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TITLE 6—AGRICULTURAL CREDIT

Chapter III—Farmers Home Administration, Department of Agriculture

Subchapter B—Farm Ownership Loans

PART 311—BASIC REGULATIONS

SUBPART B—LOAN LIMITATIONS

For the purposes of title I of the Bankhead-Jones Farm Tenant Act, as amended, average values of efficient family-type farm-management units and investment limits for the counties identified below are determined to be as herein set forth. The average values and investment limits heretofore established for said counties, which appear in the tabulations of average values and investment limits under § 311.30, Chapter III, Title 6 of the Code of Federal Regulations, as reorganized and revised (13 F. R. 9376), are hereby superseded by the average values and investment limits set forth below for said counties.

KANSAS

County	Average value	Investment limit
Phillips	$15,000	$12,000
Smith	15,000	12,000

(Secs. 41 (i), 60 Stat. 1066; 7 U. S. C. 1015 (i). Applies secs. 3 (a), 44 (b), 60 Stat. 1074, 1069; 7 U. S. C. 1003 (a), 1018 (b))

Issued this 11th day of March 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49-2007; Filed, Mar. 15, 1949; 8:58 a. m.]

TITLE 7—AGRICULTURE

Chapter III—Bureau of Entomology and Plant Quarantine, Department of Agriculture

[BEPQ 576]

PART 319—FOREIGN QUARANTINE NOTICES

ADMINISTRATIVE INSTRUCTIONS EXEMPTING CERTAIN ARTICLES FROM REQUIREMENTS OF NURSERY STOCK, PLANT, AND SEED QUARANTINE

On February 11, 1949, there was published in the FEDERAL REGISTER (14 F. R. 627), a notice of proposed issuance of administrative instructions as authorized in the first proviso of Nursery Stock, Plant, and Seed Quarantine No. 37 (7 CFR 319.37 (a), 13 F. R. 4267) to exempt certain articles from some of the requirements of the regulations supplemental to that quarantine (7 CFR 319.37–1 et seq.; 13 F. R. 4268). After due consideration of all relevant matters presented, including the proposals set forth in the notice, and pursuant to the said proviso, administrative instructions are hereby issued as follows:

§ 319.37–2a *Administrative instructions exempting certain restricted articles from some of the requirements of the Nursery Stock, Plant, and Seed Quarantine Regulations.* Pursuant to the first proviso of Nursery Stock, Plant, and Seed Quarantine No. 37 (7 CFR 319.37 (a), 13 F. R. 4267) the following articles are hereby exempted from the requirements of the regulations specified below, which are supplemental to that quarantine:

Restricted plant material (except Aglaonema) for food, analytical, medicinal, or manufacturing purposes, enterable under § 319.37–2, is hereby exempted from the notice of arrival requirements of § 319.37–11.

All grains and cereals from Canada which are restricted plant material enterable under § 319.37–2 are hereby exempted from the provisions of §§ 319.37–7, 319.37–8, 319.37–9, 319.37–11, 319.37–15, and 319.37–16, relating respectively to costs and charges, inspection, treatment, notice of arrival, freedom from soil, and approved packing materials.

These instructions shall be effective March 15, 1949.

The purpose of these instructions is to permit the importation of the above-specified articles without compliance with certain requirements and conditions that are unnecessary insofar as entry of these types of plant material is concerned. Waiver of the notice of arrival requirements of § 319.37–11 of the regulations relating to importations for food, analytical, medicinal, or manufacturing purposes is feasible because equivalent information can be obtained from other available documents. Also, existing conditions as to the pest risk involved in the importation of grains and cereals from Canada make it safe to relieve the above specified requirements.

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Since these administrative instructions relieve restrictions, they are within the exception in section 4 (c) of the Administrative Procedure Act (5 U. S. C. 1003 (c)) and may properly be made effective less than 30 days after their publication in the FEDERAL REGISTER.

(Sec. 5, 37 Stat. 316; 7 U. S. C. 159; 7 CFR 319.37 (a), 13 F. R. 4267)

Done at Washington, D. C., this 2d day of March 1949.

[SEAL] AVERY S. HOYT,
Acting Chief, Bureau of Entomology and Plant Quarantine.

[F. R. Doc. 49-2002; Filed, Mar. 15, 1949; 8:53 a. m.]

PART 319—FOREIGN QUARANTINE NOTICES

SIZE-AGE LIMITATIONS REQUIREMENTS OF NURSERY STOCK, PLANT, AND SEED QUARANTINE

On January 13, 1949 there was published in the FEDERAL REGISTER (14 F. R.

184), a notice of proposed amendment of a regulation supplemental to Quarantine No. 37 relating to nursery stock, plants, and seeds (7 CFR § 319.37–18; 13 F. R. 4273) under section 1 of the Plant Quarantine Act of 1912, as amended (7 U. S. C. Sup. I 154). Also, on February 1, 1949 there was further published in the FEDERAL REGISTER (14 F. R. 444) a notice extending through February 15, 1949 the time for filing comments regarding the proposed amendment. After due consideration of all relevant matters presented, including the proposals set forth in the notice, and pursuant to said section 1 of the Plant Quarantine Act, § 319.37–18 is hereby amended to read as follows:

§ 319.37–18 *Size-age limitations.* (a) Except as provided in this paragraph, all restricted trees and shrubs to be imported shall be limited to the youngest and smallest, normal, clean, and healthy plants which can be successfully freed from soil about their roots, transported to the United States, and established. The inspector may use as a maximum size criterion in enforcing this limitation the normal size of plants no more than two years of age when they have been grown from seeds or cuttings, or having no more than one year's growth after severance from the parent plant when produced by layers, or having no more than two seasons' growth from the bud or graft when they have been produced by budding or grafting, except that the maximum size criterion for rhododendrons (including azalea) or other genera or species of similar slow growth habit shall be the normal size of plants no more than three years of age when they have been grown from seeds or cuttings, or having no more than three years' growth from the bud or graft, or no more than two years' growth after severance in the case of layers. The size-age limitation shall not apply to naturally dwarf or miniature forms not exceeding 12 inches in height from the soil line nor to artificially dwarfed forms of the character popular in parts of the Orient. Whenever the importer makes a showing with his application for permit, satisfactory to the inspector responsible, that importation of a larger plant, such as, for example, a specimen plant, is necessary, and if in the opinion of the inspector such larger plant may be imported under conditions prescribed in the permit without added risk of pest entry, the inspector may authorize an exception to the limitation of this paragraph and shall specify the exception in the permit.

(b) Herbaceous perennials which are usually imported in the form of root crowns or clumps shall be limited to one-year-old plants produced from single propagating units, or, when consisting of divided clump material, such as Astilbe, to divisions comparable to one-year-old plants produced from single propagating units.

(c) Whenever the Chief of Bureau shall find that plants of any kinds, classes, or growth habit, when limited in size and age as set forth in paragraphs (a) and (b) of this section, are too young and small successfully to be freed of soil, transported, and established in the United States, he may set forth in administrative instructions other criteria for the size-age limitation of such plants.

(d) Except as provided in this paragraph, only seeds may be imported in the case of forest trees, species of any plants used for understocks, and woody ornamental plants that are botanical species or botanical varieties and which grow true from seed. The inspector responsible may issue a permit authorizing in advance the importation of plants rather than seeds of such species and varieties specified in this paragraph whenever the importer makes a showing with his application for permit, satisfactory to the inspector, that the plants desired cannot be produced from seed because either (1) they are variations which are reproduced by vegetative means only or (2) it is impossible or impracticable to import viable seed.

(e) Restricted plant material arriving in the United States contrary to any limitation provided in this section may be refused entry.

This amendment shall be effective April 15, 1949.

The purpose of this amendment is (1) to define more clearly the criterion to be followed on size-age limitations for herbaceous perennials, (2) to bring the criterion to be used as to size and age of rhododendrons (including azaleas) or other genera or species of similar slow growth habit produced from seeds, cuttings, buds, grafts, and layers into more exact agreement with the intent outlined in the original regulation, (3) to confine to woody plants the requirement as to importation of seeds of species or varieties which grow true from seed, and (4) to more specifically prescribe the modification that can be made by administrative instructions of the Chief of Bureau. It is believed that the provisions of this amendment involve no additional risk of pest entry and that it carries out the basic thought of limiting imports of nursery stock "to the youngest and smallest, normal, clean, and healthy plants which can be successfully freed from soil about their roots, transported to the United States, and established.

(Sec. 1, 37 Stat. 315, as amended; 7 U. S. C. and Sup. 154)

Done at Washington, D. C., this 11th day of March 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49-2004; Filed, Mar. 15, 1949; 8:56 a. m.]

Chapter VIII—Production and Marketing Administration (Sugar Branch), Department of Agriculture

[Sugar Reg. 817, Amdt. 1]

PART 817—ENTRY OF SUGAR INTO THE CONTINENTAL UNITED STATES

MISCELLANEOUS AMENDMENTS

By virtue of the authority vested in the Secretary of Agriculture by the Sugar Act of 1948 (61 Stat. 922, 7 U. S. C. 1100) and the Administrative Procedure Act (60 Stat. 237) Sugar Regulation 817 (formerly General Sugar Regulations, Series 3, No. 2, as amended (13 F. R. 127, 1076, 2063, 4590, 5903, 14 F. R. 466)) are hereby amended as hereinafter set forth.

Basis and purpose. This amendment is issued pursuant to the Sugar Act of 1948 and deals with the administration of the sugar quota system provided by that act. Its purpose is to waive, in certain instances, the requirement for certification set forth in the regulations until 80 per centum of any quota or portion thereof has been entered into the continental United States and to provide that such certification shall be required at all times with respect to raw sugar or liquid sugar brought in from Puerto Rico when the Puerto Rican sugar quota for shipment to the United States has been allotted under section 205 of the act. Notice that the Secretary proposed to issue the rule set forth below was given (14 F. R. 1) and no written expression of views was received. This amendment shall become effective 30 days after publication in the FEDERAL REGISTER.

Sugar Regulation 817 (formerly General Sugar Regulations, Series 3, No. 2, as amended (13 F. R. 127, 1076, 2063, 4590, 5903, 14 F. R. 466)) is hereby amended as follows:

1. The first sentence in the proviso clause of § 817.2 (a) is revised to read as follows: "*Provided, however,* That, except as specified below, such certification shall not be required until 80 per centum of any quota or portion thereof has been entered. Whenever in any calendar year 80 per centum of any quota or portion thereof has been entered the Director or Acting Director, Sugar Branch, Production and Marketing Administration, of the Department shall promptly publish in the FEDERAL REGISTER notice of such fact and thereafter such certification shall be required for the remainder of the applicable calendar year."

2. The last sentence in § 817.2 (a) is amended by deleting therefrom the word "and" where it appears before the roman numeral "vi"; by substituting a comma for the period at the end of the sentence; and by adding the following new language at the end of such last sentence: "and (vii) raw sugar or liquid sugar brought in from Puerto Rico when the Puerto Rican sugar quota for shipment to the United States has been allotted under section 205 of the act."

(Sec. 403, 61 Stat. 932; 7 U. S. C., Sup., 1153)

Done at Washington, D. C., this 11th day of March, 1949. Witness my hand and the seal of the Department of Agriculture.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49-2010; Filed, Mar. 15, 1949; 8:59 a. m.]

PART 862—DETERMINATION OF WAGE RATES; SUGAR BEETS; STATES OTHER THAN CALIFORNIA

1949 CROP

Pursuant to the provisions of section 301 (c) (1) of the Sugar Act of 1948, after

investigation, and due consideration of the evidence obtained at the several public hearings held during January 1949, the following determination is hereby issued:

§ 862.1 *Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of the 1949 crop of sugar beets in States other than California.* The requirements of section 301 (c) (1) of the Sugar Act of 1948 shall be deemed to have been met with respect to the 1949 crop of sugar beets in States other than California, if the producer complies with the following:

(a) *Wage rates.* All persons employed on the farm, or part of the farm covered by a separate labor agreement, in the production, cultivation, or harvesting of the 1949 crop of sugar beets in States other than California shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates as agreed upon between the producer and the laborer, but, after the date of issuance of this determination, not less than the following:

(1) *For work performed on a time basis.* (i) Thinning, hoeing, or weeding: 60 cents per hour.

(ii) Pulling, topping, or loading: 65 cents per hour.

(iii) For workers between 14 and 16 years of age the above rates may be reduced by not more than one-third. (Maximum employment for such workers, without deduction from Sugar Act payments to the producer, is 8 hours per day.)

(2) *For work performed on a piecework basis.* (i) 1949 basic piecework rates per acre for thinning, hoeing and weeding by wage districts:

Operations	I	II	III	IV		V	VI
	Michigan, Ohio, Indiana, Illinois, Wisconsin	Minnesota, Iowa, Eastern North Dakota	Nebraska, Colorado, Kansas, South Dakota, Southeastern and Eastern Wyoming, East-Central Utah, New Mexico, Texas	(A) Northern Wyoming, Western North Dakota, Montana (except Western)	(B) Western Montana	Southern and Eastern Idaho, Utah (except East-Central), Northern Nevada	Western Idaho, Oregon, Washington
Thinning:							
Hoe and finger thinning fields planted with segmented seed:							
Without machine blocking	$11.00	$12.00	$13.00	$14.00	$13.00	$12.00	$13.00
With machine blocking	9.00	9.00	10.00	11.00	10.00	9.00	10.00
Hoe-thinning—no finger thinning (any type seed)	7.00	7.00	8.00	9.00	8.00	7.00	8.00
Hoeing and weeding:							
First hoeing following hoe and finger thinning (any type seed)	3.50	4.00	4.50	5.00	5.00	4.00	5.00
First hoeing following hoe-thinning (any type seed)	4.50	5.00	5.50	6.00	6.00	5.00	6.00
Second and each subsequent hoeing or weeding (any type seed)	2.25	3.00	3.00	3.50	4.50	3.00	4.00

Thinning fields planted with natural whole seed. The basic piecework rate for thinning fields planted with natural whole seed shall be $2.00 more per acre than those specified.

Wide row planting. The above thinning, hoeing and weeding rates may be reduced by not more than the indicated percentages for the following row spacings: 28 inches or more but less than 31 inches, 20 percent; 31 inches or more but less than 34 inches, 25 percent; 34 inches or more, 30 percent.

Cross cultivation. In an instance where cross cultivation is performed prior to hoeing or weeding, the specified first hoeing rate may be reduced not in excess of $1.00 per acre, and the specified subsequent hoeing or weeding rate may be reduced not in excess of 50 cents per acre.

Combined operations. Where a written agreement provides for a combined rate for "summer work", the rate for such work, regardless of the number of hoeings or weedings required, shall be the sum of the applicable thinning, hoeing and weeding rates specified above.

Explanations:

Hoe and finger thinning. Consists of removing excess beet plants from rows by use of a hoe in combination with finger work.

Segmented seed. Includes seed which has been sheared or which has been graded to pass through a $\frac{12}{64}$ inch screen, with size variations not in excess of $\frac{3}{64}$ inch.

Machine blocking. The rate for hoe and finger thinning fields planted with segmented seed with machine blocking is applicable to fields where the beets have been machine blocked before the plants have passed the 8-leaf stage; where the blocks have not been covered with dirt; and where the blocks are not larger than 4" by 6"; otherwise the "without machine blocking" rate applies.

Hoe; thinning; no finger thinning. Applicable where the producer does not require the worker to finger thin because of machine blocking, machine thinning, low rate of seeding or other labor saving practice.

(ii) 1949 basic piecework rates for pulling, topping, and loading by wage districts:

Average tons per acre for the farm, or part of the farm covered by a separate labor agreement (to determine applicable rate round average tonnage to nearest one-tenth ton in wage district I and to nearest full ton in other wage districts)	Basic rates per ton						
	I	II	III	IV		V	VI
	Michigan, Ohio, Indiana, Illinois, Wisconsin	Minnesota, Iowa, Eastern North Dakota	Nebraska, Colorado, Kansas, South Dakota, Southeastern and Eastern Wyoming, East-Central Utah, and Mexico Texas	Montana, Northern Wyoming, Western North Dakota		Southern and Eastern Idaho, Utah (except East-Central) Northern Nevada	Western Idaho, Oregon, Washington
	Pull and top	Pull and top	Pull and top	Pull and top	Pull, top, and load	Pull, top, and load	Pull, top, and load
4	$2.30	$1.80	$1.95	$1.95	$2.35	$2.45	$2.25
5	2.09	1.75	1.85	1.85	2.22	2.35	2.15
6	1.94	1.70	1.75	1.75	2.10	2.25	2.05
7	1.85	1.65	1.70	1.70	2.04	2.15	2.00
8	1.78	1.60	1.65	1.65	1.98	2.05	1.95
9	1.75	1.55	1.60	1.60	1.92	1.95	1.90
10	1.71	1.50	1.55	1.55	1.86	1.85	1.85
11	1.67	1.45	1.50	1.50	1.80	1.80	1.80
12	1.65	1.40	1.45	1.45	1.74	1.75	1.76
13	1.62	1.40	1.42	1.42	1.70	1.70	1.72
14	1.60	1.40	1.39	1.39	1.67	1.67	1.68
15	1.57	1.40	1.36	1.36	1.63	1.65	1.64
16	1.54	1.40	1.33	1.33	1.60	1.63	1.60
17	1.54	1.40	1.31	1.31	1.57	1.61	1.58
18	1.54	1.40	1.29	1.29	1.55	1.59	1.57
19	1.54	1.40	1.27	1.27	1.52	1.57	1.56
20 and over	1.54	1.40	1.25	1.25	1.50	1.55	1.55
	Minimum wage per acre						
	9.20	7.20	7.80	7.80	9.40	9.80	9.00

Breakdown of pulling and topping rate. In instances in which the operations of pulling and topping are performed by different workers, the above applicable pulling and topping rate shall be divided 35 percent for pulling and 65 percent for topping.

Breakdown of topping and loading rate. Where loading is not required of the worker who does the pulling and topping, the rate for pulling and topping shall be 70 percent of the applicable combined rate for pulling, topping and loading; except, that if the beets are to be loaded mechanically and the topper is not required to pull beets to provide a place for a windrow, the rate for pulling and topping shall be as agreed upon, but not less than 60 percent of the applicable combined rate for pulling, topping and loading.

(iii) *Supplemental wage payment.* In addition to the basic piecework rates specified in subdivisions (i) and (ii) of this subparagraph, (a) there shall be paid to the laborer who enters into an agreement with the producer to perform the combined operations of thinning, hoeing, weeding and harvesting on a given acreage and carries out such agreement in full, or who performs such work in the absence of an express agreement, an additional amount of $3.00 per acre

harvested by such laborer, and (b) there shall be paid to the laborer who enters into an agreement with the producer to perform the harvesting operations only on a given acreage and carries out such agreement in full, or who performs such work in the absence of an express agreement, an additional amount of $2.00 per acre harvested by such laborer: *Provided, however,* That if the producer and laborer agree to a modification of the acreage covered by the original agreement, the supplemental wage payment shall apply to such modified acreage: *And provided further,* That if a producer pays a supplemental wage payment of $1.00 per acre at the completion of the summer work, such amount shall be deemed to be a part of the $3.00 per acre supplemental wage payment provided above.

(3) *Work not covered by specific rates.* For any work in the production, cultivation, or harvesting of sugar beets for which a time or piecework rate is not specified in this paragraph, such as fertilizing, plowing, preparing seedbed, irrigating, or work in connection with mechanical harvesting, the rate shall be as agreed upon between the producer and the laborer.

(b) *Perquisites.* In addition to the foregoing, the producer shall furnish to the laborer, without charge, the perquisites customarily furnished by him, such as a house, garden plot, and similar items.

(c) *Subterfuge.* The producer shall not reduce the wage rates to laborers below those determined herein through any subterfuge or device whatsoever.

Statement of Bases and Considerations

(a) *General.* The foregoing determination provides fair and reasonable wage rates to be paid by producers to persons employed on the farm in the production, cultivation, or harvesting of the 1949 crop of sugar beets in States other than California as one of the conditions for payment under the Sugar Act of 1948. In this statement, the foregoing determination, as well as determinations for prior years, will be referred to as "wage determination" identified by the crop year for which effective.

(b) *Requirements of the Sugar Act and standards employed.* In determining fair and reasonable wage rates, it is required under the Sugar Act that a public hearing be held, that investigations be made, and that consideration be given to (1) the standards formerly established by the Secretary under the Agricultural Adjustment Act, as amended, and (2) the differences in conditions among various sugar producing areas.

Public hearings were held in Detroit, Michigan; Salt Lake City, Utah; Billings, Montana; and Greeley, Colorado during the period January 3 through January 24, 1949, at which interested persons presented testimony with respect to fair and reasonable wage rates for work on the 1949 crop of sugar beets in States other than California. In addition, investigations have been made of conditions affecting such wage rates. Consideration has been given to the testimony presented at the hearings and to the information resulting from investigations. The primary factors which have been considered are (1) prices of sugar and by-products; (2) income from sugar beets; (3) costs of production; (4) cost of living; and (5) relationship of labor cost to total cost. Other economic influences also have been considered.

(c) *Background.* The first determination of fair and reasonable wage rates for sugar beet work was applicable to the harvest of the 1937 crop. Wage determinations have been issued for persons employed in the production, cultivation, or harvesting of each subsequent crop. The 1937 wage determination increased prevailing harvest wages in proportion to the increase in income to producers from Sugar Act payments. The levels of wages established in the 1938, 1939, and 1940 wage determinations were based on the past relationship of wages per acre for contract labor to the gross income from sugar beets per acre, with appropriate adjustments for increased producer income and changes in production and living costs. In conformity with the general practice in the industry, piecework rates were established on a per acre basis for blocking and thinning, hoeing, and weeding, and on a per ton basis for harvesting. Since 1940 this basic wage structure has been continued in the wage determinations, and, in addition, there have been provided alternative hourly rates and additional piecework rates as required by changed methods of production. Such additional rates have been based upon time studies of the relative amount of work required under the several methods. In the wage determinations specific rates have not been provided for work other than blocking and thinning, hoeing, weeding, pulling, topping, and loading. The rates approved for other work have been those agreed to by the producer and the laborer.

