separate orders both proposed that handlers pay an additional differential known as "direct delivery differentials." The only differential currently contained in the order that is comparable with the proposed direct delivery differential is that part (5 cents) of the location differentials

paid by the handler receiving the milk.

The proponents of a single order proposed that direct delivery differentials be applicable as follows:

(1) 25 cents per hundredweight on all milk delivered in cans, and 35 cents per hundredweight on all milk delivered by bulk tank directly from farms to plants in counties in or near the area covered by the 1–30 mile zone.

(2) Continuation of the 5 cents paid by handlers under the present location differential provisions, and 15 cents per hundredweight on all other milk delivered to pasteurizing and bottling plants in the proposed marketing area and used for Class I–A milk distributed locally, except that where the plant is subject to the 5-cent payment, the 15-cent rate would be reduced to 10 cents.

Proponents of a separate order proposed direct delivery differentials of 30 cents per hundredweight for the 0–50 mile zone with reductions to zero beyond the 91–100 mile zone. Another proposal was for payment of a direct delivery differential at rates ranging from 10 to 40 cents depending upon whether receipt of the milk is in cans or in bulk tank, and upon the "type of market" in which the plant is located and in which Class I sales are made. Under this proposal, the differential paid by the handler for direct delivered milk would be financed in part by an assessment on all handlers per hundredweight of Class I sales.

Among the reasons given in support of these proposals were the following: (1) such milk is worth more to dealers; (2) producers incur added costs in delivering directly to pasteurizing and bottling plants; (3) provides for better equalizing of dealer's product cost, particularly in the metropolitan area where the major part of the supply is received from country plants rater than by direct delivery; (4) reflects existing practice; (5) needed to guarantee an adequate supply of milk at city bottling plants; (6) to encourage the shift from country receiving of milk to the more efficient direct shipment from farms to city plants; and (7) to insure that the potential savings in more efficient handling of milk be returned to producers.

These proposals for a direct delivery differential were opposed on various grounds including (1) that the premiums historically paid at pasteurizing and bottling plants vary widely between areas; (2) that such premiums do not constitute appropriate criteria for establishing a direct delivery differential; (3) that producer costs of delivery to the pasteurizing and bottling plants are no greater in many instances than delivery to other plants; (4) that direct delivered milk may or may not be worth more to the dealer depending upon the location of his plant and other factors; (5) that a requirement that such differential be paid would result in inequity and dissatisfaction among the producers, uneconomic shifting of producers and the unwarranted payment of premiums at other pool plants; and (6) that no basis was established for a provision in the order designed to encourage a shift from delivery to country plants to the alleged efficient method of direct delivery to city pasteurizing and bottling plants.

In most instances the value to a handler of direct delivered milk is related to the lowest cost of an alternative supply which meets his requirements with respect to volume, seasonality and quality. Where abundant supplies are available from a relatively large number of producers delivering to nearby pool plants and who are being paid the minimum Order No. 27 uniform price, only a small premium, if any, is required to obtain an adequate supply of direct delivered milk. If the best alternative is direct receipts from producers in a more distant area, direct delivery from nearby producers is worth the price which must be paid in the more distant territory plus the additional cost of transporting milk from that distant territory. If the best alternative supply is milk from an Order No. 27 pool plant, direct delivery is worth the class price at that plant plus the charge for country plant handling and hauling.

Likewise, a producer may be expected to deliver to a pasteurizing and bottling plant if he considers that to be a market which will pay him more than his best alternative outlet. If that outlet is an Order No. 27 country plant paying the minimum uniform price, it will not require much more than the uniform price to persuade him to deliver to the pasteurizing plant. If, on the other hand, his best alternative outlet is a distributor from an adjacent market, or a local dealer paying a premium, the pasteurizing and bottling plant will need to meet the premium in order to obtain the milk.

Exceptions were taken to direct delivery differentials based on the contention that they are not "location differentials" as that term is used in the act. They are called "location differentials" herein and so they are; but they are also customary market differentials based upon the location of the plants to which producers deliver milk.

Direct delivery differentials will be discussed herein in two parts, (1) those associated with plants located in or near metropolitan New York-New Jersey where alternative supplies mainly are from country plants, and (2) those associated with Upstate New York where alternative supplies are primarily other producers delivering to country plants.

(1) *Delivery to the metropolitan New York-New Jersey and nearby territory.* Metropolitan New York-New Jersey receives the major part of its milk supply from country plants; only a small part of the total is received from producers delivering milk directly to processing plants in or near this territory. Milk dealers receiving milk from country plants for distribution in the metropolitan territory therefore must pay, in addition to the price paid farmers, an additional charge covering the cost of handling at the country plant and the cost of transportation, including both the fixed and variable costs of transportation from country plant to city plant.

Some handlers process milk for consumer distribution from plants located in the rural territory immediately surrounding the metropolitan area at which plants milk is received directly from producers. In this case, the handler may avoid the extra cost of operating two plants but this saving may be offset to some extent by the cost of transportation of processed milk, and consequently, the net saving may not be as great as in instances where the milk is received directly in the urban area.

Many producers in the area throughout Northern New Jersey and the nearby counties of New York State deliver milk directly to plants where it is processed and packaged for the consumer. Also, in this same territory there are a number of plants which do not process milk but merely cool it and ship it to a processing plant at another location. With the development of farm bulk tank pickup, many farmers in this territory who formerly delivered to a country receiving and shipping plant now ship milk directly to a city processing plant.

Handlers receiving milk directly from producers at processing plants located within the 1–10 mile zone would avoid charges of 25 cents or more for operation of a country plant together with the fixed cost of transportation. The amount charged the city dealer by a country plant operator for these services usually is in excess of 25 cents. A direct delivery differential for milk delivered to a handler located in the 1–10 mile zone of 25 cents per hundredweight would tend to equate his cost of milk with the cost of a handler similarly located who receives his milk from a country plant. Likewise, handlers operating pasteurizing and bottling plants located outside the 1–10 mile zone but relatively near the metropolitan area could also afford to pay direct delivery differentials but at a declining rate as the distance from the metropolitan area increased.

The differential should be payable on all milk received by all plants in the designated area, and regardless of the type of operations conducted by the plant. All of the milk delivered by producers in this area is available for the fluid milk market and the fluid milk market is more than sufficient to absorb all of the milk produced in the nearby territory. Any attempt to vary the amount of differential based on the classification of the milk at the plant or upon the basis of whether the plant is conducting pasteurizing and bottling operations would be meaningless since competition would force handlers to pay premiums if direct delivery differentials applied to only a part of the milk. The differential payable at nearby plants should be based on the zone of the plant and should be tapered to disappear completely in the 81–90 mile zone. Handlers customarily have paid a premium over the uniform price to producers delivering to plants in the area covered by these differentials, and usually in considerably greater amounts than are required by these differentials. In line with a general policy of doing nothing under orders to significantly influence the development of the bulk tank method of delivery, it is concluded that no special differential should be provided for bulk tank delivery. The determination of any special value for such type of delivery should be left to private negotiation between the producer and the handler.

2. *Milk received by local distributors outside the metropolitan and nearby dis-*

*tricts.* The best alternative milk supply for direct delivered milk by local dealers in Upstate districts is direct delivery by producers delivering milk to plants supplying metropolitan New York-New Jersey. Few Upstate local distributors would find country plant milk the lowest priced alternative to direct delivery milk.

As previously indicated in the analysis of conditions prevailing in each of the respective Upstate districts, the price paid to farmers in excess of the Order No. 27 uniform price for milk delivered to Upstate pasteurizing and bottling plants varies widely between districts and to a lesser extent among dealers in the same district. In addition to the premiums noted in the preceding analysis, it appears that substantial premiums also are paid to about 1,150 producers in the proposed extended area in Upstate New York from whom milk is purchased on a so-called flat price without regard to butterfat test.

Analysis of the premiums paid by local dealers in Upstate New York indicates that they pay a price for milk which they find necessary to obtain the milk they want. In the procurement of a milk supply, they must compete with other local dealers, with other pool plants under Order No. 27, and in some cases, with dealers buying milk for markets outside the State of New York. Some of such out-of-State dealers operate country plants in the State of New York from which milk is shipped, and some, as in the case of Connecticut dealers, buy milk from farmers for direct delivery to their out-of-State distribution plants.

In the Capital District where a relatively high proportion of the nearby producers deliver to local distributors, where there are country plants supplying out-of-State markets and where distances from the milk production area to the urban area are relatively great, relatively high premiums are paid for direct delivered milk. Premiums also were paid in other parts of the Upstate New York area where density of population was great but at lower rates than in the Capital District. The city of Syracuse is the only other urban area in Upstate New York where the density of population over an extended area is comparable to the Capital District. Here, however, distance to production areas are less and the premiums paid were less than in Albany. Premiums in the Utica area were relatively small. They were not as large as in that part of the Mohawk District immediately adjacent to Schenectady. In most other areas, the local dealer pays little more than the uniform price for his direct delivered milk. In all districts, the minimum uniform price under Order No. 27 is the principal price making factor for the local distributor.

The desirability of providing in the order for payment of a direct delivery differential in the Upstate territory depends to a considerable degree upon how the promulgation of regulation will affect the competitive situation of the local distributor. Order No. 27 prices are minimum prices and the local dealer, of course, will be permitted to pay premiums over the uniform price. With regulation, the local distributor will still be competing with other local distributors, with other Order No. 27 pool plants, and, in some districts, with buyers for out-of-State markets as at present.

If regulation is extended in the Upstate area, the Order No. 27 uniform price will continue to be the basic price making factor both for present pool plants and for local distributors. However, the price paid by the local distributor for milk for fluid use will be increased from his present paying price to the full Class I–A price and will apply uniformly at all plants in the same mileage zone. Since all of the local distributors tend to handle relatively small amounts of milk for other than fluid use, the requirement of paying a full Class I–A price will affect all local distributors to about the same degree. The institution of regulation for the local distributor will not change the competitive situation with respect to out-of-State buyers of milk.

With regulation, local distributors will be able to buy milk for other than fluid use at the Class III price rather than at the average price for all of their direct received milk as at present. Upstate dealers contend that, because of low volume and absence of facilities, they will be at a competitive disadvantage to the extent of 20 cents per hundredweight in the handling of Class III milk compared with plants specializing in the manufacture of dairy products. If that is the case, local dealers will have no incentive, even at the Class III price, to purchase more than the necessary minimum volume of milk for Class III uses. They will continue, however, to have an incentive to obtain direct delivered milk from producers with relatively uniform production seasonally and from whom milk is available which otherwise best meets the requirements of the particular dealer, and may be expected to continue to pay premiums over the minimum uniform price to obtain such milk.

The proposed 15-cent rate of direct delivery differential was represented as a minimum over which premiums would be negotiated. That rate, however, exceeds the premium paid over the Order No. 27 uniform price by local dealers in some of the Upstate districts. If the fixing of a direct delivery differential resulted in a price higher than the price of alternative supplies there would be a tendency, in spite of the desire of more producers to obtain the differential, for local distributors to discontinue buying direct delivered milk and to obtain supplies from other sources. The apparent inapplicability of a single rate points, of course, to the desirability of some method of fixing different rates for different localities depending upon local conditions, if indeed, there is justification for a direct delivery differential of any amount.

Although premiums to producers over the uniform price undoubtedly will continue to be paid by dealers in various areas in Upstate New York, provisions should be made for the payment of direct delivery differentials on deliveries to producers delivering to plants in and around Albany and Syracuse in order to insure an orderly transition from nonregulated to regulated status. Such differentials should be paid for all milk delivered by producers to pool plants located in the area and at rates as follows:

| *County—City or township* | *Rate—dollars per hundredweight* |
|---|---|
| Albany: | |
| Albany | $0.10 |
| Colonie | .10 |
| Watervliet | .10 |
| Green Island | .10 |
| Cohoes | .10 |
| Guilderland | .05 |
| New Scotland | .05 |
| Bethlehem | .05 |
| Coeymanas | .05 |
| Schenectady: | |
| Schenectady | .10 |
| Glenville | .05 |
| Niskayuna | .05 |
| Rotterdam | .05 |
| Montgomery: | |
| Amsterdam (city) | .05 |
| Amsterdam (township) | .05 |
| Saratoga: | |
| Waterford | .10 |
| Rensselaer: | |
| Troy | .10 |
| Rensselaer | .10 |
| Brunswick | .05 |
| N. Greenbush | .05 |
| E. Greenbush | .05 |
| Schodack | .05 |
| Onondaga: | |
| Syracuse | .05 |
| Manlius | .05 |
| De Witt | .05 |
| Onondaga | .05 |
| Camillus | .05 |
| Solvay | .05 |
| Geddes | .05 |
| Salina | .05 |

Exceptions were taken to the proposed differential rates payable at plants in the city of Albany on grounds that operating conditions relating to producer receipts and distribution were no different at such plants than at plants just outside the city limits, thus subjecting operators of plants in the city to undue competitive disadvantage. Exceptions also were taken to the difference between the proposed rates in the city of Syracuse and those in surrounding towns on much the same basis and on the basis that the Syracuse rate is not in line with the historical pattern of producer payments. After reviewing these exceptions and the pertinent record evidence, it is concluded that the rate applicable at plants in Albany should be reduced to 10 cents (from 15) and that the rate at plants in the city of Syracuse should be reduced from 10 cents to 5 cents.

8. *Farm bulk tank milk.* Handlers proposed that milk picked up at the farm by a bulk tank truck be priced f. o. b. farm instead of f. o. b. first receiving plant. The producer groups supporting a single order acknowledged a growing problem but refrained from suggesting a solution at this time in order to expedite the solution of the larger problem of expanding the coverage of the order.

The solution proposed by the handlers involves a fundamental change in the method of pricing under the order. It involves such problems as (1) determining zones for all farms, (2) determining the value of milk at the farm in relation to its value at a nearby country plant, and (3) revised methods for determining what milk is to be subject to regulation under the order. Solutions to these

problems require more evidence than was presented at this hearing. The delivery of farm bulk tank milk, while increasing, has not yet become sufficiently extensive to constitute a problem of proportions justifying amendments to deal with it at the same time that the other amendments herein provided for are made effective. Accordingly, adoption of the proposed changes relating to pricing bulk tank milk should be deferred until after further hearing.

9. *Basis of classification and allocation.* At the present time, the order requires that milk shipped from any plant to a plant in the marketing area in the form of milk be classified at the shipping plant, and that cream shipped from a plant to a plant in the marketing area be classified at the shipping plant unless such cream is utilized in one of a limited number of products. The result is that milk shipped to any plant in the marketing area is classified in Class I–A and most of the cream shipped to the marketing area other than that used in ice cream or cream cheese is classified in Class II.

These provisions were designed to apply to shipments to the particular geographical area which constitutes the present marketing area rather than to a marketing area in the abstract. The characteristics of the marketing area which make such provisions practical are (1) nearly the entire milk supply is received from country plants rather than from farmers, and (2) surplus milk is manufactured near the country plant source rather than in the marketing area.

An extension of the present provisions to Upstate New York is unworkable because that area is an important production area as well as a consumption area. Milk is received here from over one-third of the producers whose milk will be subject to the order. Part of this milk must be moved to other plants to be utilized, either as fluid milk or in manufactured products. Many of the larger manufacturing plants are located in the area, and they receive surplus milk from many feeder plants. There was no proposal that present provisions apply in the Upstate New York territory.

Proponents of a single order suggested that the system applicable to the present marketing area be extended to Northern New Jersey. They contend that this area is a deficit area and that there is no reason to ship milk into the area for manufacturing purposes. The Northern New Jersey area, however, is also an important production area. Milk is received directly at plants in this area from nearly 3,000 farmers. At times, an individual receiver of this milk finds that he has a surplus in excess of his regular uses, and must dispose of it to some other handler. To require that such milk disposed of to a neighboring plant be automatically classified as Class I–A would place an unnecessary burden upon the receiver of the milk and might result in the milk being turned back to producers. The system, therefore, should not be extended into the New Jersey part of the marketing area.

Handlers operating plants in the present area propose elimination of the country classification system on the basis that they should be in the same position as competing handlers in New Jersey or elsewhere receiving milk directly from producers, and that no other Federal order contains such a provision. It is concluded that the system should be abolished for the present marketing area.

This will mean, however, that some milk presently classified as Class I–A will be priced at a lower class price, and that the Class I–A price itself will be slightly lower resulting from operation of the formula. These facts have been taken into consideration in the revision of the Class I–A pricing formula.

The general accounting principles under the present order provide that milk from pool plants be assigned to Class I–A milk before milk from nonpool plants is so assigned. Handlers proposed that this provision be modified to permit the operator of an expressly designated pool plant to allocate his Class I–A to any source, and the operator of a shipping pool plant to allocate to any sources Class I–A in excess of that necessary to qualify the shipping plant as a pool plant. In this way, the maximum amount of Class I–A milk would be available for allocation to shipping plants in order to qualify them as pool plants. Such an optional assignment would open the door for other markets to shift the burden of their surplus to Order No. 27 producers, and thus, is inconsistent with the purpose of the amended pool plant provisions.

With the expansion of the marketing area, and the abolition of country plant classification for the present marketing area, some further prescribed method of allocating various sources of milk to Class I–A appears necessary. The expanded allocation rules, however, should avoid maximizing the number of plants qualifying as pool plants on the basis of meeting prescribed requirements for supplying the marketing area with fluid milk. Accordingly, the allocation rules should provide (1) that any handler operating a plant from which Class I–A milk is distributed in packaged form may first assign Class I–A milk resulting from such distribution to milk received at the plant directly from farmers, (2) that after such assignment (or if there is no such distribution), Class I–A milk be assigned to milk from expressly designated pool plants or to plants which themselves are temporary pool plants by reason of their own distribution (as under (1) above), and (3) that Class I–A milk, after such assignment to all such known sources of pool milk, may then be assigned to other plants at the option of the handler.

The combination of the elimination of country plant classification and the specified order of assignment of various sources of milk to Class I–A results in the operator of a country receiving and shipping plant which is not an expressly designated pool plant having less assurance than at present that a shipment to another plant in the marketing area will be classified as Class I–A, and thus, be a basis for qualifying the shipping plant as a temporary pool plant.

10. *Base rating.* The proponents of a separate order for New Jersey and of a single order for the entire area both proposed the inclusion of a base rating plan. Under such a plan a producer is given a daily base or quota based on his deliveries in some specified period. Future deliveries of milk not in excess of his base are considered to be deliveries of base milk. Deliveries over and above his base deliveries are considered excess deliveries.

The price for excess milk is usually the lowest class price. The base price is the blend and usually reflects all of the utilization of milk in the higher priced classes. The base price would be higher than the uniform price for all milk without the application of the base rating plan. Producers with little excess milk would get higher returns than producers with large amounts of excess milk.

Among the reasons stated or implied in support of a base rating plan were the following:

1. It would result in a more equitable distribution of the returns for milk among farmers—i. e., the producer whose seasonal variation in production was small would receive more money for his milk, and the producer whose seasonal variation was great would receive less.

2. It would tend to lessen seasonal variation in production.

3. It would tend to discourage producers from delivering to pool plants part of the year and not in the remainder.

4. It would tend to discourage handlers from having a plant in the pool part of the year and not the rest.

5. Transportation differentials to producers could be improved by being applied to base milk and not surplus milk.

6. The application of nearby differentials out of the pool would be improved if paid on base milk and not on excess milk.

7. The producers delivering to Upstate local dealers and to the New Jersey dealers not under Order No. 27 have more even seasonal patterns of production than the pattern for present Order No. 27 producers as a whole, and therefore, they would get a higher share of the pool than they would without the plan.

8. In a separate order for New Jersey it would impede the movement of milk from the New York order to the New Jersey order.

9. If partially closed bases were applied, the effectiveness of the plan not only in connection with the seasonal pattern would be increased, but it also would tend to control total production.

The plan was opposed by handlers on the basis that it would require a vast amount of additional accounting work and that there is no desirable objective to be achieved at the present time. The proposal also was opposed by representatives of producers in distant areas who looked on this as an additional method of reducing the proportion of the total pool to be distributed to distant producers.

The proponents generally agreed on the base forming period with proponents of separate orders proposing August-November and September-December base forming periods and with proponents of

a single order favoring a July-November period. Each of these periods include the months when production is relatively low in comparison to consumption. Partially closed bases also were proposed under the separate order for Northern New Jersey. Experience with base rating plans in other markets has shown a tendency for a sharp decline in production immediately prior to a base forming period. The inclusion of July in the base period would tend to avoid this development in the New York-New Jersey area.

There is a great variety of seasonal patterns of production among the farmers of the New York-New Jersey milkshed. The record does not show, however, how returns to producers with the various patterns would be affected by the application of the plan. It does not show what base prices might be expected in relation to the uniform price. It does not show how average returns to producers in the different sections of the milkshed would be affected, although data available on a county basis indicate that the results may not be those anticipated by either the proponents or the opponents.

Where, as is true for the New York-Northern New Jersey market, there is at present and in prospect an adequate supply of milk from presently approved sources in the season of shortest production and adequate facilities for handling the seasonal surplus, the need for a base rating plan to encourage a more uniform seasonal pattern of production is not as great as it otherwise would be. It was not established that a shift in the seasonal pattern of milk in excess of fluid requirements would be advantageous or desirable, particularly a shift to higher volumes in the winter months of December through February.

A base rating plan has never been operated in a market with as many producers and handlers as in the New York-Northern New Jersey market.

There was a pronounced absence of agreement on the period in which bases should be used in paying producers. The single order proponents proposed that the period be March through June. Two of the three separate order proponents proposed that payments be made on bases in all twelve months. Payment on bases only in April, May, and June also was proposed. There was no analysis to show what would be the difference in returns to the various types of producers under the several payment periods proposed.

In view of the apparent widespread desire for some form of base rating plan, however, the order should provide for a means of obtaining the necessary data to analyze the value of the plan and to determine if one is administratively feasible in a market of this size. Provision should be made, (1) for the computation by the market administrator of bases on the basis of deliveries of producers during the period July-November 1957, (2) for the announcement of such bases, and (3) beginning with March 1958, the computation by handlers of base and excess milk received from each producer. However, no provision should be made for payments on bases established earlier than in a base forming period starting no earlier than July 1, 1958, and then only in accordance with terms and provisions formulated after further hearing.

Further evidence is needed, not only relating to aspects of a base rating plan previously noted, but also relating to the transfer of bases and so-called hardship cases concerning which the evidence presented at the hearing is incomplete and inadequate. Some provision for alternative bases related to deliveries in the base paying period is ordinarily made in connection with base rating plans in lieu of attempting to deal administratively with so-called hardship cases on an individual basis with no rules insuring uniformity of treatment. The record provides no basis for the establishment of such alternative bases, or other realistic means of handling hardship cases and related problems.

11. *Producer-dealers.* It is concluded that the pricing and pooling provisions of the order should not apply (1) to milk produced on the farm of a handler operating a pasteurizing and bottling plant if no fluid milk is received from any other plant or from dairy farmers, and (2) to milk produced on a handler's own farm up to an average of 800 pounds per day and which is received at a plant operated by the handler and at which plant milk is received from other plants but not from dairy farmers.

The production of milk by dealers' own herds in Northern New Jersey totaled 58,527,087 pounds in 1955, or 4.6 percent of the total volume of fluid milk sold in the area. In 1955, a monthly average of 93 producer-distributors produced a monthly average volume of 4,877,257 pounds of milk. Included in this total is the production of one large dealer who produces and distributes approximately 10,000 quarts daily of high butterfat content milk which is sold as a premium milk. This dealer also purchases and distributes milk received from between 170 to 190 dairy farmers and owns and operates a receiving plant which is presently regulated by Order No. 27.

By excluding the own herd production of this dealer from the average monthly production in 1955, the remaining 92 producer-distributors in Northern New Jersey produced an average of 713 quarts (1,533 pounds) daily. While the record does not indicate the precise number of dealers with own farm production who produced more or less than this average, it does show that a substantial number are dealers with own herd production and who also buy substantial volumes of milk from farmers. It is expected that the volume of own herd milk of these dealers is substantially higher than the average, and accordingly, that the average daily production of the remaining producer dealers, that is, farmers engaged primarily in production and in the distribution of their own milk, is substantially less than the average for the entire group of 92.

The production of milk by dealers' own herds in the area of Upstate New York proposed for inclusion in the marketing area amounted to 93,531,000 pounds in 1955, an amount equivalent to about 10 percent of the volume of milk sold for fluid use in the same area. It varied from a low of about 5 percent in the Binghamton District to a high of about 25 percent in the Elmira District.