In the 1948 wage determination specific piecework rates were provided for hoe and finger thinning work in fields planted with segmented seed with a differential where machine blocking was used. Also specified were rates for hoe-thinning applicable where the producer did not require the workers to finger thin because of machine blocking, machine thinning, low seeding rate or other labor saving practice. Differentials were specified in the first hoeing rates following the different types of thinning indicated. In the same determination modified sliding scales of payment for harvesting work, based upon two-ton yield brackets, were effective in all areas. Supplemental wage payments were provided for the completion of summer and harvesting work combined and for the completion of harvesting work only. In addition to these changes in the rate structure the 1948 wage determination provided for six wage districts rather than ten as was the case in prior years.

(d) *1949 wage determination.* The 1949 wage determination continues the general level of wage rates established in the 1948 wage determination but contains some modifications with respect to the application of rates. Available data indicate that prices paid by laborers for food and clothing have increased from 110 to 130 percent since the base period 1938 to 1940, while production costs of farmers have more than doubled since that time. The average 1949 wage per acre, including the supplemental wage payment for harvesting, will result in about the same relationship of basic wages to gross income per acre of sugar beets as existed in the base period and is slightly greater than during the years price support programs were in effect from 1943 to 1947. As in the 1948 wage determination, piecework rates have been geared to return to the average worker approximately 70 to 80 cents per hour for summer work operations and 80 to 90 cents per hour for harvesting operations. The significant changes in the 1949 wage determination follow:

Wage districts. The 1949 wage determination provides six wage districts as in 1948 but District IV has been subdivided by providing special summer work rates for Western Montana. This classification gives recognition to differences in worker accomplishment and production methods as determined on the basis of available information.

Machine blocking. The rate for machine blocked fields is applicable where the plants have not passed the 8-leaf stage, where the blocks have not been covered with dirt, and where the size of the block is not larger than 4 by 6 inches. In the 1948 wage determination the maximum dimensions of the block were 4 by 4 inches. The increase in the block dimensions will permit more flexibility on the part of the machine operator and should not appreciably affect the work requirements of the laborers.

Harvesting. The 1949 wage determination continues a modified sliding scale of payment although the rates for the wage districts have been revised to more effectively conform to worker output. The changes in rates have been based upon a study of worker performance made during the 1947 and 1948 crop harvesting seasons which indicated generally that workers under normal conditions can harvest more tons of beets per unit of time at higher yields than at lower yields. The rates specified are essentially the same as in 1948 at average yields, somewhat lower at lower yields and slightly more at higher yields. The scales in all wage districts have been extended to include yields of 4 tons per acre. The minimum wage rate per acre has been lowered in most wage districts to conform to the extension of the scale.

Modified sliding scales of payment for harvest work based upon one-ton yields have been provided for all wage districts. In District I, where rates have been determined historically on a one-tenth ton yield basis, the applicable rates are determined by interpolating to the nearest one-tenth ton while in the other wage districts the rates apply to the nearest one-ton yield. These changes minimize the distortions in the acre rates brought about by the two-ton yield bracket established in the 1948 wage determination.

Supplemental wage payment. The supplemental wage payment provision of the 1948 wage determination has been continued in 1949 with the added provision that if a producer pays $1.00 of the $3.00 per acre seasonal supplemental wage at the completion of summer work, such payment will be considered to be a

part of the total supplemental wage payment due for completion of the season's work. It is to be noted that payment of the supplemental wage is mandatory if a laborer actually performs the work specified, even though an express agreement has not been made.

Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948.

(Secs. 301, 403, 61 Stat. 929, 932; 7 U. S. C. Sup. 1131, 1153)

Issued this 11th day of March 1949.

[SEAL] CHARLES F. BRANNAN, *Secretary of Agriculture.*

[F. R. Doc. 49-2008; Filed, Mar. 15, 1949; 8:58 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 5513]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

ENCYCLOPEDIA EDUCATIONAL SERVICE

§ 3.6 (d 5) *Advertising falsely or misleadingly—Content:* § 3.6 (l) *Advertising falsely or misleadingly—Free goods or service:* § 3.6 (m 10) *Advertising falsely or misleadingly—Manufacture or preparation:* § 3.6 (r) *Advertising falsely or misleadingly—Prices—Usual as reduced, special, etc.:* § 3.6 (dd 10) *Advertising falsely or misleadingly—Success, use or standing:* § 3.72 (e) *Offering unfair, improper and deceptive inducements to purchase or deal—Free goods.* In connection with the offering for sale, sale or distribution in commerce, of respondents' reference books designated "Standard American Encyclopedia" and material supplementary thereto, whether sold under the same name or any other name, and among other things, as in order set forth, representing, directly or by implication, (1) that said encyclopedia is authoritative or one of the world's authoritative encyclopedias; (2) that it is one of the most remarkable of America's reference encyclopedias, or one of the world's finest or greatest encyclopedias, or that it is world famous; (3) that it contains complete, up-to-date information on all subjects in every field of knowledge; (4) that any volume of said encyclopedia is a "gift", a "gift offer", or in any sense a gratuity, when in truth and in fact payment therefor is included in the price of another volume or volumes sold, or when the purchaser is required to purchase another book or books or some other merchandise as a condition to the receipt of said volume; or, (5) that any volume or volumes of said encyclopedia which are offered for sale at or about the usual and customary prices are amazingly low priced, or that they are offered at a special low price; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U. S. C., sec. 45b) [Cease and desist order, Arthur A. Gache et al. trading as Encyclopedia Educational Service, Docket 5513, February 11, 1949]

§ 3.6 (a) *Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Organization and operation:* § 3.6 (a 10) *Advertising falsely or misleadingly—Comparative data or merits:* § 3.6 (b) *Advertising falsely or misleadingly—Competitors and their products—Competitors' products:* § 3.6 (m 10) *Advertising falsely or misleadingly—Manufacture or preparation:* § 3.6 (dd) *Advertising falsely or misleadingly—Special or limited offers:* § 3.6 (gg) *Advertising falsely or misleadingly—Value:* § 3.48 (b) *Disparaging competitors and their products—Goods—Manufacture or preparation:* § 3.48 (b) *Disparaging competitors and their products—Goods—Value:* § 3.72 (g 10) *Offering unfair, improper and deceptive inducements to purchase or deal—Limited offers or supplies.* In connection with the offering for sale, sale or distribution in commerce, of respondents reference books designated "Standard American Encyclopedia" and material supplementary thereto, whether sold under the same name or under any other name, and among other things, as in order set forth, representing, directly or by implication; (1) that the value of said encyclopedia is far higher or exceeds by any substantial amount the price actually charged therefor; (2) that its value equals or exceeds the value of similar reference books sold by respondents' competitors at higher prices; (3) that its binding is a "lifetime" binding; (4) that the quality of the paper and printing used in its manufacture is superior to that used in competing reference books, when such is not a fact; (5) that an offer made in connection with the sale of a reference book is "limited" or "for a limited time only" when such offer is made continuously to purchasers in the regular course of business; or (6) that respondents make surveys of any kind; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U. S. C., sec. 45b) [Cease and desist order, Arthur A. Gache et al. trading as Encyclopedia Educational Service, Docket 5513, February 11, 1949]

At a regular session of the Federal Trade Commission held at its office in the city of Washington, D. C., on the 11th day of February A. D. 1949.

In the Matter of Arthur A. Gache, Morton Gache, and Irving Greenwood, Individually and as Copartners Trading as Encyclopedia Educational Service

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of the respondents, a stipulation of facts in lieu of all other evidence entered into subject to the approval of the Commission by and between counsel for the respondents and counsel in support of the complaint, the trial examiner's recommended decision, and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission having approved the stipulation of facts and having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents Arthur A. Gache and Morton Gache, copartners trading as Encyclopedia Educational Service, or trading under any other name, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their reference books designated "Standard American Encyclopedia" and material supplementary thereto, whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

1. That said encyclopedia is authoritative or one of the world's authoritative encyclopedias.

2. That it is one of the most remarkable of America's reference encyclopedias, or one of the world's finest or greatest encyclopedias, or that it is world famous.

3. That it contains complete, up-to-date information on all subjects in every field of knowledge.

4. That any volume of said encyclopedia is a "gift", a "gift offer", or in any sense a gratuity, when in truth and in fact payment therefor is included in the price of another volume or volumes sold, or when the purchaser is required to purchase another book or books or some other merchandise as a condition to the receipt of said volume.

5. That any volume or volumes of said encyclopedia which are offered for sale at or about the usual and customary prices are amazingly low priced, or that they are offered at a special low price.

6. That the value of said encyclopedia is far higher or exceeds by any substantial amount the price actually charged therefor.

7. That its value equals or exceeds the value of similar reference books sold by respondents' competitors at higher prices.

8. That its binding is a "lifetime" binding.

9. That the quality of the paper and printing used in its manufacture is superior to that used in competing reference books, when such is not a fact.

10. That an offer made in connection with the sale of a reference book is "limited" or "for a limited time only" when such offer is made continuously to purchasers in the regular course of business.

11. That respondents make surveys of any kind.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Irving Greenwood.

It is further ordered, That the respondents against whom this order is directed 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 this order.

By the Commission.

[SEAL] D. C. DANIEL, *Secretary.*

[F. R. Doc. 49-1986; Filed, Mar. 15, 1949; 8:49 a. m.]

TITLE 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T. D. 52169]

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

RETENTION OF IN-TRANSIT GOODS ON DOCK

Collectors of customs authorized to permit in-transit merchandise to remain on the dock for specified periods but not to exceed one year from the date of importation; § 18.24, Customs Regulations of 1943, amended.

The second sentence of § 18.24, Customs Regulations of 1943 (19 CFR, Cum. Supp., 18.24), is amended to read as follows: "Upon further application, additional extensions of 90 days or less, but not to exceed 1 year from the date of importation, may likewise be granted by the collector."

(Sec. 553, 46 Stat. 742, sec. 21, 52 Stat. 1087, sec. 624, 46 Stat. 759; 19 U. S. C. 1553, 1624)

[SEAL] FRANK DOW,
Acting Commissioner of Customs.

Approved: March 9, 1949.

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

[F. R. Doc. 49-1995; Filed, Mar. 15, 1949; 8:50 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Federal Security Agency

PART 170—ENFORCEMENT OF THE FEDERAL TEA ACT

TEA STANDARDS

Pursuant to sections 2 and 3 of the Federal Tea Act (29 Stat. 604, as amended by 35 Stat. 163 and 41 Stat. 712; 21 U. S. C., 41 et seq.), the following standards prepared and submitted by the Board of Tea Experts are fixed and established as standards under the Tea Act for the year beginning May 1, 1949, and ending April 30, 1950. Section 170.19 (b) is amended to read as follows:

§ 170.19 *Tea standards.* • • •

(b) The following standards prepared and submitted by the Board of Tea Experts are herby fixed and established as standards under the Tea Act for the year beginning May 1, 1949, and ending April 30, 1950.

(1) Formosa Oolong.
(2) Congou.
(3) India.
(4) Formosa Black (to be used for Formosa and Japan Blacks).
(5) Japan Green.
(6) Gunpowder.
(7) Scented Canton.
(8) Canton Oolong.

These standards apply to tea shipped from abroad on or after May 1, 1949. Tea shipped prior to May 1, 1949, will be governed by the Standards which became effective May 1, 1948 (13 F. R. 1453).

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it is based upon the recommendation of the Board of Tea Experts, which is comprised of experts in teas drawn from the tea trade and the Food and Drug Administration so as to be representative of that trade as a whole.

(29 Stat. 607; 21 U. S. C. 50)

Dated: March 10, 1949.

[SEAL] J. DONALD KINGSLEY,
Acting Administrator.

[F. R. Doc. 49-1990; Filed, Mar. 15, 1949; 8:55 a. m.]

TITLE 34—NATIONAL MILITARY ESTABLISHMENT

Chapter V—Department of the Army

JOINT PROCUREMENT REGULATIONS

MISCELLANEOUS AMENDMENTS

The Joint Procurement Regulations, formerly published as Parts 801 to 813, inclusive, of Chapter VIII, Title 10, are amended by revision of §§ 804.104, 804.104-1, 804.104-2, 804.104-3, and 809.1202-34, by addition of §§ 804.104-4 and 804.301-1, and by rescinding § 809.1202-13, as follows:

§ 804.104 *Purchases not in excess of $1,000.*

§ 804.104-1 *Authorization.* Purchases and contracts may be negotiated without formal advertising if the aggregate amount involved does not exceed $1,000.

§ 804.104-2 *Application.* This authorization does not modify in any respect the fundamental principle that supplies and nonpersonal services will be obtained as the result of competition and, in general, at least two informal quotations of prices will be requested from regular dealers in, or manufactures of, the articles desired. Where circumstances permit, quotations will be solicited from all such qualified sources as are deemed necessary by the contracting officer to assure full and free competition consistent with the procurement. The order then will be placed with that responsible supplier whose quotation, price and other facts considered, will be most advantageous to the Government. The authorization contained in this section will be availed of in case of purchases aggregating $1,000 or less rather than any of the other authorizations contained in §§ 804.100 through 804.119. For example: A purchase of medical supplies aggregating $1,000 or less will be made under this section rather than under § 804.108. The absence of competition in any particular case will be explained fully and made of record in the retained files of the contracting officer. Likewise, such a record also will be maintained of any verbal or telephonic quotations that may be received in connection with purchases made under authorization of this section.

§ 804.104-3 *Limitations.* (a) If the aggregate amount required does not exceed $1,000, advantage may be taken of this authorization, or purchase may be made after formal advertising, in the discretion of the contracting officer.

(b) The words "aggregate amount involved" do not require that the purchase should be limited to any particular period of time, as a day, month, or year, or limited to purchases made from a single firm. The aggregate should include all supplies which are grouped together properly in a single transaction and which would be included in a single advertisement for bids if advertising were resorted to. Purchases arising from the same need of the same articles of subsistence stores should not be made more frequently than the necessities of the service require, in order to limit the aggregate in each case to $1,000, and supplies which are usually purchased together should not be divided simply for the purpose of avoiding advertising for the same. If the character of the supplies is such that good administration would require their purchase in quantities sufficient to last a month, purchases should not be made weekly or daily for the purpose of bringing the amount within the limit authorized. Subject to the above considerations, the matter is one depending upon the sound discretion of the contracting officer.

(3) The purchase of similar articles at the same time from different firms or on different dates from the same or different firms when the purchases should have been combined and the aggregate is in excess of $1,000 is not authorized. Hence, when the articles purchased or the amounts of purchases are such that, without explanation, it is not readily discernible why the purchases were not combined, a statement that the contracting officer could not have foreseen and combined the requirements in sufficient time to permit advertising will be filed in the files of the contracting officer pertaining to such transactions.

§ 804.104-4 *Other instructions.* Instructions covering small purchases procedure by use of WD Form 383 (Purchase Order or Delivery Order and Vouchers for Purchases and Services Other Than Personal) are contained, for the Department of the Army, in Memorandum 734-5-10, and for the Department of the Air Force, in letter directives from Air Matériel Command to Air Force commands in continental United States and Oversea commands, December 8, 1948, subject: Small Purchases Procedure.

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§ 804.301-1 *Price revision (or escalation) articles.* When procurement is effected by formal advertising, price revision (or escalation) articles will not be inserted in the invitation for bids or in any contracts resulting therefrom.

• • • • •

§ 809.1202-13 *Leather, leather trimmed, and sheeplined garments industry.* [Rescinded]

• • • • •

§ 809.1202-34 *Uniform and clothing industry*—(a) *Suit and coat branch.* The suit and coat branch of the uniform and clothing industry is that branch which manufactures men's civilian suits and overcoats, tailored-to-measure uniforms,

tailored-to-measure trousers, uniform overcoats, and uniform coats, including tailored short jackets designed to take the place of Regular Army issue coats, e. g., the Eisenhower jacket.

Date effective: May 8, 1948.

Wage: 85 cents an hour or $34 per week of 40 hours, arrived at either upon a time or piecework basis.

(b) *Heavy outerwear branch.* (This is a new branch resulting from consolidation of the definitions of the Leather and Sheeplined Jackets Industry and the outdoor jackets branch of the Uniform and Clothing Industry.) The heavy outerwear branch of the Uniform and Clothing Industry is that branch which manufactures leather, leather-trimmed, and sheeplined garments and wool and wool-lined jackets, whether or not such jackets are properly described as mackinaws, field jackets, windbreakers, lumber jackets, pea jackets, wool jumpers or middies, blanket-lined or similar coats, or by any other similar designation.

Date effective: January 1, 1949.

Wage: 85 cents an hour or $34 per week of 40 hours, arrived at either upon a time or piecework basis.

(c) *Wool trousers branch.* The wool trousers branch of the uniform and clothing industry is that branch which manufactures wool or part-wool trousers or breeches, including uniform trousers or breeches, except tailored-to-measure.

Date effective: January 1, 1949.

Wage: 75 cents an hour or $30 per week of 40 hours, arrived at either upon a time or piecework basis.

(d) *Auxiliary workers.* Auxiliary workers may be employed in the Uniform and Clothing Industry. "Auxiliary workers" shall include those employees engaged in the following occupations as defined in the regulations of the Secretary of Labor: Position marking, shade and size numbering, bundle tying, bundle ticketing, matching and pairing, basting pulling, hand-trimming, cleaning, turning, floor boys and girls, porter, and examiner's helper.

Wage: 65 cents an hour or $26 per week of 40 hours, arrived at either upon a time or piecework basis.

(e) *Learners.* Learners may be employed in the Uniform and Clothing Industry in the nonauxiliary occupations of machine operating (except cutting), pressing, and hand-sewing as prescribed in the regulations of the Secretary of Labor, at a wage rate of not less than 65 cents an hour for not longer than 240 hours, in the suit and coat branch; and at wage rates of not less than 60 cents an hour for the first 240 hours and 65 cents an hour for the second 240 hours of a 480-hour learning period, in the heavy outerwear and wool trousers branches, unless experienced workers in the same occupation are paid on a piecerate basis amounting to earnings in excess of the authorized minimum rate, in which event learners must be paid the same piecerate.

[Proc. Cirs. 5 and 6, 1949] (Pub. Law 413, 80th Cong.)

[SEAL] EDWARD F. WITSELL,
Major General,
The Adjutant General.

[F. R. Doc. 49-1985; Filed, Mar. 15, 1949; 8:48 a. m.]

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans' Administration

PART 1—GENERAL PROVISIONS

INSPECTION AND INVESTIGATION SERVICE

New §§ 1.450 through 1.455 are added to Part 1 to read as follows:

Sec.
1.450 Jurisdiction and responsibility for inspection and investigation.
1.451 Functions of inspection and investigation service.
1.452 Authorizations for investigations, surveys, special studies, and inspections.
1.453 Cooperation of all officials on inspection-investigation.
1.454 All testimony confidential in investigations.
1.455 Witness required to read and sign transcript.

AUTHORITY: §§ 1.450 to 1.455 issued under secs. 1, 5, 43 Stat. 607, 608, secs. 1, 2, 46 Stat. 1016; 38 U. S. C. 2, 11, 11a, 421, 426. Interpret sec. 7, 48 Stat. 9; 38 U. S. C. 707.

§ 1.450 *Jurisdiction and responsibility for inspection and investigation.* The inspection and investigation service of central office will have jurisdiction and be responsible for the making of administrative and other investigations, surveys, special studies, and inspections at all levels and in all activities of the Veterans' Administration, as well as of those organizations, associations, or individuals having official dealings or relationships with the Veterans' Administration, as set forth in and authorized by §§ 1.451 and 1.452.

§ 1.451 *Functions of inspection and investigation service.* In performing its functions the inspection and investigation service will be guided by the following:

There will be assigned in central office an adequate number of inspector-investigators, including specialists, who will conduct, under the direction and supervision of the director, inspection and investigation service, properly authorized investigations and perform other related duties arising therefrom or ancillary thereto. Administrative investigations will be accomplished when the occasion demands and where it is necessary to develop the evidence on a given subject through the taking of testimony and procurement of documentary evidence in connection with alleged irregularities, maladministration involving violation of Federal statutes, regulations, instructions, or Veterans' Administration policies. Surveys, special studies, and inspections may be conducted when the occasion arises.

§ 1.452 *Authorizations for investigations, surveys, special studies, and inspections*—(a) *Central office.* The Administrator or his designate may authorize investigations, surveys, special studies, and inspections of any nature involving central office, district offices, regional offices, Veterans' Administration offices, hospitals, centers, forms and supply depots, record centers, or any activity of the Veterans' Administration concerning the following:

(1) Matters involving internal administration and functioning of any office or activity.

(2) Matters involving conduct of an officer or employee of the Veterans' Administration.

(3) Matters involving cooperating agencies, organizations, associations or individuals having official dealings or relationships with the Veterans' Administration.

(4) Such matters involving alleged irregularities, maladministration, violation of Federal statutes, regulations, instructions, and Veterans' Administration policies, and attempts to defraud the Government by any person within or without the Veterans' Administration.

(5) Cases of claimants involving administrative irregularities, or the conduct of an officer or employee of the Veterans' Administration incident thereto.

(6) Cases of claimants which are of a nature sufficiently serious or complex, and could not otherwise be satisfactorily investigated.

(7) Such other matters as in the judgment of the Administrator or his designate require investigation, survey, special studies, or inspection.

(b) *Field stations.* Managers of district offices, regional offices, hospitals and centers, depots or other offices shall have authority to order or approve investigations on matters involving complaints and infractions of regulations or law subject to the following: Loss or theft of funds or personal property, etc.; assaults upon, injuries to, and elopement of beneficiaries; and field examinations conducted by representatives from the office of the chief attorney, in accordance with the provisions of §§ 14.50 to 14.54 of this chapter. On serious matters, and those set forth in paragraph (a) (1) through (7) of this section, a preliminary report will be forwarded for consideration of the director, inspection and investigation service, with appropriate comment and recommendation. In any instance where the situation is of such gravity or so far-reaching that central office assistance or guidance is needed, or in matters of emergent character involving potential adverse publicity and matters involving public policy or widespread public interest, the Administrator will be immediately informed by the most rapid means of communication with an outline of the full facts and recommendations of the field station official.

§ 1.453 *Cooperation of all officials on inspection-investigation.* Managers as well as other officials and employees of district offices, regional offices, hospitals and centers, depots or other offices, will at all times render every assistance and cooperation to inspection-investigation officers or inspector-investigators of central office. This cooperation will include the temporary transfer of any claims, insurance, clinical, correspondence, or other records upon a statement of the reason therefor. Such stenographic and other necessary services as may be requested at such times and points as desired will be furnished by managers and other comparable officials without regard for territorial limitations. This section will be cited as the authority for such action. Travel orders is-

sued under this authority will be encumbered against station allotments but, if necessary, request may be made immediately upon the director, budget service, for funds to compensate station budget.

§ 1.454 *All testimony confidential in investigations.* All testimony given in an investigation is confidential and for the use of central office officials only, except in those cases contemplated by § 1.452 (b). In order that investigations may not interrupt the normal functions of a station, all employees are instructed to refrain from discussing matters under investigation, during the investigation or after its completion. Particularly those employees called upon to testify will refrain from discussing their testimony, except with an inspector-investigator.

§ 1.455 *Witness required to read and sign transcript.* In all instances where verbatim testimony is taken and transcribed the witness will be afforded an opportunity to read and sign the transcription, unless it is not feasible to do so, and in such cases a statement of the reason for the witness failing to sign will be appended to the transcription, together with certification by the stenographer that it is a true and accurate transcription of the notes, or, when, under unusual circumstances, sound recording equipment is used and it is impracticable for the investigator to await the return of transcribed testimony, in which event certification will be made by the inspector-investigator as to the circumstances.

[SEAL] O. W. CLARK,
Executive Assistant Administrator.

[F. R. Doc. 49-1993; Filed, Mar. 15, 1949; 8:50 a. m.]

PART 21 — VOCATIONAL REHABILITATION AND EDUCATION

REGISTRATION AND RESEARCH; PROVISIONAL REGULATIONS

In § 21.186, paragraph (e) is amended to read as follows:

§ 21.186 *Policy governing withdrawals from education or training under Part VIII prior to the completion of a period of instruction.* * * *

(e) *Payment of subsistence allowance in any case of withdrawal.* When a veteran in receipt of regular monthly payments of subsistence allowance withdraws—without giving prior notice to the Veterans' Administration—from either institutional or on-the-job training prior to the end of the course or the end of the certified period of enrollment, the authorization action will extend the training status and subsistence allowance to the end of the month in which the withdrawal, interruption, or discontinuance occurred: *Provided, however,* That in any case where an ending date has been previously fixed within the month in which the withdrawal, interruption, or discontinuance occurred, there will be no extension beyond such ending date. These provisions will be complied with without election or choice upon the part of the veteran and without regard to policy now in effect concerning accrual and granting of leave upon application by the veteran. (It will be understood that this procedure does not modify leave policy presently effective in the cases of veterans who continue in a training status to the end of a scheduled period of instruction.) This paragraph will in no event be given retroactive effect, except that in the cases of deceased veterans who had withdrawn from, or interrupted training status as defined herein, and prior to the effective date of this instruction subsistence allowance was paid to the end of the month in which such withdrawal or interruption occurred, this paragraph will be given effect, thus eliminating overpayment in the subsistence allowance account which would otherwise stand against the estate of the decedent.

(Instr. 10-A, Title II, Pub. Law 346, 78th Cong.; 58 Stat. 287-291; 38 U. S. C. 701, ch. 12 note)

[SEAL] O. W. CLARK,
Executive Assistant Administrator.

[F. R. Doc. 49-1992; Filed, Mar. 15, 1949; 8:49 a. m.]

PART 21 — VOCATIONAL REHABILITATION AND EDUCATION

REGISTRATION AND RESEARCH; PROVISIONAL REGULATIONS

In § 21.187, paragraph (d) is added to read as follows:

§ 21.187 *Payment of book, supply, and equipment charges for United States veterans enrolled in courses of education under Public Law 346, 78th Congress, as amended, in Veterans' Administration-approved foreign educational institutions.* * * *

(d) In the event that any veteran should file a claim for reimbursement for tuition, book, supply and equipment charges expended by him during the period from September 1, 1947, to December 31, 1948, inclusive, the claim will be processed in accordance with the procedures set forth in Veterans' Administration vocational rehabilitation and education procedure, which was in effect prior to January 1, 1949.

(Instr. 11-A, Title II, Pub. Law 346, 78th Cong.; 58 Stat. 287-291; 38 U. S. C. 701, ch. 12 note)

[SEAL] O. W. CLARK,
Executive Assistant Administrator.

[F. R. Doc. 49-1991; Filed, Mar. 15, 1949; 8:49 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

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

Appendix—Public Land Orders

[Public Land Order 571]

ALASKA

MODIFYING EXECUTIVE ORDER NO. 8480 OF JULY 12, 1940, AND RESERVING CERTAIN LANDS FOR USE OF ALASKA RAILROAD AS RAILROAD RESERVE

By virtue of the authority contained in the act of March 12, 1914, 38 Stat. 305, 307 (48 U. S. C. 304) and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Subject to valid existing rights, the following-described public lands in the Territory of Alaska reserved by Executive Order No. 8480 of July 12, 1940, for townsite purposes in connection with the construction and operation of railroad lines, are hereby set aside for the use of The Alaska Railroad as a railroad reserve:

Parcel No. 1. A tract of land 1420 feet wide and 3.30 miles long, 1320 feet on the east side of and parellel to and 100 feet on the west side of and parallel to the center line of the present main line of The Alaska Railroad between mileage 61.30 and 64.60, bounded on the south by the southerly boundary line of the Turnagain Arm Townsite Reserve, established by E. O. 8480, dated July 12, 1940, the north boundary being a line at right angles to the center line of the railroad at mileage 64.60. Parcel No. 1 as described contains 575 acres.

Parcel No. 2. A tract of land ½ mile wide and 1.81 miles long, ¼ mile on each side of and parallel to the center line of The Alaska Railroad, Passage Canal Connection, between mileage F-10.12 and F-11.93, bounded on the southeast by the easterly boundary line of the Turnagain Arm Townsite Reserve, established by E. O. 8480, dated July 12, 1940, and bounded on the nothwest by the easterly boundary line of Parcel No. 1, described above. Parcel No. 2 as described contains 579 acres.

Executive Order No. 8480 is hereby modified to the extent necessary to permit the use of said lands for the purposes stated.

J A. KRUG,
Secretary of the Interior.

MARCH 9, 1949.

[F. R. Doc. 49-1975; Filed, Mar. 15, 1949; 8:55 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Bureau of Entomology and Plant Quarantine

[7 CFR, Part 301]

JAPANESE BEETLE QUARANTINE

NOTICE OF PROPOSED RULE MAKING TO AMEND REGULATIONS

Notice is hereby given under section 4 of the Administrative Procedure Act (5 U. S. C. 1003) that the Secretary of Agriculture, pursuant to section 8 of the Plant Quarantine Act of 1912, as amended (7 U. S. C. 161), and sections 1 and 3 of the Insect Pest Act of March 3, 1905 (7 U. S. C. 141, 143), is considering amending §§ 301.48–2, 301.48–4, 301.48–5, 301.48–8 and 301.48–9 of the regulations supplemental to Quarantine No. 48 relating to the Japanese beetle (7 CFR §§ 301.48 through 301.48–10; 13 F. R. 2250), as follows:

1. Amend § 301.48–2 to include the following counties, magisterial districts, and independent cities:

Maryland. County of Garrett.

Virginia. Counties of Brunswick, Charles City, Clarke, Dinwiddie, Essex, Frederick, Gloucester, Goochland, Hanover, Isle of Wight, James City, King and Queen, Lancaster, Louisa, Mathews, Middlesex, New Kent, Northumberland, Powhatan, Prince George, Richmond, Southampton, Surry, Sussex, and York; the presently nonregulated portions of the counties of Caroline, Chesterfield, Greensville, King William, Nansemond, Orange, Rappahannock, Spotsylvania, Warren, Warwick, and Westmoreland; magisterial districts of Elon in Amherst county, Forest in Bedford county, and Brookville in Campbell county; and the independent cities of Hopewell, Lynchburg, and Williamsburg.

West Virginia. Counties of Preston and Tucker, and the presently nonregulated portion of Mineral county.

2. Amend § 301.48–4 (a) to read as follows:

(a) *Certification.* Articles designated in § 301.48–3 may be moved either on direct billing, diversion or reconsignment from a regulated area to or through any point outside thereof only after a certificate or limited permit has been issued therefor in compliance with § 301.48–5, except as follows:

(1) A certificate or limited permit will not be required for the movement of regulated articles when transported via mail or by a common carrier on a through bill of lading from a regulated area through a nonregulated area to another regulated area.

(2) A certificate or limited permit will be required for the movement of any or all of the articles described in § 301.48–3 (b), (3) and (4) only when an inspector's observations in regulated areas disclose either that adult beetles have emerged in large numbers and are actively flying in such quantities that they may infest shipments of these articles to be moved from such areas to nonregulated points, or that such emergence and flight are imminent. Common carriers, shippers, and other interested persons will be informed in advance by appropriate notice of the areas in which these conditions exist, the articles affected, the dates of the imminence or beginning and cessation of adult flights during which certificates or limited permits will be required, and the places where inspections will be made and certificates and permits issued.

3. Amend §§ 301.48–5, 301.48–8, and 301.48–9 by inserting the word "aircraft" after the words "car" or "cars" wherever these words occur in the said sections.

All persons who desire to submit written data, views, or arguments concerning the proposed amendments may do so by filing them with the Chief of the Bureau of Entomology and Plant Quarantine, United States Department of Agriculture, Washington 25, D. C., within fifteen days after publication of this notice in the FEDERAL REGISTER.

(Secs. 1, 3, 33 Stat. 1269, 1270, sec. 8, 37 Stat. 318, as amended; 7 U. S. C. 141, 143, 161; 7 CFR §§ 301.48 through 301.48–10, 13 F. R. 2250)

Done at Washington, D. C., this 11th day of March 1949. Witness my hand and the seal of the United States Department of Agriculture.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49–2006; Filed, Mar. 15, 1949; 8:58 a. m.]

Production and Marketing Administration

[7 CFR, Part 29]

TOBACCO INSPECTION

ANNOUNCEMENT OF REFERENDUM IN CONNECTION WITH PROPOSED DESIGNATION UNDER TOBACCO INSPECTION ACT OF TOBACCO AUCTION MARKET OF ELLERBE, N. C.

Pursuant to the authority vested in the Secretary of Agriculture by the Tobacco Inspection Act (49 Stat. 731; 7 U. S. C. 511 et seq.), and in accordance with the applicable regulations (13 F. R. 9474–9479) issued thereunder by the Secretary, notice is given that a referendum of tobacco growers will be conducted from March 24 through March 26, 1949, to determine whether two-thirds of the growers voting in said referendum favor the designation of the Ellerbe, North Carolina, tobacco auction market for free and mandatory inspection under the act.

Growers who sold tobacco at auction on the Ellerbe, North Carolina, market during the 1948 marketing season shall be eligible to vote in said referendum. Ballots for use in said referendum will be mailed to all eligible voters insofar as their names and addresses are known. Eligible voters who do not receive ballots by mail may obtain them from the county agent or the office of the county agricultural conservation association at Rockingham, North Carolina; from the county agents at Troy, Wadesboro, Laurinburg, or Carthage, North Carolina; or from the representative of the Production and Marketing Administration at Town Office in Ellerbe, North Carolina.

All completed ballots shall be mailed to the Tobacco Branch, Production and Marketing Administration, United States Department of Agriculture, P. O. Box 549, Raleigh, North Carolina, and in order to be counted in said referendum, must be postmarked not later than midnight, March 26, 1949.

Issued this 11th day of March 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F R. Doc. 49–2009; Filed, Mar. 15, 1949; 8:59 a. m.]

[7 CFR, Part 927]

HANDLING OF MILK IN NEW YORK METROPOLITAN MILK MARKETING AREA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED AMENDMENT TO ORDER, AS AMENDED

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR, Supps. 900.1 et seq., 13 F. R. 8585), a public hearing was held at New York City during the period September 27–October 1, 1948, continued at Utica, New York, on October 6 and 7, 1948, and was reopened at Almira, New York, during the period January 24–28, 1949 and continued at Syracuse, New York, during the period January 31–February 2, 1949, upon certain proposed amendments to the tentative marketing agreement heretofore approved by the Secretary of Agriculture and to the order, as amended, regulating the handling of milk in the New York metropolitan milk marketing area.

The material issues [1] presented on the record of this hearing are concerned with the following:

1. Revision of classes of utilization by designating Class II–A as Class II, combining Classes II–B through IV–B into a new Class III, and eliminating Classes V–A and V–B (H. N. 72).

2. Establishment of pricing provisions for the new Class III and revision of the Class II pricing provisions by including therein a skim milk value (H. N. 30–47, 75, 77 and 78).

[1] The listing of each issue is followed by the numbers of the proposals (as set forth in the notice of hearing issued on September 2, 1948, and January 3, 1949) directly associated with that issue, thus: (H. N. --).

3. Establishment of a butter-cheese adjustment (H. N. 76).

4. Establishment of a fluid skim differential (H. N. 79).

5. Storage cream payments. (H. N. 57, 59–60, and 86).

6. Revision of the provisions for payments on milk or milk products from other than producer sources (H. N. 61–63 and 87).

7. Revision of the pricing of Class I–C milk sold in New England (H. N. 27, 65, and 66).

8. Qualification of a plant to be a pool plant even though shipment of milk to the marketing area is prohibited for specified periods by reason of health authority permission for receiving unapproved milk or skim milk or for shipment of approved skim milk from such a plant (H. N. 3).

9. Revision of provisions concerning the suspension of pool plant designations as to (a) establishing an obligation for handlers to utilize milk so it will yield the greatest possible return to producers; and (b) the classes of milk which are permitted or required to be included by the market administrator in his determination as to the desirable utilization of milk (H. N. 4–9 and 70).

10. Revision of the basis of classification by (a) prohibiting the classification in a class higher than Class II of milk manufactured into cream or, if such cream is shipped to another plant, in a class higher than the class applicable to fluid cream in the area in which the receiving plant is located; (b) prohibiting the classification of milk shipped to a plant in an area not regulated by an order of the Secretary in a class higher than I–C; (c) eliminating or revising the provisions requiring that milk, cream, or skim milk shipped to the marketing area be classified as I–A, II–A, or V–A, respectively; (d) changing the provisions for classifying milk and cream shipped more than 65 miles to plants located in certain states; (e) allowing a handler to elect at which plant milk or cream shipped to a nonpool plant shall be classified; and (f) eliminating the preferential assignment of pool milk to excess plant loss classified in Classes I–A, II–A, II–B, and V–A in a plant with receipts from both pool and nonpool sources (H. N. 11–21, 25, 26, and 71).

11. Revision of class definitions by (a) placing cultured or flavored milk drinks containing more than 5 percent of butterfat in Class II if sold in the marketing area or in Class III if sold outside the marketing area; (b) basing Classes I–B and I–C on delivery to a plant or purchaser rather than on ultimate distribution; and (c) classifying as Class III milk utilized in products not specifically named in any other class. (H. N. 22–24, and 72).

12. Revision of the provisions authorizing the market administrator to audit handlers' records (H. N. 51).

13. Revision of reporting and accounting requirements associated with storage cream payments (H. N. 50, 57, 58, 81 and 86).

14. Revision of the method for establishing freight zones (H. N. 48 and 67).

15. Elimination or revision of provisions relating to location differentials (H. N. 52, 53 and 54).

16. Elimination of provisions for payment by handlers into the producer settlement fund, and for later disposition of payments due producers who cannot be located, and of payments concerning which dispute arises as to when such payments are due producers (H. N. 55).

17. Revision of the provisions for calculating the butterfat differential used in connection with payments to producers (H. N. 56).

18. Revision of provisions concerning expenses of administration (H. N. 88).

19. Miscellaneous and incidental (H. N. 1, 2, 28, 29, 49, 64, 68, 69, 73, 74, 80, and 82–85).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Assistant Administrator, Production and Marketing Administration, on February 21, 1949, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of such recommended decision and of opportunity to file exceptions thereto was published in the FEDERAL REGISTER on February 24, 1949 (14 F. R. 829).

Exceptions to the recommended decision were filed on behalf of interested parties. Each of such exceptions was carefully and fully considered in arriving at the findings and conclusions appearing in this decision. Rulings on some of the exceptions appear herein in the findings and conclusions with respect to the particular issue to which the exception refers. Otherwise, to the extent that the findings and conclusions contained herein are at variance with exceptions pertaining thereto, such exceptions are denied. Rulings contained in the recommended decision upon proposed findings and conclusions submitted by interested parties are confirmed except as modified by the findings and conclusions set forth herein. To the extent that findings and conclusions proposed by interested parties and not ruled upon in the recommended decision are inconsistent with the findings and conclusions contained herein, the specific or implied requests to make such findings and to reach such conclusions are denied on the basis of the facts found and stated in connection with the conclusions herein set forth.

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

Issues Nos. 1, 2, 3, 4, 5, and 6. Milk classified in the present classes II–B through IV–B should be classified in one class and designated as Class III. Class II–A should be redesignated as Class II. A fluid skim differential applicable to skim milk now classified as Class V–A should be substituted for the present classes V–A and V–B. Prices for Classes II and III milk should include the value of the skim milk for manufacturing.

The formula for Class III milk should reflect the value of butterfat plus the value of skim milk, minus allowances for transportation and handling. The butterfat value for the months of August through February should be computed by dividing the Boston weighted average cream price by 33.48, but at no time during these months should the butterfat value be lower than the New York U. S. Grade A or U. S. 92–score butter price plus 2 cents, multiplied by 1.24. The butterfat value during March through July should be the New York U. S. Grade A or U. S. 92–score butter price plus 2 cents, multiplied by 1.24. The skim milk price should be the price per pound published on "The Producers' Price—Current" for nonfat dry milk solids, other brands, human consumption, carlots, bags or barrels, multiplied by 7.5.

Allowances for transportation and handling should be 10 cents and 70 cents, respectively, per hundredweight of milk.

The transportation differentials presently applicable to Class II–A milk should apply to Class II and Class III milk.

The skim milk adjustment to be included in the Class II price should be an amount obtained by subtracting 48 cents from the skim milk value used in the Class III formula.

The butterfat differentials for Class II and Class III should be computed by subtracting the amount of the Class II skim milk adjustment from the class price and dividing by 35.

For milk made into butter and cheese (Cheddar, American Cheddar, Colby, washed curd, or part skim Cheddar) the handler should be credited with an amount equivalent to 4 cents per pound of butterfat except that the amount credited in plants in zones beyond 325 miles should be reduced to offset the increase in transportation differentials applicable in such zones over and above those applicable in the zones between 301 and 325 miles from New York.

For storage cream used in reconstituted cream or sour cream for the marketing area, the handler should pay to producers through the producer settlement fund an additional 9 cents per pound of butterfat if the cream was separated in the months of March through July, and an additional 10 cents per pound of butterfat if the cream was separated in the months of August through February.

Handlers storing cream during the months of April through September should be eligible, as heretofore, for a storage cream payment from the pool equivalent to the butter-cheese adjustment for such cream utilized in the manufacture of butter in the months of January through March.

For storage cream separated during the months of April through July 1949 which is utilized after July 1949 in products other than reconstituted cream and sour cream for the marketing area and other than butter otherwise eligible for payments, handlers separating cream should be paid an amount equivalent to any decline in the Class III butterfat value between the month of separation and the month of utilization, but no more than the amount of the butter-cheese adjustment. The payment into the pool for storage cream separated in the months of April through July 1949 used for marketing area sour cream or reconstituted cream should be so limited that

it does not exceed an amount equivalent to 10 times the Class II butterfat differential less 4 cents in the month utilized.

The payment into the pool for nonpooled milk received in the marketing area in the form of milk, fluid milk products, cultured or flavored milk drinks, cream or fluid cream products should be made at a rate equal to the difference between the Class III and the Class I-A or Class II price, whichever is applicable. A rate equal to the fluid skim differential should be paid on nonpool skim milk entering the marketing area.

Payments on non-pooled cream which is received in the marketing area and classified as Class III, and on plain condensed milk, frozen desserts, or homogenized mixtures, should be eliminated.

Indications are that the quantity of Order No. 27 pool milk which must be utilized in products other than those rerequiring approval of marketing area health authorities (such milk being hereinafter referred to as surplus milk) will be substantially larger during the next few months than during corresponding months of recent years. This is due principally to the action of the Board of Health of the City of New York in permitting, effective January 1, 1949, cream from sources not directly under the supervision of the New York City Department of Health to be used in the manufacture of ice cream and other manufactured dairy products. In addition it appears that the total supply of pool milk, particularly through the season of flush production, will be somewhat higher than in recent years. Any decrease in the consumption of fluid milk this year in relation to recent years would also increase the quantity of surplus milk.

If orderly marketing of producers' milk is to be effected, all milk offered to handlers by producers must be accepted. To insure orderly marketing, therefore, surplus milk must be priced at a level at which handlers will accept and utilize it.

In the absence of classified pricing and equalization as provided under the order, certain milk products, including cream for fluid purposes or ice cream in the Northeast and the products included in the present Class III, would comprise preferred outlets for New York pool milk. These are relatively bulky or perishable products for which transportation costs from the more distant production areas in the Midwest are relatively high. This is not true in the case of butter and Cheddar cheese and certain other milk products which are compact and relatively nonperishable. Surplus milk used in butter and Cheddar cheese has regularly returned less money to producers than milk used in other products. New York pool milk should be priced under the order so as to result in the utilization of surplus milk in the preferred surplus outlets, thus preserving for producers the economic advantage to which their location entitles them.

Ideally, those uses which return producers the highest prices should yield the greatest net return to handlers. Although class prices in the past have been established in accordance with that objective, changing relationships between product values have frequently interfered with its realization. With the present system of multiple class pricing, the amount of surplus milk used in certain preferred outlets such as fluid cream and ice cream for Eastern markets and evaporated milk has declined in recent years, both in absolute quantity and in relation to the total milk utilized in such outlets, while at the same time relatively large amounts of pool milk have been utilized in the manufacture of butter and cheese. With all surplus milk priced at a single price handlers can reasonably be expected to search for the preferential markets rather than put their milk into those products which afford the most favorable margin for handlers but which under the present order may yield the lowest return to producers. It is concluded, therefore, that all surplus milk should be in the same class.

The price established at this time for milk classified in a single surplus class may need to be lower than the price established for such milk after a period of time has been allowed for a shift of pool milk into the more preferential outlets.

An analysis of possible markets for surplus milk reveals that it must be priced so that a substantial part of it will be utilized for ice cream in New York City if the quantity of such milk used in lower value products, such as butter and Cheddar cheese, is to be kept at a minimum.