In 1955, there were 313 dealers with own farm production in the Upstate New York area proposed for inclusion in the marketing area. Of this number 243, or 77 percent, were dealers with own farm production of less than 500 quarts per day with an average of about 235 quarts, ranging from 183 in the South Central District to 334 in the Elmira District. Of the remaining 70 dealers with own herd milk in excess of 500 quarts per day, there were 55 with own herd milk averaging less than 1000 quarts daily, 8 between 1000 and 1500 quarts, 4 between 1500 and 2000 quarts, and 3 averaging over 2000 quarts. The production of all dealers' own herd milk averaged 382 quarts per herd, ranging from 318 in the Capital District to 764 in the Elmira District.

The total own farm production of this group of dealers with own farm production of less than 500 quarts per day constituted less than one-half the total deliveries of milk from dealers' own herds. In the Capital District, where there were 75 dealers with own herd production averaging 202 quarts per day, the volume of such production constituted slightly more than one-half of the total production of dealers' own herd milk, and about 5 per cent of total fluid sales. In the Elmira District, where the milk received from dealers' own herds was equal to about 25 percent of total fluid sales in the district, the production of dealers' own herds averaging less than 500 quarts per day was slightly less than 25 percent of the total receipts from dealers' own herds, and equivalent to less than 7 percent of the total fluid sales in the district.

The receipts of milk from a handler's own farm is completely exempt from equalization under the order at the present time and the volume of such milk is relatively small. In the Upstate New York and Northern New Jersey areas, however, there are a large number of dealers with own farm production and the volume of such milk is larger in relation to total fluid sales. Dealers with own farm production in the Upstate New York and Northern New Jersey areas at present are in competition with dealers buying milk from producers for which no minimum price was established or for which the dealer now pays the Class I–C price. Upon extension of the area, however, dealers in these areas will be required to pay the Class I–A price for milk in fluid use. This will materially increase the competitive advantage accruing to dealers with own farm production if such production continues to be fully exempt from equalization. Such advantage would constitute an unwarranted incentive for additional producers to engage in distribution and for the expansion of own farm production by those presently engaged in distribution at the expense of other handlers whose entire supply of milk is fully regulated.

Handlers who depend entirely upon their own production as a source of supply and who do not burden the pool with any surplus or excess supplies should be subject to the order only to the extent that they must submit reports to the market administrator as required and

make available to the market administrator accounts, records and facilities, so that the market administrator may verify the reports submitted.

Since the own farm production of 242 out of a total of 313 dealers in Upstate New York averaged 235 quarts (about 500 pounds) in 1955 and since the own farm production of 92 dealers (which includes large as well as small dealers) in Northern New Jersey averaged 713 quarts (about 1,533 pounds), it appears that an exemption of own farm production up to 800 pounds per day in the case of handlers who receive no milk from other dairy farmers but who may receive milk from other plants will exempt from regulation a large majority of producer-handlers, and at the same time not be sufficiently large to constitute a serious competitive factor in the marketing area.

Any handler with own farm production and who purchases milk from other dairy farmers would have the obligation of accounting to the pool for such milk and of paying such other farmers. Consequently, such a handler could not be fully exempt from regulation even though his own production did not exceed 800 pounds.

Exceptions were also made to the failure of the recommended decision to provide an exemption for custom-bottle own farm milk. It appears that such a provision would create serious administrative difficulties and provide opportunity for engaging in practices which would tend to defeat the overall objectives of the regulation and be contrary to the interests of other producers and handlers.

Exceptions were submitted to the failure to provide for quota exemption from pricing and pooling for all handlers with own farm production regardless of whether milk is received by the producer-handler from other plants or from dairy farmers. Such a quota would be based on operations during a past period. This type of exemption appears to constitute unwarranted discrimination against those not in operation prior to the effective date of such a provision.

The order presently provides for exemption of the production of handlers' farms located in New York City. Exception was taken by such producer-handlers (who are extremely limited in number) to the failure of the recommended decision to provide for continued exemption of their milk from the pricing and pooling provisions of the order on the basis that no evidence was presented at the hearing justifying a change in their status. It is concluded that such exemption should be continued.

There is one farm in the State of New York and one in Northern New Jersey engaged in the production of milk in accordance with methods and standards of the American Association of Medical Milk Commission for the production of certified milk. Such milk currently is exempt from regulation under the order. Production requirements for certified milk are more rigid than for other milk and all such milk must be bottled on the farm where produced and where no milk is received from other sources. Certified milk sells for a price substantially higher than for other milk and is sold under conditions not generally competitive with other milk. The circumstances under which certified milk is produced and marketed are such that an expansion in its production sufficient to constitute a disturbing factor in the market appears extremely remote. The number of farms in New York State engaging in the production of certified milk has declined during the past 10 years from 14 to 1. Sales of such packaged certified milk should be exempt from regulation.

To insure that the surplus milk of producer-handlers does not burden the pool, any milk shipped to another plant, except certified milk in consumer packages, should be treated as nonpool milk and be subject to compensatory payments if assigned to Class I–A or Class II. This will prevent a producer-handler from diluting the pool and obtaining a share of the fluid market of other producers who have no share in the fluid sales of the exempt producer-handlers.

Any milk delivered to a partially exempt producer-handler by another handler should be assigned to such producer-handler's Class I–A use. Such producer-handler's nonexempt production should then be prorated to the classification of his entire production. Any of his milk shipped to another handler and on which such other handler is required to pay compensatory payments should be considered Class III for purposes of pricing the producer-handler's nonexempt milk.

12. *Flat price buyers.* Milk purchased from producers on a so-called "flat price basis" (without regard to butterfat test) should be pooled as milk containing 3.5 percent butterfat, and producers should be paid, as a minimum, the uniform price for 3.5 percent. This arrangement, however, should be regarded as temporary, and should be limited to milk purchased by handlers who receive milk from no more than 10 producers and on no part of which tests are made for butterfat content.

During 1955, there were 281 dealers in Upstate New York who bought milk from 1,145 farmers on a flat price basis, or an average of four producers per dealer. This constituted nearly 25 percent of all farmers delivering to local dealers and slightly less than 23 percent of the total volume of direct deliveries. Only slight variations existed between districts in the Upstate area in the average number of such producers per dealer. In some instances, milk was purchased on this basis by dealers who bought milk from other producers on the basis of butterfat content. In most instances, however, the milk purchased on this basis was purchased by small dealers who purchased milk only on this basis.

A substantial part of the milk purchased on a flat price basis was milk of relatively high butterfat content and distributed by the dealer as high test milk. The prices paid for milk purchased were considerably higher than prices paid by other local dealers for 3.5 percent milk including premiums other than extra butterfat. In vew of the relatively high premiums paid for milk purchased on a flat price basis, it appears reasonable to expect that these premiums will continue to be paid for milk testing in excess of 3.5 percent even though the minimum uniform price is established on that basis.

Upstate dealers proposed that this flat price milk be pooled on the basis of the average test of all other milk in the pool. The pooling of such milk as milk containing 3.5 percent butterfat is only slightly different insofar as the handler's obligation to the pool is concerned, but from an accounting point of view it will be easier for handlers in making the required reports and in settling with the producer settlement fund if the butterfat test to be used for accounting purposes is known prior to computation of the uniform price, and if the butterfat test at which they account for milk is the test for which minimum prices are announced.

This method of accounting for milk purchased on a flat price basis appears necessary as a temporary measure since numerous small dealers presently are not equipped to make butterfat tests, and since the market administrator, although authorized to conduct a weighing and testing program, may not be prepared at this time to conduct such a program on such a large scale. Provision for pooling on a 3.5 percent basis, however, should be discontinued as soon as possible and should be authorized only in the case of small dealers not equipped or otherwise presently not in a position to make butterfat tests. Dealers purchasing milk from some producers on a flat price basis but also from other producers on the basis of butterfat tests should be required to account on the basis of butterfat tests for all milk purchased.

13. *Nearby cooperative payments.* The supplemental notice of hearing dated February 26, 1957, includes a proposal that provision be made for cooperative payments for a cooperative representing the interest of nearby producers. Such proposal includes a statement by the proponents that such payments should be justified independently and that the basis for cooperative payments now provided under the order should not be relied upon. No evidence was presented at the hearing purporting to be in support of this proposal and, accordingly, the proposal should not be adopted.

14. *Other order provisions.* The proponents of a single order presented evidence in support of the inclusion in such an order for the expanded marketing area all of the present provisions of Order No. 27 in addition to those specifically considered in connection with the foregoing issues 1 through 13. The provisions to which such evidence was presented include among others most of the definitions, the appointment, power and duties of the market administrator, class definitions and class prices, butterfat differentials, reports, computations of the uniform price, payments to producers, operation of the producer-settlement fund, expense of administration, and cooperative payments. Testimony also was presented by others in opposition to provisions of the order for cooperative payments. Such testimony, however, was directed at the principle of cooperative payments rather than to any

question of inapplicability by reason of expansion of the marketing area, and was not of sufficient substance to justify any change in the present provisions of the order relating to cooperative payments.

Exception was taken to provisions in the proposed order for a butterfat differential of 4 cents per point applicable to Class I–A and Class I–B milk. Although testimony was presented on a proposed butterfat differential of 6 cents per point under provisions of the proposed separate order for Northern New Jersey, no evidence was presented supporting a change in the butterfat differential of 4 cents as a provision of a single order for the expanded marketing area. Accordingly, the differential should not be changed at this time. Except for minor co-ordinating amendments, all provisions of the order not herein specifically amended are provisions which together with the amended provisions constitute appropriate terms and provisions of regulation for the expanded area.

Several provisions presently a part of the order, and not elsewhere specifically referred to herein, have been eliminated, however, from the proposed amended order since they are rendered inapplicable and unnecessary by amendments effectuating the findings and conclusions herein set forth or have become obsolete due merely to passage of time, among which are (1) the definition of Northern New Jersey, (2) provisos in present § 927.40 (a) and (a) (1) relating to Class I–A prices for periods now past, (3) the provision (paragraph (1) of present § 927.76) for adjustment period in connection with cooperative payments, and (4) a provision in present § 927.55 requiring retention of certain books and records until October 1, 1949.

This hearing having been held jointly not only with the State of New York but also with the State of New Jersey, reference to the latter has been included in the provision relating to expense of administration (amended § 927.90).

No change has been made herein in provisions of the order (paragraphs (d) and (e) of present § 927.61) for adding unreserved cash and deducting specified amounts in connection with computation of the uniform price. Likewise, no provision is made in connection with payments for expense of administration (pursuant to present § 927.80) for the separation of funds on hand as of the effective date of the amendments herein set forth from payments to be made thereafter.

The amended order includes a provision requiring operators of plants which will be newly regulated thereunder to file reports by not later than the 10th day of the month in which the amended order becomes effective; such reports being those relating to the receipts and disposition of milk at such plants for the preceding month. This requirement is designed to provide an opportunity for newly regulated handlers to obtain experience and proficiency in the filing of reports prior to the time (one month later) when such reports will be required as a basis for determining their obligations for making payments to the pool and to producers for milk received during the first month after the effective date of the amended order. No significant, if any, additional obligation on the part of such handlers in the keeping of records needed for the filing of such reports is contemplated since most of such handlers already maintain the necessary records in compliance with regulations of the States in which their plants are located.

*Rulings.* Within the period reserved therefor, interested parties filed exceptions to certain of the findings, conclusions and actions recommended by the Deputy Administrator. In arriving at the findings, conclusions, and regulatory provisions of this decision, each of such exceptions was carefully and fully considered in conjunction with the record evidence pertaining thereto. Certain of the findings and conclusions contained in the recommended decision have been modified after consideration of the exceptions filed.

To the extent that findings, conclusions and actions decided upon herein are at variance with any of the exceptions filed to the recommended decision, such exceptions are overruled. Rulings contained in the recommended decision upon proposed findings and conclusions submitted by interested persons are affirmed except as modified by the findings and conclusions set forth herein. To the extent that findings and conclusions proposed by interested persons are not ruled upon in the recommended decision and are inconsistent with the findings and conclusions contained herein, the specific or implied requests to make such findings and reach such conclusions are denied on the basis of the facts found and stated in connection with the conclusions herein set forth.

Interested parties requested, in briefs filed following the close of the hearing, a review of rulings of the presiding officer at the hearing denying motions (1) to recall the supplemental notice of hearing issued on February 26, 1957 (22 F. R. 1219), and (2) that certain witnesses who had testified prior to the issuance of such supplemental notice be recalled for further cross-examination in the light of the supplemental notice.

The ruling of the presiding officer on the first motion was made on March 5. The motion was based on unsupported assertions of the illegality of the notice. At no time, however, did any interested party request a continuance on grounds of insufficient time to prepare. The hearing continued through March 29 during which time, and as late as March 25, witnesses who previously had testified on behalf of proponents of proposals set forth in the supplemental notice of February 29 were available for cross-examination. The supplemental notice of hearing of February 26, 1957, did not expand the area or scope of regulation beyond that set forth in the earlier notices, but merely contained additional specific proposals relating to the form of regulation. The alleged illegality of the supplemental notice has not been established. The reasons here stated being sufficient, it is deemed unnecessary to discuss additional reasons. Accordingly, the ruling of the presiding officer on this motion is affirmed and the exceptions taken thereto are denied.

The ruling of the presiding officer on the second motion (recall of certain witnesses) has been reviewed and is affirmed for the reasons stated by the presiding officer in connection with his ruling.

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

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

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

*Marketing agreement and order.* Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the New York-New Jersey Marketing Area", and "Order Regulating the Handling of Milk in the New York-New Jersey Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

*It is hereby ordered,* That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with this decision.

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

The month of March 1957 is hereby determined to be the representative period for the conduct of such referendum.

For purposes of this referendum, the plants which shall be deemed to have been pool plants in March 1957 are as follows: (1) Plants which were pool plants under Order No. 27 in such month; (2) plants at which 25 percent or more of the milk received from farmers during such month was disposed of as fluid

milk in any part of the New York-New Jersey milk marketing area; and (3) plants from which in such month any packaged milk was distributed in such marketing area, and at which plant the handling of milk was not regulated under another order issued pursuant to the act.

C. J. Blanford is hereby designated as agent of the Secretary to conduct a ballot box referendum and, except as set forth herein, such referendum shall be conducted in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177), and shall be completed on or before June 29, 1957.

In lieu of the provisions set forth in paragraph 4 of the published procedure, the above designated agent of the Secretary shall comply with the following procedure:

(a) Ascertain which producers are eligible to vote.

(b) Ascertain the name and location of any cooperative association of which any such eligible producers are members.

(c) Ascertain which of such cooperative associations have been determined by the Director of the Dairy Division, Agricultural Marketing Service, to be qualified to vote for their producers.

(d) Ascertain which qualified cooperative associations desire to cast a ballot on behalf of their eligible producers.

(e) Obtain from each qualified cooperative association ascertained under (d) a certified list of producers who are members of, stockholders in, or under contract with such association, and inform such associations that refusal or failure to permit immediate verification of the certified list of producers and of the relations of such producers to the cooperative association shall be deemed to be a decision by such association not to vote on behalf of its producers.

(f) Designate the polling places, the day for the referendum, and the hours during which such polling places shall be open and closed: *Provided*, That all polling places shall remain open not less than four hours during such day.

(g) Give notice of the day, places and hours of polling by (1) public dissemination of such information through the press and other media of publicity; (2) posting such information at each polling place at least one day prior to the day of balloting, and having available at such places copies of the order on which the referendum is to be conducted; (3) notifying all county agents within the milkshed of the date, places and hours of polling, and providing them with copies of the order; and (4) using such other means as the referendum agent may deem effective.

(h) Appoint the person or persons who shall be in charge of each polling place, and instruct all such officers as to the conduct of the referendum and the manner of transmittal of the ballots.

(i) Supervise the counting and tabulation of all ballots cast.

(j) During the period within which the referendum is to be conducted, present to each handler defined in the order who operates a pool plant a copy of the marketing agreement, containing identical terms, for his signature.

(k) Upon completion of the balloting, tabulate such ballots in a manner which will show the total number of known eligible producers, the number of producers voting in the referendum, the number of producers favoring and the number opposed to the issuance of the order, and the number of producers whose ballots were disqualified. (If, in checking the ballots, it is found that any ballots were cast by persons who were not producers during the representative period, such ballot shall be disqualified. Likewise, if a ballot is cast by any person whose name appears on the list of producers on whose behalf a qualified cooperative association is voting, such ballot shall be disqualified.)

(l) Within 4 days after the close of the referendum, transmit to the Secretary, for the attention of the Director of the Dairy Division, the information tabulated pursuant to paragraph (k). As soon as possible after such information has been forwarded to the Secretary, submit to him a complete report of all action taken in connection therewith.

As a means of effectuating certain policies jointly adopted by the Secretary and the Commissioner of Agriculture and Markets of the State of New York in a memorandum of cooperation dated August 26, 1938, and by the Secretary and the Director of the New Jersey Office of Milk Industry in a memorandum of agreement dated June 30, 1955, the designated agent of the Secretary shall, at the same time he transmits his report to the Secretary, also transmit a similar report to the Commissioner of Agriculture and Markets of the State of New York, and to the Director of the Office of Milk Industry of the State of New Jersey.

Issued at Washington, D. C., this 10th day of June 1957.

[SEAL] EARL L. BUTZ,
*Acting Secretary.*

## *Order[1] Regulating the Handling of Milk in the New York-New Jersey Milk Marketing Area*



AUTHORITY: §§ 927.0 to 927.99 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 927.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and deter-

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders have been met.

minations 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 upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New York-New Jersey milk marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

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

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

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

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 2 cents per hundredweight or such amount not to exceed 2 cents per hundredweight as the Secretary may prescribe, with respect to milk received from producers.

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

DEFINITIONS

§ 927.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

§ 927.2 *Secretary.* "Secretary" means the Secretary of Agriculture or any officer or employee of the United States who is, or who may hereafter be, authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 927.3 *Marketing area.* "New York-New Jersey milk marketing area" (hereinafter called the "marketing area") means all of the territory within the boundaries of the city of New York, and the counties and parts of counties set forth in paragraphs (a) and (b) of this section together with all piers, docks and wharves connected therewith, and all craft moored thereat, and including territory within such boundaries which is occupied by Government (Municipal, State, Federal or International) reservations, installations, institutions or other establishments.

(a) The city of New York and counties of Nassau, Suffolk (except Fisher's Island) and Westchester in the State of New York (such territory being referred to hereinafter as the "New York metropolitan district").

(b) The following counties and parts of counties in the State of New York: Albany; Broome; Cayuga (except the townships of Sterling, Victory, Conquest, and Montezuma); Chemung; Chenango; Columbia; Cortland; Delaware; Dutchess; that part of Essex consisting of the townships of Schroon, Ticonderoga, Crown Point, and Moriah; Fulton (except the township of Stratford); Greene; Herkimer (except the townships of Webb, Ohio, and Salisbury); Madison; Montgomery; Oneida (except the townships of Ava, Boonville, Forestport, and Florence); Onondaga; Orange; Oswego (except the townships of Redfield and Boyleston); Otsego; Putnam; Rensselaer; Rockland; Saratoga (except the townships of Day, Edinburg, and Providence); Schenectady; Schoharie; Schuyler; that part of Steuben consisting of the townships of Addison, Corning, and Erwin; Sullivan; Tioga; Tompkins; Ulster; Warren (except the townships of Johnsburg, Thurman, and Stony Creek); Washington; and Yates (except the townships of Italy, Middlesex, and Potter); and in the State of New Jersey: Bergen; Essex; Hudson; Hunterdon; Middlesex; Monmouth; Morris; Ocean (except the boroughs of Barnegat Light, Beach Haven, Harvey Cedars, Ship Bottom, Surf City, Tuckerton, and the townships of Eagleswood, Lacey, Little Egg Harbor, Long Beach, Ocean, Stafford, and Union); Passaic; Somerset; Sussex; Union; and Warren.

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

§ 927.5 *Dairy farmer.* "Dairy farmer" means any person who produces milk.

§ 927.6 *Producer.* "Producer" means any dairy farmer whose milk is delivered direct from farm to a pool plant.

§ 927.7 *Handler.* "Handler" means (a) any person who engages in the handling of milk or products therefrom, which milk was received at a pool plant, or at a plant approved by any health authority as a source of milk for the marketing area, (b) any person who engages in the handling of milk, concentrated fluid milk, cultured or flavored milk drinks, cream, half and half, or skim milk, all or a portion of which is shipped to, or received in, the marketing area, or (c) any cooperative association of dairy farmers with respect to any milk which it causes to be delivered from dairy farmers to a pool plant of any other handler for the account of such association and for which such association receives payment.

§ 927.8 *Plant.* "Plant" means the land, buildings, surroundings facilities, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, handling, or processing of milk or milk products as determined by the market administrator.

§ 927.9 *Pool plant.* "Pool plant" means any plant which is designated as a pool plant pursuant to §§ 927.25, 927.28, or 927.29.

§ 927.10 *Market administrator.* "Market administrator" means the agency, which is described in §§ 927.20 through 927.23 for the administration of this part.

§ 927.11 *Base.* "Base" means a quantity of milk expressed in pounds per day or month computed pursuant to § 927.60.

§ 927.12 *Base milk.* "Base milk" means the milk delivered by a producer during the month in an amount which is not in excess of his base.

§ 927.13 *Excess milk.* "Excess milk" means all milk delivered by a producer in excess of base milk.

MARKET ADMINISTRATION

§ 927.20 *Selection, removal, and bond.* The agency for the administration of this part shall be a market administrator who shall be a person selected and subject to removal by the Secretary. The market administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

§ 927.21 *Compensation.* The market administrator shall be entitled to such reasonable compensation as shall be determined by the Secretary.

§ 927.22 *Powers.* The market administrator shall have the following powers:

(a) To administer the terms and provisions of this part;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

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

(d) To recommend to the Secretary amendments to this part.

§ 927.23 *Duties.* The market administrator, in addition to the duties hereinafter described, shall:

(a) Keep such books and records as will clearly reflect the transactions provided for in this part;

(b) Submit his books and records to examination by the Secretary at any and all times;

(c) Furnish such information and such verified reports as the Secretary may request;

(d) Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the market administrator.

(e) Publicly disclose, after reasonable notice, the name of any person who has not made reports pursuant to §§ 927.50, 927.51, and 927.53, or made payments required by §§ 927.70, 927.71, 927.72, 927.77, 927.80, 927.82, 927.83, 927.84, and 927.90;

(f) Prepare and disseminate for the benefit of producers, consumers, and handlers such statistics and information concerning the operation of this part, as amended, as do not reveal confidential information;

(g) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions of this part;

(h) Pay out of the funds received pursuant to § 927.90 the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the market administrator, his own compensation, and all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties;

(i) Maintain a main office and such branch offices as may be necessary; and

(j) Promptly notify a handler, upon receipt of the handler's written request therefor, of his determination; as to whether one or more plants exist at a specified location, as to whether any specified item constitutes a part of the handler's plant, or as to which plant a specified item is a part in the event that the particular premises in question constitutes more than one plant: *Provided,* That if the request of the handler is for revision or affirmation of a previous determination, there is set forth in the request a statement of what the handler believes to be the changed conditions which make a new determination necessary. If a handler has been notified in writing of a determination with respect to an establishment operated by him, any revision of such determination shall not be effective prior to the date on which such handler is notified of the revised determination.

POOL PLANTS

927.25 *Regular pool plants.* Any plant shall be designated a pool plant upon determination by the Secretary that the provisions of paragraphs (a) through (d) of this section have been met. Not later than the end of the month following the month in which an application is received by the Secretary pursuant to paragraph (a) of this section, the Secretary shall either determine that the provisions of paragraphs (a) through (d) of this section either have been met or have not been met, or notify the applicant that additional information is needed prior to making a determination. Such designation shall be effective the first of the month following the date of designation and shall continue until such designation is cancelled pursuant to § 927.27: *Provided,* That notwithstanding the provisions of paragraphs (a) through (d) of this section, any plant which for the month of June 1957 had a designation pursuant to § 927.20, § 927.22, or this section, as then in effect, and which is not cancelled prior to the effective date of this section, is hereby designated a regular pool plant from the effective date of this section until such designation is cancelled pursuant to § 927.27: *Provided further,* That notwithstanding the provisions of paragraphs (a) through (d) of this section, any plant for which an application is filed by the operator with the market administrator by not later than 15 days after the effective date of this section, and (1) which had a pool plant designation of any kind for each of the 12 months of April 1956 through March 1957, or (2) as to which it is determined by the market administrator that 50 percent or more of the milk received at the plant from dairy farmers during the 12-month period of April 1956 through March 1957 was utilized as fluid milk in the marketing area, is hereby designated a regular pool plant from the effective date of this section until such designation is cancelled pursuant to § 927.27.