Until recently, cream for use in New York City ice cream could be obtained only from sources under the direct supervision of the New York City Department of Health. The price for pool milk so utilized has included a premium over the price of other cream. This outlet, principally by reason of the change in New York City health authority requirements, will no longer return producers its former premium. Any attempt to maintain this premium in the order would result in the substitution of other milk for pool milk for this use.

Ice cream manufacturers have been permitted to use butter from sources other than those directly inspected by the New York City Department of Health in making ice cream. Butter has displaced pool cream as a source of butterfat for New York City ice cream to a substantial extent. This shift has been expedited by recent technological developments in the process of using butter in making ice cream with accompanying improvement in the quality of ice cream so made. Cream for New York City ice cream, therefore, must compete with butter as a source of butterfat.

The butter used in ice cream, however, is of special quality for which ice cream manufacturers pay a premium. Ice cream manufacturers indicated at the hearing that the premium which they are willing to pay is 2 cents per pound for such butter. Butter usually contains about 80.5 percent butterfat. The value of a pound of butter, including premium, therefore, should be multiplied by 1.24 to arrive at the value of a pound of butterfat. To convert the value per pound of fat to a value per hundredweight of milk, multiply by 3.5.

Other preferred outlets in the Northeast should be able to absorb pool milk at a price which will permit pooled milk to compete with butter for use in New York City ice cream. These outlets include cream for other Eastern markets such as Boston and Philadelphia. Supply conditions in the Northeast at times in the past have resulted in the payment of premiums for butterfat in Northeastern markets higher than premiums normally obtainable over the price of butterfat in the Midwest. If such a condition develops in the future, the additional premium should accrue to Northeastern producers. The weighted average price per 40-quart can of 40 percent bottling quality cream in Boston is apparently the best indicator of the variation in value of butterfat in the Northeast due to short-term variations between National and Northeastern supply conditions. A disadvantage of the Boston cream price, however, is that the milk equivalent of cream in the Boston market is relatively small as compared with the volume of surplus milk in the New York pool.

The value of butterfat in Boston cream is probably comparable with the value of butterfat in butter suitable for New York City ice cream as an indicator of butterfat values in the Northeast except for occasional premiums due to special supply and demand conditions in the Northeast. Some slight difference exists because of a difference in the cost of shipping cream from the Midwest to the New York and Boston markets. The contention was made at the hearing that the Boston cream price reflected some premium for continuous supply throughout the year which New York handlers are not in a position to obtain. The precise amount of such premium, if any, is not shown in the record. The price for a 40-quart can of 40 percent cream is converted to a value per pound of butterfat by dividing by 33.48.

In the months from March through July, the New York ice cream market is a more important outlet for pool milk than at other times of the year. During this period, production of New York surplus milk is likely to exceed the available outlets for current use other than for butter and cheese. Ice cream manufacturers, as well as others, however, buy butterfat during this period to store for use in times of short supply. Some ice cream manufacturers buy a substantial part of their entire year's needs of butterfat during this period.

Exception was taken to the conclusion in the recommended decision which might result in the Class III butterfat value being based on the butter price plus 3 cents in any of the months of March through July. It was contended that ice cream manufacturers would not pay 3 cents premium over butter for cream. Establishing the premium at a flat 2 cents over butter for these months should insure a maximum use of cream in ice cream and should encourage storage of cream for subsequent use in ice cream. It is concluded, therefore, that during the months of March through July the butterfat value in the Class III formula should be the price per pound of New York U. S. Grade A or U. S. 92-score butter plus 2 cents, times 1.24; and that during the months of August through

February the Boston weighted average cream price should be used to reflect any additional premium over butter which should accrue to producers as a result of special supply and demand conditions in the Northeast.

Evidence in the record shows that a large part of the skim milk from pool milk is manufactured into nonfat dry milk solids and that a large proportion of the nonfat dry milk solids manufactured in recent years has been sold for human consumption.

It is concluded, therefore, that the prices to be used to represent the value of skim milk be prices for nonfat dry milk solids for human consumption only rather than the average of the prices for human consumption and for animal feed. This change, however, has been taken into consideration in arriving at the handling allowance included as a part of the Class III price formula.

In the computation of the skim value in the recommended Class II and Class III formulas, the quotation for nonfat dry milk solids is multiplied by 7.5 to represent the value of 91.25 pounds of skim milk (considering 100 pounds of 3.5 percent milk to be equivalent to 8.75 pounds of 40 percent cream and 91.25 pounds of skim milk). The result is approximately the same as that obtained under the present Class V–B formula by multiplying the nonfat dry milk solids quotation by 8.3 to arrive at a value for nonfat dry milk solids made from 100 pounds of skim milk.

The Class III price resulting from the formula is the price in the 201-210 mile zone from New York City. An allowance to cover the cost of shipping cream and nonfat dry milk solids from the 201–210 mile zone to New York City should be subtracted from the value of the butterfat and skim milk solids in New York City. Carlot rates for shipping cream are equivalent to about 7 cents per hundredweight of milk, and rates for shipping nonfat dry milk solids are approximately equivalent to 3 cents per hundredweight of milk. A transportation allowance of 10 cents, therefore, should be subtracted from the combined value at New York City of the butterfat and nonfat solids in a hundredweight of milk.

Probably the most important single factor in a formula for Class III milk is the handling allowance. The allowance should be one under which all of the milk offered for sale by producers will be accepted by handlers. An allowance which is too high would result in high charges by country plants for Class I–A milk and varying premium payments to producers, and cooperative associations of producers, above the prices required to be paid by the order. A handling allowance which is too low would result in charges for Class I–A milk at less than that necessary to cover cost of operations, and eventually in the reluctance or refusal of handlers to accept milk from producers or from cooperative associations of producers.

One approach to the problem of determining the handling allowance is to determine the cost of manufacturing the products used as a basis for determining the price. In a formula using the value of cream and nonfat dry milk solids as a basis, the cost of manufacturing these products should be used. There are many difficulties in determining handling allowances on the basis of such costs. First, there are few, if any, operations in the New York milkshed which are limited substantially to the separation of cream and the production of roller process nonfat dry milk solids. The cost of operating manufacturing plants may be higher by reason of the manufacture of products which yield a higher return, or a lower cost may be incurred if products yielding a lower return are being sold. Second, fixed costs may be allocated to different operations in different ways. An operator who has principally a Class I–A business may allocate most or all of his fixed costs to the Class I–A business, while an operator who has a large percentage of his milk being manufactured might allocate a large share of his fixed costs to the manufacturing operations. Both methods may be correct for the particular business involved. Third, it is necessary to adjust the handling allowance for prospective changes in the costs.

Considerable testimony was offered to indicate that the cost of making cream and nonfat dry milk solids is between 85 cents and one dollar per hundredweight. When these figures are adjusted for prospective decreases in plant loss costs because of recent and prospective decrease in product values, for prospective decreases in costs of feeder plant milk in view of prospective higher volume, and to eliminate costs already taken into account in the transportation allowance, it appears that the costs for this year will be nearer to 70 cents than to the costs for last year.

Another method of approaching the problem is to consider percentage changes in the costs of operating manufacturing plants. Over-all costs of manufacturing operations appear to have increased about 26 percent since handling allowances were last determined. Increasing by 26 percent the present handling allowance of 59 cents for cream and nonfat dry milk solids operations would result in a handling allowance of about 74 cents. Some adjustment in this figure is appropriate in view of prospective conditions this year.

A third method of approaching the problem is through study of the actual handling allowances paid feeder plants for milk for manufacture or for Class I–A use. The payment of charges for handling fluid milk, except in times of short supply, considerably in excess of the cost of operating fluid milk plants will indicate a correspondingly excessive allowance for handling surplus milk. A Class III formula must have been in operation for a period of time before this method can be used.

A variation of this third method is to study margins taken for fluid cream and nonfat dry milk solids sold in New York City. Since such cream is supplied almost entirely from pool milk, margins existing indicate what handlers actually believe is a sufficient allowance for handling milk. In 1948 the margin was equivalent to 84.8 cents per hundredweight of milk. This margin, however, includes the transportation allowance. It also should be adjusted for prospective conditions this year.

It is concluded, therefore, that the handling allowance in the Class III formula should be 70 cents. The effects of this allowance on the handling allowances paid fluid milk plant operators should be watched and the allowance be reconsidered soon after the period of flush milk production.

No evidence was introduced to show that the present method of computing the surplus class butterfat differentials should be changed. The only changes recommended herein are those changes necessary to make the butterfat differentials conform with the recommended changes in class prices. Since the recommended Class II and Class III formulas include a skim value, that skim value should be deducted from those class prices in the computation of butterfat differentials. The amount to be deducted should be the same as the skim value included in the Class II formula. A different butterfat differential for milk utilized in butter or cheese will be reflected in the operation of the recommended butter-cheese adjustment which is based on pounds of butterfat so used.

Establishment of one set of transportation differentials for all Class III products should encourage more economic handling of milk. It should encourage the shipment of the more bulky and perishable Class III products from areas nearer the available markets, leaving the milk in more distant areas for manufacture into more condensed products.

The proposal was made that the present transportation differentials should be retained on milk separated into cream sold in New England or the Class II–D area. This was based on the contention that it would equalize costs for the consuming market as among handlers. While this might be true for cream shipped to Boston or Philadelphia, it would not be true for shipments to other markets in these areas. Furthermore, the evidence reveals that it is economically sound for such outside markets to be served from plants most advantageously located with respect to those markets.

The handling allowance in the Class III price formulas as herein set forth represents an allowance for making cream and nonfat dry milk solids from whole milk. In adding a skim value to the Class II price an allowance for making nonfat dry milk solids from the skim milk in Class II milk is required. The allowance should be some portion of the 70 cents allowance on Class III milk.

Evidence in the record indicates that any break-down of plant operating costs between cream and nonfat dry milk solids involves arbitrary assignment of various factors of cost to each product to the extent that separate allowances for cream and for nonfat dry milk solids are less significant than the total allowance for manufacturing milk into cream and nonfat dry milk solids. However, if nonfat dry milk solids price quotations are to be used as a basis for determining the value of skim milk in Class II milk, some margin must be provided the handler to cover the cost of skim milk in

Class II milk or such cost would have to be recovered in the price of cream.

Pursuant to the present order the allowances on nonfat dry milk solids amount to about 64 percent of the sum of the allowances on a hundredweight of milk made into cream and nonfat dry milk solids. If the allowance on nonfat dry milk solids was considered to bear the same percentage to the 70-cent allowance as it does to the total of the allowances on cream and nonfat dry milk solids at the present time, it would amount to 45 cents. Addition of 3 cents as an allowance for freight on nonfat dry milk solids from the 201–210 mile zone results in a total allowance of 48 cents for skim milk in Class II milk.

The return to producers for milk should be the same whether the milk is used as fluid milk, or as fluid cream and low butterfat content milk drinks or as fluid cream and fluid skim milk in the marketing area, as long as skim milk sold as fluid skim milk or milk drinks must come from producers approved by a marketing area health authority. The fluid skim differential herein established applies to the same skim milk as presently classified in V–A. The return to producers, and the cost to handlers, for such skim milk will be the same as under the present provision.

Proposals were made at the hearing to reduce to the present Class V–B level the price of skim milk presently classified in Class V–A. Proponents contended that the V–A price has added materially to the product cost of skim milk products, thus encouraging substitution of concentrated skim milk for fluid skim milk in skim milk products, and pointed to the limited extent to which the uniform price would be reduced by reason of the proposed change. The record shows that the volume of Class V–A skim milk increased about 50 percent in 1948 over 1947 and to a level higher than for any year since 1943. Likewise the contribution to the uniform price in 1948 was substantially greater than previously. If substitution of concentrated skim in V–A products does occur the return to producers on displaced fluid skim milk will be no lower than the return on all skim milk in the event of adoption of the proposed price reduction. The fact that the volume of Class V–A skim milk is small in relation to the total volume of pool milk and therefore makes only a minor contriubtion to the uniform price is no valid reason for reducing its price.

Outlets may not be available in 1949 for all of the surplus milk in products other than butter and cheese. In order to insure the acceptance of all the milk produced for the market, a lower price should be established for milk made into butter and cheese. This lower price should not be such that it encourages the use of milk in butter and cheese when a more remunerative outlet is available.

The changes in disposition of surplus milk that may be expected to result from shifting to a single surplus class may require some time to take place. Providing a special differential for milk made into butter and cheese while this shift is taking place appears reasonable.

Evidence in the record indicates that the price of cheese on the Wisconsin Cheese Exchange does not accurately reflect changes in the value of cheese in the New York milkshed. Handlers manufacturing cheese contended that they sell their cheese on the basis of the Wisconsin Cheese Exchange quotations but at varying amounts above or below that quotation. Evidence in the record indicates that prices obtained by handlers for cheese during 1948 range from somewhat below to as much as 6 cents per pound of cheese (equivalent to 54 cents per hundredweight of milk) above the Wisconsin Cheese Exchange quotations. No other cheese price quotation was suggested which would reflect changes in the value of cheese made from pool milk.

May and June are the months of greatest cheese production from pool milk while the most butter is usually made in March. The fact that less butter is made in May and June than in March indicates that butter facilities are not being used to capacity in May and June. To the extent that milk has alternative outlets in butter and cheese, it appears that a price for milk used in cheese lower than for milk used for butter should not be provided.

Most of the cheese sold on the Wisconsin Cheese Exchange is produced in areas where milk is used primarily for manufacturing. Cheese factories must compete with butter factories in obtaining and maintaining a supply of milk. Accordingly, the prices paid farmers for milk used to make butter or cheese must be about the same. Since the combined costs of shipping butter and nonfat dry milk solids from the Midwest is about the same as the cost of shipping cheese, the value of Eastern milk for butter and cheese should be about the same.

During the months of March through July, which are the months during which a large proportion of the butter and cheese is made, the butterfat value used in computing the Class III price will exceed the value of butterfat in butter by not more than 3 cents per pound of butter (3.72 cents per pound of fat) and may exceed the value of butterfat in butter by as little as 2 cents per pound of butter (2.48 cents per pound of fat). A butter-cheese adjustment of 4 cents per pound of fat will therefore at all times during those months completely cancel out the amount by which the butterfat value used in computing the Class III price exceeds the value of butterfat in butter and will provide a handler making butter or cheese some additional allowance.

Some further allowance to handlers making butter or cheese results from the use of a transportation allowance and transportation differentials based on the cost of shipping cream and nonfat dry milk solids to the marketing area. This additional allowance would be approximately equal to the difference between the costs of shipping butter or cheese and cream to the marketing area. This difference increases as the distance to the marketing area increases.

The amount of the allowance provided a handler in the butter-cheese adjustment plus the transportation differential to the 301–325 mile zone could result in an amount approximately equivalent to the costs of churning butter as shown in the record. Crediting handlers with the full butter-cheese adjustment in zones more distant from the marketing area than the 301–325 mile zone could result in the butter being a more favorable outlet to a handler than a Class III product other than butter and cheese. To eliminate this possibility the amount of the butter-cheese adjustment in areas more distant from the marketing area than the 301–325 mile zone should be reduced by the amount by which the transportation differential is higher than the transportation differential in the 301–325 mile zone.

Public disclosure by the market administrator of the location of any plant, and the name of the handler operating the plant, at which any significant amount of milk is being used in butter or cheese should result in the movement of milk into a higher value utilization if any other handler has such outlets available. Provision for such public disclosure only in instances of utilization in butter and cheese of an average of at least 4,000 pounds of milk per day is designed to exclude incidental uses for butter or cheese of volumes of milk smaller than those constituting a probable source of supply for other Class III products.

Numerous exceptions taken to the various factors used in the Class III formula and the butter-cheese adjustment were based on claims that the inclusion of such factors would result in a price for surplus milk either too high or too low. The effect of any one factor on the price is of less significance than the price resulting from the application of all factors in the formula. A comparison of the prices which would have resulted from the application of the Class III formula in the past with prices paid by operators of manufacturing plants in unregulated areas is some indication of the adequacy of the Class III formula since prices paid to producers by unregulated operators is an indication of the value of milk for manufacturing. The prices paid in 1948 to farmers by 20 Midwestern condenseries ranged, by months, from 9 cents less to 50 cents more than the new Class III price, and averaged 14 cents higher than the new Class III price. Prices paid to farmers per hundredweight of milk at Wisconsin cheese factories in the months of April through July 1948 ranged, by months, from 3 to 59 cents more and averaged for the 4 months 38 cents more than the new Class III price less the butter-cheese adjustment. The new Class III price less the butter-cheese adjustment for the same 4 months in 1948 would have averaged 2 cents lower than the present IV–B price.

In view of these comparisons and for reasons elsewhere set forth herein, the exceptions to the Class III price formula and the butter-cheese adjustment are denied. The exceptions, however, serve to emphasize the desirability of reconsidering the pricing of surplus pool milk.

Storage cream from pool milk has historically been used principally for products requiring milk from sources inspected by the New York City Department of Health, namely sour cream, re-

constituted cream and ice cream. The order has priced milk utilized in storage cream the same as milk used in New York City ice cream—a price higher than that for milk used for cream sold outside the marketing area but lower than that for Class II–A milk. Milk used for storage cream subsequently manufactured into ice cream should be priced the same as milk used directly in ice cream. No similar reduction should be made in the price of milk used for storage cream subsequently made into sour cream or reconstituted sweet cream for the marketing area since such cream is still required to come only from sources inspected by the New York City Department of Health the same as fresh cream used either as sweet or sour cream and which continues to be priced at the present Class II–A level.

In order to lower the price for milk used in cream stored for ice cream and not for cream stored for sour or reconstituted cream, one of two methods might be used: First, price the milk at the higher price and pay rebates when the cream is used in ice cream; or, second, price the milk at the lower price and require an additional payment if the cream is used in sour or reconstituted cream. In order to encourage the storage of cream, and thus facilitate the use of pool milk in the preferential uses, it is concluded that the original payment should be at the lower rate.

At the present time the Class II–B price (the price for milk used in storage cream) is priced 20 cents per hundredweight over the Class II–E price in March through July and 25 cents over the Class II–E price in the months of August through February. To bring the total costs of milk used for storage cream for sour or reconstituted cream up to the approximate level resulting from the present Class II–B formula, an additional payment above the Class III price of 9 cents per pound of butterfat should be charged for cream separated in the months of March through July, and 10 cents per pound of butterfat should be charged for cream separated in the months of August through February. On the basis of exceptions taken to the payment rates of 10 and 11 cents as set forth in the recommended decision, such rates are changed to 9 and 10 cents as being the rates resulting in a price more nearly approximating the present Class II–B price.

Inasmuch as a lower price (in the form of the butter-cheese adjustment) for milk made into butter is being continued in the order, storage cream payments for cream separated in April through September and used in butter during January through March should be continued. The rate should be the same as the butter-cheese adjustment.

The decline in dairy product prices generally in the latter half of 1948 resulted in inventory losses to handlers holding storage cream. Thus, handlers may be reluctant to store cream in 1949. It is in the interest of producers that cream be stored, however. To encourage the storage of cream during the coming season of flush production, therefore, it is concluded that handlers should be insured against inventory loss on storage cream separated in April through July 1949 to the extent of the butter-cheese adjustment on that cream used after July 1949 for other than marketing area sour or reconstituted cream. They should not be eligible both for this payment and the payment otherwise provided on cream made into butter. For the same reason, a similar protection against inventory loss on storage cream separated in April through July 1949 and used in sour or reconstituted cream should be provided by restricting the payment by the handler on cream so utilized to the value of the butterfat at the Class II price less 4 cents in the month when the cream is used. Since the cost of storage for a 5-month period was shown to be about 6 cents per pound of butterfat, such a provision protects the handler against a price decline and covers a substantial part of the cost of storage. Findings herein supporting these provisions for the purpose of encouraging the storage of cream under conditions in prospect for 1949 outweighed the reasons given for exceptions taken to such provisions. Therefore, such exceptions are not granted.

Payments on milk and certain milk products shipped to the marketing area from nonpool sources are designed primarily to minimize the differences in cost of pool and nonpool butterfat and to provide some measure of assurance that purchasers of pool butterfat are not at an economic disadvantage compared with purchasers of nonpool butterfat. The Class III price established herein is designed to be a price which will permit the utilization of pool milk in products sold in Northeastern markets in competition with similar products made from nonpool milk. Such a competitive price, therefore, appears to represent the price at which nonpool milk or milk products will be available for sale in the marketing area. Accordingly, payments on nonpool milk or milk products shipped to the marketing area at the difference between the Class III price and the respective Class I or Class II price should provide the necessary assurance that purchasers of pool milk will not be at an economic disadvantage compared with purchasers of nonpool milk.

Exception was taken to the amendment recommended to effectuate the conclusion that payments into the pool should be continued on certain products entering the marketing area from other than pool sources on the grounds that such payments are not authorized by the act and are otherwise illegal. Similar exceptions were ruled upon in a decision issued on January 28, 1948 (13 F. R. 452). Such ruling is hereby adopted and reaffirmed.

Issue No. 7. No change should be made in the present provisions of the order for pricing Class I–C milk sold in New England. The butterfat differentials on Classes I–B and I–C should not be changed.

Exception was taken to the conclusion, and some of the findings, that Class I–C milk sold in Maine, Massachusetts, New Hampshire, or Rhode Island should be priced at the Class I–A price. Upon a further analysis of the evidence in the record, a different conclusion has been reached for the reasons herein set forth.

In 1948 the Class I–C price averaged 33 cents below the Class I–A price. This compares with 27 cents in 1947 and 6 cents in 1946. The Class I–C price for the months of October, November and December averaged 5 cents above, 6 cents below, and 49 cents below the Class I–A price in the respective years of 1946, 1947 and 1948. The lower Class I–C price in relation to the Class I–A price results primarily from a combination of lower surplus class prices in relation to the Class I–A price and higher utilization in the surplus classes. A similar decline in the Class I–C price in relation to the Class I price under the Boston order has occurred.

Compared with a year earlier, shipments of Class I–C milk into Rhode Island and Massachusetts have shown some increase in recent months while shipments into Connecticut have declined, and all shipments into New England have increased while total Class I–C sales have declined. Shipments of Boston pool milk into Rhode Island in November and December 1948 were lower than a year earlier.

In recent months Class I–C milk sold in New England has amounted to about 21 percent of total Class I–C and less than 2 percent of total receipts of milk from producers.