(a) An application by the operator of the plant for such determination has been addressed to the Secretary and filed at the office of the market administrator: *Provided,* That if 50 percent or more of the dairy farmers delivering milk at such plant deliver such milk for the account of a cooperative association which does not operate the plant but for which milk such association receives payment, an application must be filed by such cooperative association as well as the person operating the plant.

(b) The plant is located in New York, New Jersey, or Pennsylvania: *Provided,* That if such plant is located in Pennsylvania within 200 miles of Philadelphia, it shall be eligible only if it is in a county bordering the marketing area or is closer to the marketing area than it is to Philadelphia, distance to the marketing area being the same as that used for zoning plants pursuant to § 927.42, and distance to Philadelphia being the shortest highway mileage computed by the market administrator from data contained in Mileage Guide No. 5 issued on July 20, 1949, effective August 21, 1949, by the Household Goods Carriers' Bureau, Agent, Washington, D. C.

(c) The plant was a pool plant either pursuant to paragraphs (a) and (b) of § 927.29, or pursuant to § 927.27 as in effect immediately prior to the effective date of this part, for each of the 12 months immediately preceding the month during which an application is filed.

(d) The operating requirements of § 927.26 are being met.

§ 927.26 *Operating requirements* The person operating the plant shall meet each of the following requirements:

(a) Be willing to dispose of as Class I–A milk in the marketing area milk received at the plant from dairy farmers;

(b) Keep such control over the sanitary conditions under which milk received at the plant is produced and handled, that the plant can meet the requirements of a source of milk for the marketing area: *Provided,* That approval by a health authority of the plant as a source of milk for the marketing area shall constitute sufficient evidence that this requirement is being met even though such approval is restricted to prohibit shipment to the marketing area of milk for specified periods during which permission is given by such health authority for receiving unapproved milk or skim milk at the plant or for shipment of approved skim milk from such plant; and

(c) Have no commitments for disposition of milk that prevent him from utilizing milk as set forth in § 927.27 (g).

§ 927.27 *Suspension and cancellation of designation.* The designation of a pool plant pursuant to § 927.25 or § 927.28 may be suspended or cancelled under any of the following provisions:

(a) The designation shall be cancelled effective on the first of the month following the filing with the market administrator, and on a form prescribed by him, of an application by the handler operating the plant: *Provided,* That such application for cancellation shall be accompanied by proof that the handler, if not a cooperative association qualified pursuant to § 927.81, has notified any qualified cooperative association which has any members who deliver milk to such plant, and has notified individually all producers delivering to such plant who are not members of such qualified cooperative association, of his intention to make such application: *Provided further,* That if 50 percent or more of the producers delivering milk at such plant deliver such milk for the account of a cooperative association which does not operate the plant, but for which milk such association receives payment, an application must be made by such cooperative association as well as by the handler operating the plant: *Provided further,* That such plant shall not be a pool plant on any basis from the effective date of cancellation until after the next continuous period of April through June.

(b) The designation of any plant which on June 15 of any year is not approved by a health authority as a source of milk for the marketing area shall be automatically suspended effective on August 1 of such year unless the absence of such approval is a temporary condition covering a period of not more than 15 days: *Provided,* That the designation of a plant approved by a health authority as a source of milk for the marketing area, even though such approval is restricted to prohibit shipment to the marketing area of milk for specified periods during which permission is given by such health authority for receiving unapproved milk or skim milk at the plant or for shipment of approved skim milk from such plant, shall not be suspended pursuant to this provision.

(c) The designation of any plant shall be suspended, effective no sooner than 10 days nor later than 20 days after the date of mailing of notice, by registered letter, to the handler, whenever the market administrator, subject to the limitations set forth in paragraphs (g) and (i) of this section, finds on the basis of available information that the handler operating the plant is not meeting the requirements set forth in § 927.26: *Provided,* That, if the handler operating the plant is not a cooperative association qualified pursuant to § 927.81, the market administrator shall also notify any qualified cooperative association which has any members who deliver milk to such plant, and shall notify individually all producers delivering to such plant who are not members of such qualfied cooperative association, of such suspension of designation.

(d) In the case of the suspension pursuant to this section of the designation of one or more plants for failure to meet the requirements of § 927.26 (a) or (c), the handler operating such plant may select, prior to the effective date of such suspension, some other pool plant or plants to be substituted for the plant or plants suspended if, during the preceding month, the quantity of milk received from producers at such substituted plant or plants was not less than the quantity of milk received from producers at the suspended plant or plants. The handler may also select the order in which plant designations are to be cancelled in the event of a later determination by the Secretary cancelling the designation of some but not all of the plants suspended.

(e) Not later than 10 days after the effective date of suspension of designation pursuant to this section, the handler operating the plant may apply to the Secretary for a review. If the handler fails to so apply for such review, the designation of the plant as a pool plant shall be cancelled as of the effective date of the suspension. If the handler does so apply, the Secretary shall, after review, either determine that the requirements set forth in § 927.26 have been met and order the suspension revoked, or determine that such requirements have not been met and order the designation cancelled as of the effective date of the suspension: *Provided,* That, if the Secretary has made no determination within two months after the end of the month in which the suspension was made effective, but later orders the designation cancelled, such cancellation shall be effective as of the first of the month following the date of such determination.

(f) Beginning with the effective date of a suspension pursuant to this section, and until the Secretary has either ordered the designation cancelled or ordered the suspension revoked, the plant shall be treated as a pool plant: *Provided,* That all payments into or out of the producer settlement fund (except such payments on the basis of operations during a month in which the plant meets the requirements of § 927.29) shall be held in reserve by the market administrator until an order is issued by the Secretary, but not longer than two months after the end of the month in which the suspension was made effective.

(g) No pool plant designation shall be suspended for failure to meet the requirements of § 927.26 (a) except under the following conditions:

(1) A meeting has been held no sooner than three days after notice by the market administrator to all handlers operating pool plants designated pursuant to § 927.25 or § 927.28 for consideration of the desirable utilization of milk received from producers during a period ending not later than the end of the second month after the month during which such meeting is held.

(2) There has been issued by the market administrator, following such meeting, and mailed to all handlers operating pool plants designated pursuant to § 927.25 or § 927.28, the market administrator's determination of the desirable utilization of milk received from producers each month during all or a part of the period set forth in subparagraph (1) of this paragraph. Such determination shall include a schedule setting forth, by months, the desired minimum percentage of milk received from producers to be utilized in specified classes. Such specified classes shall include Class I–A, and may include all or a part of Class I–B and Class II.

(3) The market administrator finds on the basis of available information that the handler operating a plant or the cooperative reporting a plant is not utilizing milk received from producers in accordance with the minimum percentage set forth in the determination of the market administrator previously announced pursuant to subparagraph (2) of this paragraph: *Provided,* That the suspension of the pool plant designation of a plant may be made effective during the months of November and December if the market administrator finds that the handler is utilizing any milk received from producers in classes other than those set forth in the determination of the market administrator announced pursuant to subparagraph (2) of this paragraph.

(h) The cancellation of pool plant designations for failure to meet the requirements of § 927.26 (a) shall be subject to the following conditions:

(1) No pool plant designation shall be cancelled if the handler operating the plant utilized the milk received by him at all pool plants from producers during the month in which the suspension is made effective in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (g) (2) of this section.

(2) No pool plant designation shall be cancelled if the handler operating the plant utilized in the specified classes set forth in the determination of the market administrator announced pursuant to paragraph (g) (2) of this section a percentage of the total milk received by him at all pool plants from producers during the month in which the suspension is made effective which is not less than the percentage of the total milk reported by all handlers to have been received from producers during such month which was reported to have been used in the specified classes.

(3) In the event that all milk received from producers at a plant is reported to the market administrator by a cooperative association qualified pursuant to § 927.81 and such association pays the producers for such milk, the pool plant designation of such plant shall not be cancelled if a percentage of all milk reported by such cooperative association is utilized in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (g) (2) of this section, or in accordance with the percentage set forth in subparagraph (2) of this paragraph.

(4) Cancellation of designations shall be limited to those plants necessary to result in a utilization of milk received at the remaining pool plants operated by the handler, or reported by the cooperative, as the case may be, in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (g) (2) of this section.

(i) Loss of approval by health authorities of a plant as a source of milk for the marketing area may in itself constitute adequate reason for the market administrator to suspend the designation of plant for failure to meet the requirements of § 927.26 (b), only if the absence of such approval continues for more than 15 days.

§ 927.28 *Plant replacements and change of operator.* (a) A plant may be designated at any time as a pool plant upon application made by the person operating the plant to the Secretary showing that the plant is a replacement for one or more pool plants designated pursuant to § 927.25, or this section, which are operated by him and that substantially all of the dairy farmers delivering milk at the plant previously delivered milk to the pool plant or plants replaced. Upon designation of a plant pursuant to this section, the designation of the plant or plants which is replaced shall be automatically cancelled.

(b) The designation of pool plants pursuant to § 927.25 or this section shall be considered as applicable to the plant as such, and subject to cancellation only pursuant to § 927.27 or this section, regardless of change in the person owning or operating the plant. The market administrator shall be notified, by the handlers involved, of any transfer from one person to another of ownership or operation of a pool plant.

§ 927.29 *Temporary pool plants.* Except for plants which, pursuant to paragraph (a) of § 927.27 or pursuant to the proviso of paragraph (c) or (e) of this section, are not eligible for designation, any plant not designated pursuant to § 927.25 or § 927.28 shall automatically be designated a pool plant in accordance with provisions of paragraphs (a) through (d) of this section.

(a) For any of the months of January through March and July through December, any plant at which 25 percent or more of the receipts of milk from dairy farmers is classified in Class I–A on some

basis other than the failure to account for such milk shall automatically be designated a pool plant for such month.

(b) For any of the months of April, May, or June, any plant at which, during the preceding period of October, November, and December either (1) no milk was received from dairy farmers, or (2) 60 percent or more of the milk received from dairy farmers was classified in Class I–A on some basis other than the failure to account for such milk, shall automatically be designated a pool plant for any of such months of April, May, or June in which 10 percent or more of the milk received from dairy farmers is classified in Class I–A on some basis other than the failure to account for such milk.

(c) Any plant which is a pool plant in any of the months of April, May, or June on the basis of paragraph (b) of this section shall be a pool plant in any of the months of July through March following in which 60 percent or more of the milk received at the plant from dairy farmers is classified in Class I–A and Class I–B: *Provided,* That upon written request presented to the market administrator by the handler, the plant shall not be a pool plant on any basis from the month following receipt of such request until the following July 1.

(d) Any plant which for any month is not a pool plant because of failure to meet the requirements of paragraph (a), (b), or (c) of this section (except a plant which is not a pool plant pursuant to the proviso in paragraph (c)), but from which Class I–A milk is distributed in the marketing area other than to another plant shall be a pool plant in any month at the option of the handler, exercised at the time of filing the report pursuant to § 927.50, if at least 55 percent of the milk received from dairy farmers at the plant during such month is classified in Class I–A and Class I–B: *Provided,* That a plant at which, except for this paragraph, milk received from farmers would be classified and priced under another order issued pursuant to the act, shall not be a pool plant pursuant to this paragraph unless the percentage of the milk received from dairy farms at the plant which is classified in Class I–A is greater than the percentage of such milk which is classified in Class I–B and disposed of in the marketing area defined in such other order.

(e) No plant shall be a pool plant on the basis of this section during the months of January through July if the designation of the plant as a pool plant was cancelled for failure to meet the requirements of § 927.26 during the preceding year.

(f) At the time of announcing the uniform price for each month, the market administrator shall make public the location and name of the operator of any plant for which a report of receipts from dairy farmers was used pursuant to this section in the computation of that uniform price.

CLASSIFICATION

§ 927.30 *Basis of classification.* All milk the butterfat from which is received at a plant at which the classification of milk received from producers is to be determined pursuant to § 927.33, and all milk entering the marketing area in the form of milk, concentrated fluid milk, fluid milk products, cultured or flavored milk drinks, cream, half and half, fluid cream products, or skim milk, shall be classified in accordance with the form in which it is held at, or moved from, the plant at which classification is determined. Such classification shall be subject to the conditions set forth in §§ 927.31 through 927.35.

§ 972.31 *Burden of proof.* In establishing the classification of milk received from producers, the burden rests upon the handler who received the milk from producers to show that the milk should not be classified as Class I–A, and that the skim milk in Class II and Class III milk should not be subject to the fluid skim differential. The burden rests upon the handler who receives in the marketing area or at a pool plant, or distributes in the marketing area, milk, concentrated fluid milk, fluid milk products, cultured or flavored milk drinks, cream, half and half, fluid cream products, or fluid skim milk to establish the source of all of his milk and milk products, and in the absence of such proof such milk and the milk equivalent of such eneumerated products shall be subject to the provisions of § 927.84.

§ 927.32 *Period for establishing classification.* A period ending with the last day of the month following the month during which the milk was received from dairy farmers shall be allowed for handling such milk as a basis for establishing the classification as other than Class I–A: *Provided,* That the holding of milk in the form of cream in a licensed cold storage warehouse for a least 7 days shall constitute that portion of the handling of such cream required pursuant to § 927.37 (d) (2) that is required to be performed during the month following its receipt from dairy farmers.

§ 927.33 *Plant at which classification is to be determined.* Classification shall be determined at the plant at which milk is received from dairy farmers: *Provided,* That if such milk is shipped in the form of milk or cream to another plant or other plants, it shall be classified, subject to the provisions of paragraphs (a) and (b) of this section, at the plant or plants to which it is shipped, and there shall be no limit on the number of interplant movements in the form of milk or cream except as set forth in paragraphs (a) and (b) of this section.

(a) Except as set forth in paragraph (b) of this section, the classification of milk shipped in the form of milk and of milk the butterfat from which is shipped in the form of cream to a non pool plant shall be determined at the non pool plant (unless such non pool plant is in the marketing area, received no milk from dairy farmers and is engaged substantially either in distributing packaged milk or cream in the marketing area or in shipping bulk milk or cream to a pasteurizing and bottling plant in the marketing area), unless the handler operating the pool plant from which such shipments are made to the non pool plant elects in writing on his monthly reports to have classification of all milk or cream received during the month at such handler's pool plant and shipped as milk or cream to the non pool plant determined at the pool plant from which the milk or cream is shipped to the non pool plant.

(b) The classification of milk shipped in the form of milk more than 65 miles from the plant where received from dairy farmers and of milk the butterfat from which is shipped in the form of cream more than 65 miles from the plant where the milk was separated to a plant outside Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York State, Ohio, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, or the District of Columbia shall be determined at the plant from which the milk or cream is so shipped.

§ 927.34 *Plant loss.* Allowances for plant loss not to exceed 5 percent of the butterfat in the product resulting from any specific plant operation, which plant loss may be classified the same as the milk equivalent of the butterfat in the product, shall be determined by the market administrator pursuant to § 927.36

§ 927.35 *Accounting procedure.* The accounting procedure for classifying milk pursuant to §§ 927.30 through 927.37 shall be set up by the market administrator pursuant to § 927.36. Such accounting procedure shall include conversion factors to be used in the absence of specific weights and tests, specific definitions of products, and such methods for assignment of milk to classes according to source and form as may be necessary to effectuate the provisions of §§ 927.30 through 927.37 and which are not inconsistent with the following general principles:

(a) Milk, concentrated fluid milk, fluid milk products, cream, half and half, fluid cream products, and skim milk received from pool plants or from producers shall be assigned, as far as possible, to Class I–A, Class II, or to skim milk subject to the fluid skim milk differential. The assignment of milk shall be subject to the additional requirements set forth in subparagraphs (1) through (5) of this paragraph.

(1) If the plant is not a pool plant pursuant to § 927.25 or § 927.28, milk received directly from dairy farmers in an amount sufficient to qualify such plant as a pool plant pursuant to paragraph (a) or (b) of § 927.29 shall be assigned to Class I–A milk leaving the plant which is distributed to outlets which are not other plants: *Provided,* That if such Class I–A milk is not sufficient to qualify such plant as a pool plant pursuant to paragraph (a) or (b) of § 927.29, no assignment pursuant to this subparagraph is to be made by the handler.

(2) After any required assignment pursuant to subparagraph (1) of this paragraph, milk from the following sources shall be assigned as far as possible to Class I–A:

(i) Milk received from producers delivering to the plant if the plant is designated as a pool plant pursuant to § 927.25 or § 927.28.

(ii) The balance of the milk received from producers if the plant is a pool plant pursuant to § 927.29 on the basis of the assignment pursuant to subparagraph (1) of this paragraph.

(iii) Milk received from other pool plants designated pursuant to § 927.25 or § 927.28.

(iv) Milk received from other plants which are pool plants pursuant to § 927.29 on the basis of the assignment pursuant to subparagraph (1) of this paragraph at such other plants.

(3) After assignments pursuant to subparagraphs (1) and (2) of this paragraph, milk from other sources shall be assigned to remaining Class I–A at the option of the handler.

(4) Notwithstanding the other provisions of this paragraph, milk received from the plant of a handler at which milk is received from farms which is eliminated from the computation of the handler's net pool obligation pursuant to § 927.65 (h) (1) shall be assigned, as far as possible, to Class III milk at the plant unless such assignment results in nonpooled milk being assigned to Class I–A, Class II, or skim milk subject to the fluid skim differential.

(5) Notwithstanding other provisions of this paragraph, milk received (except packaged milk produced in accordance with methods and standards of the American Association of Medical Milk Commissions for the production of certified milk) from a handler's plant receiving milk which, pursuant to § 927.65 (h) (2) or (3), is excluded from such handler's net pool obligation shall be considered to be nonpool milk with respect to assignments pursuant to this section and payments pursuant to § 927.83.

(b) After the assignments prescribed in paragraph (a) of this section, the remaining whole milk received at a plant from producers or from pool plants and in like form from dairy farmers not producers or from nonpooled plants shall be assigned pro rata to the total classification of all milk on hand at or leaving such plant as whole milk.

(c) After the assignments prescribed in paragraphs (a) and (b) of this section, the then remaining milk or cream received from producers or from pool plants and the milk or cream received from dairy farmers not producers or from nonpool plants shall be assigned pro rata to the total remaining classification of such products received in like form.

(d) After the assignment of skim milk prescribed in paragraph (a) of this section, skim milk received from nonpool plants shall be assigned to the remaining skim milk subject to the fluid skim differential.

(e) Milk from a handler's own farm which is excluded from the computation of the handler's net pool obligation pursuant to § 927.65 (h) (2) shall be assigned pro rate to the classification of milk at the plant after first assigning all milk from other pool plants to Class I–A: *Provided,* That any milk shipped to another plant on which the handler operating the other plant is required to make payments pursuant to § 927.83 shall be considered to be Class III at this plant, and shall be considered to be subject to the butter-cheese adjustment if such butter-cheese adjustment was used in determining the rate of payment pursuant to § 927.83.

§ 927.36 *Rules and regulations.* The rules and regulations to effectuate the terms and provisions of §§ 927.30 through 927.37 shall be made, and may from time to time be amended, by the market administrator in accordance with the procedure set forth in this section: *Provided,* That at any time upon a determination by the Secretary that an emergency exists which requires the immediate adoption of rules and regulations, the market administrator may issue, with the approval of the Secretary, temporary rules and regulations without regard to the following procedure: *Provided further,* That if any interested person makes written request for the issuance, amendment, or repeal of any rule, the market administrator shall within 30 days either issue notice of meeting pursuant to paragraph (a) of this section or deny such request, and except in affirming a prior denial, or where the denial is self-explanatory, shall state the grounds for such denial.

(a) All proposed rules and regulations and amendments thereto shall be the subject of a meeting called by the market administrator, at which time all interested persons shall have opportunity to be heard. Notice of such meeting shall be given by the market administrator, and a copy of the proposed rules and regulations shall be sent at least five days prior to the date of the meeting to all handlers operating pool plants. A stenographic record shall be made at all such meetings and such record shall be public information available for inspection at the office of the market administrator.

(b) A period of at least five days after the meeting held pursuant to paragraph (a) of this section shall be allowed for the filing of briefs. Such briefs shall be public information available for inspection at the office of the market administrator.

(c) Not later than 30 days after a meeting held pursuant to paragraph (a) of this section, the market administrator shall issue and send to all handlers operating pool plants the tentative rules and regulations or amendments thereto relating to the issues considered at such meeting, or a tentative notice that no rules or regulations or amendments thereto are to be issued prior to further consideration at another meeting. The tentative rules and regulations, or tentative notice, together with copies of the stenographic record and briefs, shall also at the same time be forwarded by the market administrator to the Secretary.

(d) Not later than 30 days after issuance by the market administrator, the Secretary shall either approve the tentative rules and regulations or tentative notice as issued, or direct the market administrator to reconsider. In which latter event, the market administrator shall within 30 days either issue revised tentative rules and regulations or tentative notice, or call another meeting pursuant to paragraph (a) of this section.

(e) The tentative rules and regulations and amendments thereto or tentative notice issued pursuant to paragraph (c) of this section shall be effective as of the first of the month following approval by the Secretary, but not sooner than ten days after issuance by the market administrator.

§ 927.37 *Classes of utilization.* Subject to all of the conditions set forth in §§ 927.30 through 927.36, milk shall be classified at the plant at which classification is to be determined as follows:

(a) Class I–A milk shall be all milk, except as provided in paragraph (b) of this section and in subparagraphs (3) and (5) of paragraph (d) of this section, the butterfat from which leaves or is on hand at the plant in the form of milk, concentrated fluid milk, fluid milk products, or as cultured or flavored milk drinks containing 3.0 percent or more but not more than 5.0 percent of butterfat, and all milk the classification of which is not established in some other class named in this section.

(b) Class I–B milk shall be all milk, except as provided in subparagraphs (3) and (5) of paragraph (d) of this section, the butterfat from which leaves the plant in the form of milk, concentrated fluid milk, fluid milk products, or of cultured or flavored milk drinks containing 3.0 percent or more but not more than 5.0 percent of butterfat, and which is delivered to a plant or a purchaser outside the marketing area and remains outside the marketing area.

(c) Class II milk shall be all milk the butterfat from which leaves or is on hand at the plant in the form of cream, sweet or sour, half and half, fluid cream products, or in the form of cultured or flavored milk drinks, containing less than 3.0 percent or more than 5.0 percent of butterfat, unless such cream, half and half, fluid cream products, or cultured or flavored milk drinks are established to have been so handled or marketed as to classify such milk in some other class named in this section.

(d) Class III milk shall be all milk which meets the conditions set forth in any one of the following subparagraphs:

(1) All milk the butterfat from which leaves or is on hand at the plant in the form of cultured or flavored milk drinks containing less than 3.0 percent or more than 5.0 percent of butterfat or in the form of cream, half and half, or fluid cream products which cream, half and half, fluid cream products, or cultured or flavored milk drinks is delivered to a plant or a purchaser outside the New York metropolitan district and remains outside the New York metropolitan district.

(2) All milk the butterfat from which leaves or is on hand at the plant in the form of cream which is subsequently held in a licensed cold storage warehouse for at least 28 days, and which is subject at all times until utilization of such cream to being inspected by a representative of the market administrator to determine the physical presence of the cream. After the first 7 days, such cream may be moved from one licensed cold storage

warehouse to another: *Provided,* That the market administrator receives notice of such removal within 7 days thereafter. Any handler whose report claimed the original classification of milk pursuant to this subparagraph shall be liable under the provisions of § 927.80 for the difference between the Class II and Class III prices for the month in which the Class III classification was claimed on any such milk if the storage of cream does not comply with all requirements of this subparagraph.

(3) All milk the butterfat from which leaves the plant in the form of products named in paragraph (a), (b), or (c) of this section if such products have been sterilized and leave the plant in hermetically sealed containers.

(4) All milk the butterfat from which leaves the plant in the form of milk which is delivered in bulk to an establishment (other than a plant as defined in § 927.8) at which food products are processed and packed in hermetically sealed containers and at which establishment there is no disposition of milk or milk products specified in paragraphs (a), (b), or (c) of this section other than milk or milk products received in consumer packages for consumption on the premises.

(5) All milk the butterfat from which leaves or is on hand at the plant in the form of concentrated fluid milk which is established not to have been packaged in consumer packages either before or after leaving the plant.

(6) All milk the butterfat from which leaves or is on hand at the plant in the form of some product the classification of which is not established in some other class named in this section.

MINIMUM PRICES

§ 927.40 *Class prices.* For milk received during each month from producers or cooperative associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section, subject to the differentials and adjustments in §§ 927.41 through 927.44. Any handler who purchases or receives, during any month, milk from a cooperative association of producers which is also a handler shall, on or before the 15th day of the following month, pay such cooperative association in full for such milk at not less than the minimum class prices applicable pursuant to this section, subject to the differentials and adjustments in §§ 927.41 through 927.44 and § 927.71 (c).

(a) For Class I–A milk the price during each month shall be a price computed pursuant to subparagraphs (1) through (11) of this paragraph: *Provided,* That the provisions in effect for the pricing of Class I–A milk for the month immediately prior to the effective date of this proviso shall continue in effect for the purpose of computing Class I–A prices for the first two months following the effective date of this proviso.

(1) Divide (with the result expressed to three decimal places) the monthly wholesale price index for all commodities in the second preceding month as reported on a 1947–49 base by the Bureau of Labor Statistics, United States Department of Labor, by the average of the monthly indexes reported on the same base for the year 1955.

(2) Multiply the base price of $5.20 by the result determined pursuant to subparagraph (1) of this paragraph. Express the result to the nearest cent.

(3) For each month during the 3-year period ending with the second preceding month, calculate to one decimal place the percentage that the total volume of milk in Class I–A and Class I–B was of the total volume of reported receipts of milk from producers and from unrevealed sources (these percentages to be referred to as utilization percentages): *Provided,* That the utilization percentages for months prior to the effective date of the amendment to the definition of the marketing area set forth in § 927.3 to include areas outside the New York metropolitan district shall be the percentages computed pursuant to this subparagraph plus 8.1.

(4) Calculate the average of the 36 monthly utilization percentages for the 3-year period ending with the second preceding month.

(5) Calculate the average of the 6 utilization percentages for the second and third preceding months and for the same months of the 2 preceding years.

(6) Divide the result determined pursuant to subparagraph (5) of this paragraph by the result determined pursuant to subparagraph (4) of this paragraph expressing the result to three decimal places.

(7) Calculate the average of the 2 utilization percentages in the second and third preceding months.

(8) Divide the result determined pursuant to subparagraph (7) of this paragraph by the result determined pursuant to subparagraph (6) of this paragraph. Express the result to one decimal place and add 100.

(9) Calculate a utilization adjustment percentage by subtracting the base utilization percentage of 56.2 from the result determined pursuant to subparagraph (8) of this paragraph.

(10) Multiply the result determined pursuant to subparagraph (2) of this paragraph by the utilization adjustment percentage determined pursuant to subparagraph (9) of this paragraph.

(11) Multiply the result determined pursuant to subparagraph (10) of this paragraph by the following seasonal adjustment factor for the month for which the Class I–A price is being determined:

| | | | |
|---|---|---|---|
| January | 1.05 | July | 0.95 |
| February | 1.03 | August | 1.00 |
| March | 1.00 | September | 1.04 |
| April | 0.94 | October | 1.07 |
| May | 0.88 | November | 1.09 |
| June | 0.88 | December | 1.07 |

(b) Whenever any of the following conditions exist for 3 consecutive months, the Secretary shall call a public hearing promptly to consider those and other economic conditions, or promptly announce his determination that such a hearing should not be held, together with reasons for such determination:

(1) There is a difference of more than 6 points for each of 3 consecutive months between the index of the cost of production announced pursuant to § 927.46 (a) (6) and the index of wholesale prices (1955 base) announced pursuant to § 927.46 (a) (1).

(2) There is a difference of more than 15 points for each of 3 consecutive months between the index of the cost of production announced pursuant to § 927.46 (a) (6) and the index of the Class I–A price announced pursuant to § 927.46 (a) (7).

(3) The Class I–A price for each of 3 consecutive months is less than $1.00 higher than the condensery price announced pursuant to § 927.46 (b) (9) for such months or more than $2.50 higher than such condensery price.

(c) For Class I–B milk the price shall be the price for Class I–A milk.

(d) For Class II milk the price during each month shall be the sum of the amounts computed pursuant to subparagraphs (1) and (2) of this paragraph.

(1)

| U. S. Grade A or U. S. 92-score butter, wholesale, at New York, average price announced pursuant to (§ 927.46 (a) (4) for the period ending on the 24th of the preceding month | Class II price: March through July (dollars per hundredweight) | Class II price: August through February (dollars per hundredweight) |
|---|---|---|
| *Cents per pound* | | |
| Under 21.5 | 1.35 | 1.50 |
| 21.5 or over, but under 25.0 | 1.50 | 1.65 |
| 25.0 or over, but under 28.5 | 1.65 | 1.80 |
| 28.5 or over, but under 32.0 | 1.80 | 1.95 |
| 32.0 or over, but under 35.5 | 1.95 | 2.10 |
| 35.5 or over, but under 39.0 | 2.10 | 2.25 |
| 39.0 or over, but under 42.5 | 2.25 | 2.40 |
| 42.5 or over, but under 46.0 | 2.40 | 2.55 |
| 46.0 or over, but under 49.5 | 2.55 | 2.70 |
| 49.5 or over, but under 53.0 | 2.70 | 2.85 |
| 53.0 or over, but under 56.5 | 2.85 | 3.00 |
| 56.5 or over, but under 60.0 | 3.00 | 3.15 |
| 60.0 or over, but under 63.5 | 3.15 | 3.30 |
| 63.5 or over, but under 67.0 | 3.30 | 3.45 |
| 67.0 or over, but under 70.5 | 3.45 | 3.60 |
| 70.5 or over, but under 74.0 | 3.60 | 3.75 |
| 74.0 or over, but under 77.5 | 3.75 | 3.90 |
| 77.5 or over, but under 81.0 | 3.90 | 4.05 |

Should the average butter price set forth above be 81.0 cents or more, the Class II price shall be the price which would result from further extension of this table at the same rate to cover such average butter price.

(2) Multiply by 7.5 the average of all the hot roller process dry skim milk or nonfat dry milk solids quotations for "other brands, human consumption, carlots, bags, or barrels" (using midpoint of any range as one quotation), published for the delivery period in "The Producers' Price-Current," and subtract 48 cents.

(e) For Class III milk, the price shall be the sum of the amounts computed or determined pursuant to subparagraphs (1), (2), and (3) of this paragraph, minus 80 cents.

(1) To the simple average of the daily wholesale selling price per pound (using the midpoint of any price range as one price) reported during such month by the

United States Department of Agriculture for Grade A (92-score) bulk creamery butter in the New York City market, add two cents, multiply by 1.22, and then multiply by 3.5: *Provided*, That for any of the months from August through February for which the utilization adjustment percentage announced pursuant to § 927.46 (a) (2) is 107.5 or larger, there shall be an additional three cents added to such average butter price.

(2) Multiply by 7.8 the weighted average, as computed by the market administrator using a weight of 70 for roller process prices and a weight of 30 for spray process prices, of the prices per pound of roller process and spray process nonfat dry milk solids, for human consumtion in carlots, f. o. b. manufacturing plants in the Chicago area, as published by the United States Department of Agriculture for the period from the 26th day of the immediately preceding month through the 25th day of the current month.

(3) Determine the appropriate seasonal adjustment in accordance with the following table:

| Month to which the price is applicable: | *Amount* |
|---|---|
| July through November | $0.13 |
| December through February | 0.10 |
| March and April | 0.08 |
| May and June | 0.05 |

§ 927.41 *Butterfat differentials.* The minimum price for Class I–A and Class I–B milk shall be plus or minus four cents for each one-tenth of 1 percent of butterfat therein above or below 3.5 percent. The minimum price for Class II and Class III milk shall be plus or minus, for each one-tenth of 1 percent of butterfat therein above or below 3.5 percent, an amount computed as follows: subtract from the respective class prices an amount computed pursuant to § 927.40 (d) (2), and divide by 35.

§ 927.42 *Transportation differentials.* The market administrator shall determine and publicly announce a freight zone for each pool plant, and he shall determine the freight zone for each plant at which milk or milk products subject to the provisions of §§ 927.83 and 927.84 is received from dairy farmers or is first found. Such freight zone shall be the shortest highway mileage from the plant to the nearest of the following points as computed by the market administrator from data contained in Mileage Guide No. 5, without supplements, issued on July 20, 1949, effective August 21, 1949, by the Household Goods Carriers' Bureau, Agent, Washington, D. C.: Mount Vernon or Yonkers in the State of New York; Tenafly, Glen Ridge, East Orange, Elizabeth, Hackensack, Hillside, Irvington, or Passaic in the State of New Jersey. The freight zone for plants located in New York City, Nassau, and Suffolk Counties in the State of New York, or in Essex, Hudson, and Union Counties in the State of New Jersey shall be in the 1–10 mile zone. The class prices set forth in § 927.40 and the fluid skim differential set forth in § 927.44 shall be plus or minus the amount set forth in the following schedule:

| A | B | C |
|---|---|---|
| Freight zone—Miles | Classes I–A, I–B, and skim milk subject to the fluid skim differential | Classes II and III |
| | *Cents per hundredweight* | *Cents per hundredweight* |
| 1–10 | +28 | +8 |
| 11–20 | +26.6 | +8 |
| 21–25 | +25.2 | +8 |
| 26–30 | +25.2 | +7 |
| 31–40 | +23.8 | +7 |
| 41–50 | +22.4 | +7 |
| 51–60 | +21.0 | +6 |
| 61–70 | +19.6 | +6 |
| 71–75 | +18.2 | +6 |
| 76–80 | +18.2 | +5 |
| 81–90 | +16.8 | +5 |
| 91–100 | +15.4 | +5 |
| 101–110 | +14.0 | +4 |
| 111–120 | +12.6 | +4 |
| 121–125 | +11.2 | +4 |
| 126–130 | +11.2 | +3 |
| 131–140 | +9.8 | +3 |
| 141–150 | +8.4 | +3 |
| 151–160 | +7.0 | +2 |
| 161–170 | +5.6 | +2 |
| 171–175 | +4.2 | +2 |
| 176–180 | +4.2 | +1 |
| 181–190 | +2.8 | +1 |
| 191–200 | +1.4 | +1 |
| 201–210 | 0.0 | 0 |
| 211–220 | −1.4 | 0 |
| 221–225 | −2.8 | 0 |
| 226–230 | −2.8 | −1 |
| 231–240 | −4.2 | −1 |
| 241–250 | −5.6 | −1 |
| 251–260 | −7.0 | −2 |
| 261–270 | −8.4 | −2 |
| 271–275 | −9.8 | −2 |
| 276–280 | −9.8 | −3 |
| 281–290 | −11.2 | −3 |
| 291–300 | −12.6 | −3 |
| 301–310 | −14.0 | −4 |
| 311–320 | −15.4 | −4 |
| 321–325 | −16.8 | −4 |
| 326–330 | −16.8 | −5 |
| 331–340 | −18.2 | −5 |
| 341–350 | −19.6 | −5 |
| 351–360 | −21.0 | −6 |
| 361–370 | −22.4 | −6 |
| 371–375 | −23.8 | −6 |
| 376–380 | −23.8 | −7 |
| 381–390 | −25.2 | −7 |
| 391–400 | −26.6 | −7 |
| 401 and over | −28.0 | −8 |

§ 927.43 *Butter-cheese adjustment.* For milk received from producers which is classified as Class III pursuant to § 927.37 (d) (6), and which leaves or is on hand at the plant at which classification is determined in the form of butter or Cheddar, American Cheddar, Colby, washed curd, or part skim Cheddar cheese, or is assigned to plant loss which pursuant to § 927.34 is associated with such products, there shall be credited to the handler receiving the milk from producers four cents per pound of butterfat in such milk in the months of March through June and three cents per pound of butterfat in such milk in the months of July through February: *Provided*, That for milk received from producers during any of the months of March through July which is classified on the basis of one of the types of cheese named in this section, the amount so credited shall be increased one cent per pound of butterfat for each full five-hundredths by which the ratio of 2.5 is lower than a ratio computed as follows: add to the New York 92-score butter price for the month announced pursuant to § 927.46 (b) (5) the amount obtained by multiplying by 1.83 the weighted nonfat dry milk solids price for the period ending with the 25th day of the month as announced pursuant to § 927.46 (b) (7); divide this sum by the price of Cheddar cheese for the month as announced pursuant to § 927.46 (b) (8) and round the result to the nearest hundredth: *Provided further*, That for such milk received from producers at a plant in a freight zone farther from New York City than the 321–325 mile zone, there shall be deducted from the amount so credited the following amounts per hundredweight of milk:

| Zones of plant: | *Cents per hundredweight* |
|---|---|
| 326–350 | 1 |
| 351–375 | 2 |
| 376–400 | 3 |
| 401 and over | 4 |

With respect to each plant at which milk received from producers is reported by the handler operating the plant to have been utilized (either at the plant where received or at another plant), in an amount exceeding an average of 4,000 pounds per day in the manufacture of butter or of Cheddar, American Cheddar, Colby, washed curd, or part skim Cheddar cheese, the market administrator shall publicly disclose (a) the location of the plant at which the milk was received from producers, and (b) the name of the handler operating such plant. Such public disclosure shall be made monthly on the basis of handlers' monthly reports, and may be made more frequently on the basis of such other utilization reports as may be required by the market administrator.

§ 927.44 *Fluid skim differential.* For skim milk derived from Class II or Class III milk which skim milk enters the marketing area in the form of milk, fluid skim milk, condensed skim milk, half and half, cream, or cultured milk drinks and is there utilized or disposed of in the form of milk, fluid skim milk, half and half, or cultured milk drinks containing 3.0 percent or more but not more than 5.0 percent of butterfat, and for all other skim milk derived from Class II or Class III milk which is not established to have been otherwise utilized or disposed of, the handler shall pay a fluid skim differential per hundred-weight computed as follows: deduct the price of Class II milk computed pursuant to § 927.40 (d) from the price for Class I–A milk computed pursuant to § 927.40 (a), and divide by 0.9125: *Provided*, That with respect to skim milk so utilized or disposed of in half and half, this differential shall apply only to that quantity of skim milk in excess of 4.5 times the quantity of butterfat in such half and half.

§ 927.45 *Use of equivalent price or index.* If for any reason a price or index specified in §§ 927.40 through 927.46 for use in computing and announcing class prices or for any other purpose is not reported or published in the manner therein described, the market administrator shall use a price or index determined by the Secretary to be equivalent to or comparable with the price or index specified.

§ 927.46 *Announcement of prices.* The market administrator shall publicly announce the following:

(a) Not later than the 25th day of each month, or the next succeeding workday in any month in which the 25th day is a Sunday or holiday:

(1) The monthly wholesale price index for all commodities in the preceding month as reported on a 1947–49 base by the Bureau of Labor Statistics, United States Department of Labor, and the resulting index determined pursuant to § 927.40 (a) (1) multiplied by 100.

(2) The utilization adjustment percentage computed pursuant to § 927.40 (a) for the following month.

(3) The preliminary Class I–A price computed pursuant to § 927.40 (a) for the following month.

(4) The average, for the period beginning with the 25th of the immediately preceding month and ending with the 24th of the current month of the highest prices reported daily by the United States Department of Agriculture for U. S. Grade A or U. S. 92-score butter at wholesale in the New York market.

(5) The preliminary calculation for the following month pursuant to § 927.40 (d) (1).

(6) The index of the cost of production for the preceding month computed by the market administrator as follows:

The index of the cost of production computed by the New York State College of Agriculture at Cornell University (1910–14 base) converted to a 1955 base.

(7) The index computed by dividing the Class I–A formula price prior to the seasonal adjustment, for the following month by $5.20.

(8) Other statistics relating to economic conditions affecting the market supply and demand for milk.

(b) Not later than the 5th day of each month, or the next succeeding workday in any month in which the 5th day is a Sunday or holiday, for the preceding months:

(1) The minimum class prices pursuant to § 927.40.

(2) The butterfat differentials pursuant to § 927.41.

(3) The butter and cheese adjustment pursuant to § 927.43.

(4) The fluid skim differential pursuant to § 927.44.

(5) The simple average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) reported by the United States Department of Agriculture for Grade A or 92-score bulk creamery butter in New York City.

(6) The average of the prices (using the midpoint of any range as one quotation) reported daily in "The Producers' Price-Current" for hot roller process dry skim milk or nonfat dry milk solids "other brands, human consumption, carlots, bags, or barrels."

(7) The respective averages of the carlot prices per pound of spray process and of roller process nonfat dry milk solids for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the second preceding month through the 25th of the preceding month by the United States Department of Agriculture, and the weighted average of such two averages using a weight of 70 for roller prices and a weight of 30 for spray prices.

(8) The average selling prices per pound reported by the United States Department of Agriculture for Wisconsin State Brand Cheddars, cars or truckloads, f. o. b. Wisconsin assembly points.

(9) The average of prices paid in the preceding month by 18 midwestern condenseries as reported by the United States Department of Agriculture.

(10) The nearby differential rate for the preceding month determined pursuant to § 927.71 (b).

### Reports of Handlers

§ 927.50 *Monthly reports.* On or before the 10th day of each month, each handler shall report to the market administrator, for the preceding month, in the manner and on forms prescribed by the market administrator, with respect to milk or milk products received at each of his pool plants, and at each of his plants where milk or milk products subjected to payments under §§ 927.83 and 927.84 were handled, the following: *Provided,* That for informational and statistical purposes only, each handler, by not later than the 10th day after the effective date of this proviso, shall report to the market administrator, for the preceding month, in the manner and on forms prescribed by the market administrator, the information specified in paragraphs (a) through (e) of this section with respect to plants which become pool plants on the effective date of this proviso but which were not pool plants in the preceding month:

(a) The total quantity of milk and of each milk product with the average butterfat content thereof, received from dairy farmers, from other plants, from such handler's own farm, from other handlers, and from other sources;

(b) The total quantity of milk and of each milk product moved out of, or on hand at, such plant, the average butterfat content thereof, and the destination of any milk or milk product the classification of which wholly or partially depends upon its destination, moved out of such plant;

(c) The disposition of milk or milk products at each other plant at which the disposition of any milk or milk products is claimed as the basis of classification;

(d) The computation pursuant to § 927.65 of such handler's net pool obligation;

(e) The computation of the amount of any payments pursuant to §§ 927.83 and 927.84; and

(f) Beginning March 1958, the total quantity of base milk and the total quantity of excess milk delivered by dairy farmers.

§ 927.51 *Producer payroll reports.* Each handler shall report with respect to producers as follows:

(a) On or before the 10th day after the end of each month, the information required by the market administrator with respect to producer additions, producer withdrawals, and changes in names of farm operators; and

(b) On or before the last day of each month, such handler's producer payroll for the preceding month, which shall show for each producer:

(1) The total delivery of milk with the average butterfat test thereof: *Provided,* That, if no butterfat tests are made on any of the milk received from producers, and if such milk is received by the handler from no more than 10 producers, 3.5 percent shall be reported as the average butterfat test of milk received from producers,

(2) The amount of payment due each producer,

(3) Any deductions and charges made by the handler,

(4) The net amount of payment to such producer made pursuant to §§ 927.70 through 927.72, and

(5) Such other information with respect thereto as the market administrator may require.

§ 927.52 *Storage cream reports.* (a) On or before the last day of the period for establishing classification pursuant to § 927.32, or, if earlier, not later than 15 days prior to the date of final removal of the cream from storage, each handler who separates milk the cream from which is stored as a basis for Class III classification pursuant to § 927.37 (d) (2) shall report to the market administrator on forms prescribed by the market administrator information with respect to the storage of cream. Failure to make such report shall result in the disallowance of Class III classification pursuant to § 927.37 (d) (2).

(b) The handler who made such reports shall report to the market administrator, not later than the end of the second month following the month during which frozen cream is utilized, information with respect to the utilization of such cream. Failure to make such reports shall result in the disallowance of storage cream payments pursuant to § 927.82 (b).

(c) With respect to notices of transfer of cream filed pursuant to § 927.37 (d) (2) and with respect to storage cream reports filed pursuant to this section, a receipt form acknowledging receipt of such notice or report shall be mailed by the market administrator to the handler within 48 hours after such notice or report is received by the market administrator.

§ 927.53 *Other reports.* At such time as the market administrator may request, each handler shall report to the market administrator in the manner and on forms prescribed by the market administrator:

(a) The total quantity of milk and of each milk product received at his nonpool plants, with the average butterfat content thereof, from dairy farmers, from other plants, from such handler's own farm, from other handlers, and from other sources;

(b) The total quantity of milk and of each milk product moved out of, or on hand at, his nonpool plants, the average butterfat content thereof, and the destination of any milk or milk product moved out of such plants;

(c) Information concerning land, buildings, surroundings, facilities, and equipment at any of his plants;

(d) The current receipts and utilization of milk at each of his pool plants; and

(e) Such other information as may be necessary for the administration of the provisions of this part.

§ 927.54 *Verification of reports and payments.* The market administrator shall promptly verify all reports and payments of each handler by audit of such handler's records and of the records of any handler or person upon whose disposition of milk such handler claims classification, and each such handler shall, during the usual hours of business, make available to the market administrator or his representative such records and facilities, of his own or other persons, as will enable the market administrator to:

(a) Verify the receipts and disposition of all milk required to be reported pursuant to §§ 927.50 through 9257.53, and, in case of errors or omissions, ascertain the correct figures;

(b) Weight, sample, and test for butterfat content the milk received from producers and any product of milk upon which classification depends;

(c) Verify the payments to producers prescribed in §§ 927.70 through 927.72;

(d) Verify all claims for payments pursuant to §§ 927.81 and 927.82; and

(e) Make inspection of buildings and their surroundings, facilities, and equipment for verification purposes and to ascertain what constitutes a plant.

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

BASE RATING PLAN

§ 927.60 *Computation of producer's base.* (a) Subject to the rules set forth in § 927.61, the market administrator each year shall compute a daily base for each producer as follows: determine the total amount of milk delivered by the producer in the months of July through November and divide by 153. Such base shall be applicable for the 12-month period beginning the following March.

(b) The monthly base for any producer shall be the daily base multiplied by the number of days in the month, except that for any producer who discontinues delivering to a pool plant during a month, the monthly base shall be the daily base multiplied by the number of days in the month prior to the discontinuance of delivery, and for any producer who begins delivering to a pool plant in a month, the monthly base at such plant shall be the daily base multiplied by the number of days remaining in the month beginning with the day of first delivery.

§ 927.61 *Base rules.* No later than March 1 of each year, the market administrator shall inform each handler of the daily base for each of his producers delivering milk to his pool plants; and not later than 15 days after receiving such information, handlers shall inform each producer of his base.

DETERMINATION OF UNIFORM PRICE

§ 927.65 *Net pool obligation of handlers.* The handler's net pool obligation shall be computed pursuant to paragraphs (a) through (g) of this section: *Provided,* That milk specified in paragraph (h) of this section shall be eliminated from this computation and such milk shall be deemed to be excluded by the phrase "milk received from producers" as such phrase is used in this section and in §§ 927.43, 927.66, 927.79, 927.81, 927.82, and 927.90.

(a) Determine the classification pursuant to §§ 927.30 through 927.37 of milk received from producers at each pool plant;

(b) Subject to adjustments for appropriate differentials pursuant to §§ 927.41 and 927.42, multiply the milk in each class by the class price, multiply the skim milk subject to the fluid skim differential by the fluid skim differential, and add together the resulting values;

(c) Deduct, in the case of each plant where the average butterfat content of all milk received from producers is in excess of 3.5 percent, and add, in the case of each plant where the butterfat content of all milk received from producers is less than 3.5 percent, the total value of the butterfat differential applicable pursuant to § 927.72;

(d) Deduct, in the case of each plant nearer New York City than the 201-210 mile zone, and add, in the case of each plant farther from New York City than the 201-210 mile zone, the sum obtained by multiplying the milk received from producers by the zone differential set forth in column B of the schedule in § 927.42 applicable to the plant;

(e) Deduct the total amount of the butter-cheese adjustment computed pursuant to § 927.43;

(f) Deduct the total value of the nearby differential to be paid producers pursuant to § 927.71 (b). The computation to this point shall be known as the handler's net pool obligation;

(g) Add together the handler's net pool obligation for all plants at which milk was received from producers; and

(h) Milk specified in subparagraphs (1) through (3) of this paragraph shall be excluded from the computation of the handler's net pool obligation pursuant to this section.