In addition to Boston and New York pool milk, other sources of supply for New England secondary markets are local producers and plants not under the Boston or New York orders. The Class I prices to be paid local producers in most of the markets are established by the respective State milk control agencies. Such Class I prices appear to move somewhat in line with the New York Class I–A price and the Boston Class I price. Class I milk from plants not under the Boston or New York order is generally priced on the basis of either the Boston or the New York uniform price. Pricing New York milk sold in such markets at the Class I–A price would result in a fairly close relationship between the cost of Boston or New York pool milk and the cost of milk from local producers. However, such pricing would place New York handlers selling milk into New England secondary markets at a further competitive disadvantage compared with plants not under the Boston or New York orders from which milk is available on the basis of the Boston or New York uniform price. If the Class I–C price were increased to the Class I–A level, New York handlers might withdraw plants from the pool to meet the nonpool competition. Since such plants would withdraw from the pool for the primary purpose of supplying fluid markets, it appears that there would be some incentive for the handler to withdraw a plant with relatively little seasonal variation in volume of milk handled, leaving the pool with a larger proportion of surplus. Furthermore, operators of the withdrawn plants might be expected to seek the higher value surplus outlets, and displace pool milk presently supplying such outlets. If plants were not withdrawn from the pool to meet the competition of nonpool plants, it is reasonable to expect that some of the outlets would be lost. Any loss of Class I–C sales

to the New York pool would tend to aggravate the problem of finding outlets for the volume of surplus milk in prospect during the coming flush season.

Proponents contended on the record that the relationship between Class I–C price and the Boston Class I price gives New York handlers a competitive advantage over Boston handlers selling milk in southern New England markets. A representative of a Boston handler testified that in recent months outlets in southern New England formerly supplied by that handler had been lost to a New York handler. However, there is no assurance that revision of the Class I–C price as proposed would correct the conditions complained of. Other methods which might correct or partially correct such conditions are to revise the price of Boston pool milk sold in New England secondary markets or to extend regulation to cover all of the milk sold in the secondary markets.

Issues 8 and 9: The classes to be included in the requirement for desirable utilization should be changed to the extent of eliminating the present Class II–B from the optional classifications to be included.

The requirement concerning the inclusion of Class I–C in the desirable utilization provision should not be changed.

The cancellation of pool plant designations should not be employed as a means of directing milk into the highest paying surplus classes.

The provision concerning automatic cancellation in the event of lack of health approval on June 15 of any year should be modified to definitely show that health approval in this connection means exactly the same thing as health approval in the requirement for pool plant designation. This modification is one of clarification and not one of substance.

A considerable amount of testimony was offered at the hearing in support of the proposition to use the provision concerning cancellation of pool plant designations for the purpose of channeling milk into the higher paying surplus classes as well as for supplying the market with fluid milk when needed. The objective of the proposal was to meet problems associated primarily with the maladjustment of prices established for the various classes of surplus milk. The whole question of surplus pricing is discussed elsewhere herein. The changes, as elsewhere herein set forth, in the method of pricing surplus milk appear to minimize, if not eliminate, the need for this type of provision.

Furthermore, the existing provision of the order relative to the desirable utilization of milk is based on the principle that handlers who receive equalization payments under the classified pricing and market-wide pooling system have an obligation to supply the market fluid milk when needed. In other words, the fact that an order is in existence should not jeopardize the supply of milk for the marketing area simply because the outlets returning the lower prices to producers may be more attractive to handlers. A provision making continued pool participation contingent upon utilization of surplus milk in products yielding the highest return to producers involves a substantially different principle, would lead to numerous administrative problems, and would be designed for a purpose more appropriately accomplished by other methods as herein provided. Exceptions taken to the conclusion that such a provision should not be included in the order are denied for the reasons indicated.

Because of the action of the New York City Board of Health permitting cream to enter the marketing area from sources not subject to inspection by the New York City Department of Health, cream for uses in the present Class II–B classification (except storage) no longer is required to come principally from sources that are presently subject to regulation by Order No. 27. Furthermore, the proposed reclassification and change in price for milk handled in such a manner that it is presently classified as II–B makes this utilization one that is no more desirable with respect to its effect on the uniform price than most other surplus uses. Class II–B therefore should be eliminated from the list of classes which the market administrator may include as desirable in a determination of desirable utilization.

A number of witnesses testified that the present requirement that a determination of desirable utilization include certain Class I–C milk to the extent of 50 percent of the milk received from producers might result in handlers outside of the marketing area having an advantage over handlers in the marketing area in obtaining fluid milk in times of short supply. The record did not reveal, however, that such has been the actual experience under the operation of the present provision. Furthermore, the record indicates that problems during the next few months will be those associated with the handling of surplus milk to a greater extent than with the problems associated with a shortage of milk.

Issues Nos. 10, 11, and 12. Milk used in a product not specifically named in some other class should be classified as Class III. Fluid milk products and fluid cream products should be classified the same as milk and cream respectively. The order should be changed to provide that milk drinks containing more than 5 percent of butterfat should be classified as Class II if sold in the marketing area and as Class III if sold outside, and that milk drinks containing less than 3 percent of butterfat should be classified as Class III if sold outside the marketing area.

The requirement that pool milk or cream at a nonpool plant be assigned to any excess plant loss before pro rata assignment to all products leaving the plant should be continued. Milk or cream shipped to a nonpool plant should be classified at either the pool plant or the nonpool plant according to the shipping handler's election. The classification of cream used in standardizing milk should continue to be Class I–A, Class I–B, or Class I–C.

The classification of milk shipped into the marketing area in the form of cream and assigned to ice cream or cream cheese at either the first or second plant in the marketing area should be determined at such plant. Otherwise milk shipped into the marketing area in the form of milk or cream should be classified according to the form in which it leaves the shipping plant.

No change should be made in the provisions concerning the classification of milk shipped in the form of milk or cream more than 65 miles to plants in certain specified areas except as is necessary to conform with other recommended changes in the order.

Proposals 11, 12 and 18, providing that milk, once separated, shall be classified no higher than Class II–A, and that milk shipped as milk or cream to a nonpool plant shall be classified no higher than the class for milk or cream sold as fluid milk or cream in that area, apparently were prompted by the following effects of the present provisions proposed to be amended:

(1) Class I–A, I–B or I–C classification for cream used in standardization of milk.

(2) Class I–A classification of milk or cream assigned to products not specifically named in another class.

(3) Class II–A classification of cream assigned to milk drinks of less than 3 percent butterfat sold in an area where fluid cream is classified in a lower class.

(4) The assignment of pool milk or cream to excess plant loss at a nonpool plant before assignment to products leaving the nonpool plant.

Proposal 21 was also designed to eliminate the requirement that pool milk at a nonpool plant be assigned to excess plant loss prior to a pro rata assignment to all classes at the plant.

Proposals 22 and 23 would change the present classification as I–A of milk or cream used in a new manufactured product even though the new product had to compete with similar products made from nonpool milk.

Proposal 24 would classify milk used to make eggnog in Class II–B. A higher classification now results from the fact that eggnog, although made of cream or a mixture similar to ice cream mix, is considered to be a milk drink of more than 3 percent butterfat, or the mixture from which it is made is considered to be a product not named in the class definitions.

The principal reason given in support of these proposals was that the provisions sought to be amended discourage nonpool users of milk and cream from buying from handlers under the order. Most of the difficulties complained of are corrected by changing the classes of utilization in the manner herein set forth. Such changes will result in milk drinks of less than 3 percent or more than 5 percent butterfat, which are frequently made by adding cream to milk or skim milk, being classified the same as fluid cream distributed in the same area as the milk drinks. Products not named in a specific class are placed in Class III inasmuch as these products must compete with milk from unregulated sources. The one apparent danger in such a shift is that some handler may claim that a product which is essentially fluid milk or fluid cream should be classified as Class III because its com-

position varies from the technical definition in the rules and regulations established under the order. The term "fluid milk products", therefore, is included in the Class I–A, I–B, and I–C definitions, and the term, "fluid cream products" is included in the Class II and Class III definitions. The terms milk and cream might be defined to include what is contemplated under the terms fluid milk products and fluid cream products, but because of the special significance of the definitions of these terms for purposes other than administration of the order, it appears advisable to provide a means of defining modifications of milk and cream under a different name and still require the same classifications as for milk and cream.

It was contended in exceptions that the inclusion of "fluid cream products" in Class II is not within the scope of the notice of hearing, that "due process is being violated", and that the hearing should again be reopened for further testimony on this question. Any products not specifically defined are now classified in Class I–A. Fluid cream products which are essentially in the nature of fluid cream or are substitutes for fluid cream and compete with fluid cream should be classified the same as fluid cream. It was testified that if the classification of such products sold in the marketing area was to be changed it should be changed to Class II rather than to Class III. The classification of such products in Class III (the lowest value class) was vigorously opposed at the hearing.

The mere inclusion of a proposal in the notice of hearing does not assure its adoption. Otherwise, the hearing would serve no purpose. The evidence in the record of this hearing does not support the inclusion in Class III of fluid cream products sold in the marketing area, but does justify classification of such products in the fluid cream class. If the exceptants desired to support the specific inclusion of their products in Class III, they should have done so at the hearing since that question was clearly within the scope of the hearing notice. Their failure to do so does not justify a further reopening of the hearing, particularly since prompt action is necessary with respect to the classification and pricing of surplus milk. The exceptions are overruled and the motion to reopen the hearing is denied.

The provision to permit a handler shipping milk or cream to a nonpool plant to choose whether the milk is to be classified at the pool plant or at the nonpool plant also gives handlers relief with respect to the complaints made. Under this provision, the handler can remove most of the risk of higher classifications by giving up the right to claim lower classifications. This will make it possible for him to avoid high classification at nonpool plants because of excess plant loss if the handler operating the nonpool plant can prove that the milk or cream was actually received and handled at the nonpool plant and not shipped to the marketing area in the form of milk or cream. Shipments from the nonpool plant to the marketing area of milk or cream will still be classified as Class I–A and Class II.

Cream used for standardization of milk will still be classified in the same class as the milk so standardized. It would be inconsistent with the terms of the order and of the required accounting procedure to classify, at the plant where classification is to be determined, milk from two sources and used in one product in two different classes simply because the milk from one source was separated prior to use while the milk from the other source was not. This is particularly true if the distinction is dependent upon the separation taking place at some plant other than the one at which classification is to be determined. The record revealed that standardization is not generally practiced at nonpool plants receiving milk or cream from pool plants.

The present requirements for a complete audit at any plant at which classification is to be determined, and for the burden of proof to be upon the handler, are continued. Without such requirements, handlers keeping inadequate records would be placed at a competitive advantage over those whose records are complete.

The record revealed that a number of the present provisions of the basis of classification were not clear or were subject to misinterpretation. Several of these provisions have been revised for the purpose of clarity only. These include the opening statement, the burden of proof, provisions concerning the plant at which classification is to be determined, and the accounting procedure. A number of exceptions were taken to the opening provisions of § 927.3 (a) (5) (accounting procedure) as contained in the recommended decision, the contention being made that the recommended change was one of substance rather than of clarification. Such is not the case.

The present provision is intended to authorize establishment by the market administrator, pursuant to the procedure set forth in § 927.4 (b), of the accounting procedure for classifying milk in accordance with the provisions of § 927.4, and to require adherence to the general principles set forth in § 927.4 (a) (5) insofar as applicable. Such general principles obviously do not specifically cover all situations and circumstances which must necessarily be covered by a complete accounting procedure. The substance of the present provision is more accurately and clearly set forth in the provision as it appears in the recommended decision. If the method of accounting to be used in all situations requiring accounting rules was set forth in detail in the order, there would be no reason for authorizing the market administrator to set up an accounting procedure. The procedure required in § 927.4 (b) adequately protects the interests of handlers and producers. The exceptions are denied.

Proposals numbered 13 through 17 were to classify milk in accordance with use in the marketing area rather than at plants outside the marketing area. There were two problems relating to marketing area classification which were particularly stressed. One involved classification at ice cream plants only if the ice cream plant is the first marketing area plant at which the cream is received. It appears from the record that it is often more economical to redistribute cream received in large lots to many small ice cream plants than to ship small lots of cream directly to each plant. Furthermore, there appeared to be no good reason why an additional cream movement should disqualify an ice cream classification for the milk. A provision is included, therefore, for an additional movement of cream in the marketing area prior to classification. This provision, however, does not change the existing provision for the market administrator to determine what constitutes a plant nor does it permit classification at establishments not considered plants for purposes of the order.

A second problem concerning marketing area classification was that involving cream cheese. At present cream received in the marketing area and manufactured into cream cheese is classified as cream at the plant from which it is shipped as cream into the marketing area. The elimination of the manufacture of cream cheese in the marketing area as a basis of classification in the cream cheese class in 1941 caused at least one handler to move his cream cheese manufacturing operations to a country plant and to leave the packaging operation in the marketing area. It was contended that cream cheese is of better quality if manufactured and packaged at the same place and near the market. It was not shown that a marketing area cream cheese outlet was either necessary or particularly desirable as an outlet for producers' milk. However, pursuant to prices herein set forth, it will return to producers the same price as most other surplus outlets.

Except for the two problems mentioned, evidence in the record fails to justify unlimited classification on the basis of marketing area use. The record was vague as to what would be the effect of the proposals as far as returns to producers and auditing problems are concerned. Furthermore, complete marketing area classification would mean lower total payments on fluid milk and fluid cream shipments to the marketing area because of classification of route returns in classes lower than Class I–A and Class II. Consideration of a change in the order with respect to a lower classification of route returns should be accompanied by consideration of an increase in the Class I–A and Class II prices to offset the reduction in Class I–A and Class II volume.

Exception was taken to the provision requiring payment of the fluid skim differential on fluid skim milk shipped to the marketing area and used therein in the manufacture of cream cheese or sour cream. The exception is denied for the same reasons given in support of the fluid skim differential.

Proposals 19 and 20 were designed to allow classification at the receiving plant of milk or cream shipped outside of the states comprising the New York milkshed to any plant within 65 miles of a pool plant. The present provisions permit classification at such plants to which shipments are made only if they are located within 65 miles of the pool plant

where the milk was received from producers (or the plant where the milk was separated in the case of cream). The proposed change is defective in the following respects:

(1) In case of shipments to plants located approximately 65 miles from a number of pool plants, it would be necessary to determine distances from all such pool plants to the plant to which shipment is made.

(2) If the only pool plant within 65 miles of the plant to which shipments were made is a plant operated by a handler other than the shipping handler, the question of classifying milk at the receiving plant would be subject to the continuing designation as a pool plant of a plant over which neither the shipping nor the receiving handler had control.

(3) It fails to recognize that pool plants located in the fringe of the milkshed may need outlets not needed by other pool plants to dispose of surplus milk.

Exception was taken to the recommended decision for failure to conclude that proposals 19 and 20 as modified at the hearing to provide that distances be measured from state lines rather than from pool plants should be adopted. It was also pointed out in exceptions that failure to make the proposed change results in some handlers having a competitive advantage over other handlers in supplying certain outlets. However, it was not shown that such outlets must be made available to all handlers to insure disposition of all their surplus milk. The exceptions are denied.

Proposal 51 would require the market administrator to accept as correct any reported classification of milk in those cases where he would not attempt to conduct an audit. Apparently the cases prompting the proposal were those involving shipments of ice cream mix and storage cream to foreign countries. The changes in classification and pricing as set forth herein should correct most of the alleged inequities.

Issues Nos. 13, 14, 15, 16, 17, 18, and 19. The findings and conclusions contained in the recommended decision on these issues are hereby adopted without change as a part of this decision.

General. (a) The proposed marketing agreement and the proposed amendments to the order, as amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(b) The proposed marketing agreement and the proposed amendments to the order, as amended, regulates the handling of milk in the same manner and is applicable only to persons in the respective classes of industrial and commercial activity specified in the said tentative marketing agreement upon which the hearings have been held; and

(c) The prices calculated to give milk produced for sale in the said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to section 2 and section 8 (e) of the act are not reasonable in view of the price of feed, available supplies of feeds, and other economic conditions which affect market supply and demand for such milk, and the minimum prices specified in the proposed marketing agreement and the proposed amendments to the order, as 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.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled "Marketing Agreement Regulating the Handling of Milk in the New York Metropolitan Milk Marketing Area" and "Order Amending the Order, As Amended, Regulating the Handling of Milk in the New York Metropolitan Milk Marketing Area" which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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 amending the order, as amended, which will be published with the decision.

This decision filed at Washington, D. C., this 11th day of March 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

Order Amending the Order, as Amended, Regulating the Handling of Milk in the New York Metropolitan Milk Marketing Area [1]

§ 927.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary to and in addition to the findings and determinations made in connection with the issuance of this order and of each 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 Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure covering the formulation of marketing agreements and orders (7 CFR, Supps. 900.1 et seq., 13 F. R. 8585), a public hearing was held upon certain proposed amendments to the tentative marketing agreement heretofore approved by the Secretary of Agriculture and to the order, as amended, regulating the handling of milk in the New York metropolitan 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 amended and as hereby further amended, and all of the terms and conditions of said order, as amended and as hereby further amended, will tend to effectuate the declared policy of the act;

(2) The prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 8 (e) of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supplies of and demand for such milk and the minimum prices specified in the order, as amended and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the New York metropolitan 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; and the aforesaid order, as amended, is hereby further amended to read et seq.:

§ 927.1 *Definitions.* The following terms shall have the following meanings:

(a) "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.

(b) "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.

(c) "New York metropolitan milk marketing area" means the city of New York, the counties of Nassau, Suffolk (except Fisher's Island), and Westchester, all in the State of New York, and is hereinafter called the "marketing area."

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

(e) "Dairy farmer" means any person who produces milk.

(f) "Producer" means any dairy farmer whose milk is delivered direct from farm to a pool plant.

(g) "Handler" means (1) 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, (2) any person who engages in the handling of milk, cultured or flavored milk drinks, cream, or skim milk, all or a portion of which is shipped to, or received in, the marketing area, or (3) any co-

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

operative 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.

(h) "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 pursuant to § 927.2 (d) (10).

(j) "Pool plant" means any plant which is designated as a pool plant pursuant to § 927.3.

(k) "Market administrator" means the agency, which is described in § 927.2, for the administration of this order.

(l) "Northern New Jersey" means the following counties in the State of New Jersey: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren.

§ 927.2 *Market Administrator*—(a) *Selection, removal, and bond.* The agency for the administration of this order 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.

(b) *Compensation.* The market administrator shall be entitled to such reasonable compensation as shall be determined by the Secretary.

(c) *Powers.* The market administrator shall have the following powers:

(1) To administer the terms and provisions hereof;

(2) To make rules and regulations to effectuate the terms and provisions hereof;

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

(4) To recommend to the Secretary amendments to this order.

(d) *Duties.* The market administrator, in addition to the duties hereinafter described, shall:

(1) Keep such books and records as will clearly reflect the transactions provided for herein;

(2) Submit his books and records to examination by the Secretary at any and all times;

(3) Furnish such information and such verified reports as the Secretary may request;

(4) Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the market administrator;

(5) Publicly disclose, after reasonable notice, the name of any person who has not made reports pursuant to § 927.6, or made payments required by §§ 927.8, 927.9, or 927.10;

(6) Prepare and disseminate for the benefit of producers, consumers, and handlers such statistics and information concerning the operation of this order, as amended, as do not reveal confidential information;

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

(8) Pay out of the funds received pursuant to § 927.10 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;

(9) Maintain a main office and such branch offices as may be necessary; and

(10) The market administrator shall, from time to time, cause inspections to be made of the buildings, facilities and surroundings of the plant and shall notify handlers of his determination as to what constitutes the plant and its equipment. If any handler makes written request for such determination, the market administrator shall promptly notify such handler of his determination: *Provided*, That if the request is for a revised determination or for affirmation of a previous determination, the handler shall set forth in his request the changed conditions which he believes make a new determination necessary. Such determination shall be ruling for all purposes hereunder, and any revision in the determination of which handlers have been notified shall be effective not earlier than the date of notice to handlers of such revised determination.

§ 927.3 *Pool plants.* A plant shall be designated as a pool plant pursuant to either paragraph (a) or (b) of this section.

(a) *Reserve plants*—(1) *Carryover designation.* Any plant for which the report of milk received from dairy farmers was used in the computation of the uniform price for November 1944 is hereby designated as a pool plant from the effective date hereof until such designation is cancelled pursuant to subparagraph (4) of this paragraph.

(2) *Designation upon application*—(i) *Eligible applicants.* Any person who operates a plant which is located in New York State, Vermont, Massachusetts, Connecticut, New Jersey, or Pennsylvania and which is either approved as a source of milk by a health authority in the marketing area at the time of application and under the sanitary supervision of such authority, or was a pool plant during the preceding October, November, and December, may apply to the Secretary prior to July 1 of any year to have such plant designated as a pool plant: *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 made by such cooperative association as well as by the person operating the plant. Applications shall be addressed to the Secretary and filed at the office of the market administrator.

(ii) *Designation.* (*a*) Any plant for which an application has been made pursuant to subdivision (i) of this subparagraph shall be designated as a pool plant upon determination by the Secretary that the requirements of subparagraph (3) of this paragraph are being met. Such designation shall be effective as of August 1 following the date of application and until cancelled pursuant to subparagraph (4) of this paragraph.

(*b*) If, based upon the information contained in an application filed pursuant to subdivision (i) of this subparagraph, the Secretary determines that the requirements of subparagraph (3) of this paragraph are not being met, the applicant or applicants shall be so notified. Within 15 days after receipt of such notice, the applicant or applicants may submit additional information and request further consideration.

(*c*) Prior to the issuance of the determination of the Secretary, an application may be withdrawn by written request of the applicant or applicants. In the event that no determination is made by the Secretary prior to August 1, the effective date of the designation, upon written request of the applicant or applicants prior to the issuance of a determination, shall be deferred until the first of the month following the date of such determination. If the application is not so withdrawn, or the effective date of designation is not so deferred, the plant shall be treated as a pool plant as of August 1: *Provided*, That all payments into or out of the producer settlement fund (except such payments which are made on the basis of operations during a month in which the plant meets the requirements of paragraph (b) of this section) shall be held in reserve by the market administrator until a determination is made.

(3) *Requirements.* In order to qualify as a pool plant pursuant to this paragraph, the person operating the plant shall meet each of the following requirements:

(i) Be willing to ship in the form of milk to the marketing area, milk received at the plant from dairy farmers;

(ii) 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

(iii) Have no commitments for disposition of milk that prevent him from utilizing milk as set forth in subparagraph (4) (iv) of this paragraph.

(4) *Suspension and cancellation of designation.* The designation of a pool plant pursuant to this paragraph may be suspended or cancelled under any of the following provisions:

(i) The designation shall be cancelled upon application to the market administrator by the handler operating the plant effective at any time during the months of April through July of any year but not sooner than 30 days after receipt of such application: *Provided*, That such applications for cancellation shall be accompanied by proof that the handler, if not a cooperative association qualified pursuant to § 927.9 (f), 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.

(ii) 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 cancelled 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 cancelled pursuant to this provision. This provision does not prevent a handler from applying, pursuant to subparagraph (2) of this paragraph, for a new designation effective on August 1 of the same year.

(iii) 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 subdivision (iv) of this subparagraph, finds on the basis of available information that the handler operating the plant is not meeting the requirements set forth in subparagraph (3) of this paragraph: *Provided*, That, if the handler operating the plant is not a cooperative association qualified pursuant to § 927.9 (f), 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 qualified cooperative association, of such suspension of designation.

(*a*) In the case of the suspension, pursuant to this subparagraph, of the designation of one or more plants for failure to meet the requirements of subparagraph (3) (i) or (3) (iii) of this paragraph, 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.

(*b*) Not later than 10 days after the effective date of suspension of designation, pursuant to this subparagraph, 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 subparagraph (3) of this paragraph 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.

(*c*) Beginning with the effective date of a suspension pursuant to this subparagraph, 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 paragraph (b) of this section), 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.

(iv) No pool plant designation shall be suspended for failure to meet the requirements of subparagraph (3) (i) of this paragraph except under the following conditions:

(*a*) A meeting has been held, no sooner than three days after notice by the market administrator to all handlers operating reserve pool plants, 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.

(*b*) There has been issued by the market administrator, following such meeting, and mailed to all handlers operating reserve pool plants 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 (*a*) of this subdivision. 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 Class I–C to the extent of 50 percent of the milk received by a handler from producers which is ultimately distributed in the State of New York, in Northern New Jersey, in Fairfield County, Connecticut, or in Pennsylvania outside the counties of Allegheny, Beaver, Fayette, Greene, Washington, and Westmoreland. In addition, such specified classes may include all or a part of Class II and other I–C.

(*c*) 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 (*b*) of this subdivision: *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 (*b*) of this subdivision.

(v) The cancellation of pool plant designations for failure to meet the requirements of subparagraph (3) (i) of this paragraph shall be subject to the following conditions:

(*a*) 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 subdivision (iv) (*b*) of this subparagraph.

(*b*) 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 subdivision (iv) (*b*) of this subparagraph 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: *Provided*, That the limitations as to quantity and area set forth in the determination of the market administrator announced pursuant to subdivision (iv) (*b*) of this subparagraph shall apply in computing the utilization percentage of the individual handler but shall not apply in computing the utilization percentage of all handlers.

(*c*) 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 § 927.9 (f), 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 subdivision (iv) (*b*) of this subparagraph, or in accordance with the percentage set forth in (*b*) of this subdivision.

(*d*) 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 subdivision (iv) (*b*) of this subparagraph.

(vi) 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 a plant for failure to meet the requirements of subparagraph (3) (ii) of this paragraph, only if the absence of such approval continues for more than 15 days.

(5) *Plant replacements.* In addition to designations pursuant to subparagraph (2) of this paragraph, 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 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 subparagraph the designation of the plant or plants which it replaced shall be automatically cancelled.

(6) *Change of operator.* The designation of pool plants pursuant to this paragraph shall be considered as applicable to the plant as such, and subject to cancellation only pursuant to subparagraphs (4) and (5) of this paragraph, 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.

(b) *Plants shipping Class I–A milk to the marketing area.* For any month a plant from which during such month Class I–A milk, either directly or through other plants, is sold or distributed in or shipped to the marketing area, which quantity of milk during the months of July through March, is equal to more than 25 percent of the milk received directly from dairy farmers, or during the months of April through June is equal to more than 10 percent of the milk received directly from dairy farmers, shall automatically be designated a pool plant: *Provided,* That for the months of April, May, or June no plant at which milk was received from dairy farmers during the preceding period of October, November, and December shall be a pool plant on this basis, unless at least 60 percent of such milk was classified in Class I–A, and either directly, or through other plants, was sold or distributed in or shipped to the marketing area in the form of milk: *Provided, further,* That no plant shall be a pool plant on this basis 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 paragraph (a) (3) (i) of this section during the preceding year. 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 paragraph, in the computation of that uniform price.

§ 927.4 *Classification*—(a) *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 subparagraph (3) of this paragraph, and all milk entering the marketing area in the form of milk, fluid milk products, cultured or flavored milk drinks, cream, 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 following conditions:

(1) *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 or distributes in the marketing area milk, fluid milk products, cultured or flavored milk drinks, cream, fluid cream products, or skim milk to establish the source of all his milk or milk products.

(2) *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 at least 7 days shall constitute that portion of the handling of such cream required pursuant to paragraph (c) (5) (ii) of this section that is required to be performed during the month following its receipt from dairy farmers.

(3) *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 subdivisions (1) through (vi) of this subparagraph, 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 subdivisions (i) through (vi) of this subparagraph.

(i) The classification of milk shipped in the form of milk to a plant in the marketing area shall be determined at the plant from which such milk is shipped to the plant in the marketing area.

(ii) Except as set forth in subdivision (iii) of this subparagraph, the classification of milk the butterfat from which is shipped in the form of cream to a plant in the marketing area shall be determined at the plant from which such cream is shipped to the plant in the marketing area.

(iii) The classification of milk the butterfat from which is shipped in the form of cream to a plant in the marketing area shall be determined, if such cream is moved in the form of frozen desserts or homogenized mixtures or cream cheese either from the plant at which cream is first received in the marketing area or from the first plant to which cream is shipped from the plant where first received in the marketing area, at the first plant from which the frozen desserts or homogenized mixtures or cream cheese are so moved.

(iv) Except as set forth in subdivisions (v) and (vi) of this subparagraph, 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 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.

(v) The classification of milk shipped in the form of milk more than 65 miles from the plant where received from dairy farmers, to a plant outside New York State, Vermont, New Jersey, or Pennsylvania, or to a plant in the county of Alleghany, Beaver, Fayette, Greene, Washington or Westmoreland in Pennsylvania shall be determined at the plant from which the milk is so shipped.

(vi) The classification of milk the butterfat from which is shipped in the form of cream to a plant more than 65 miles from the plant where the milk was separated to a plant outside New York State, Vermont, New Jersey, or Pennsylvania, or to a plant in the county of Allegheny, Beaver, Fayette, Greene, Washington or Westmoreland in Pennsylvania shall be determined at the plant from which the cream is so shipped. This provision shall not apply to milk received from dairy farmers during April, May or June if such shipment is to a plant in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, Pennsylvania, Maryland, Delaware, or Ohio.

(4) *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 paragraph (b) of this section.

(5) *Accounting procedure.* The accounting procedure for classifying milk pursuant to this section shall be set up by the market administrator pursuant

to paragraph (b) of this section. 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 this section and which are not inconsistent with the following general principles:

(i) Milk, fluid milk products, cream, 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 differential.

(ii) If milk, cream, or skim milk is received at a plant from producers or from pool plants and in like form from dairy farmers not producers or from non-pool plants, the total milk equivalent of such products from producers and pool plants, and the total milk or milk equivalent from dairy farmers not producers and non-pool plants shall be assigned pro rata to the total classification of all such milk or milk equivalent and to all skim milk subject to the fluid skim differential after the assignment in accordance with subdivision (i) of this subparagraph.

(iii) The milk received from producers which is eliminated from the computation of the handler's net pool obligation pursuant to § 927.7 shall be assigned pro rata to the total classification of all milk from producers and pool plants.

(b) *Rules and regulations.* The rules and regulations to effectuate the terms and provisions of this section shall be made, and may from time to time be amended by the market administrator in accordance with the procedure set forth in this paragraph: *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 subparagraph (1) of this paragraph 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.

(1) 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.

(2) A period of at least five days after the meeting held pursuant to subparagraph (1) of this paragraph shall be allowed for the filing of briefs. Such briefs shall be public information available for inspection at the office of the market administrator.

(3) Not later than 30 days after a meeting held pursuant to subparagraph (1) of this paragraph 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.

(4) 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 subparagraph (1) of this paragraph.

(5) The tentative rules and regulations and amendments thereto or tentative notice issued pursuant to subparagraph (3) of this paragraph 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.

(c) *Classes of utilization.* Subject to all of the conditions set forth in paragraphs (a) and (b) of this section, milk shall be classified at the plant at which classification is to be determined as follows:

(1) Class I–A milk shall be all milk, except as provided in subparagraphs (2) and (3) of this paragraph, the butterfat from which leaves or is on hand at the plant in the form of 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 paragraph.

(2) Class I–B milk shall be all milk the butterfat from which leaves the plant in the form of 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 which is delivered to a plant or a purchaser in an area regulated by another order of the Secretary and remains outside the marketing area.

(3) Class I–C milk shall be all milk the butterfat from which leaves the plant in the form of 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 which is delivered to a plant or a purchaser in an area not regulated by another order of the Secretary and remains outside the marketing area.

(4) 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, 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, 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 paragraph.

(5) Class III milk shall be all milk which meets the conditions set forth in any one of the following subdivisions:

(i) 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, or fluid cream products which cream, fluid cream products, or cultured or flavored milk drinks are delivered to a plant or a purchaser outside the marketing area and remain outside the marketing area.

(ii) 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 subdivision shall be liable under the provisions of § 927.9 (e) 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 the requirements of this subdivision.

(iii) 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 paragraph.

§ 927.5 *Minimum 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. 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.

(a) *Class prices.* (1) Except as provided in subdivisions (i) and (ii) of this subparagraph, for Class I–A milk the price per hundredweight during each month shall be as set forth in the following table:

[U. S. Grade A or U. S. 92-score butter, wholesale, at New York, average price per pound announced pursuant to § 927.5 (g) (1) (i) for the period ending on the 24th of the preceding month, plus an amount calculated as follows: deduct four cents from the average dry skim milk or nonfat dry milk solids quotation per pound, announced pursuant to § 927.5 (g) (1) (iv) for the period ending on the 24th of the preceding month, and multiply by 1.8]

	Class I-A price	
	April through June	July thorugh March
Cents	*Dollars per cwt.*	*Dollars per cwt.*
Under 30	1.72	2.16
30 or over, but under 35	1.94	2.38
35 or over, but under 40	2.16	2.60
40 or over, but under 45	2.38	2.82
45 or over, but under 50	2.60	3.04
50 or over, but under 55	2.82	3.26
55 or over, but under 60	3.04	3.48
60 or over, but under 65	3.26	3.70
65 or over, but under 70	3.48	3.92
70 or over, but under 75	3.70	4.14
75 or over, but under 80	3.92	4.36
80 or over, but under 85	4.14	4.58
85 or over, but under 90	4.36	4.80
90 or over, but under 95	4.58	5.02
95 or over, but under 100	4.80	5.24

Should the butter-dry skim milk price combination set forth above be 100 cents or more, the Class I-A price shall be the price which would result from further extension of this table at the same rate to cover such butter-dry skim milk price combination.

(i) The Class I–A price for any of the months of March through June of each year shall not be higher than the Class I–A price for the immediately preceding month, and the Class I–A price for any of the months of September through December of each year shall not be lower than the Class I–A price for the immediately preceding month.

(ii) The Class I–A price per hundredweight for each of the months of January through June 1949 shall be the 201–210 mile zone price per hundredweight established under Order No. 4 for Class I milk containing 3.7 percent butterfat for the Greater Boston marketing area, minus 19 cents.

(2) For Class I–B milk the price during each month shall be the price for Class I–A milk.

(3) For Class I–C milk the price shall be the uniform price computed by the market administrator pursuant to § 927.7 (b) plus 20 cents per hundredweight.

(4) For Class II milk the price during each month shall be the sum of the amounts computed pursuant to subdivisions (i) and (ii) of this subparagraph.

(i)

[U. S. Grade A or U. S. 92-score butter, wholesale, at New York, average price announced pursuant to § 927.5 (g) (1) (i) for the period ending on the 24th of the preceding month]

	Class II price	
	March through July	August through February
Cents per pound	*Dollars per cwt.*	*Dollars per cwt.*
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.

(ii) Multiply by 7.5 the average of all the hot roller process dry skim milk or nonfat dry milk solids quotation 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.

(5) For Class III milk, the price shall be computed as follows: multiply the applicable butterfat value computed pursuant to subdivisions (i) or (ii) of this subparagraph by 3.5, add an amount obtained by multiplying by 7.5 the average of all 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," subtract 10 cents (transportation allowance) and subtract 70 cents (handling allowance). The butterfat value for the months of March through July shall be computed pursuant to subdivision (i) of this subparagraph, and the butterfat value for the months of August through February shall be computed pursuant to subdivision (ii) of this subparagraph: *Provided*, That during the months of August through February the butterfat value shall be no lower than that computed pursuant to subdivision (i) of this subparagraph.

(i) To the average of highest prices reported daily during such month 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, add two cents and multiply by 1.24.

(ii) Divide the weighted average price per 40-quart can of 40 percent bottling quality cream in the Boston market as reported by the United States Department of Agriculture for such month by 33.48. In the event that no such price is reported, the butterfat value shall be computed pursuant to subdivision (i) of this subparagraph.

(b) *Butterfat differentials.* The minimum price for Class I–A, Class I–B and Class I–C 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 paragraph (a) (4) (ii) of this section, and divide by 35.

(c) *Transportation differentials.* The market administrator shall, from time to time, determine and publicly announce for each pool plant the freight zone set forth in the following schedule: *Provided*, That no new freight zone for any pool plant for which a previously determined freight zone is in effect for the month of March 1949 shall be established by the market administrator for any month prior to January 1950. The freight zone for plants located in the marketing area shall be the 1–10 mile zone. The freight zones for plants outside the marketing area shall be based on the railroad mileage distance from the plant to New York City terminals to the nearest railway shipping point, or the shortest highway mileage distance from the plant to Columbus Circle, New York City, as computed from the latest mileage guide issued by the Household Goods Carriers' Bureau, Agent, Washington, D. C., whichever is shorter. The minimum prices set forth in paragraph (a) of this section shall be plus or minus the amounts as set forth in the following schedule:

A	B	C
Freight zone (miles)	Classes I–A, I–B and I–C and skim milk subject to the fluid skims differential	Classes II and III
	Cents per cwt.	*Cents per cwt.*
1–10	+15	+8
11–20	+14	+8
21–25	+13	+8
26–30	+13	+7
31–40	+13	+7
41–50	+10.5	+7
51–60	+10.5	+6
61–70	+9.5	+6
71–75	+8	+6
76–80	+8	+5
81–90	+8	+5
91–100	+7	+5
101–110	+7	+4
111–120	+6	+4
121–125	+5	+4
126–130	+5	+3
131–140	+5	+3
141–150	+3.5	+3
151–160	+2.5	+2
161–170	+2.5	+2
171–175	+1.5	+2
176–180	+1.5	+1
181–190	+1.5	+1
191–200	0.0	+1
201–210	0.0	0
211–220	−1	0
221–225	−1	0
226–230	−1	−1
231–240	−2	−1
241–250	−2	−1
251–260	−3.5	−2
261–270	−3.5	−2
271–275	−3.5	−2
276–280	−3.5	−3
281–290	−4.5	−3
291–300	−5.5	−3
301–310	−5.5	−4
311–320	−5.5	−4
321–325	−7	−4
326–330	−7	−5
331–340	−7	−5
341–350	−8	−5
351–360	−8	−6
361–370	−8	−6
371–375	−9	−6
376–380	−9	−7
381–390	−9	−7
391–400	−9	−7
401–410	−10.5	−8
411–420	−10.5	−8
421–425	−10.5	−8
426–430	−10.5	−9
431–440	−11.5	−9
441–450	−11.5	−9
451–460	−11.5	−10
461–470	−12.5	−10
471–475	−12.5	−10
476–480	−12.5	−11
481–490	−14	−11
491–500	−14	−11

(d) *Butter-cheese adjustment.* (1) For milk received from producers which is classified as Class III pursuant to § 927.4 (c) (5) (iii), 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 § 927.4 (a) (4) 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: *Provided*, 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
401–425	4
426–450	5
451–475	6
476–500	7

(2) 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 (i) the location of the plant at which the milk was received from producers, and (ii) the name of the handler operating such plant. Such public disclosure shall be made monthly on the basis of handler's monthly reports, and may be made more frequently on the basis of such other utilization reports as may be required by the market administrator.

(e) *Fluid skim differential.* For skim milk derived from Class II or Class III milk which enters the marketing area in the form of milk, fluid skim milk, or in the form of cultured or flavored milk drinks containing less than 3.0 percent or more than 5.0 percent of butterfat, and for all skim milk which is not accounted for in some product leaving or on hand at a plant, the handler shall pay a fluid skim differential per hundredweight computed as follows: deduct the price of Class II milk computed pursuant to paragraph (a) (4) of this section from the price for Class I–A milk computed pursuant to paragraph (a) (1) of this section, and divide by .9125.

(f) *Use of equivalent prices.* If for any reason a price (or prices) for milk or any milk product specified in this section 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 determined by the Secretary to be equivalent to or comparable with the price specified.

(g) *Announcement of prices.* The market administrator shall compute and publicly announce prices as follows:

(1) Not later than the 25th day of each month:

(i) 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.

(ii) The average, for the period beginning with the 25th of the immediately preceding month and ending with the 24th of the current month, of 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."

(iii) 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 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, animal feed, carlots, bags, or barrels."

(iv) The simple average of the averages computed pursuant to subdivisions (ii) and (iii) of this subparagraph.

(v) The preliminary Class I–A price for the following month pursuant to paragraph (a) (1) of this section.

(vi) The preliminary calculation for the following month pursuant to paragraph (a) (4) (i) of this section.

(2) Not later than the 5th day of each month for the preceding month:

(i) The minimum class prices, pursuant to paragraph (a) of this section.

(ii) The butterfat differentials, pursuant to paragraph (b) of this section.

(iii) The butter and cheese differential, pursuant to paragraph (d) of this section.

(iv) The fluid skim differentials, pursuant to paragraph (e) of this section.

(v) The weighted average price, as reported by the United States Department of Agriculture, per 40-quart can of 40 percent bottling quality cream in the Boston market.

(vi) The average 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.

(vii) The average of the prices (using 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."

§ 927.6 *Reports of handlers*—(a) *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 subject to payments under § 927.9 (h) were handled, the following:

(1) 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;

(2) 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;

(3) 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, such disposition to be covered by a signed statement of the plant operator if such other plant is not a pool plant;

(4) The computation pursuant to § 927.7 (a) of such handler's net pool obligation; and

(5) The computation of the amount of any payments pursuant to § 927.9 (h).

(b) *Producer pay roll reports.* Each handler shall report with respect to producers as follows:

(1) 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

(2) On or before the last day of each month, such handler's producer pay roll for the preceding month, which shall show for each producer:

(i) The total delivery of milk with the average butterfat test thereof,

(ii) The amount of payment due such producer,

(iii) Any deductions and charges made by the handler,

(iv) The net amount of payment to such producer made pursuant to § 927.8, and

(v) Such other information with respect thereto as the market administrator may require.

(c) *Storage cream reports.* (1) On or before the last day of the period for establishing classification pursuant to § 927.4 (a) (2), 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 § 927.4 (c) (5) (ii) 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 § 927.4 (c) (5) (ii).

(2) The handler who made reports pursuant to subparagraph (1) of this paragraph 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 § 927.9 (g) (2).

(d) *Other reports.* At such times 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:

(1) 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;

(2) The total quantity of milk and of each milk product moved out of, or on

hand at, his non-pool plants, the average butterfat content thereof, and the destination of any milk or milk product moved out of such plants;

(3) Information concerning land, buildings, surroundings, facilities, and equipment at any of his plants;

(4) The current receipts and utilization of milk at each of his pool plants; and

(5) Such other information as may be necessary for the administration of the provisions hereof.

(e) *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 other 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:

(1) Verify the receipts and disposition of all milk required to be reported pursuant to this section, and, in case of errors or omissions, ascertain the correct figures;

(2) Weigh, sample, and test for butterfat content the milk received from producers and any product of milk upon which classification depends;

(3) Verify the payments to producers prescribed in § 927.8; and

(4) Verify all claims for payments pursuant to § 927.9 (f) and (g).

(f) *Retention of records.* All books and records required under this order 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, except that all such books and records pertaining to transactions before August 1, 1946, shall be retained until October 1, 1949: *Provided,* That if, within such three-year period or before October 1, 1949, whichever is applicable, 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.

§ 927.7 *Determination of uniform price.* The uniform price shall be computed in accordance with the provisions set forth in this section. Milk received from farms in Nassau or Suffolk Counties, New York, which farms are not approved for sale of milk in New York City, or received from the handler's own farm shall not be included in this computation, and such milk shall be deemed to be excluded by the phrase, "milk received from producers" as such phrase is used in paragraphs (a) and (b) of this section, in paragraph (d) of § 927.5, in paragraphs (d), (f) and (g) of § 927.9 and in § 927.10.

(a) *Net pool obligation of handlers.* (1) Determine the classification pursuant to § 927.4 of milk received from producers at each pool plant;

(2) Subject to adjustment for appropriate differentials pursuant to § 927.5 (b) and (c), multiply the Class I–C milk by 20 cents per hundredweight, multiply the remaining milk in each class by the class price, multiply the skim milk subject to the fluid skim differential by the fluid skim differential per hundredweight, and add together the resulting values;

(3) 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 § 927.8 (c);

(4) 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 § 927.5 (c) applicable to the plant;

(5) Deduct the total amount of the butter-cheese adjustment computed pursuant to § 927.5 (d);

(6) With respect to milk received from producers, deduct 30 cents per hundredweight at plants in the marketing area; and 20 cents per hundredweight at plants located at Accord, Ellenville, Gardiner, Kyserike, New Paltz, Phinney's Crossing, Wallkill, and West Coxsackie, New York, and in the following counties:

NEW JERSEY COUNTIES

Burlington.	Somerset.
Essex.	Sussex.
Hunterdon.	Union.
Morris.	Warren.
Passaic.	

NEW YORK COUNTIES

Columbia.	Putnam.
Dutchess.	Rockland.
Orange.	

CONNECTICUT

Litchfield.

MASSACHUSETTS

Berkshire.