(1) Milk received from farms in Nassau and Suffolk Counties in New York, which farms are not approved for sale of milk in New York City and milk received from farms in New York City.

(2) Milk received at a handler's plant not in excess of an average of 800 pounds per day from such handler's own farm in the event that no milk is received at such plant from other dairy farmers but is received from other plants.

(3) All milk received at a handler's plant from such handler's own farm in the event that no milk is received from any other source at such plant.

§ 927.66 *Computation of the uniform price.* The market administrator shall, on or before the 14th day of each month, audit for mathematical correctness and obvious errors the report submitted for the preceding month by each handler. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than two cents per hundredweight of milk received from producers on all reports, the report of any handler who has not made payment of the last monthly pool debit account rendered pursuant to § 927.76 shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly pool debits. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

(a) Combine into one total the net pool obligations of all handlers;

(b) Subtract the total of payments required to be made for such month by § 927.81;

(c) Add the total payments required to be made by handlers for such month pursuant to §§ 927.83 and 927.84;

(d) Add the amount of unreserved cash in the producer settlement fund;

(e) Subtract an amount equal to not less than eight cents nor more than nine cents per hundredweight of milk received from producers to provide against the contingency of errors in reports and payments or of delinquencies in payments by handlers; and

(f) Divide the result obtained in paragraph (e) by the total pounds of milk delivered by producers. The result shall be known as the uniform price for milk containing 3.5 percent butterfat received from producers at plants in the 201–210 mile zone.

§ 927.67 *Announcement of uniform price and weighted average butterfat differential.* The market administrator shall announce, not later than the 14th day of each month, the uniform price computed pursuant to § 927.66 and, not later than the 5th day of each month, the weighted average butterfat differential pursuant to § 927.72 except that in any month in which the specified date is a Sunday or holiday, such announcements shall be not later than the next succeeding work-day.

PAYMENT BY HANDLERS DIRECTLY TO PRODUCERS

§ 927.70 *Time and rate of payments.* On or before the 25th day of each month each handler shall make payment to each producer for all milk delivered by such producer during the preceding

month at not less than the uniform price subject to appropriate differentials set forth in §§ 927.71 and 927.72: *Provided*, That each handler which is also a cooperative marketing association determined by the Secretary to be qualified under the Capper-Volstead Act may, with respect to producers who are members of and under contract with such association, make distribution, in accordance with the contract between the association and such members, of the net proceeds of all its sales in all markets in all use classifications. Whenever verification by the market administrator of the payment to any producer or cooperative association of producers for milk delivered to any handler discloses payment of less than is required by this subpart, the handler shall make up such payment to the producer or cooperative association of producers not later than the time of making payment next following such disclosure.: *Provided further*, That if a handler claims that he cannot make the required payment because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, such payment shall be made to the producer settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make such payment from the producer settlement fund to the handler or to the lawful claimant as the case may be: *Provided further*, That, if not later than the date when such payment is required to be made, legal proceedings have been instituted by the handler for the purpose of administrative or judicial review of the market administrator's findings upon verification as provided above, such payment shall be made to the producer settlement fund and shall be held in reserve until such time as the abovementioned proceedings have been completed, or until the handler submits proof to the market administrator that the required payment has been made to the producer or association of producers, in which latter event the payment shall be refunded to the handler.

§ 927.71 *Location differentials.* The uniform price shall be subject to the appropriate location differentials set forth below:

(a) The transportation differential shall be plus or minus the appropriate differential shown in column B of the schedule in § 927.42 for the zone of the plant to which the milk is delivered.

(b) The nearby differential shall be computed pursuant to the provisions of subparagraphs (1) through (6) of this paragraph.

(1) A zone shall be detemined by the market administrator for each farm as follows: A zone for each minor civil division (township, borough, incorporated village, or city) within the nearby differential area shall be determined by computing the shortest highway mileage distance from the nearest point in the minor civil division to the nearest point specified in § 927.42, using the mileage guide specified in such section supplemented by U. S. Geological Survey maps. The zone of a farm shall be the same as the zone of the minor civil division in which the milkhouse of such farm is located: *Provided*, That all farms located in the State of New Jersey shall be considered to be in the 1–50 mile zone.

(2) The weighted average percentage of milk utilized in Classes I–A and I–B for the 12-month period ending with the preceding month shall be computed: *Provided*, That for the 12 months following the effective date of this provision, such percentage shall be assumed to be 55 and over, but under 60.

(3) The rates of nearby differentials, except as provided in subparagraphs (4), (5), and (6), of this paragraph, shall be as set forth in the following table:

| Mileage zone of the farm pursuant to subparagraph (1) of this paragraph | Percentage utilization in Classes I–A and I–B as computed pursuant to subparagraph (2) of this paragraph | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Under 45 | 45 and over, but under 50 | 50 and over, but under 55 | 55 and over, but under 60 | 60 and over, but under 65 | 65 and over, but under 70 | 70 and over, but under 75 | 75 and over, but under 80 | 80 and over |
| | Dollars per hundredweight | | | | | | | | |
| 1–50 | 0.64 | 0.56 | 0.48 | 0.40 | 0.32 | 0.24 | 0.16 | 0.08 | 0 |
| 51–60 | .56 | .49 | .42 | .35 | .28 | .21 | .14 | .07 | 0 |
| 61–70 | .48 | .42 | .36 | .30 | .24 | .18 | .12 | .06 | 0 |
| 71–80 | .40 | .35 | .30 | .25 | .20 | .15 | .10 | .05 | 0 |
| 81–90 | .32 | .28 | .24 | .20 | .16 | .12 | .08 | .04 | 0 |
| 91–100 | .24 | .21 | .18 | .15 | .12 | .09 | .06 | .03 | 0 |
| 101–110 | .16 | .14 | .12 | .10 | .08 | .06 | .04 | .02 | 0 |
| 111–120 | .08 | .07 | .06 | .05 | .04 | .03 | .02 | .01 | 0 |

(4) For farms located in Columbia, Rensselaer, and Albany counties; and the townships of Catskill, Athens, Coxsackie, New Baltimore, Greenville, Cairo, and Durham in Greene County, the rate shall be as follows: for farms in the 91–120 mile zone, the rate otherwise applicable for farms in the 91–100 mile zone; for farms in the 121–130 mile zone, the rate otherwise applicable for farms in the 101–110 mile zone; and for farms in the 131–140 mile zone, the rate otherwise applicable for farms in the 111–120 mile zone.

(5) Farms delivering to plants in Columbia, Rensselaer, and Albany counties; and the townships of Catskill, Athens, Coxsackie, New Baltimore, Greenville, Cairo, and Durham in Greene County beyond the 131–140 mile zone, and for farms delivering to plants located in any other territory beyond the 111–120 mile zone shall not be eligible for the differentials set forth in this paragraph.

(6) The differential shall be reduced by 10 percent for each full 0.01 that the ratio computed pursuant to (i) of this subparagraph exceeds the ratio computed pursuant to (ii) of this subparagraph:

(i) Divide the total receipts of milk subject to the nearby differential in the preceding 12 months by the total Class I–A milk in such 12 months, and

(ii) Divide the total receipts of milk subject to the nearby differential in the first 12 months of this provision by the total Class I–A milk in the first 12 months of this provision.

(c) Direct delivery differentials: For plants located in the areas specified in the following table, the handler shall pay to producers, in addition to that required by other provisions of this section, the amounts set forth below:

| *Mileage zone computed pursuant to § 927.42, or county—City or township* | *Rate—dollars per hundredweight* |
|---|---|
| 1–10 mile zone | 0.25 |
| 11–30 mile zone | .20 |
| 31–50 mile zone | .15 |
| 51–70 mile zone | .10 |
| 71–80 mile zone | .05 |
| *Mileage zone computed pursuant to § 927.42, or county—City or township* | *Rate—dollars per hundredweight* |
| Albany: | |
| Albany | 0.10 |
| Colonie | .10 |
| Watervliet | .10 |
| Green Island | .10 |
| Cohoes | .10 |
| Gilderland | .05 |
| New Scotland | .05 |
| Bethlehem | .05 |
| Coeymanas | .05 |
| Schenectady: | |
| Schenectady | .10 |
| Glenville | .05 |
| Niskayuna | .05 |
| Rotterdam | .05 |
| Montgomery: | |
| Amsterdam (city) | .05 |
| Amsterdam (township) | .05 |
| Saratoga: | |
| Waterford | .10 |
| Rensselaer | |
| Troy | .10 |
| Rensselaer | .10 |
| Brunswick | .05 |
| N. Greenbush | .05 |
| E. Greenbush | .05 |
| Schodack | .05 |
| Onondaga: | |
| Syracuse | .05 |
| Manlius | .05 |
| DeWitt | .05 |
| Onondaga | .05 |
| Camillus | .05 |
| Solvay | .05 |
| Geddes | .05 |
| Salina | .05 |

§ 927.72 *Butterfat differential.* The uniform price shall be plus or minus, as the case may be, for each one-tenth of 1 percent above or below 3.5 percent of average butterfat content of milk delivered by any producer during any month, an amount equivalent to the average of the butterfat differentials determined pursuant to § 927.41, for each class weighted by the pounds of butterfat in the milk in each such class used in the computation of the uniform price for the preceding month. Such differential shall be computed to the nearest even tenth of a cent.

PRODUCER SETTLEMENT FUND AND ITS OPERATION

§ 927.75 *Producer settlement fund.* The market administrator shall establish and maintain a separate fund known as "the producer settlement fund" into which he shall deposit all payments and out of which he shall make all payments pursuant to §§ 927.77 through 927.84.

§ 927.76 *Handlers' accounts.* The market administrator shall establish an account for each handler who is required to make payments to the producer settlement fund or who received payments from the producer settlement fund. After computing the uniform price and each handler's pool debit or credit each month, and at such times as he deems appropriate, the market administrator shall render each handler a statement of his account showing the debit or credit balance, together with all debits or credits entered on such handler's account since the previous statement was rendered.

§ 927.77 *Payment to the producer settlement fund.* On or before the 18th day of each month each handler shall make full payment of the debit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 927.76.

§ 927.78 *Payments out of producer settlement fund.* On or before the 20th day of each month the market administrator shall make payment to each handler of the credit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 927.76. If, at any such time, the balance in the producer settlement fund is insufficient to make full payment due to each handler, the market administrator shall reduce uniformly the payments to each handler and shall complete such payments as soon as the necessary funds are available. No handler who, on the 25th day of the month, has not received such payments in full from the market administrator shall be deemed to be in violation of §§ 927.70 through 927.72 if he reduces his total payments to producers for milk delivered by such producers during the preceding month by not more than the amount of the reduction in payment from the producer settlement fund.

§ 927.79 *Handlers' pool debit or credit.* After computing the uniform price for each month, the market administrator shall compute each handler's pool debit or pool credit as follows:

(a) Multiply the quantity of milk received by each handler from producers by the uniform price.

(b) If the result obtained in paragraph (a) of this section is less than the handler's net pool obligation, the difference shall be entered on the handler's producer settlement fund account as such handler's pool debit.

(c) If the result obtained in paragraph (a) of this section is greater than the handler's net pool obligation, the difference shall be entered on the handler's producer settlement fund account as such handler's pool credit.

§ 927.80 *Adjustments of errors in payments.* Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to or from the producer settlement fund, the market administrator shall debit the handler's producer settlement fund account for any unpaid amount. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall credit the handler's producer settlement fund account for any such amount.

§ 927.81 *Cooperative payments for market-wide services.* Payments shall be made to qualified cooperatives or to federations under the conditions, in the manner, and at the rates set forth in this section.

(a) *Definitions.* As used in this section the following terms shall have the following meanings:

(1) "Cooperative" means a cooperative association of producers which is duly incorporated under the cooperative corporation laws of a state; is qualified under the Capper-Volstead Act (7 U. S. C. 291 et seq.; has all its activities under the control of its members; and has full authority in the sale of its members' milk.

(2) "Federation" means a federation of cooperatives.

(3) "Federated cooperative" means a cooperative which is a member of a federation and on whose membership the federation is an applicant for or receives payments under subparagraph (2) of paragraph (f) of this section.

(4) "Member" means, when used with respect to a member of a cooperative or of a federated cooperative, only a member who is also a producer, as defined in § 927.6.

(b) *Qualified cooperatives and federations.* A cooperative or federation may submit an application to the market administrator for payments under the provisions of this section. In accordance with the requirements of the rules and regulations issued by the market administrator, any such application shall include a written description of the applicant's program for the performance of market-wide services, including evidence that adequate facilities and personnel will be maintained by it so as to enable it to perform the market-wide services; and the application shall contain a statement by the applicant that it will perform the required market-wide services for which it is applying for payments. The application shall set forth all necessary data so as to enable the market administrator to determine whether it meets the qualification requirements with respect to the payments for which the application is submitted. An application shall be approved by the market administrator only if he determines that:

(1) In the case of a cooperative:

(i) It has not less than 4,000 members and receives from its members not less than 1 cent per hundredweight of milk delivered by them: *Provided,* That no person shall be counted in this respect as a member if he is a member of another cooperative which is an applicant for or which receives cooperative payments, or if he is a member of a federated cooperative.

(ii) If the application is also for an additional payment under subparagraph (3) of paragraph (f) of this section, it has not less than 6,000 members and receives from its members not less than 1 cent per hundredweight of milk delivered by them, subject to the proviso in subdivision (i) of this subparagraph.

(iii) If the application is also for an additional payment under subparagraph (4) of paragraph (f) of this section, the cooperative is an operating cooperative which operates marketing facilities, i. e., pool plant(s), at which it receives at least 25 per centum, by weight, of the milk marketed by its members: *Provided,* That in determining whether the 25 per centum minimum requirement is complied with, there shall be excluded the milk delivered by a member of the cooperative who is a member of another cooperative which is an applicant for or which receives cooperative payments on the same milk or which is a federated cooperative in a federation which is an applicant for or receiving cooperative payments on the same milk.

(2) In the case of a federation:

(i) It is duly incorporated under the laws of a state.

(ii) It has contracts with each of its federated cooperatives under which the cooperatives agree to remain in the federation for at least one year, and such contracts cover or will be renewed for a yearly period for every subsequent year for which the federated cooperatives are to be included within the membership of the federation for cooperative payment purposes.

(iii) Its federated cooperatives have an aggregate of not less than 4,000 members and the federated cooperatives receive from their members not less than 1 cent per hundredweight of milk delivered by them; and its federated cooperatives will pay to the federation, when required by rules and regulations issued by the market administrator, the minimum monthly payment specified in the rules and regulations to finance the activities of the federation that are not market-wide in character: *Provided,* That no person shall be counted in this respect as a member if he is a member of a cooperative which is an applicant for or which receives cooperative payments, or if he is a member of another federated cooperative.

(iv) If the application is also for an additional payment under subparagraph (3) of paragraph (f) of this section, the aggregate membership of the federated cooperatives is not less than 6,000 members and the federated cooperatives received from their members not less than 1 cent per hundredweight of milk delivered by their members, subject to the proviso in subdivision (iii) of this subparagraph.

(v) If the application is also for an additional payment under subparagraph (5) of paragraph (f) of this section, the federation operates marketing facilities, i. e., pool plant(s), or the federated cooperatives operate marketing facilities, at which is received at least 25 per

centum, by weight, of the milk marketed by the members of the federated cooperatives: *Provided*, That in determining whether the 25 per centum minimum requirement is complied with, there shall be excluded the milk delivered by members of a cooperative which is an applicant for or which receives cooperative payments on the same milk, or which is a federated cooperative in another federation which is an applicant for or receiving cooperative payments on the same milk, or which is not meeting the requirements of this section applicable to it.

(3) The applicant cooperative or federation demonstrates that it has the ability to perform the market-wide services for which application is made, and that such services will be performed.

(4) The applicant cooperative or the federated cooperatives of an applicant federation are in no way precluded from arranging for the utilization of milk under their respective control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification.

(c) *Notice of qualification or denial: Effective date.* Upon determination by the market administrator that a cooperative or a federation is qualified to receive payment for performance of the market-wide services, he shall transmit such determination to the applicant cooperative or federation and publicly announce the issuance of the determination. The determination shall be effective with respect to milk delivered on and after the first day of the month following issuance of the determination. If, after consideration of an application for payments for market-wide services, the market administrator determines that the cooperative or federation is not qualified to receive such payments he shall promptly notify the applicant and specifically set forth in such notice his reasons for denial of the application.

(d) *Requirements for continued qualification.* From time to time and in accordance with rules and regulations which may be issued by the market administrator, each qualified cooperative or federation must demonstrate to the market administrator that it continues to meet the qualification requirements for the payments and is fully performing the market-wide services for which it is being paid.

(e) *Market-wide services.* Each cooperative or federation shall perform the market-wide services enumerated in this paragraph. Such services are: (1) analyzing milk marketing problems and their solutions, conducting market research and maintaining current information as to all market developments, preparing and assembling statistical data relative to prices and marketing conditions, and making an economic analysis of all such data; (2) determining the need for the formulation of amendments to the order and proposing such amendments or requesting other appropriate action by the Secretary or the market administrator in the light of changing conditions; (3) participating in proceedings with respect to amendments to the order, including the preparation and presentation of evidence at public hearings, the submission of appropriate briefs and exceptions, and also participating, by voting or otherwise, in the referenda relative to amendments; (4) participation in the meetings called by the market administrator, such as meetings with respect to rules and regulations issued under the order, including activities such as the preparation and presentation of data at such meetings and briefs for submission thereafter; (5) conducting a comprehensive education program among producers—i. e., members and nonmembers of cooperatives—and keeping such producers well informed for participation in the activities under the regulatory order and, as a part of such program, issuing publications that contain relevant data and information about the order and its operation, and the distribution of such publications to members and, on the same subscription basis, to non-members who request it, and holding meetings at which members and non-members may attend; and (6) in the case of a cooperative or federation which receives an additional payment under subparagraph (4) or (5) of paragraph (f) of this section, operating marketing facilities, or having within its membership federated cooperatives operating marketing facilities, i. e., pool plant(s), at which is received at least 25 per centum, by weight, of the milk marketed by all the members of the cooperative or by all the members of the federated cooperatives' members.

(f) *Rate, computation, time, and method of payment.* (1) Subject to the provisions of paragraph (g) of this section, the market administrator, on or before the 25th day of each month, shall make payment out of the producer settlement fund, or issue equivalent credit therefor, to each cooperative or federation which is qualified for such payments for market-wide services. The payment to a cooperative shall be based upon the milk reported by cooperative or proprietary handlers to have been received during the preceding month from its members, and the payment to a federation shall be based upon the milk reported by cooperative or proprietary handlers to have been received during the preceding month from the members of its federated cooperatives, subject in both instances to adjustment upon verification by the market administrator.

(2) Such payment or credit shall be at the rate of 2 cents per hundredweight of milk in accordance with subparagraph (1) of this paragraph: *Provided*, That in computing payment to a cooperative, there shall be excluded all of the milk of its members who belong to another cooperative which is an applicant for or which receives cooperative payments on the same milk or which is a federated cooperative in a federation which is an applicant for or receiving cooperative payments on the same milk: *Provided further*, That in computing payment to a federation there shall be excluded all of the milk of members of a cooperative which is an applicant for or which receives cooperative payments on the same milk, or which is a federated cooperative in another federation which is an applicant for or receiving cooperative payments on the same milk, or which is not meeting the requirements of this section applicable to it.

(3) Any cooperative that has at least 6,000 members and any federation which has an aggregate membership of its federated cooperatives of at least 6,000 members shall receive a payment, in addition to the payment provided for in subparagraph (2) of this paragraph, of 1 cent per hundredweight of milk in accordance with subparagraph (1) of this paragraph and subject to the provisos contained in subparagraph (2) of this paragraph.

(4) Any cooperative that operates marketing facilities, i. e., pool plant(s), at which is received at least 25 per centum, by weight, of the milk marketed by its members shall receive a payment, in addition to the payment provided for in subparagraph (2) or subparagraph (3) of this paragraph of 1 cent per hundredweight of all milk marketed by its members in accordance with subparagraph (1) of this paragraph: *Provided*, That in computing the payment under this subparagraph there shall be excluded the milk delivered by a member of the coopertive who is a member of another cooperative which is an applicant for or which receives cooperative payents on the same milk or which is a federated cooperative in a federation which is an applicant for or receiving cooperative payments on the same milk.

(5) Any federation that operates marketing facilities, i. e., pool plant(s), or whose members include one or more federated cooperatives that operate marketing facilities, at which is received at least 25 per centum, by weight, of the milk marketed by the members of its federated cooperatives shall receive a payment, in addition to the payment provided for in subparagraph (2) or subparagraph (3) of this paragraph, of 1 cent per hundredweight of all milk marketed by such members in accordance with subparagraph (1) of this paragraph: *Provided*, That in computing the payment under this subparagraph there shall be excluded the milk delivered by members of a cooperative which is an applicant for or which receives cooperative payments on the same milk, or which is a federated cooperative in another federation which is an applicant for or receiving cooperative payment on the same milk, or which is not meeting the requirements of this section applicable to it.

(6) If an individually qualified cooperative is affiliated with a federation, the cooperative payment shall be made to such cooperative unless its contract with the federation specifies in writing that the federation is to receive the payments. Any such contract must authorize the federation to receive the payments for at least one year, and such agreement must cover or be renewed for a yearly period for every subsequent year for which the federation is to receive the payments.

(g) *Disqualification.* (1) The market administrator shall issue an order wholly or partly disqualifying a previously qualified cooperative or federation for payments authorized pursuant to this section and such payments shall not thereafter be made to it if he determines that:

(i) The cooperative or federation no longer complies with the requirements of this section: *Provided,* That in the case of the federation, if one of its federated cooperatives has failed to comply with the requirements of this section applicable to it or has failed, promptly after demand by the market administrator, to arrange for the utilization of milk under its control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification; the federation shall be disqualified only to the extent that its qualification for payments or the amount of its payments are based upon the membership, milk, or operations of such non-complying federated cooperatives;

(ii) The cooperative or federation has failed to make reports or furnish records pursuant to this section or pursuant to rules and regulations issued by the market administrator; or

(iii) In the case of the cooperative, it has failed, promptly after demand by the market administrator, to arrange for the utilization of milk under its control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification.

(2) An order of the market administrator wholly or partly disqualifying a cooperative or federation shall not be issued until after the cooperative or federation has had opportunity for hearing thereon following not less than 15 days' notice to it specifying the reasons for the proposed disqualifications. If the cooperative or federation fails to file a written request for hearing with the market administrator within such period of 15 days, the market administrator may issue an order of disqualification without further notice; but if within such period a request for hearing is filed, the market administrator shall promptly proceed to hold such hearing pursuant to rules and regulations issued by him under paragraph (i) of this section.

(3) A disqualification order issued by the market administrator shall set forth the findings and conclusions on the basis of which it is issued.

(h) *Appeals*—(1) *From denials of application.* Any cooperative or federation whose application for qualification has been denied by the market administrator may, within 30 days after notice of such denial, file with the Secretary a written petition for review. But the failure to file such petition shall not bar the cooperative or federation from again applying to the market administrator for qualification.

(2) *From disqualification orders.* A disqualification order by the market administrator shall become final 30 days after its service on the cooperative or federation unless within such 30-day period the cooperative or federation files a written petition with the Secretary for review thereof. If such petition for review is filed, payments for which the cooperative or federation has been disqualified by the order shall be held in reserve by the market administrator pending ruling of the Secretary, after which the sums so held in reserve shall either be returned to the producer settlement fund or paid over to the cooperative or federation depending on the Secretary's ruling on the petition. If such petition for review is not filed, any payments which otherwise would be made within the 30-day period following issuance of the disqualification order shall be held in reserve until such order becomes final and shall then be returned to the producer settlement fund.

(3) *Record on appeal.* If an appeal is taken under subparagraphs (1) or (2) of this paragraph, the market administrator shall promptly certify to the Secretary the ruling or order appealed from and the evidence upon which it was issued: *Provided,* That if a hearing was held the complete record thereof, including the applications, petitions, and all exhibits or other documentary material submitted in evidence shall be the record so certified. Such certified material shall constitute the sole record upon which the appeal shall be decided by the Secretary.