(7) Add together the handler's net pool obligation for all plants at which milk was received from producers.

(b) *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 § 927.9 (a) 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:

(1) Combine into one total the net pool obligations of all handlers;

(2) Subtract the total of payments required to be made for such month by § 927.9 (f);

(3) Add the total payments required to be made by handlers for such month pursuant to § 927.9 (h);

(4) Add the amount of unreserved cash in the producer settlement fund;

(5) Subtract an amount equal to not less than four cents nor more than five 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;

(6) Subtract the Class I–C milk of all handlers whose reports are included in this computation from the total milk received from producers by all such handlers; and

(7) Divide the result obtained in subparagraph (5) of this paragraph by the result obtained in subparagraph (6) of this paragraph. The result shall be known as the uniform price for milk containing 3.5 percent butterfat received from producers at plants in 201–210 mile zone.

(c) *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 paragraph (b) of this section, and not later than the 5th day of each month, the weighted average butterfat differential pursuant to § 927.8 (c).

§ 927.8 *Payment by handlers directly to producers.*—(a) *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 differentials set forth in paragraphs (b) and (c) of this section: *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 order, 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 finding 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 above-mentioned 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.

(b) *Transportation and location differentials.* The uniform price at any plant shall be:

(1) Plus or minus the differential shown in column B of the schedule contained in § 927.5 (c) for the zone of the plant in effect pursuant to § 927.5 (c); and

(2) Plus the differentials, if any, applicable pursuant to § 927.7 (a) (6) plus five cents.

(c) *Butterfat differential.* The uniform price shall be plus or minus, as the case may be, for each one-tenth of one 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 § 927.5 (b) 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.

§ 927.9 *Producer settlement fund and its operation.* 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 this section.

(a) *Handler's 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.

(b) *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 paragraph (a) of this section.

(c) *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 paragraph (a) of this section. 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 § 927.8, 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.

(d) *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:

(1) Add to each handler's net pool obligations the value of his Class I–C milk at the uniform price.

(2) Multiply the quantity of milk received by each handler from producers by the uniform price.

(3) If the result obtained in subparagraph (2) of this paragraph is less than the result in subparagraph (1) of this paragraph, the difference shall be entered on the handler's producer settlement fund account as such handler's pool debit.

(4) If the result obtained in subparagraph (2) of this paragraph is greater than the result in subparagraph (1) of this paragraph, the difference shall be entered on the handler's producer settlement fund account as such handler's pool credit.

(e) *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.

(f) *Cooperative payments.* Any cooperative association of producers may apply to the Secretary for a determination of its qualifications to receive payments pursuant to this paragraph by reason of its having and exercising full authority in the sale of the milk of its members; arranging for and supplying, in a manner commensurate with the marketing capacity of the several types of cooperative associations designated in this paragraph, in times of short supply, Class I milk to the marketing area; securing utilization of milk, in times of long supply, in a manner to assure the greatest possible return to all producers; having its entire activities under the control of its members; and complying with all provisions of this order applicable to it.

After the Secretary has determined any cooperative to be qualified to receive payments pursuant to this paragraph, such cooperative shall, from time to time, as requested by the market administrator, make reports to the market administrator with respect to services rendered to the market and the use of the sums received under this paragraph. Whenever the market administrator has reason to believe that any cooperative qualified by the Secretary is failing to perform the obligations covered by the payments under this paragraph, he shall suspend and hold in reserve such payments, notifying the Secretary and the cooperative of his action and the reasons therefor. Such suspended payments shall be held in reserve until the Secretary has, after hearing, disqualified such cooperative or ruled upon the performance of the cooperative and either ordered the suspended payments to be paid to the cooperative in whole or in part or disqualified the cooperative, in which event the balance of payments held in reserve shall be returned to the producer settlement fund.

The market administrator shall make the payments authorized by this paragraph, or issue credit therefor, out of the producer settlement fund on or before the 25th day of each month, subject to verification of the reports upon which such payment is based. Such payments shall be made to each cooperative association of producers under the following conditions and at the following rates:

(1) Three-quarters of one cent per hundredweight of milk received from producers at any handler's plant which was caused to be delivered from its members by such associations and on which such handler has made the reports and payments required by this order;

(2) Except as set forth in subparagraph (3) of this paragraph, two cents per hundredweight of milk received from producers at plants of other complying handlers which was reported and collected for by such association; and

(3) Four cents per hundredweight of milk received from producers at plants operated by such association and, if, in addition to the other qualifications, such association has been determined by the Secretary to have sufficient plant capacity to receive all the milk of producers who are members and to be willing and able to receive milk from producers not members, four cents per hundredweight of milk received from producers which was caused by it to be delivered to any other complying handler and which is reported and collected for by such association.

(g) *Storage cream payments.* (1) For milk received from producers which is classified as Class III pursuant to § 927.4 (a) (5) (ii) the butterfat from which is subsequently assigned in accordance with the provisions of the rules and regulations issued by the market administrator pursuant to § 927.4 (b) to sour cream or reconstituted cream shipped

to, received in, or distributed in the marketing area, or is not established to have been otherwise utilized, or to be still in storage, the handler required to file reports pursuant to § 927.6 (c) 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: *Provided*, That for butterfat in such milk separated in the months of April through July 1949, the payment shall be no greater than an amount computed as follows: multiply by 10 the Class II butterfat differential for the month when the butterfat was utilized in sour cream or reconstituted cream, subtract 4 cents, and subtract 10 times the butterfat differential for Class III for the month during which the cream was separated.

(2) On the basis of reports pursuant to § 927.6 (c) (2) of the utilization of frozen cream which cream was separated from milk received from producers, 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 and under conditions set forth in subdivision (i) and (ii) of this subparagraph.

(i) For cream which was separated in the months of April through September and was assigned, in accordance with the provisions of the rules and regulations issued by the market administrator pursuant to § 927.4 (b), to butter in the months of January through March, an amount per pound of butterfat equal to the butter-cheese adjustment.

(ii) For cream which was separated in the months of April through July 1949 and was assigned, in accordance with the provisions of the rules and regulations issued by the market administrator pursuant to § 927.4 (b), after July 1949 to products other than sour cream or reconstituted cream shipped to, received in, or distributed in the marketing area, or other than to butter in the month of January through March, any amount by which the butterfat value used in computing the Class III price for the month in which the butterfat was assigned is lower than the butterfat value used in computing Class III price for the month in which the milk was separated: *Provided*, That the amount per pound of butterfat shall be no greater than the butter-cheese adjustment.

(h) *Payments for milk or milk products from other than producer sources.* (1) Payment shall be made by handlers to producers, through the producer-settlement fund, for milk, fluid milk products, cultured or flavored milk drinks, cream, fluid cream products, or skim milk, which milk or milk product meets each of the following provisions:

(i) It was derived from milk received at some plant from dairy farmers (other than the handler operating such plant) who are not producers;

(ii) It was received at a plant in, or delivered to a purchaser in the marketing area, or was received at a pool plant outside the marketing area and assigned either to shipments to the marketing area of milk, fluid milk products, cultured or flavored milk drinks, cream, fluid cream products, or skim milk, or to plant loss; and

(iii) 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.

(2) The amount of payment for the products set forth in subparagraph (1) of this paragraph shall be as follows:

(i) 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 herein. The amount of payment on skim milk shall be an amount computed pursuant to § 927.5 (e).

(ii) If the milk or milk products is derived from milk the handling of which is not regulated by another order issued pursuant to the act, the amount of payment shall be as follows: For milk, fluid milk products, or for cultured or flavored milk drinks containing 3.0 percent or more but not more than 5.0 percent of butterfat, the difference between the value of such milk, fluid milk products, or cultured or flavored milk drinks at the Class I–A price in the 201–210 mile zone and the Class III price in the 201–210 mile zone; for cream, fluid cream products, or for cultured or flavored milk drinks containing less than 3.0 percent or more than 5.0 percent of butterfat, the difference between the value of the milk equivalent of such cream, or milk drinks at the Class II price and at the value computed at the Class III price (milk equivalent in each case to be computed on the basis of milk containing 3.5 percent of butterfat); and for skim milk (either as skim milk or in cultured or flavored milk drinks), the amount computed pursuant to § 927.5 (e).

(iii) In the event that the source of such milk or milk product is not revealed, the amount of the payment shall be as follows: On 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 at the Class I–A price in the 201–210 mile zone; on cream, 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 § 927.5 (a) (4) (i) (milk equivalent to be computed on the basis of milk containing 3.5 percent of butterfat); and on skim milk in the form of fluid skim milk or cultured or flavored milk drinks containing less than 3.0 percent or more than 5.0 percent of butterfat, the value at a rate per hundredweight computed as follows: Divide the amount computed pursuant to § 927.5 (a) (4) (ii) by 0.9125 and add an amount computed pursuant to § 927.5 (e).

(3) Payment for any milk or milk product pursuant to this paragraph shall be made only once and shall be made by the appropriate handler as set forth in the following provisions:

(i) By the handler first receiving the milk or milk product at a pool plant outside the marketing area;

(ii) 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; or

(iii) By the handler operating the plant from which the milk or milk product was delivered to a purchaser in 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.

(4) The amount due pursuant to this paragraph shall be entered on the handler's account as a debit immediately after the filing of the report pursuant to § 927.6 (a).

§ 927.10 *Expense of administration*—(a) *Payment by handlers.* As his pro rata share of the expense of administration hereof, 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, 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.

§ 927.11 *Termination of obligations.* The provisions of this section shall apply to any obligation under this order 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 order 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 order, to make available to the market administrator or his representatives all books and records required by this order to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the 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 order 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 order 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 § 927.9 (g), 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.

§ 927.12 *Suspension, termination, and liquidation*—(a) *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 hereof, 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 order; release or waive any violation of this order 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.

(b) *Continuing power and duty of market administrator.* The market administrator shall:

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

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

(3) 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 hereto.

(c) *Liquidation.* Upon the termination or suspension hereof, 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 hereof, 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.

§ 927.13 *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 hereof.

[F. R. Doc. 49-2003; Filed, Mar. 15, 1949; 8:56 a. m.]

[7 CFR, Part 944]

HANDLING OF MILK IN QUAD CITIES MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO A PROPOSED AMENDMENT TO TENTATIVE MARKETING AGREEMENT, AND TO ORDER, AS AMENDED

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and orders (7 CFR, Supps., 900.1 et seq.), notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to a proposed amendment to the tentative marketing agreemen and to the order, as amended, regulating the handling of milk in the Quad Cities marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, Room 1844, South Building, United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the 5th day after publication of this decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed amendment to the tentative marketing agreement and to the order, as amended, was formulated was conducted at Rock Island, Illinois, on January 7, 1949, pursuant to notice thereof which was issued on December 22, 1948 (13 F. R. 8717).

The material issues on the record related to (1) allocation of other source milk received in processed form, (2) revision of the price of skim milk used to produce condensed milk, and (3) revision of the Class IV price.

Findings and conclusions. The following findings and conclusions on these issues are based upon the evidence introduced at the hearing and the record pertaining thereto.

(1) The present method of allocating other source milk should be changed to require the deduction of other source milk received in the form of skim milk, condensed skim milk or nonfat dry milk solids from Class III to the extent that skim milk was used in the manufacture of ice cream or ice cream mix.

The proponents of the proposal are engaged in the manufacture of ice cream and ice cream mix They either have inadequate facilities for condensing or drying skim milk or are completely lacking in such facilities. In consequence they must purchase solids in the form of condensed skim milk or powder, usually from outside the market.

The provisions of the present order allocate producer milk to the highest classification in a handler's plant. Proponents contend they are penalized when the present allocation provisions of the order are applied in a situation where producer milk would be classified as Class III milk even though it were not available in a form in which it could be used for such purpose and was actually used in Class IV.

Skim milk which is purchased outside the market in the form of skim milk and later condensed by the handler and used in the manufacture of ice cream or ice cream mix should be allocated in the same manner as that which was condensed or dried before reaching the market.

(2) The price of skim milk used in the production of condensed milk (other than that used locally in ice cream) should be based on the price of nonfat dry milk solids. The proponents of the proposal contend that under the present Class III pricing formula the value of skim milk used in the production of condensed milk is often out of line with the national market for condensed milk. They have found it impossible to dispose of condensed made from producer milk outside the market except at a substantial loss. In consequence, large volumes of producer skim milk have been converted into casein or animal feed at the Class IV price. This has resulted in a lowering of the uniform price to producers. The interests of the entire market would be advanced by the establishment of a price for skim milk used in condensed which would more nearly reflect the national market for that product. The record indicates that the price of condensed milk bears a fairly close relationship to the

market for roller process nonfat dry milk solids, and the price of skim milk used in condensed should be based on this market.

The record further indicates that the present Class III price is proper for skim milk used locally in the manufacture of ice cream even though such skim milk must be condensed prior to its use in ice cream. Therefore the proposed price should not apply to skim milk which is condensed for use locally in ice cream.

The desired change in price can most readily be accomplished by establishing a Class III–A to include condensed milk, either skim or whole, except that which is used in the manufacture of ice cream within or for sale or disposition within the marketing area. A Class III–A price should be established which would continue the present Class III value for butterfat, but which would price the skim milk in relation to the value of nonfat dry milk solids.

(3) The Class IV price should be revised. There is a likelihood that the casein quotation which is currently used as a part of the formula for establishing the Class IV price will be discontinued. Therefore, it is necessary that some other basis be adopted. Since no evidence was presented to indicate any need for a change in the level of the Class IV price, the new formula should be that which would result in a price most nearly equal to that resulting from the present formula. Of the several formulas discussed on the record, the following would result in a price most nearly equal to the existing butter-casein formula: Multiply the price of Cheddars on the Wisconsin Cheese Exchange by 2.4 and multiply the result by 3.5. This formula should be adopted as the basis for pricing Class IV milk.

Because the value of whole milk should never be less than the value of the butterfat contained therein, provision should be made that the Class III price shall never be lower than the value of the butterfat in such milk at the butterfat differential. While it is extremely unlikely that such a situation would develop, it could possibly happen in a period of rapidly changing prices if the price of cheese were to fall substantially in relation to the price of butter. The present formula would prevent the Class III price from ever falling below the value of butterfat and the same safeguard should be provided in the proposed amendment.

General findings. (a) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act.

(b) The prices calculated to give milk produced for sale in the said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 8e 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 of and demand for such milk, and the minimum prices specified in the proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in a public interest; and

(c) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further 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 hearings have been held.

Rulings on proposed findings and conclusions. Briefs were filed on behalf of the Quad Cities Association of Milk Dealers, the Quality Milk Association and the Illinois-Iowa Milk Producers Association, Inc. The briefs contain statements of fact, conclusions and arguments with respect to the provisions of the proposed amendments. Every point covered in the briefs was carefully considered along with the evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. To the extent that the findings and conclusions proposed in the briefs are inconsistent with the proposed findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of the facts found and stated in connection with the conclusions in this decision.

Recommended marketing agreement and amendment to the order. The following amendment to the order, as amended, is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be identical with those contained in the order, as amended, and as hereby proposed to be further amended.

1. Amend § 944.2 (c) (10) (i) (*b*) to read as follows:

(*b*) The minimum prices for Class III milk, Class III–A milk, and Class IV milk computed pursuant to § 944.5 (a) (3), (4), and (5) for the previous delivery period and the butterfat differentials computed pursuant to § 944.5 (b) (3), (4), and (5) for the previous delivery period, and

2. Amend § 944.4 (b) (1) to read as follows:

(1) "Class I milk" shall be all skim milk and butterfat disposed of in fluid form for consumption as skim milk or milk and all skim milk and butterfat not specially accounted for under subparagraphs (2), (3), (4), or (5) of this paragraph.

3. Amend § 944.4 (b) (3) to read as follows:

(3) "Class III milk" shall be all skim milk and butterfat used to produce evaporated milk, ice cream and ice cream mix, condensed milk which is used in the manufacture of ice cream within or for sale or disposition within the marketing area, cottage cheese, unsalted butter, or any milk product other than those specified in Class II milk, Class III–A milk, or Class IV milk.

4. Delete § 944.4 (b) (4) and substitute therefor the following:

(4) "Class III–A milk" shall be all skim milk and butterfat used to produce plain or sweetened condensed skim milk and plain or sweetened condensed whole milk: *Provided*, That such product is not used in the manufacture of ice cream within or for sale or disposition within the marketing area by the handler who received the milk from producers or by any other person.

5. Add as § 944.4 (b) (5) the following:

(5) "Class IV milk" shall be all skim milk disposed of as animal feed and all skim milk and butterfat: (i) Used to produce salted butter, casein, and American type Cheddar cheese; (ii) in shrinkage up to 2 percent of receipts from producers and cooperative associations and of emergency milk; and (iii) in shrinkage of other source milk.

6. Amend § 944.4 (g) to read as follows:

(g) *Computation of skim milk and butterfat in each class.* For each delivery period the market administrator shall correct mathematical and other obvious errors in the delivery period report submitted by each handler and shall compute the total pounds of skim milk and butterfat, respectively, in Class I milk, Class II milk, Class III milk, Class III–A milk, and Class IV milk.

7. Amend § 944.4 (h) (1) (ii) to read as follows:

(ii) Subtract from the remaining pounds of skim milk in each class, in series beginning with the lowest priced class in which the handler has use, the pounds of skim milk contained in other source milk: *Provided*, That in the case of a handler who manufactures ice cream or ice cream mix, other source milk received in the form of skim milk, condensed skim milk, or nonfat dry milk solids shall be subtracted from the remaining pounds of skim milk in Class III but not in excess of the amount of skim milk used in the manufacture of ice cream and ice cream mix.

8. Delete § 944.5 (a) (4) and substitute therefor the following:

(4) *Class III–A milk.* The price resulting from the following computation: Multiply by 3.5 the average daily wholesale price per pound of 92-score butter in the Chicago market as reported by the Department of Agriculture during the delivery period; add 20 percent thereof; and add any plus amount resulting from the following calculation: Subtract 5.5 cents from the average price per pound of nonfat dry milk solids, roller process, for human consumption, f. o. b. manufacturing plants, as reported by the Department of Agriculture for the Chicago area, during the delivery period, and multiply by 8.5.

9. Add as § 944.5 (a) (5) the following:

(5) *Class IV milk.* The higher of the prices resulting from the following computations:

(i) Multiply by 2.4 the average of the weekly prices of the cheese known as "Cheddars" on the Wisconsin Cheese Exchange at Plymouth, Wisconsin, as reported by the Department of Agriculture during the delivery period and multiply

such result by 3.5. If there are no sales on the Exchange during any week, the last previously quoted price shall be used as the price for that week in making these computations.

(ii) Multiply by 3.5 the average daily wholesale price per pound of 92-score butter in the Chicago market as reported by the Department of Agriculture during the delivery period and add 20 percent thereof.

10. Delete § 944.5 (b) (4) and substitute therefor the following:

(4) *Class III–A milk.* Multiply the average daily wholesale price per pound of 92-score butter in the Chicago market as reported by the Department of Agriculture during the delivery period in which the milk was received by 1.20 and divide the resulting amount by 10.

11. Add as § 944.5 (b) (5) the following:

(5) *Class IV milk.* Multiply the average daily wholesale price per pound of 92-score butter in the Chicago Market as reported by the Department of Agriculture during the delivery period in which the milk was received by 1.20 and divide the resulting amount by 10.

Filed at Washington, D. C., this 10th day of March 1949.

[SEAL] JOHN I. THOMPSON,
Assistant Administrator.

[F. R. Doc. 49–1962; Filed, Mar. 15, 1949; 8:55 a. m.]

[7 CFR, Part 946]

[Docket No. AO–123 A–10]

HANDLING OF MILK IN LOUISVILLE, KY., MILK MARKETING AREA

NOTICE OF HEARING ON PROPOSED AMENDMENT TO TENTATIVE MARKETING AGREEMENT, AND TO ORDER, AS AMENDED

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. and Sup. I 601 et seq.), and in accordance with the applicable rules of practice and procedure, as amended (7 CFR and Supps. Part 900; 13 F. R. 8585), notice is hereby given of a public hearing to be held at the Kentucky Hotel, Louisville, Kentucky, beginning at 9:30 a. m., c. s. t., March 23, 1949, for the purpose of receiving evidence with respect to proposed amendments hereinafter set forth, or appropriate modifications thereof, to the tentative marketing agreement heretofore approved by the Secretary of Agriculture and to the order, as amended, regulating the handling of milk in the Louisville, Kentucky, milk marketing area (7 CFR and Supps. Part 946.0; 13 F. R. 5112, 13 F. R. 7294, 14 F. R. 791). These proposed amendments have not received the approval of the Secretary of Agriculture.

Amendments to the order (No. 46), as amended, for the Louisville, Kentucky, milk marketing area were proposed, as follows:

By the Scottsburg Dairy, Inc.:

1. Amend § 946.1 (c) so as to eliminate the town of Charlestown, Indiana, from the Louisville, Kentucky, marketing area.

By the Falls Cities Cooperative Milk Producers' Association, Inc.:

2. Delete § 946.1 (e) (2) and substitute therefor:

(2) Received at a plant approved by the appropriate health authority in the marketing area to furnish and from which milk or cream is furnished to a plant described under subparagraph (1) of this paragraph which owns and operates said receiving plant; or received at a plant approved by the appropriate health authority in the marketing area to furnish milk or cream which is diverted by a plant described under subparagraph (1) of this paragraph in the marketing area to any other milk distributing or milk manufacturing plant: *Provided*, That any such milk so diverted shall be deemed to have been received at the plant from which it was diverted.

3. Delete § 946.1 (e) (3) and substitute the following:

(3) Received at a plant approved by the appropriate health authority in the marketing area to furnish and from which is furnished milk or cream to a plant described under subparagraph (1) of this paragraph: *Provided*, That no milk or cream is disposed of in the marketing area by the approved receiving plant for human consumption as fluid milk or fluid cream.

4. Renumber § 946.1 (f) (2) to § 946.1 (f) (3) and add the following:

(2) Any person who receives milk produced under a dairy farm inspection permit issued by the appropriate health authority in the marketing area at a plant described in paragraph (e) (3) of this section: *Provided*, That such plant beginning after March 31, 1949, has within the delivery periods of September, October, November, December, January, February, and March furnished milk or cream to a plant described under paragraph (e) (1) of this section, in an amount equal to 95 percent of its entire receipts from producers during each of the delivery periods of October through February and 25 percent of its entire receipts from producers during the delivery periods of September and March.