(i) *Regulations.* The market administrator is authorized to issue regulations and amendments thereto to effectuate the provisions of this section and to facilitate and implement the administration of its provisions. Such regulations shall be issued in accordance with the following procedure:

(1) All proposed rules and regulations and amendments thereto shall be the subject of a meeting called by the market administrator, at which all interested persons shall have opportunity to be heard. Not less than five days prior to the meeting, notice thereof and of the proposed regulations or amendments shall be published in the FEDERAL REGISTER and mailed to qualified cooperatives and federations. A stenographic record shall be made at such meetings which shall be public information and be available for inspection at the office of the market administrator.

(2) A period of at least five days after the meeting shall be allowed for the filing of briefs.

(3) All regulations and amendments thereto issued by the market administrator pursuant to this section must be submitted in tenative form to the Secretary for approval, shall not be effective without such approval, and shall be published in the FEDERAL REGISTER following such approval. The regulations or amendments in tentative form shall be forwarded also to cooperatives and federations qualified under this section and to other persons upon request in writing. The Secretary shall either approve the regulations or amendments thereto submitted by the market administrator or direct the market administrator to reconsider the tentative rules or amendments. In the event the market administrator is directed to give reconsideration to the matter, the market administrator shall either issue revised tentative regulations or amendments or call another meeting pursuant to this section for additional consideration of the rules or amendments.

(j) *Reports and records.* A qualified cooperative or federation and any federated cooperative in a qualified federation shall make such reports to the market administrator as may be requested by him for the administration of the provisions of this section, and shall maintain and make available to the market administrator or his representative such records as will enable the market administrator to verify such reports.

(k) *Notices, demands, orders, etc.* All notices, demands, orders, or other papers required by this section to be given to or served upon a cooperative or federation shall be deemed to have been given or served as of the time when mailed to the last known secretary of the cooperative or federation at his last known address.

§ 927.82 *Cream payments.* (a) For milk received from producers which is classified as Class III pursuant to § 927.37 (d) (2) the butterfat from which is subsequently assigned in accordance with the provisions of the rules and regulations issued by the market administrator pursuant to § 927.36 to sour cream, half and half, or reconstituted cream shipped to, received in, or distributed in the metropolitan district, or is not established to have been otherwise utilized, or to be still in storage, the handler required to file reports pursuant to § 927.52 shall pay to the producer settlement fund or be issued debits against balances due to such handler from the producer settlement fund an amount equal to 9 cents per pound of butterfat if the milk was separated in the months of March through July, and 10 cents per pound of butterfat if the milk was separated in the months of August through February.

(b) On the basis of reports pursuant to § 927.52 of the utilization of frozen cream and the market administrator's investigation and audit of such reports, the market administrator shall make payment out of the producer settlement fund to the handler filing such reports, or issue credit against balances due from such handler to the producer settlement fund, an amount equal to the butter-cheese adjustment on each pound of butterfat in such cream which was separated in the months of April through September from milk received from producers and was assigned, in accordance with the provisions of the rules and regulations issued by the market administrator pursuant to § 927.36, to butter in the months of January through March.

(c) With respect to Class II milk the butterfat from which is on hand at the plant in the form of cream, or having left the plant in the form of cream had not been delivered to a plant or purchaser by the end of the period for establishing classification, but subsequent to the end of the period for establishing classification such cream is so handled that it would have been classified at a plant outside the marketing area in Class III pursuant to § 927.37 (d) (1), (3), (5), or (6) had such handling occurred during the period for establishing classification, the handler who received the milk from producers may claim a refund by filing a report giving the facts with respect to such handling. On the basis of verification of such report, the market administrator shall make payment out of the producer settlement fund to such handler or issue credit against any balance due from such han-

dler to the producer settlement fund in an amount equal to the difference between the Class II and Class III prices applicable for the month when the milk was received from producers.

§ 927.83 *Payments on milk received from dairy farmers at nonpool plants.* Payments shall be made by handlers to producers, through the producer settlement fund, for milk and milk products under conditions, in amounts, and by the handler pursuant to paragraphs (a) through (d) of this section: *Provided,* That for any month in which the volume of Class III milk used in the computation of the uniform price is less than 15 percent of the combined volume of the Class I–A and Class II milk used in such computation, the payments set forth in this section shall not be required.

(a) Payments shall be made for milk, concentrated fluid milk, fluid milk products, cultured or flavored milk drinks, cream, half and half, fluid cream products, and skim milk, which milk or milk products meets each of the following conditions:

(1) It was derived from milk received at a nonpool plant from dairy farmers or is received at a plant from which milk specified in § 927.65 (h) (2) or (3) was received from the handler's own farm.

(2) It was shipped to, received in, or distributed in the marketing area, or was received at a pool plant outside the marketing area.

(3) The milk or milk equivalent of the butterfat is classified as Class I–A or Class II, or the skim milk would be subject to the fluid skim differential if it were derived from pool milk.

(b) The amounts of payment for the products set forth in paragraph (a) of this section shall be as follows:

(1) If the milk or the milk equivalent of the butterfat, or the skim milk is classified and paid for under another order issued pursuant to the act, the amount of payment on such products, except skim milk, shall be any plus amount obtained by subtracting the value of the milk or the milk equivalent of the butterfat at the class price or prices under such order from the value computed in accordance with the classification and pricing set forth in this subpart: *Provided,* That the payment shall be at the rates set forth in subparagraph (2) of this paragraph if the other order permits the deduction of such payment from the amount otherwise due for such milk pursuant to such other order. The amount of payments on skim milk shall be an amount computed pursuant to § 927.44 adjusted for the location of the plant.

(2) If the milk or milk product is derived from milk received from dairy farmers at a nonpool plant in the 401–425 mile zone, or in some other zone nearer the marketing area, the handling of which is not regulated by an order issued pursuant to the act or is regulated by another order as specified in the proviso of subparagraph (1) of this paragraph, the amount of payment, except as otherwise specified in subparagraph (4) of this paragraph, shall be the differences between its classified value at the Class I–A or the Class II price, depending upon its classification, and its value at the Class III price, such class prices to be adjusted for butterfat test and the location of the plant at which the nonpool milk was originally received from farmers: *Provided,* That for concentrated fluid milk, cream, half and half, fluid cream products, and cultured or flavored milk drinks containing less than 3.0 percent or more than 5.0 percent butterfat, the payment shall be computed on the milk equivalent thereof as so classified. The amount of the payment on skim milk (either as skim milk, half and half, or in cultured milk drinks) shall be the amount computed pursuant to § 927.44 as similarly adjusted for location.

(3) If the milk or milk product is derived from milk received from dairy farmers at a non pool plant farther from the marketing area than the 401–425 mile zone, the handling of which is not regulated by another order issued pursuant to the act, or is regulated by another order as specified in the proviso of subparagraph (1) of this paragraph, the amount of payments shall be the difference between the value of its milk equivalent at the Class I–A or Class II price, depending upon its classification, and the value of such milk at the midwestern condensery price announced pursuant to § 927.46 (b) (9), such class prices to be adjusted for the location of the plant at which the non pool milk was originally received from dairy farmers: *Provided,* That for milk, fluid milk products, and cultured or flavored milk drinks containing 3.0 percent or more but not more than 5.0 percent of butterfat, the payment shall be the difference between the value of such milk or milk product at the Class I–A price for milk containing 3.5 percent butterfat, adjusted for location of the plant, and the condensery price. The amount of the payment on skim milk (either as skim milk, half and half, or in cultured milk drinks) shall be the amount computed pursuant to § 927.44 similarly adjusted for location.

(4) For any month in which the volume of milk subject to the butter-cheese adjustment used in the computation of the uniform price is more than 15 percent of the combined volume of the Class I–A and Class II milk used in such computation, the payment required by subparagraph (2) of this paragraph shall be increased by the value of the milk or milk equivalent at the rate of the butter-cheese adjustment at the plant where the milk was received from dairy farmers.

(5) In computing the milk equivalent value of milk or milk products as specified in this paragraph, such value shall be computed on the basis of milk containing 3.5 percent of butterfat.

(c) Payment for any milk or milk product pursuant to this section shall be made, on behalf of the handler receiving the milk from dairy farmers, by the appropriate handler as set forth in subparagraphs (1) through (3) of this paragraph: *Provided,* That if the milk is received from a handler under another order issued pursuant to the act, which order provides that the payment to the producer settlement fund may be deducted from the handler's obligation under the other order, the payment shall be made by the handler subject to the other order regardless of the provisions of subparagraphs (1) through (3) of this paragraph:

(1) By the handler first receiving the milk or milk product at a pool plant outside the marketing area.

(2) By the handler operating the plant where the milk or milk product is first received in the marketing area if the milk or milk product is not received at a pool plant outside the marketing area.

(3) By the handler operating the plant from which the milk or milk product was moved into the marketing area if such milk or milk product is neither received at a pool plant outside the marketing area nor at a plant in the marketing area.

(d) The amount due pursuant to this section shall be entered on the handler's account as a debit immediately after the filing of the report pursuant to § 927.50, or if the handler fails to file such report, such amount shall be entered on the handler's account in accordance with § 927.80.

§ 927.84 *Payments on milk or milk products the source of which is not established.* Payments shall be made by handlers to producers through the producer settlement fund, for milk and milk products under conditions, in amounts, and by the handler pursuant to paragraphs (a) through (d) of this section.

(a) Payments shall be made for milk, concentrated fluid milk, fluid milk products, cultured or flavored milk drinks, cream, half and half, fluid cream products, and skim milk which milk or milk product meets each of the conditions specified in subparagraphs (1) and (2) and, if applicable, subparagraph (3) of this paragraph.

(1) It was derived from milk for which the farm source is not established.

(2) It was shipped to, received in, or distributed in the marketing area, or was received at a pool plant.

(3) If first found at a nonpool plant, the milk or milk equivalent of the butterfat is classified as Class I–A or Class II, or the skim milk is subject to the fluid skim differential.

(b) The amounts of payment for the product set forth in paragraph (a) of this section shall be as follows:

(1) For milk, concentrated fluid milk, fluid milk products, or cultured or flavored milk drinks containing 3.0 percent or more but not more than 5.0 percent of butterfat, the value of such milk, fluid milk products, cultured or flavored milk drinks, or the milk equivalent of such concentrated fluid milk at the class price at the plant where first found.

(2) For cream, half and half, fluid cream products, or cultured or flavored milk drinks containing less than 3.0 percent or more than 5.0 percent of butterfat, the value of the milk equivalent of such product at a rate per hundredweight computed pursuant to § 927.40 (d) (1) adjusted by the differentials set forth in column C in the table in § 927.42 for the zone of the plant at which first found.

(3) For skim milk in a form subject to the fluid skim milk differential, the value at a rate per hundredweight computed as follows: divide the amount computed pursuant to § 927.40 (d) (2) by 0.9125; add an amount computed pursuant to § 927.44, and adjust the result by the differential set forth in column B in the table in § 927.42 for the zone of the plant where first found.

(4) For skim milk in a form not subject to the fluid skim milk differential, the value at a rate per hundredweight computed as follows: divide the amount computed pursuant to § 927.40 (d) (2) by 0.9125.

(5) In computing the milk equivalent value of products as specified in this paragraph, such value shall be computed on the basis of milk containing 3.5 percent of butterfat.

(c) Payment for any milk or milk product pursuant to this section shall be made, on behalf of the handler receiving the milk from dairy farmers, by the appropriate handler as set forth in subparagraphs (1) through (3) of this paragraph:

(1) By the handler first receiving the milk or milk product at a pool plant outside the marketing area.

(2) By the handler operating the plant where the milk or milk product is first received in the marketing area if the milk or milk product is not received at a pool plant outside the marketing area.

(3) By the handler operating the plant from which the milk or milk product was moved into the marketing area if such milk or milk product is neither received at a pool plant outside the marketing area nor at a plant in the marketing area.

(d) The amount due pursuant to this section shall be entered on the handler's account as a debit immediately after the filing of the report pursuant to § 927.50, or if the handler fails to file such report, such amount shall be entered on the handler's account in accordance with § 927.80.

EXPENSE OF ADMINISTRATION

§ 927.90 *Payment by handlers.* As his pro rata share of the expense of administration of this part, each handler shall, on or before the 18th day of each month, pay to the market administrator a sum not exceeding two cents per hundredweight on the total quantity of milk which was received from producers at plants operated by such handler, directly or at the instance of a cooperative association of producers, the exact amount to be determined by the market administrator subject to review by the Secretary. This section shall not be deemed to duplicate any similar payment by any handler under an order issued by the Commissioner of Agriculture and Markets of the State of New York, or the Director of the New Jersey Office of Milk Industry, with respect to the marketing area. Whenever verification by the market administrator discloses an error in the payment made by any handler, such error shall be adjusted not later than the date next following such disclosure on which payments are due pursuant to this section.

MISCELLANEOUS

§ 927.95 *Termination of obligations.* The provisions of this section shall apply to any obligation under this part for the payment of money irrespective of when such obligation arose, except an obligation involved in an action instituted before August 1, 1949, under section 8c (15) (a) of the act or before a court.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

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

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received (or with respect to storage cream payments pursuant to § 927.82 (b), two years after the end of the calendar month during which such cream is utilized) if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable periods of time, files pursuant to section 8c (15) (A) of the act, a petition claiming such money.

§ 927.96 *Continuing obligation of handlers.* Unless otherwise provided by the Secretary in any notice of amendment, termination, or suspension of any or all of the provisions of this part, such amendment, termination, or suspension shall not affect, waive, or terminate any right, duty, obligation, or liability which shall have risen or may thereafter arise in connection with any provision of this subpart; release or waive any violation of this subpart occurring prior to the effective date of such amendment, termination, or suspension; or affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 927.97 *Continuing power and duty of market administrator.* The market administrator shall (a) continue in such capacity until discharged by the Secretary; (b) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the market administrator, to such person as the Secretary shall direct; and (c) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator pursuant to this part.

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

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

[F. R. Doc. 57-4838; Filed, June 13, 1957; 8:48 a. m.]

## [ 7 CFR Part 965 ]

[Docket No. AO–166–A22]

### MILK IN CINCINNATI, OHIO, MARKETING AREA

### NOTICE OF HEARING ON PROPOSED AMENDMENTS TO TENTATIVELY APPROVED MARKETING AGREEMENT AND TO ORDER, AS AMENDED

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Hotel Sinton, Rockwood Room, Fourth and Vine Streets, Cincinnati, Ohio, June 25, 1957 at 10:00 a. m., for the purpose or receiving evidence with respect to marketing conditions and proposed amendments hereinafter set forth, or appropriate modifications thereof, to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Cincinnati, Ohio, marketing area. These proposed amendments have not received the approval of the Secretary of Agriculture.

Proposed by The Cincinnati Milk Sales Association:

1. Amend § 965.7 (c) by deleting the words "A plant receiving milk from dairy farms" and substituting therefor the following: "A plant receiving milk from dairy farmers who produce milk under a dairy farm permit issued by a health department having jurisdiction in the marketing area".

2. Amend § 965.8 by deleting the words "Producer means any person operating a dairy farm who produces milk under a dairy farm permit issued by an appropriate health authority" and substitute therefor the following: "Producer means any person operating a dairy farm who produces milk under a dairy farm permit issued by a board of health having jurisdiction in the marketing area".

3. Amend § 965.8 (b) by deletion of the proviso.

4. Add a new § 965.14 to read as follows:

§ 965.14 *Fluid milk product.* "Fluid milk product" means milk, skim milk, buttermilk, flavored milk, milk drink, cream (sweet, cultured sour, or whipped), eggnog, concentrated milk and any mixture in fluid form of milk, skim milk or cream having more than eight percent butterfat (except storage cream, aerated cream in dispensers, ice cream and frozen dessert mixes, and evaporated or condensed milk).

5. Delete § 965.13 and substitute therefor the following:

§ 965.13 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in or represented by (a) receipts during the month in the form of fluid milk products except (1) producer milk, (2) such products received from other pool plants, and (3) inventory of fluid milk products at the beginning of the month; and (b) products other than fluid milk products from any source, including those produced at the plant which are reprocessed, repackaged, or converted to another product during the month.

6. In § 965.22, add a new paragraph (i) as follows:

(i) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such statistics and information concerning the operation of this part as do not reveal confidential information.

7. Redraft § 965.30 through § 965.46 to incorporate references to pool plants and the terms provided by Proposals 1 and 2 and to provide for the reporting and accounting for skim milk and butterfat, separately.

8. Delete § 965.30 and substitute therefor the following:

§ 965.30 *Monthly reports of receipts and utilization.* On or before the 10th day after the end of each month, each handler shall report to the market administrator for each of his pool plants, in the detail and on forms prescribed by the market administrator the following:

(a) The total pounds of skim milk and butterfat contained in or represented by:

(1) Producer milk;

(2) Fluid milk products received from other pool plants;

(3) Other source milk; and

(4) Inventories of fluid milk products on hand at the beginning and end of the month.

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

(c) Such other information with respect to such receipts and utilization as the market administrator may prescribe;

(d) His producer payroll, which shall show for each producer: the total receipts of milk with the average butterfat test thereof, the amount of the advance payment to such producer made pursuant to § 965.70 and the deductions and charges made by the handler; and

(e) The name and address of each new producer.

§ 965.31 *Reports by handlers of nonpool plants.* Each handler who operates a nonpool plant shall make reports to the market administrator at such times and in such manner as the market administrator may request.

9. In § 965.41 (a), delete subparagraph (4) and substitute therefor the following: "(4) not accounted for as Class II or Class III milk".

10. In § 965.41 (c) (4), delete "2.5 percent" and substitute therefor "2.0 percent".

11. Delete § 965.44 and substitute therefor the following:

§ 965.44 *Shrinkage.* The market administrator shall allocate shrinkage at the handlers pool plant(s) as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively; and

(b) Prorate the resulting amounts between receipts of skim milk and butterfat, respectively in producer milk and other source milk received in the form of a fluid product in bulk.

12. Delete § 965.45 and substitute therefor the following:

§ 965.45 *Computation of skim milk and butterfat in each class.* For each month the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk, Class II milk, and Class III milk for such handler: *Provided,* That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all of the water normally associated with such solids in the form of whole milk.

13. Delete § 965.46 and substitute therefor the following:

§ 965.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 965.45, the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler during the month as follows:

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

(1) Subtract from the total pounds of skim milk in Class III milk the pounds of skim milk in producer milk shrinkage assigned to Class III milk pursuant to § 965.41 (c) (4);

(2) Subtract from the remaining pounds of skim milk in each class, in series, beginning with the lowest price available use in Class III milk the pounds of skim milk in other source milk;

(3) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from other pool plants according to the classification of such products as determined pursuant to § 965.43;

(4) Subtract from the remaining pounds of skim milk in series from Class II milk and then Class I milk the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month; and

(5) Add to the pounds of skim milk remaining in Class III milk the skim milk subtracted pursuant to subparagraph (1) of this paragraph and if the remaining pounds of skim milk in all classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with the lowest price use available.

(b) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk remaining in each class pursuant to paragraphs (a) and (b) of this section.

14. Amend § 965.50 *Basic formula price* by deleting from paragraph 2 thereof the words "and roller process" wherever they may appear therein.

15. Amend § 965.51 (a) (1) by deleting the words "that portion of Class I milk

set forth in § 965.41 (a) (1) and (3)" and substitute therefor the words "Class I milk".

16. Amend § 965.51 (a) (2) by deleting the table shown and substituting therefor the following:

| Month for which price is being computed | Base utilization percentages | |
|---|---|---|
| | Minimum | Maximum |
| January | 69 | 75 |
| February | 73 | 77 |
| March | 67 | 73 |
| April | 61 | 67 |
| May | 58 | 64 |
| June | 55 | 59 |
| July | 49 | 53 |
| August | 44 | 47 |
| September | 44 | 46 |
| October | 46 | 47 |
| November | 51 | 52 |
| December | 62 | 53 |

17. Delete § 965.53 and substitute therefor the following:

§ 965.53 *Location differentials to handlers.* For that milk which is received from producers at a pool plant located 45 miles by shortest hard surfaced highway distance as determined by the market administrator from the City Hall in Cincinnati, Ohio, and which is transferred to a distributing plant which is a pool plant in the form of a fluid milk product and assigned to Class I pursuant to the proviso of this section or otherwise classified as Class I milk, the price specified in § 965.51 (a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

| Distance from the City Hall (miles): | *Rate per hundredweight (cents)* |
|---|---|
| 45 but less than 120 | 15.0 |
| 120 but less than 150 | 20.0 |
| For each additional 30 miles or fraction thereof an additional | 5.0 |

*Provided,* That for the purpose of calculating location differentials, fluid milk products which are transferred between pool plants shall be assigned to Class I milk only to the extent that the gross Class I utilization at the transferee plant exceeds the receipts of producer milk at such plant, such assignment to transferor plants to be made first to plants at which no location adjustment is applicable and then in sequence according to the location differential applicable to each plant beginning with the plant having the smallest differential.

18. Add a new section as follows:

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

19. Amend § 965.61 by adding after the first sentence the following: *"Provided,* That any such milk received from a plant regulated under a marketing agreement or order issued pursuant to the act for another fluid milk marketing area shall be computed by the market administrator by multiplying each hundredweight of milk disposed of as Class I milk, by the difference between the Class I price under this part and the applicable Class Price of the Order under which such milk was regulated."

20. Add the following new sections:

§ 965.14 *Quota milk.* "Quota milk" means the amount received by a pool plant from a producer during each of the months of April through June which is not in excess of such producer's daily average quota computed pursuant to § 965.65 multiplied by the number of days for which such producer's milk was received by such pool plant during the month.

§ 965.15 *Non quota milk.* "Non quota milk" means the amount of milk received by a pool plant from a producer during each of the months of April through June which is in excess of "quota milk" received from such producer during such months, and shall include all milk received from a producer for whom no daily quota can be computed pursuant to § 965.65.

§ 965.65 *Determination of "quota milk". quota for each producer.* Subject to the rules set forth in § 965.66, the market administrator shall determine the daily quota for each producer by dividing the total pounds of milk delivered by such producer during the immediate preceding period of October through December by the number of days from date of first delivery to the end of such three-month period, but not less than 60 days.

§ 965.66 *Quota rules.* (a) A quota shall be assigned to the person for whose account that milk was delivered as reported to the market administrator and to whom a final settlement check was issued by the market administrator or a Cooperative Association.

(b) Quotas may be transferred upon written notice of the holder of the quota to the market administrator on or before the first day of any month that such quota is to be transferred to the person named in such notice, but under the following conditions only:

(1) Upon retirement or entry into military service of a producer, the entire quota may be transferred to an immediate member or members of his family.

(2) Quota may be held jointly, if the combined operations are from a single farm, and if such joint holding is terminated, the quota may be transferred as specified by written agreement of the holders; and

(3) Two or more producers, upon formation of a joint partnership, operating from the same farm, may combine quotas.

(c) Upon death of a quota holder the quota may be transferred to a member or members of a deceased producer's immediate family.

21. Amend § 965.60 to provide a computation of a uniform quota price during delivery periods effected, by allocating the value of highest priced milk to the quota price, and the balance to a non quota price.

22. Amend § 965.73 to provide payments to producers on a quota plan.

23. Amend § 965.73 (c) to provide for the application of the same location adjustment rates provided in § 965.53 to producer milk received at pool plants located more than 45 miles from the City Hall in Cincinnati, Ohio.

24. Add a new § 965.93 as follows:

§ 965.93 *Plants subject to other Federal orders.* The provisions of this part shall not apply to a fluid milk plant or a supply plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant qualified as a pool plant pursuant to § 965.7 and a greater volume of fluid milk products is disposed of from such plant to retail or wholesale outlets and to pool plants in the Cincinnati, Ohio, marketing area than in the marketing area regulated pursuant to such other order during the current month and each of the three months, immediately preceding: *Provided,* That the operator of a fluid milk plant or a supply plant which is exempted from the provisions of this part pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

By Cedar Hill Farms, Inc.:

25. Amend § 965.51 (b) to read as follows:

(b) The price to be paid by each handler for Class II milk used in the manufacture of cottage cheese disposed of outside the marketing area, in lieu of the price otherwise applicable pursuant to this section, shall be a price to be arrived at by the market administrator, such price to be the prevailing price in the area for milk of a similar use.

26. Amend § 965.41 of the order to cover a new product in the market, namely 2 percent butterfat homogenized skim milk.

Proposed by The Dairy Division:

27. Make such other changes as may be required to make the marketing agreement and order in their entirety conform with any amendments thereto which may result from this hearing and consider any other suggestions for changes in the order language which may be necessary for clarification in redrafting and reissuing the entire order.

Copies of this notice of hearing and the order now in effect may be procured from the market administrator, 519 Main Street, Cincinnati 1, Ohio or from the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington 25, D. C., or may be there inspected.

Dated: June 11, 1957.

ROY W. LENNARTSON,
*Deputy Administrator.*

[F. R. Doc. 57-4840; Filed, June 13, 1957; 8:48 a. m.]

## CIVIL AERONAUTICS BOARD

### [ 14 CFR Parts 41, 42 ]

[Draft Release 57-12]

TEMPORARY AUTHORIZATION FOR SCHEDULED AIR TRANSPORTATION OF CARGO

NOTICE OF PROPOSED RULE MAKING

Pursuant to authority delegated by the Civil Aeronautics Board to the Bureau of Safety, notice is hereby given that the Bureau will propose to the Board the extension of the provisions of Special Civil Air Regulation SR-368A for scheduled cargo operations outside the continental limits of the United States.

Interested persons may participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should be submitted in duplicate to the Civil Aeronautics Board, attention Bureau of Safety, Washington 25, D. C. In order to insure their consideration by the Board before taking further action on the proposed rule, all communications must be received after July 15, 1957. Copies of such communications will be available by July 17, 1957, for examination by interested persons at the Docket Section of the Board, Room 5412, Department of Commerce Building, Washington, D. C.

Special Civil Air Regulation SR-368A currently authorizes air carriers permitted by the Board to engage in scheduled cargo-only operations outside the continental limits of the United States to conduct such operations under the provisions of Part 42 of the Civil Air Regulations. This authorization terminates July 31, 1957. At the time the Board promulgated SR-368A, it indicated that the regulation was a temporary measure pending the development of adequate certification and operation rules for scheduled air transportation of cargo outside the continental limits of the United States.

Civil Air Regulations Draft Release No. 56-17, "Proposed Revision of Part 41 of the Civil Air Regulations—Certification and Operation Rules for Scheduled Air Carrier Operations Outside the Continental Limits of the United States," contains provisions in this respect but requires such operations to be authorized by the Administrator. It is anticipated that this proviso will be contained in revised Part 41 which is presently being developed. It is evident, however, that this revision cannot be accomplished prior to July 31, 1957.

In view of the foregoing, it is proposed to promulgate a Special Civil Air Regulation to read as follows:

Any air carrier authorized by the Board pursuant to Title IV of the Civil Aeronautics Act of 1938, as amended, to engage in scheduled air transportation of cargo outside the continental limits of the United States may, upon authorization by the Administrator, conduct such transportation under the air carrier certification and operation rules prescribed in Part 42 of the Civil Air Regulations.

This regulation would supersede SR-368A and remain in effect until such time as new certification and operation rules become effective for cargo operations outside the continental limits of the United States, unless sooner terminated or rescinded by the Board.

This regulation is proposed under the authority of Title VI of the Civil Aeronautics Act of 1938, as amended. The proposal may be changed in the light of comments received in response to this notice of proposed rule making.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 601-610, 52 Stat. 1007-1012, as amended; 49 U. S. C. 551-560)

Dated at Washington, D. C., June 10, 1957.

By the Bureau of Safety.

[SEAL] OSCAR BAKKE, *Director.*

[F. R. Doc. 57-4861; Filed, June 13, 1957; 8:52 a. m.]

# NOTICES

## ATOMIC ENERGY COMMISSION

[Docket No. 50-52]

BABCOCK & WILCOX CO.

NOTICE OF ISSUANCE OF FACILITY EXPORT LICENSE

Please take notice that no petitions to intervene having been filed after the publication of a notice of its proposed action in the FEDERAL REGISTER on May 23, 1957, 22 F. R. 3644, the Atomic Energy Commission has issued The Babcock & Wilcox Company a license for the export of a five-megawatt pool-type research reactor to the Society for the Utilization of Nuclear Energy in Shipbuilding and Navigation, Inc., Hamburg, Germany.

Dated at Washington, D. C., this 10th day of June 1957.

For the Atomic Energy Commission.

H. L. PRICE, *Director, Division of Civilian Application.*

[F. R. Doc. 57-4854; Filed, June 13, 1957; 8:50 a. m.]

[Docket No. 50-63]

INTERCONTINENTAL CHEMICAL CORP.

NOTICE OF ISSUANCE OF FACILITY EXPORT LICENSE

Please take notice that no petitions to intervene having been filed after the publication of a notice of its proposed action in the FEDERAL REGISTER on May 25, 1957, 22 F. R. 3708, the Atomic Energy Commission has issued Intercontinental Chemical Corporation a license for the export of a 50-kilowatt solution-type research reactor to Farbwerke Hoechst AG, Frankfurt a. M.-Hoechst, West Germany.

Dated at Washington, D. C., this 11th day of June 1957.

For the Atomic Energy Commission.

H. L. PRICE, *Director, Division of Civilian Application.*

[F. R. Doc. 57-4855; Filed, June 13, 1957; 8:50 a. m.]

## CIVIL AERONAUTICS BOARD

[Dockets Nos. 6921, 6922, 8798]

K. L. M. ROYAL DUTCH AIRLINES

NOTICE OF PREHEARING CONFERENCE

In the matter of the supplemental application of K. L. M. Royal Dutch Airlines for an amendment of its foreign air carrier permit with respect to foreign air transportation between Amsterdam, The Netherlands and New York, New York, U. S. A., Docket No. 6921.

In the matter of the supplemental application of K. L. M. Royal Dutch Airlines for an amendment of its foreign air carrier permit with respect to foreign air transportation between Willemstad, Curacao, and Oranjestad, Aruba, N. A. and Miami, Florida, U. S. A., Docket No. 6922.

In the matter of the application of K. L. M. Royal Dutch Airlines for a foreign air carrier permit with respect to foreign air transportation between (a) Amsterdam, The Netherlands and Houston, Texas; and (b) Willemstad, Curacao and Oranjestad, Aruba, Netherlands Antilles and New York, New York, Docket No. 8798.

Notice is hereby given that a prehearing conference in the above-entitled applications is assigned to be held on June 25, 1957, at 10:00 a. m., e. d. s. t., in Room 4827, Commerce Building, 14th Street and Constitution Avenue NW., Washington, D. C., before Examiner James S. Keith.

Dated at Washington, D. C., June 11, 1957.

[SEAL] FRANCIS W. BROWN, *Chief Examiner.*

[F. R. Doc. 57-4862; Filed, June 13, 1957; 8:52 a. m.]

[Docket No. 7122 et al.]

NORTH CENTRAL AIRLINES, INC., AND NORTHWEST AIRLINES, INC.; DULUTH-CHICAGO SERVICE INVESTIGATION

NOTICE OF POSTPONEMENT OF ORAL ARGUMENT

In the matter of an investigation as to the manner of service by North Central Airlines, Inc., between Duluth, Minn./Superior, Wis., and continued suspension of the authority of Northwest

Airlines, Inc., to serve Duluth/Superior and applications proposing the elimination of Green Bay, Wausau, Eau Claire, and La Crosse, Wis., from the certificate for route No. 3 or the suspension of the authority of Northwest Airlines, Inc., to serve those points and Duluth/Superior.

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, that oral argument in the above-entitled proceeding now assigned for June 19 is postponed to June 26, 1957; 10:00 a. m., e. d. s. t., in Room 5042, Commerce Building, Constitution Avenue, between 14th and 15th Streets NW., Washington, D. C., before the Board.

Dated at Washington, D. C., June 11, 1957.

[SEAL] FRANCIS W. BROWN,
*Chief Examiner.*

[F. R. Doc. 57-4864; Filed, June 13, 1957; 8:52 a. m.]

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[Docket No. 8685]

COMPANIA ECUATORIANA DE AVIACION, S. A.

NOTICE OF HEARING

In the matter of the application of Compania Ecuatoriana de Aviacion, S. A., under section 402 of the Civil Aeronautics Act of 1938, as amended, for a foreign air carrier permit to engage in foreign air transportation in scheduled and non-scheduled operations with respect to mail, persons and property between the Republic of Ecuador and Miami, Florida, U. S. A., via intermediate points.

Notice is hereby given that a hearing in the above-entitled application is assigned to be held on June 27, 1957, at 10:00 a. m., e. d. s. t., in Room 1032, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Ferdinand D. Moran.

Dated at Washington, D. C., June 10, 1957.

[SEAL] FRANCIS W. BROWN,
*Chief Examiner.*

[F. R. Doc. 57-4863; Filed, June 13, 1957; 8:52 a. m.]

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# DEPARTMENT OF COMMERCE

## Maritime Administration

NOTICE OF AVAILABILITY OF TWO VESSELS FOR PURCHASE

On June 7, 1957, the Secretary of Commerce redelegated to the Maritime Administrator, Maritime Administration, the powers and authorities vested in the Secretary of Commerce by Public Law 938, 84th Congress, with respect to the sale of two war-built vessels to United States citizens for employment on essential trade routes 3 and 4 to Cuba and Mexico.

Notice is hereby given that any citizens of the United States interested in bidding on two vessels for employment as above stated, pursuant to the provisions of Public Law 938, 84th Congress, should contact the Secretary, Maritime Administration, New General Accounting Office Building, Fifth and G Streets NW., Washington 25, D. C. The authority to sell these vessels under said statute expires on August 3, 1957.

Copies of the above statute may be obtained from the United States Government Printing Office.

Dated: June 12, 1957.

[SEAL] CLARENCE G. MORSE,
*Maritime Administrator.*

[F. R. Doc. 57-4888; Filed, June 13, 1957; 8:53 a. m.]

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# DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

[Portland Area Office Redelegation Order 1, Amdt. 3]

FUNDS AND FISCAL MATTERS; SATISFACTION OF JUDGMENTS

REDELEGATION OF AUTHORITY

Order 1, as amended, is further amended to add a new heading and a new section, to read as follows:

FUNCTIONS RELATING TO FUNDS AND FISCAL MATTERS

SEC. 2.264 *Satisfaction of judgments.* The approval of expenditures of Individual Indian Moneys held in the custody of the Department of the Interior with respect to judgments issued pursuant to 25 CFR Part 161 or any tribal law and order code.

T. H. MOORE,
*Acting Area Director.*

Approved: JUNE 10, 1957.

GLENN L. EMMONS,
*Commissioner.*

[F. R. Doc. 57-4823; Filed, June 13, 1957; 8:45 a. m.]

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## Bureau of Land Management

[Classification 569]

CALIFORNIA

SMALL TRACT CLASSIFICATION

JUNE 7, 1957.

1. Pursuant to authority delegated to me by the California State Supervisor, Bureau of Land Management, under Part II, Document 4, California State Office, dated November 19, 1954 (19 F. R. 7697). I hereby classify the following described public lands, totaling 2,252.06 acres in San Bernardino County, California, as suitable for disposition under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended:

SAN BERNARDINO BASE AND MERIDIAN

T. 6 N., R. 1 W.,
Sec. 4, lots 1 to 12, inclusive.
T. 7 N., R. 1 W.,
Sec. 15, N½, SE¼, E½SW¼, NW¼SW¼, E½SW¼SW¼, SW¼SW¼SW¼;
Sec. 22, N½, SE¼, N½SW¼, SE¼SW¼, N½SW¼SW¼, E½SE¼SW¼SW¼.
T. 6 N., R. 1 E.,
Sec. 32, NE¼SW¼, E½ of lot 4, lots 1, 2, and 3 incl.;
Sec. 33, N½S½, S½NE¼, SE¼NW¼, E½SW¼NW¼, Lots 1 to 4 incl.

2. Classification of the above-described lands by this order segregates them from all appropriations, including locations under the mining laws, except as to applications under the mineral leasing laws.

3. The lands classified by this order shall not become subject to application under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended, until it is so provided by an order to be issued by an authorized officer, opening the lands to application or bid with a preference right to veterans of World War II and of the Korean conflict and other qualified persons entitled to preference under the act of September 27, 1944 (58 Stat. 497; 43 U. S. C. 279-284), as amended.

4. All valid applications filed prior to June 7, 1957, will be granted, as soon as possible, after the order of opening, the preference right provided for by 43 CFR 257.5 (a).

R. G. SPORLEDER,
*Officer-in-Charge,*
*Southern Field Group,*
*Los Angeles, California.*

[F. R. Doc. 57-4825; Filed, June 13, 1957; 8:45 a. m.]

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# FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 11786, 11787; FCC 57M-549]

WEST SHORE BROADCASTING CO. AND WEST PORT BROADCASTING CO.

ORDER CONTINUING HEARING

In re applications of Samuel Babbit, Saul Dresner, Leonard Wechsler, Alfred Dresner, Fred Schottland and Robert Gessner, d/b as West Shore Broadcasting Company, Beacon, New York; Docket No. 11786, File No. BP-9821; The Westport Broadcasting Company, Westport, Connecticut; Docket No. 11787, File No. BP-9972; for construction permits.

On the oral request of counsel for The Westport Broadcasting Company, and without objection by counsel for the other parties: *It is ordered,* This 7th day of June 1957, that

(1) The date for the further conference is continued from June 11, 1957, to Thursday, June 27, 1957.

(2) The date for the beginning of the evidentiary hearing is continued from June 20, 1957, to Thursday, July 11, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 57-4850; Filed, June 13, 1957; 8:50 a. m.]

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[Docket No. 11938 etc.; FCC 57M-550]

GOLD COAST BROADCASTERS ET AL.

ORDER SCHEDULING PRE-HEARING CONFERENCE

In re applications of James C. Dean, C. Robert Clark and Charles W. Stone d/b as Gold Coast Broadcasters, Pompano Beach, Florida; Docket No. 11938, File No. BP-10631; Gold Coast Radio, Inc., Pompano Beach, Florida; Docket

No. 11939, File No. BP-10782; Lawrence J. Plym, Pompano Beach, Florida; Docket No. 12029, File No. BP-11097; construction permits.

*It is ordered*, This 7th day of June 1957, that all parties, or their attorneys, are directed to appear for a pre-hearing conference, pursuant to the provisions of § 1.813 of the Commission's rules, at the Commission's offices in Washington, D. C., at 10:00 a. m., July 1, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 57-4851; Filed, June 13, 1957; 8:50 a. m.]

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[Docket No. 12013]

MOE BERGER

NOTICE OF PLACE OF HEARING

In the matter of Moe Berger, 136 St. George Street, St. Augustine, Florida; suspension of Radiotelephone Second-Class Operator license; Docket No. 12013.

The hearing on the above-entitled matter presently scheduled for Monday, June 17, 1957 will be held at 1:00 p. m. in the Commission Room, City Building, corner of St. George and Hypolita Streets, St. Augustine, Florida.

Dated: June 10, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 57-4852; Filed, June 13, 1957; 8:50 a. m.]

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[Change List 112]

CANADIAN BROADCAST STATIONS

LIST OF CHANGES, PROPOSED CHANGES AND CORRECTIONS IN ASSIGNMENTS

MAY 24, 1957.

Notification under the provisions of Part III, section 2 of the North American Regional Broadcasting Agreement.

List of changes, proposed changes, and corrections in assignment of Canadian Broadcast Stations modifying appendix containing assignments of Canadian Broadcast Stations (Mimeograph 47214-3) attached to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

| Call letters | Location | Power kw | Antenna | Schedule | Class | Expected date of commencement of operation |
|---|---|---|---|---|---|---|
| | | *610 kilocycles* | | | | |
| New | Thompson Townsite, Manitoba | 1 kw | ND | U | III | May 15, 1958. |
| | | *630 kilocycles* | | | | |
| CJET | Smith Falls, Ontario | 1 kw | DA-1 | U | III | May 15, 1958 (PO: 1070 kc 1 kw ND D). |
| | | *680 kilocycles* | | | | |
| CHLO | St. Thomas, Ontario | 10 kw D/1 kw N | DA-2 | U | II | EIO May 15, 1958 (PO: 680 kc 1 kw DA-1). |
| | | *900 kilocycles* | | | | |
| CKBI | Prince Albert, Saskatchewan | 10 kw | DA-2 | U | II | Now in operation. |
| | | *1250 kilocycles* | | | | |
| CKRB | St. Georges de Beauce, P. Q. | 5 kw D/1 kw N | DA-N | U | III | EIO May 15, 1958 (PO: 1400 kc 250 w ND). |

NOTE: In Change List #111, dated April 12, 1957 "EIO 15.3.57" should have read "EIO 15.3.58" in all cases. The annotation to the CJSP, Leamington, Ontario, item should have shown present operation as Day only instead of DA-1.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 57-4853; Filed, June 13, 1957; 8:50 a. m.]

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# FEDERAL POWER COMMISSION

[Docket No. G-11644]

WILCOX TREND GATHERING SYSTEM, INC.

NOTICE OF APPLICATION AND DATE OF HEARING

JUNE 10, 1957.

Take notice that on December 21, 1956, Wilcox Trend Gathering System, Inc. (Applicant), filed in Docket No. G-11644 an application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of approximately 2.84 miles of 3½ inch O. D. supply lateral pipeline extending from a point of connection with Applicant's existing 3½ inch O. D. Hunt-Schrade lateral in DeWitt County, Texas, to a point in the North Mission Valley Field, DeWitt County, together with a meter station and appurtenances, in order to receive natural gas produced in said field by Midstates Oil Corporation, et al. (Midstates). The estimated total cost of the proposed facilities is $33,700, which cost is to be financed from company funds. The estimated gas reserves of Midstates to be transported by Applicant through the proposed facilities are estimated at 2,331 MMcf. at 14.73, as of November 1, 1956, as more fully set forth in the application on file with the Commission and open to public inspection.

Midstates was authorized in Docket No. G-11274 to sell gas in the subject field to Texas Eastern Transmission Corporation (Texas Eastern), Assignee of Applicant.

Applicant will transport the gas received from Midstates for the account of Texas Eastern for delivery to the latter company at Provident City, Texas. Texas Eastern will transport such gas in interstate commerce for resale.

This matter should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on July 15, 1957, at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before July 3, 1957. Failure of any party to appear at and participate in the hearing shall be construed as a waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

[SEAL] JOSEPH H. GUTRIDE,
*Secretary.*

[F. R. Doc. 57-4826; Filed, June 13, 1957; 8:45 a. m.]

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[Docket No. G-11875]

UNITED GAS PIPE LINE CO.

NOTICE OF APPLICATION AND DATE OF HEARING

JUNE 10, 1957.

Take notice that United Gas Pipe Line Company (Applicant), a Delaware corporation, with its principal place of business in Shreveport, Louisiana, filed an application on February 1, 1957, pursuant to section 7 of the Natural Gas Act and as provided for in the Commission's Order No. 185, for a certificate of public convenience and necessity authorizing the construction and operation during 1957 of certain taps, meters, and appurtenant facilities, and to render temporary direct interruptible natural gas service to "not more than 25 direct industrial customers" as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application, which is on

file with the Commission and open to public inspection.

Applicant states that the proposed sales are to be made on its pipeline system as it passes through the States of Alabama, Florida, Louisiana, Mississippi and Texas, to certain unnamed road construction contractors who would use the gas in connection with federal, state and local roadbuilding projects. The temporary deliveries will cease and such service will terminate when the road construction projects are completed. Applicant states that its past experience shows that the average road project uses approximately 16,000 Mcf. and would require an investment of approximately $500 for construction and removal of facilities for each project, or approximately 400,000 Mcf. of gas with a total construction cost of $12,500 for the proposal herein.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on July 17, 1957 at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before June 26, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,
*Secretary.*

[F. R. Doc. 57-4827; Filed, June 13, 1957; 8:45 a. m.]

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[Docket No. G-11964]

PERMIAN BASIN PIPELINE CO.

NOTICE OF APPLICATION AND DATE OF HEARING

JUNE 10, 1957.

Take notice that Permian Basin Pipeline Company (Applicant), a Delaware corporation, with its principal place of business in Omaha, Nebraska, filed an application on February 11, 1957, as supplemented on March 6, 1957, for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing the acquisition of certain natural-gas compressor facilities, as hereinafter described, subject to the jurisdiction of the Commission, all as more fully described in the application as supplemented, which is on file with the Commission and open to public inspection.

Applicant seeks authority to acquire two existing 1,350 horsepower compressor units, located at its Andrews County, Texas, compressor station from Phillips Petroleum Company (Phillips), and to operate said units as an integral part of its system and in connection with its existing Andrews compressor facilities.

Applicant states that in conjunction with its purchase of natural gas from Phillips it operates its Andrews compressor station, consisting of ten 1350 horsepower units, in addition to other facilities previously authorized. The present daily capacity of its Andrews station is approximately 50,000 Mcf per day of residue gas. The two additional compressor units proposed to be acquired, Applicant states, will enable it to compress additional gas now available in the Andrews County area under a supplemental agreement with Phillips, entitling Applicant to purchase up to 75,000 Mcf per day.

The application states that, in anticipation of further development of the Andrews Field, Phillips had three additional compressor units constructed by Permian, said units to be the property of Phillips, with Applicant having the option to buy at cost any of these units necessary to increase its compressor capacity as required in the event additional quantities of gas become available to Applicant.

Applicant will pay Phillips $842,800, an amount equal to the actual cost of the two units to be acquired, such sum to be obtained by short-term borrowing from Applicant's parent, Northern Natural Gas Company.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations, and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on July 16, 1957, at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before June 28, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,
*Secretary.*

[F. R. Doc. 57-4830; Filed, June 13, 1957; 8:46 a. m.]

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[Docket No. G-12018]

TRANSCONTINENTAL GAS PIPE LINE CORP.

NOTICE OF APPLICATION AND DATE OF HEARING

JUNE 10, 1957.

Take notice that Transcontinental Gas Pipe Line Corporation (Applicant), a Delaware corporation with its principal place of business at Houston, Texas, filed an application on February 15, 1957, for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing the sale and delivery of additional volumes of natural gas to existing customers, as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application, which is on file with the Commission and open to public inspection.

Applicant seeks authorization to sell and deliver to Philadelphia Electric Company (Philadelphia Electric), Consolidated Edison Company of New York, Inc. (Con. Edison), Long Island Lighting Company (Long Island), and the City of Danville, Virginia (Danville), all existing customers, the following volumes of gas under its applicable LTF Rate Schedules for the periods indicated:

| Customer | Term of service | | Volume |
|---|---|---|---|
| | From | To | |
| Philadelphia Electric | 4-15-57 | 11-15-57 | 10,000 Mcf |
| Con. Edison | 11- 1-57 | 11- 1-58 | 30,000 Mcf |
| Long Island | 11- 1-57 | 11- 1-58 | 5,000 Mcf |
| Danville, Va | 11- 1-57 | 11- 1-58 | 1,000 Mcf |
| Total | | | 46,000 Mcf |

Applicant states that it will have these volumes available because of excess capacity for a limited period during the build-up period of markets authorized in Docket No. G-10000 on March 1, 1957, particularly since the Tidewater area of the Carolinas are not expected to begin taking gas until late in 1958. Some of the customers Transco was authorized to serve in Opinion No. 280 (issued March 7, 1955) have not yet reached their third year allocations. Thus, some additional excess capacity exists as a temporary condition, which can be utilized through these proposed LTF sales. No new facilities are proposed.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the

Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on July 17, 1957 at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street, NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before June 28, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-4831; Filed, June 13, 1957; 8:46 a. m.]

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[Docket No. G-12033]

NORTHERN NATURAL GAS CO.

NOTICE OF APPLICATION AND DATE OF HEARING

JUNE 10, 1957.

Take notice that Northern Natural Gas Company (Applicant), a Delaware corporation with its principal place of business at Omaha, Nebraska, filed an application on February 18, 1957, for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of natural gas facilities to render direct natural gas service to the proposed new North Star Concrete Company (North Star) plant to be located near Rochester, Minnesota, as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct a two inch line tap with metering appurtenances on its 10-inch Rochester branch line to render both firm and interruptible gas service to the proposed new plant of North Star located about five miles west of Rochester, Minnesota. North Star will build a short pipeline from Northern's metering station to its plant site.

Applicant states that North Star is expected to require only a maximum of 5 Mcf daily and 420 Mcf annual of firm gas to heat its offices and for processing fuel.

Interruptible gas will also be used by North Star for boiler fuel in concrete drying. A maximum daily demand of 180 Mcf of interruptible gas is estimated with an annual delivery of 20,760 Mcf.

The total gas consumption of the plant, it is estimated, would be a maximum of 185 Mcf per day and 21,180 Mcf per year.

The firm demand of North Star, approximately 5 Mcf per day, will be made available to the plant from the Peoples Division's existing contract demand allocation of 18,458 Mcf per day.

Applicant estimates the total cost of its proposed facilities to be $3,500. However, up to $2,300 will be advanced to Applicant by North Star, leaving a net cost of only $1,200 to Applicant.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on July 10, 1957, at 9:30 a. m., e. d. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before June 28, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-4828; Filed, June 13, 1957; 8:46 a. m.]

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[Docket No. G-12060]

SOUTHERN NATURAL GAS CO. AND TRANSCONTINENTAL GAS PIPE LINE CORP.

NOTICE OF APPLICATION AND DATE OF HEARING

JUNE 10, 1957.

Take notice that Southern Natural Gas Company (Southern) and Transcontinental Gas Pipe Line Corporation (Transco), Delaware corporations, with their principal places of business in Birmingham, Alabama, and Houston, Texas, respectively, filed a joint application on February 21, 1957, as supplemented March 22, 1957, for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing construction and operation of interconnection facilities for the exchange of natural gas, as hereinafter described, subject to the jurisdiction of the Commission, all as more fully described in the application which is on file with the Commission and open to public inspection.

The proposed connection is to be made between Transco's 30-inch line and Southern's 12-inch crossover line, which connects Southern's North and South systems near Selma, Alabama. Southern proposes to take the Transco gas into its crossover line and carry it south to its main South System for transmission east and delivery to customers served from the South System.

The application states that Southern at times needs additional volumes of gas to serve the requirements of existing customers along its South System, while Transco periodically has capacity beyond its requirements which it can make available to Southern through the proposed connection.

Southern proposes to make the connection and install metering and appurtenant facilities which will permit receipt of up to 100,000 Mcf of natural gas per day. The estimated cost to Southern will be $32,000, to be made from current funds.

The proposed exchange of gas will be under both Applicant's Ex-1 Rate Schedules which permit either Applicant to return the exchange gas or to purchase the gas outright at certain specified rates.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on July 16, 1957 at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (c) (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before July 1, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-4829; Filed, June 13, 1957; 8:46 a. m.]

[Docket No. G-12062]

NEW YORK STATE NATURAL GAS CORP.

NOTICE OF APPLICATION

JUNE 10, 1957.

Take notice that on February 21, 1957, New York State Natural Gas Corporation (Applicant), a New York corporation having its principal place of business at Pittsburgh, Pennsylvania, filed an application for a certificate of public convenience and necessity pursuant to section 7 (c) of the Natural Gas Act, authorizing the installation and operation of an additional 2,000 horsepower compressor with appurtenant facilities at its Sabinsville Compressor Station in Tioga County, Pennsylvania, all as more fully set forth in its application which is on file with the Commission and open to public inspection.

The estimated cost of the proposed facilities is $400,000 to be financed in part from available company funds, and in part from funds obtained by the issuance of securities to its parent, Consolidated Natural Gas System.

Take further notice that protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before July 1, 1957.

[SEAL] JOSEPH H. GUTRIDE,
*Secretary.*

[F. R. Doc. 57-4832; Filed, June 13, 1957; 8:46 a. m.]

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[Project No. 2228]

RIVERSIDE POWER & DEVELOPMENT CO., INC.

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT

JUNE 10, 1957.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U. S. C. 791a-825r) by Riverside Power & Development Co., Inc., of Dora, Indiana, for preliminary permit for proposed water power Project No. 2228 to be located on Salamonie River in Wabash County, Indiana, and in the vicinity of Dora, Holland, Monument City, Lagro, Wabash, Marion, and Huntington, Indiana, affecting navigable waters of the United States. The proposed project would consist of a concrete dam 27 feet high and 440 feet long with flood gates as may be necessary, trash cleanout with small gate at bottom; a reservoir of 219 acres extending approximately 3 miles upstream; a powerhouse with a 1360 horsepower turbine driving a 1,000 kilowatt generator; and appurtenant facilities. The preliminary permit, if issued, shall be for the sole purpose of maintaining priority of application for a license under the terms of the Federal Power Act for the proposed project.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is July 15, 1957. The application is on file with the Commission for public inspection.

[SEAL] JOSEPH H. GUTRIDE,
*Secretary.*

[F. R. Doc. 57-4833; Filed, June 13, 1957; 8:46 a. m.]

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# DEPARTMENT OF LABOR

## Wage and Hour Division

LEARNER EMPLOYMENT CERTIFICATES

ISSUANCE TO VARIOUS INDUSTRIES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.), Part 522 of the regulations issued thereunder (29 CFR Part 522), and Administrative Order No. 414 (16 F. R. 7367), special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates applicable under section 6 of the act have been issued to the firms listed below. The employment of learners under these certificates is limited to the terms and conditions therein contained and is subject to the provisions of Part 522. The effective and expiration dates, occupations, wage rates, number or proportion of learners and learning periods for certificates issued under general learner regulations (§§ 522.1 to 522.11) are as indicated below; conditions provided in certificates issued under special industry regulations are as established in these regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.20 to 522.24, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Angelica Uniform Co., Eminence, Mo.; effective 6-9-57 to 6-8-58 (washable service uniforms).

Angelica Uniform Co., Summersville, Mo.; effective 6-12-57 to 6-11-58 (washable service apparel).

Bern Haven, Inc., York Haven, Pa.; effective 5-31-57 to 5-30-58 (children's cotton dresses).

The Juvenile Manufacturing Co., Inc., San Antonio, Tex; effective 5-31-57 to 5-30-58 (boys' outerwear).

Kennebec Manufacturing Co., Inc., Northern Avenue, Gardiner, Maine; effective 6-6-57 to 6-5-58 (boys' pants, cotton woven goods).

Saxon Trouser Manufacturing Co., Aberdeen, Miss.; effective 6-6-57 to 6-5-58 (men's trousers).

Wolfspar, Inc., 103 North Main Street, Mount Wolf, Pa.; effective 5-31-57 to 5-30-58 (children's cotton dresses).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number or proportion of learners authorized are indicated.

Bern Haven, Inc., 239 North George Street, York, Pa.; effective 5-31-57 to 5-30-58; five learners (pressing, folding, and shipping of children's cotton dresses).

Bryan Infants' Wear, Inc., 712 South Wheeling, Tulsa, Okla.; effective 5-30-57 to 5-29-58; three learners (infants' nightgowns, sunsuits).

Youngwood Manufacturing Co., Inc., 309 North Fourth Street, Youngwood, Pa.; effective 5-28-57 to 5-27-58; five learners (children's snowsuits).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Fairfield Manufacturing Co., Inc., Winnsboro, S. C.; effective 6-4-57 to 12-3-57; 20 learners (cotton wash dresses).

Williamson-Dickie Manufacturing Co., McAllen, Tex.; effective 5-29-57 to 11-28-57; 100 learners (men's and boys' cotton pants).

Williamson-Dickie Manufacturing Co., Weslaco, Tex.; effective 5-29-57 to 11-28-57; 100 learners (men's and boys' cotton pants).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.40 to 522.43, as amended).

Crescent Hosiery Mills, Niota, Tenn.; effective 5-29-57 to 5-28-58; 5 percent of the total number of factory production workers for normal labor turnover purposes (children's anklets).

Woosley Knitting Mills, Shelbyville, Tenn.; effective 5-31-57 to 5-30-58; five learners for normal labor turnover purposes (full-fashioned).

Independent Telephone Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.70 to 522.74, as amended).

Citizens Telephone Corp., Warren, Ind.; effective 5-31-57 to 5-30-58.

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.30 to 522.35, as amended).

Carmi Ainsbrooke Corp., Olney, Ill.; effective 5-29-57 to 5-28-58; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's undershorts).

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.11, as amended).

The following learner certificates were issued to the companies listed below manufacturing miscellaneous products. The effective and expiration dates, learner rates, occupations, learning periods, and the number or proportion of learners authorized to be employed, are as indicated.

R. K. Barter Canneries, Inc., Stonington, Maine; effective 6-1-57 to 11-30-57; authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes, in the occupation of sardine packer for a learning period of 160 hours at the rates of 80 cents an hour for the first 80 hours and 85 cents an hour for the remaining 80 hours (sardines).

Bath Canning Co., 66 Bowery Street, Bath, Maine; effective 6-1-57 to 11-30-57; authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes, in the occupation of sardine packer for a learning period of 160 hours at the rates of 80 cents an hour for the first 80 hours and 85 cents an hour for the remaining 80 hours (sardines).

Port Clyde Packing Co., Inc., Port Clyde, Maine; effective 6-1-57 to 11-30-57; authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes, in the occupation of sardine packer for a learning

period of 160 hours at the rates of 80 cents an hour for the first 80 hours and 85 cents an hour for the remaining 80 hours (sardines).

F. H. Snow Canning Corp., Shore Road, South Gouldsboro, Maine; effective 6–1–57 to 11–30–57; authorizing the employment of 10 learners for normal labor turnover purposes, in the occupation of sardine packer for a learning period of 160 hours at the rates of 80 cents an hour for the first 80 hours and 85 cents an hour for the remaining 80 hours (sardines).

See-Gal Manufacturing Co., 220 Franklin Street, Johnstown, Pa.; effective 5–29–57 to 11–28–57; authorizing the employment of three learners for normal labor turnover purposes, in the occupation of sewing machine operator for a learning period of 320 hours at the rates of 87 cents an hour for the first 160 hours and 90 cents an hour for the remaining 160 hours (ladies' belts).

William Underwood Co., McKinley, Maine; effective 6–1–57 to 11–30–57; authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes, in the occupation of sardine packer for a learning period of 160 hours at the rates of 80 cents an hour for the first 80 hours and 85 cents an hour for the remaining 80 hours (sardines).

William Underwood Co., West Jonesport, Maine; effective 6–1–57 to 11–30–57; authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes, in the occupation of sardine packer for a learning period of 160 hours at the rates of 80 cents an hour for the first 80 hours and 85 cents an hour for the remaining 80 hours (sardines).

William Underwood Co., Yarmouth, Maine; effective 6–1–57 to 11–30–57; authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes, in the occupation of sardine packer for a learning period of 160 hours at the rates of 80 cents an hour for the first 80 hours and 85 cents and hour for the remaining 80 hours (sardines).

The following special learner certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods, and the number or proportion of learners authorized to be employed, are as indicated:

Sanrico Sportswear Corp., Hato Rey, P. R.; effective 5–15–57 to 5–14–58; authorizing the employment of five learners for normal labor turnover purposes, in the occupations of sewing machine operators and final pressers, each for a learning period of 480 hours at the rates of 45 cents an hour for the first 240 hours and 53 cents an hour for the remaining 240 hours (slacks, shorts).

Superior Products, Inc., Cidra, P. R.; effective 5–15–57 to 11–14–57; authorizing the employment of 40 learners for plant expansion purposes, in the occupation of sewing machine operator for a learning period of 480 hours at the rates of 55 cents an hour for the first 320 hours and 63 cents an hour for the remaining 160 hours (undergarment accessories).

Each learner certificate has been issued upon the employer's representation that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be annulled or withdrawn in the manner provided in Part 528 and as indicated in the certificates. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of Part 522.

Notice is hereby given that pursuant to Section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.), and Part 527 of the regulations issued thereunder (29 CFR Part 527) a special certificate authorizing the employment of student-workers at hourly wage rates lower than the minimum wage rates applicable under section 6 of the act has been issued to the firm listed below. Effective and expiration dates, occupations, wage rates, number or proportion of student-workers as learners, and learning period for the certificate issued under Part 527 are as indicated below.

Regulations Applicable to the Employment of Student-Workers (29 CFR 527.1 to 527.9).

Pacific Union College, Angwin, Calif.; effective 5–27–57 to 8–31–57; authorizing the employment of eight additional student-workers in the bookbindery industry in the occupations of bookbinder, sewer, stamper, trimmer, cutter, backer, case-maker and related skilled and semiskilled occupations including incidental clerical work in shop, each for a learning period of 600 hours at the rates of 80 cents an hour for the first 300 hours and 85 cents an hour for the remaining 300 hours (supplementary certificate).

The student-worker certificate listed herein was issued upon the employer's representation that the employment of the student-workers at subminimum rates was necessary to prevent curtailment of opportunities for employment.

Signed at Washington, D. C., this 4th day of June 1957.

MILTON BROOKE,
*Authorized Representative of the Administrator.*

[F. R. Doc. 57–4781; Filed, June 12, 1957; 8:47 a. m.]

## SECURITIES AND EXCHANGE COMMISSION

[File No. 24FW–942]

SUPER-SEAL PISTON RING MFG. CORP.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

JUNE 10, 1957.

I. Super-Seal Piston Ring Mfg. Corp. ("Super-Seal"), a Delaware corporation, 2308 Brooks, Garland, Texas, filed with the Commission on June 3, 1955, a notification on Form 1–A and an offering circular, and subsequently filed various amendments thereto relating to an offering of 575,000 shares of its common 10-cent par value stock at $0.50 per share for an aggregate of $287,500 for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation A promulgated thereunder; and

II. The Commission has reasonable cause to believe that the terms and conditions of Regulation A have not been complied with, in that Super-Seal has failed to file reports on Form 2–A as required by Rule 224;

III. *It is therefore ordered,* Pursuant to Rule 223 (a) of the General Rules and Regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for a hearing; that, within 20 days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place of said hearing will be promptly given by the Commission.

By the Commission.

[SEAL] NELLYE A. THORSEN,
*Assistant Secretary.*

[F. R. Doc. 57–4836; Filed, June 13, 1957; 8:47 a. m.]

## SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 10 (Revision 1), Amdt. 2]

DEPUTY ADMINISTRATOR FOR FINANCIAL ASSISTANCE

DELEGATION OF AUTHORITY

Delegation of Authority No. 10 (Revision 1) (21 F. R. 5853, 22 F. R. 3432) is hereby amended by:

a. Deleting subsection I. B. 2 in its entirety and substituting the following in lieu thereof:

2. To approve or decline business and disaster loan applications and amendments thereof involving split or unanimous recommendations.

b. Deleting Part II in its entirety and substituting the following in lieu thereof:

II. The specific authority delegated in I. B. 1 and 7 herein may not be redelegated.

Dated: June 5, 1957.

WENDELL B. BARNES,
*Administrator.*

[F. R. Doc. 57–4845; Filed, June 13, 1957; 8:49 a. m.]

[Delegation of Authority 10–1, Amdt. 1]

DIRECTOR, OFFICE OF FINANCIAL ASSISTANCE

DELEGATION OF AUTHORITY

Delegation of Authority No. 10–1 (21 F. R. 5853) is hereby amended by:

a. Deleting subsection I. B. 1 in its entirety and substituting the following in lieu thereof:

1. To approve or decline business and disaster loan applications and amendments thereof involving split or unanimous recommendations.

b. Deleting Part II in its entirety and substituting the following in lieu thereof:

II. The specific authority delegated in I. B. 3, 5, 6 (b) and (c), and I. C. may not be redelegated.

Dated: June 5, 1957.

W. NORBERT ENGLES,
*Deputy Administrator for Financial Assistance.*

[F. R. Doc. 57-4846; Filed, June 13, 1957; 8:49 a. m.]

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[Delegation of Authority 10-2]

CHAIRMAN, LOAN REVIEW COMMITTEE

DELEGATION RELATING TO FINANCIAL ASSISTANCE

Notice is hereby given that this delegation is rescinded in its entirety.

Dated: June 5, 1957.

J. F. MATCHETT,
*Director, Office of Financial Assistance.*

[F. R. Doc. 57-4848; Filed, June 13, 1957; 8:49 a. m.]

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[Delegation of Authority 10-4]

LOAN REVIEW BOARD

DELEGATION RELATING TO FINANCIAL ASSISTANCE

I. Pursuant to the authority delegated to the Director, Office of Financial Assistance, by Delegation of Authority No. 10-1, dated July 31, 1956, and Amendment thereto, dated June 5, 1957, there is hereby redelegated to the Loan Review Board, the authority:

A. *General.* To carry out all the functions listed for the Loan Review Board in section 101 of SBA-100, Administrative Manual.

B. *Specific.* When a majority of the Board concurs:

1. To approve or decline business and disaster loan applications involving split and unanimous recommendations.

2. To approve or decline all amendatory actions relating to loans.

II. The authority delegated herein may not be redelegated.

III. All authority delegated herein may be exercised by the Board, when at least three members, regular or acting, participate in such actions.

Dated: June 5, 1957.

J. F. MATCHETT,
*Director, Office of Financial Assistance.*

[F. R. Doc. 57-4847; Filed, June 13, 1957; 8:49 a. m.]

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[Declaration of Disaster Area 141, Amdt. 1]

OKLAHOMA

DECLARATION OF DISASTER AREA

Declaration of Disaster Area 141, dated May 21, 1957, for the State of Oklahoma, is hereby amended as follows:

By including in paragraph 1 thereof the Counties of Sequoyah and Muskogee (flood).

Dated: May 29, 1957.

WENDELL B. BARNES,
*Administrator.*

[F. R. Doc. 57-4849; Filed, June 13, 1957; 8:49 a. m.]

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# INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

JUNE 11, 1957.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 33843: *Substituted service—Motor-rail-motor, N. & W. and Pennsylvania Railroads.* Filed by Motor Carriers Traffic Association, Inc., Agent, for interested rail and motor carriers. Rates on various commodities, loaded in highway trailers and transported on railroad flatcars between Bristol, Va.-Tenn., Roanoke, Va., or Winston-Salem, N. C., on the one hand, and Kearny, N. J., or Philadelphia, Pa., on the other, on traffic originating at or destined to points beyond the named points on motor carriers.

Grounds for relief: Motor truck competition.

Tariff: Motor Carriers Traffic Association, Inc., Agent, tariff I. C. C. No. 1.

FSA No. 33844: *Carbon blacks—Southwestern points to Pulaski, Tenn.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on blacks, carbon, gas and/or oil, carloads, also blacks, chemical carbon, carloads from specified points in Arkansas, Kansas, Louisiana, New Mexico, Oklahoma, and Texas, to Pulaski, Tenn., and in the reverse direction to points of origin.

Grounds for relief: Grouping, short-line distance formula, and circuitous routes.

Tariff: Supplement 207 to Agent Kratzmeir's tariff I. C. C. 3744.

FSA No. 33845: *Paper articles—Orange, Tex., to Long Island City, N. Y.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on wrapping paper and paper bags, straight or mixed carloads from Orange, Tex., to Long Island City, New York.

Grounds for relief: Circuitous routes.

Tariff: Supplement 13 to Agent Kratzmeir's tariff I. C. C. 4215.

FSA No. 33846: *Wallboard—Rio Grande crossings to southern points.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on wallboard, building, wall or insulating, viz.: fibreboard or pulpboard or strawboard and wood combined, straight or mixed carloads from Brownsville, Eagle Pass, El Paso, Hidalgo, Laredo, and Presidio, Tex., to Columbia, Miss., and Scottdale, Ga.

Grounds for relief: Short-line distance formula, and circuitous routes.

Tariff: Supplement 50 to Agent Kratzmeir's tariff I. C. C. 4159.

FSA No. 33847: *Cement—Arkansas, Oklahoma and Tennessee points to Arkansas points.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on cement and concrete mixtures, straight or mixed carloads from Okay Jct., Ark., Ada, Okla., and Memphis, Tenn., to West Line, Ark., and nine other named points in Arkansas.

Grounds for relief: Short-line distance formula and circuitous routes.

Tariff: Supplement 82 to Agent Kratzmeir's tariff I. C. C. 3934.

FSA No. 33848: *All commodities—Mt. Wolf, Pa., to Georgia and Louisiana points.* Filed by O. E. Schultz, Agent, for interested rail carriers. Rates on merchandise, mixed carloads from Mt. Wolf, Pa., to Oakland City, Ga., and New Orleans, La.

Grounds for relief: Motor truck competition and circuitous routes.

Tariff: Supplement 5 to Agent C. W. Boin's tariff I. C. C. A-1119.

FSA No. 33849: *Methanol—Military, Kans., to Chicago, Ill.* Filed by W. J. Prueter, Agent, for interested rail carriers. Rates on methanol (methyl alcohol), tank-car loads from Military, Kans., to Chicago, Ill.

Grounds for relief: Market competition with Sterlington, La., and circuitous routes.

Tariff: Supplement 134 to Agent Prueter's tariff I. C. C. A-3991.

FSA No. 33850: *Lubricating oils—Chicago, Ill., and district to Iowa points.* Filed by W. J. Prueter, Agent, for interested rail carriers. Rates on lubricating oils, in packages, carloads and in tank-car loads from Chicago, Ill., and points in the Chicago Switching district to Des Moines, Ottumwa, and Sioux City, Iowa.

Grounds for relief: Truck competition and circuitous routes.

Tariffs: Supplement 83 to Agent Prueter's tariff I. C. C. A-4038 and other tariffs listed in the application.

FSA No. 33851: *Cathode ray tubes—New Orleans, La., to Michigan and Massachusetts points.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on cathode ray tubes, old, used and unfit for repair or use, carloads from New Orleans, La., to Indianfield, Mich., and Newburyport, Mass.

Grounds for relief: Circuitous routes in part west of the Mississippi River.

FSA No. 33852: *Grain and products—Indiana points to eastern points.* Filed by O. E. Schultz, Agent, for interested rail carriers. Rates on grain and grain products, carloads from specified points in Indiana to specified points in Maryland, Massachusetts, New York, and Pennsylvania.

Grounds for relief: Circuitous routes.

Tariff: Supplement 94 to Agent H. R. Hinsch's tariff I. C. C. 4403.

FSA No. 33853: *Substituted service—Motor-rail-motor, N. Y., N. H., and H. and Pennsylvania Railroads.* Filed by Transamerican Freight Lines, Inc., Agent, for interested rail and motor carriers. Rates on various commodities, loaded in highway trailers and transported on railroad flatcars between Chicago, East St. Louis, Ill., Indianapolis, Ind., and Cleveland, Ohio, on one hand, and Boston, Mass., on the other.

Grounds for relief: Motor truck competition.

Tariff: Transamerican Freight Line, Inc., Agent, tariff I. C. C. No. 6.

FSA No. 33854: *Substituted service—Motor-rail-motor, Pennsylvania Railroad.* Filed by Transamerican Freight Lines, Inc., Agent, for itself, interested motor carriers and the Pennsylvania Railroad. Rates on various commodities, loaded in highway trailers and transported on railroad flatcars between Cincinnati, Ohio, Louisville, Ky., and Detroit, Mich., on one hand, and Philadelphia, Pa., and Kearny, N. J., on the other.

Grounds for relief: Motor truck competition.

Tariff: Transamerican Freight Lines, Inc., Agent, tariff I. C. C. No. 6.

FSA No. 33855: *Barytes—Arkansas and Missouri points to Louisiana points.* Filed by F. C. Kratzmeir, Agent for interested rail carriers. Rates on barite (barytes), ground, carloads from specified points in Arkansas and Missouri to specified points in Louisiana.

Grounds for relief: Market competition and circuitous routes.

Tariff: Supplement 79 to Agent Kratzmeir's tariff I. C. C. 4092.

FSA No. 33856: *Cast iron pressure pipe—Birmingham, Ala., to Wisconsin Points.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on cast iron pressure pipe and fittings, carloads from Birmingham, Ala., and group to Appleton, Wis., and other specified points in Wisconsin.

Grounds for relief: Short-line distance formula and circuitous routes.

Tariff: Suplement 117 to Agent Spaninger's tariff I. C. C. 1374.

FSA No. 33857: *Pig iron—Rockwood, Tenn., to eastern points.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on pig iron, carloads from Rockwood, Tenn., to specified points in Delaware, Maryland, New Jersey, Pennsylvania, and Virginia.

Grounds for relief: Market competition and circuitous routes.

Tariff: Supplement 96 to Agent Spaninger's tariff I. C. C. 1420.

FSA No. 33858: *Fertilizer and materials—New Orleans, La. to Mississippi and Ohio river crossings.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on fertilizer and fertilizer materials, carloads from New Orleans, La., to Helena, Ark., Memphis, Tenn., and Cairo, Ill.

Grounds for relief: Circuitous routes.

Tariff: Supplement 79 to Agent Spaninger's tariff I. C. C. 1510.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 57-4835; Filed, June 13, 1957; 8:47 a. m.]