5. Add a new subparagraph to § 946.1 (f) to read as follows:

(4) *Disqualifications.* A plant described under paragraph (e) (3) of this section shall be disqualified as a handler under either of the following circumstances:

(i) If such plant furnishes less than 95 percent of producer receipts during any of the delivery periods of October, November, December, January, and February or less than 25 percent of producer receipts in either of the months of September or March, to a plant described under paragraph (e) (1) of this section; such disqualification to be effective at the beginning of the first delivery period following the date of the determination of the Market Administrator that less than the required amount of producer milk was furnished to a plant described under paragraph (e) (1) of this section. The Market Administrator shall immediately after such determination, but not later than the 15th day after the end of the delivery period for which the handler is to be disqualified, notify the producers delivering to such plant of its disqualification effective on the first day of the next succeeding delivery period after the notice is given and notice shall also be given in the same period to the qualified cooperative associations. The notices shall be in writing addressed to the last known address of the parties to be notified; or

(ii) Upon prior written request for disqualification by a handler; such request to be made on or before the 15th day of any delivery period; such disqualification to be effective at the beginning of the first delivery period following the Market Administrator's receipt of such request within which no milk was furnished by such plant to a plant described under paragraph (e) (1) of this section, the Market Administrator shall immediately notify in writing at his last known address each producer delivering to such plant and the qualified cooperative associations of such plant's disqualification.

By the Dairy Branch, Production and Marketing Administration:

6. Delete § 946.3 (b) (1) and substitute therefor the following:

(1) Class I milk shall be all skim milk and butterfat (i) disposed of in fluid form as milk, skim milk, buttermilk, and milk drinks, whether plain or flavored, and (ii) not specifically accounted for as Class II milk or Class III milk, except that this definition shall not include any of the products mentioned in subdivision (i) of this subparagraph disposed of in bulk to any manufacturer of candy, soup, or baking products who does not dispose of any products mentioned in subdivision (i) of this subparagraph in fluid form.

7. Delete § 946.3 (b) (2) and substitute therefor the following:

(2) Class II shall be all skim milk and butterfat disposed of as fluid cream (including sour cream), eggnog, and any cream product disposed of in fluid form which contains less than the minimum butterfat content required for fluid cream, except that this definition shall not include any of the cream, eggnog, or fluid cream products disposed of in bulk to any manufacturer of candy, soup, or baking products, who does not dispose of cream, eggnog, or fluid cream products in fluid form.

8. Delete § 946.3 (b) (3) and substitute therefor the following:

(3) Class III milk shall be all skim milk and butterfat accounted for (i) as used to produce a product other than those specified in Class I milk and Class II milk, (ii) all skim milk and butterfat which is contained in products disposed of in bulk to any manufacturer of candy, soup, or baking products pursuant to the exceptions in subparagraphs (1) and (2) of this paragraph, (iii) as actual plant shrinkage of skim milk and butterfat in milk received from producers, but not to exceed 2 percent of such receipts of skim milk and butterfat, respectively, and (iv) as actual plant

shrinkage of skim milk and butterfat in other source milk: *Provided*, That if milk is diverted by a handler to a plant of another handler without first having been received for purpose of weighing and testing in the diverting handler's plant, the respective quantities of skim milk and butterfat contained in such milk shall be included in the receipts of skim milk and butterfat, respectively, of the second handler in computing his plant shrinkage and shall be excluded from the receipts of skim milk and butterfat, respectively, of the diverting handler in the latter's plant shrinkage computation: *And provided further*, That (*a*) if skim milk and butterfat received by a handler at a plant described under subparagraphs (1) or (2) of § 946.1 (e) is commingled with receipts of another plant of such handler the shrinkage of skim milk or butterfat, respectively, allocated to the milk received from producers and other sources shall not exceed its pro rata share computed on the basis of the proportions of such volumes of skim milk and butterfat, respectively, received from the various sources to their total, and (*b*) if skim milk and butterfat received by a handler at a plant described under subparagraphs (1) and (2) of § 946.1 (e) is transferred as fluid milk, skim milk, or cream from such a plant of the handler to any other plant of such handler under supporting transfer records satisfactory to the market administrator, the shrinkage of skim milk and butterfat, respectively, on the aforesaid transferred portion shall be computed on a pro rata basis with the skim milk and butterfat, respectively, contained in all fluid milk, skim milk, and cream received in the latter plant and added to the shrinkage of skim milk and butterfat of producer's milk and other source milk handled by such handler in the plants described in § 946.1 (e) (1) and (2).

9. Amend subparagraph (1) (i), (1) (ii), (3), and (4) of paragraph (c) of § 946.3 by substituting the words "fluid cream" for the word "cream" wherever it appears.

10. Amend § 946.3 (d) (3) by substituting the words "disposed of in the form of milk, skim milk, buttermilk, and milk drinks, whether plain or flavored," for the words "disposed of in the form of milk buttermilk, and milk drinks, whether plain or flavored".

11. Delete § 946.5 (d) (2) and substitute therefor the following:

(2) If, in the verification of the reports of any handler made pursuant to paragraph (a) of this section, it is necessary for the market administrator to examine the records of milk and milk products handled in a plant of a handler from which no milk is disposed of in the marketing area, such handler shall make such records available to the market administrator. If, in the verification of the reports of any handler made pursuant to paragraph (a) of this section, the market administrator finds that any skim milk or butterfat was used or reused by such handler or by another handler in a class other than that in which it was first classified such skim milk or butterfat shall be reclassified accordingly and the adjustments necessary to reflect the reclassified value of such skim milk or butterfat shall be made in the billing computed for such handler for the delivery period following such reclassification.

By the Falls Cities Cooperative Milk Producers' Association, Inc.:

12. Amend § 946.4 (b) (1) to reconsider the level of Class I prices.

13. Amend § 946.4 (b) (1) by adding a proviso, as follows:

Provided, That beginning September 1, 1949, the Class I price for any of the months of April, May, and June of each year shall not be higher than the effective Class I price for the immediate preceding month; and the Class I price for any of the months of September, October, and November of each year shall not be lower than the effective Class I price for the immediate preceding month.

14. Amend § 946.4 (b) (2) to reconsider the level of Class II prices.

15. Amend § 946.4 (b) (2) by adding a proviso, as follows:

Provided, That beginning September 1, 1949, the Class II price for any of the months of April, May, and June of each year shall not be higher than the effective Class II price for the immediate preceding month; and the Class II price for any of the months of September, October, and November of each year shall not be lower than the effective Class II price for the immediate preceding month.

By Purity Maid Products Company, Inc.:

16. Amend § 946.4 (b) by adding a new subparagraph to read as follows:

(4) *Sales outside of the marketing area.* The price to be paid producers by a handler for Class I milk disposed of outside of the marketing area, in lieu of the price otherwise applicable pursuant to this section, except during the months of September, October, and November, shall be the Class II price.

By the Louisville Milk Dealers Association:

17. Delete § 946.7 (a) and substitute therefor the following:

(a) *Computation of value for each handler.* For each delivery period the market administrator shall compute, subject to the provisions of paragraph (b) of § 946.6, the value of milk of producers received by each handler, by multiplying the quantity in each class, computed pursuant to § 946.3 (f), by the price applicable to such class and adding together such amounts: *Provided*, That if such handler uses butterfat from producers' milk to produce butter, an allowance shall be made in the value of milk computed for such handler at the rate of 0.10 times the average daily wholesale price per pound of 92-score butter in the Chicago market, as reported by the Department of Agriculture during the delivery period, on such butterfat so used. If such handler utilizes other source milk in milk products, the amount of butter allocated to butterfat in milk received from producers shall be a pro rata share based upon the respective volumes of butterfat from each source utilized in milk products.

18. Any other section of Order No. 46, as amended, that may be directly or indirectly affected by proposal No. 17 should be opened for consideration and amendment.

By the Falls Cities Cooperative Milk Producers' Association, Inc.:

19. Consider a reduction in the rates of deductions specified in § 946.7 (b) (3) and a revision in the method of payment of fall production premiums specified in § 946.8 (d) (2).

By the Dairy Branch, Production and Marketing Administration:

20. Delete § 946.9 (a) and substitute therefor the following:

(a) *Deductions for marketing services.* Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 946.8 (a), shall deduct 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers during the delivery period (excluding such handler's own farm production), and shall pay such deductions to the market administrator on or before the 15th day after the end of such delivery period. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received by handlers from such producers and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

21. Amend § 946.10 to provide for an increase in the funds for maintenance and functions of the market administrator in the administration of the order.

22. Make such other changes as may be required to make the entire marketing agreement and the order, as amended, conform with any amendment thereto which may result from this hearing.

The proposals to delete the present special price for a limited quantity of butterfat used in the production of butter during the months of April, May, and June, and substitute therefor a special price for unlimited quantities of butterfat used in the production of butter during all months of the year; and to consider amendments to any other section of the order which may be directly or indirectly affected by the proposal for such special price, raise the question as to whether the price of skim milk and butterfat used to produce butter, as well as other products in Class III milk, should be considered for all months of the year, including the months of April, May, and June. Accordingly, evidence with respect to this question will also be received at the hearing.

Copies of this notice of hearing and of the tentative marketing agreement, and the order, as amended, now in effect, may be procured from the Market Administrator, 1235 Starks Building, Louisville, Kentucky, or from the Hearing Clerk, Room 1846, South Building, United States Department of Agriculture, Washington 25, D. C., or may be there inspected.

Dated: March 11, 1949.

[SEAL] JOHN I. THOMPSON,
Assistant Administrator.

[F. R. Doc. 49-2005; Filed, Mar. 15, 1949; 8:58 a. m.]

[7 CFR, Part 970]

[AMA Docket No. AO 174-A3]

HANDLING OF MILK IN CLINTON, IOWA, MILK MARKETING AREA

NOTICE OF EXTENSION OF TIME FOR FILING WRITTEN EXCEPTIONS TO RECOMMENDED DECISION

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and orders (7 CFR Supps. 900.1 et seq.), notice is hereby given that the time within which interested parties may file exceptions to the recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to a proposed amendment to the tentative marketing agreement and order, as amended, regulating the handling of milk in the Clinton, Iowa, milk marketing area, which recommended decision was published in the FEDERAL REGISTER of March 5, 1949 (14 F. R. 1012), is hereby extended so that such written exception may be filed not later than the close of business on the 10th day after such publication.

Dated: March 9, 1949.

[SEAL] F. R. BURKE,
Acting Assistant Administrator.

[F. R. Doc. 49-1961; Filed, Mar. 15, 1949; 8:54 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Order No. 370]

DELEGATION OF AUTHORITY TO REGIONAL ADMINISTRATORS

MARCH 10, 1949.

Pursuant to the authority delegated to me by Departmental Order No. 2441 of July 8, 1948, the regional administrators are hereby authorized to initiate Government contests against claims asserted to public lands.

MARION CLAWSON,
Director.

[F. R. Doc. 49-1977; Filed, Mar. 15, 1949; 8:45 a. m.]

ALASKA

NOTICE FOR FILING OBJECTIONS TO ORDER MODIFYING EXECUTIVE ORDER NO. 8480 OF JULY 12, 1940, AND RESERVING CERTAIN LANDS FOR USE OF ALASKA RAILROAD AS RAILROAD RESERVE [1]

For a period of 60 days from the date of publication of the above entitled order, persons having cause to object to the terms thereof may present their objections to the Secretary of the Interior. Such objections should be in writing, should be addressed to the Secretary of the Interior, and should be filed in duplicate in the Department of the Interior, Washington 25, D. C. In case any objection is filed and the nature of the opposition is such as to warrant it, a public hearing will be held at a convenient time and place, which will be announced, where opponents to the order may state their views and where the proponents of the order can explain its purpose, intent, and extent. Should any objection be filed, whether or not a hearing is held, notice of the determination by the Secretary as to whether the order should be rescinded, modified or let stand will be given to all interested parties of record and the general public.

J. A. KRUG,
Secretary of the Interior.

MARCH 9, 1949.

[F. R. Doc. 49-1976; Filed, Mar. 15, 1949; 8:55 a. m.]

[1] See F. R. Doc. 49-1975, Title 43, Chapter I, Appendix, *supra*.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

[Administrative Order 1897]

LOAN ANNOUNCEMENT

MARCH 3, 1949.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Nebraska 51W Burt District Public	$410,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 49-1963; Filed, Mar. 15, 1949; 8:46 a. m.]

[Administrative Order 1898]

LOAN ANNOUNCEMENT

MARCH 3, 1949.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Iowa 31N Grundy	$340,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 49-1964; Filed, Mar. 15, 1949; 8:46 a. m.]

[Administrative Order 1899]

LOAN ANNOUNCEMENT

MARCH 3, 1949.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Mississippi 30S Jones	$985,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 49-1965; Filed, Mar. 15, 1949; 8:46 a. m.]

[Administrative Order 1900]

LOAN ANNOUNCEMENT

MARCH 4, 1949.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Louisiana 13S East Baton Rouge	$230,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 49-1966; Filed, Mar. 15, 1949; 8:46 a. m.]

[Administrative Order 1901]

LOAN ANNOUNCEMENT

MARCH 4, 1949.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
North Carolina 59H Beaufort	$350,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 49-1967; Filed, Mar. 15, 1949; 8:46 a. m.]

[Administrative Order 1902]

LOAN ANNOUNCEMENT

MARCH 4, 1949.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Georgia 58R Butts	$325,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 49-1968; Filed, Mar. 15, 1949; 8:46 a. m.]

[Administrative Order 1903]

LOAN ANNOUNCEMENT

MARCH 4, 1949.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Florida 33D Pasco	$290,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 49-1969; Filed, Mar. 15, 1949; 8:47 a. m.]

[Administrative Order 1904]

LOAN ANNOUNCEMENT

MARCH 4, 1949.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Pennsylvania 14N Clearfield	$415,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 49-1970; Filed, Mar. 15, 1949; 8:47 a. m.]

FEDERAL POWER COMMISSION

[Docket No. E-6125]

SOUTHWESTERN POWER ADMINISTRATION

NOTICE OF ORDER CONFIRMING AND APPROVING TEMPORARY RATE SCHEDULE

MARCH 10, 1949.

Notice is hereby given that, on March 9, 1949, the Federal Power Commission issued its order entered March 8, 1949, confirming and approving temporary rate schedule until June 30, 1949, in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-1971; Filed, Mar. 15, 1949; 8:45 a. m.]

EASTERN KANSAS UTILITIES, INC.

NOTICE OF ORDER APPROVING DISPOSITION OF AMOUNTS CLASSIFIED IN ELECTRIC PLANT ACQUISITION ADJUSTMENTS

MARCH 10, 1949.

Notice is hereby given that, on March 8, 1949, the Federal Power Commission issued its order entered March 8, 1949, approving disposition of amounts classified in Account 100.5, Electric Plant Acquisition Adjustments, in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-1974; Filed, Mar. 15, 1949; 8:45 a. m.]

[Docket No. IT-5500]

CHICAGO DISTRICT ELECTRIC GENERATING CORP.

NOTICE OF ORDER MODIFYING ORDER REDUCING RATES

MARCH 10, 1949.

Notice is hereby given that, on March 8, 1949, the Federal Power Commission issued its order entered March 8, 1949, modifying Opinion No. 63 and order dated July 16, 1941, reducing rates in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-1972 Filed, Mar. 15, 1949; 8:45 a. m.]

[Project No. 1924]

F. J. YOUNG AND JOE SCANAVINO

NOTICE OF ORDER DISMISSING APPLICATION FOR LICENSE (MINOR)

MARCH 10, 1949.

Notice is hereby given that, on March 9, 1949, the Federal Power Commission issued its order entered March 8, 1949, dismissing application for license (minor) in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-1973; Filed, Mar. 15, 1949; 8:47 a. m.]

FEDERAL TRADE COMMISSION

[Docket No. 5560]

CONTAINER MFG. CO.

ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 7th day of March A. D. 1949.

In the matter of Container Manufacturing Company, a corporation, and Max Sax, Jack B. Schiff, and William Stone, individuals and officers of Container Manufacturing Company.

This matter being at issue and ready for the taking of testimony and the receipt of evidence, and pursuant to authority vested in the Federal Trade Commission.

It is ordered, That W. W. Sheppard, a trial examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony and the receipt of evidence begin on Monday, March 28, 1949, at ten o'clock in the forenoon of that day (c. s. t.), in Room 425, U. S. Court House and Custom House, St. Louis, Missouri.

Upon completion of the taking of testimony and receipt of evidence in support of the allegations of the complaint, the trial examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondents. The trial examiner will then close the taking of testimony and evidence and, after all intervening procedure as required by law, will close the case and make and serve on the parties at issue a recommended decision which shall include recommended findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and an appropriate recommended order; all of which shall become a part of the record in said proceeding.

By the Commission:

[SEAL] D. C. DANIEL,
Secretary.

[F. R. Doc. 49-1987; Filed, Mar. 15, 1949; 8:49 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-2042]

WEST PENN ELECTRIC CO. AND WEST PENN POWER CO.

SUPPLEMENTAL ORDER GRANTING AND PERMITTING JOINT APPLICATION-DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 9th day of March A. D. 1949.

The West Penn Electric Company ("West Penn Electric"), a registered holding company, and West Penn Power Company ("Power"), a subsidiary of West Penn Electric, having filed with this Commission a joint application-declaration pursuant to the Public Utility Holding Company Act of 1935 and certain rules and regulations promulgated thereunder regarding in part the issuance and sale by Power, at competitive bidding pursuant to Rule U-50, of $10,000,000 principal amount of First Mortgage Bonds, Series N, due 1979, and 50,000 shares of Series C Preferred Stock, par value $100 per share;

The Commission having by order dated March 1, 1949, granted and permitted effectiveness to this joint application-declaration, subject, among other things, to the condition that the proposed issuance and sale of these securities should not be consummated until the results of competitive bidding had been made a matter of record in this proceeding and a further order entered by the Commission on the basis of the record as so completed;

Power now having filed an amendment to the joint application-declaration setting forth the action taken by it to comply with the requirements of Rule U-50 and stating that pursuant to the invitation for competitive bids, the following bids were received:

BOND BIDS

Bidder	Interest rate	Price	Cost of money to the company
	Pct.		*Pct.*
Halsey, Stuart & Co., Inc.	2¾	100.71	2.839680
Kidder, Peabody & Co.	2¾	100.197	2.865170
Lehman Bros.	2¾	100.1819	2.865923
Harriman Ripley & Co.	2¾	100.133	2.868360
W. C. Langley & Co.	2⅞	100.119	2.869058
The First Boston Corp.	3	102.229	2.888415

PREFERRED STOCK BIDS

Bidder	Dividend rate	Price	Compensation	Cost of money to the company
	Pct.			*Pct.*
Lehman Bros.	4.10	102.50	$1.79	4.071095
W. C. Langley & Co.	4.10	102.50	1.80	4.071499
Smith, Barney & Co.	4.00	100.00	1.80	4.073319
Kidder, Peabody & Co.	4.00	100.00	1.89	4.077056
Harriman Ripley & Co.	4.00	100.00	2.70	4.110996
The First Boston Corp.	4.05	100.75	2.80	4.134762

COMBINATION BIDS

Bidder	Interest or dividend rate	Price	Cost of money to the company
W. C. Langley & Co.:	*Pct.*		*Pct.*
Bonds	2⅞	100.235	2.863276
Preferred stock	4.10	[1] 102.50	4.071499
Kidder, Peabody & Co.:			
Bonds	2¾	100.211	2.864472
Preferred stock	4	[2] 100	4.077056
The First Boston Corp.:			
Bonds	3	102.285	2.885654
Preferred stock	4.05	[3] 100.75	4.130545

[1] Compensation $1.80 per share.
[2] Compensation $1.89 per share.
[3] Compensation $2.70 per share.

It further appearing that Power has accepted the bid of Halsey, Stuart & Co., Inc. for the Bonds and the bid of Lehman Brothers for the Preferred Stock; that the Bonds are to be resold to the public at 101.10, plus accrued interest from March 1, 1949, representing a spread to the underwriters of 0.390% on said bonds, that the Preferred Stock is to be resold to the public at the bid price of $102.50, plus accrued dividends from March 1, 1949, that the compensation to the successful bidders for underwriting this stock is $1.79 per share; and that, on the basis of the market price for the common stock of Power on March 8, 1949, a warrant for a full share of new common stock of Power has been assigned a value of $1.38, the price which West Penn Electric will pay for such warrants not exercised (the price of the new common stock upon exercise of the warrant being $28.50), fractional warrants to be acquired by West Penn Electric, to the extent offered, at the aliquot part of $1.38 per full warrant;

The record also having been completed with respect to fees and expenses to be paid by Power and West Penn Electric in connection with the proposed transactions and the fees and expenses to be borne by the successful bidders, among these fees to be borne by Power are fees payable to Sullivan & Cromwell, New York, New York, in the aggregate amount of $9,750 and fees payable to Steptoe and Johnson, Clarksburg, West Virginia, in the aggregate amount of $500; fees to be borne by West Penn Electric payable to Sullivan & Cromwell $250; and fees of counsel for the successful bidders Simpson, Thacher & Bartlett, New York, New York, aggregating $9,000, of which $5,000 is applicable to the Bonds, and $4,000 is applicable to the Preferred Stock;

It is ordered, That said joint application-declaration, as amended, be and the same hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed by Rule U-24 and to the further condition that the reservation of jurisdiction with respect to the payment of fees and expenses applicable to these transactions and heretofore reserved by the Commission, be, and the same hereby is released.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 49-1979; Filed, Mar. 15, 1949; 8:47 a. m.]

[File Nos. 54-126, 59-76, 70-2039]

EASTERN GAS AND FUEL ASSOCIATES

MEMORANDUM OPINION AND ORDER PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 9th day of March 1949.

In the matter of Eastern Gas and Fuel Associates, File No. 70-2039; Eastern Gas and Fuel Associates, File Nos. 54-126, 59-76.

Eastern Gas and Fuel Associates ("Eastern"), a registered holding company and a subsidiary of Koppers Company, Inc., also a registered holding company, has made a filing under the Public Utility Holding Company Act of 1935 (the "Act") with regard to the issue and sale, pursuant to the competitive bidding requirements of Rule U-50, of $12,000,000 principal amount of its First Mortgage and Collateral Trust Bonds, __ % Series due March 1, 1974. The bonds are proposed to be issued pursuant to and secured by Eastern's present Indenture dated as of July 1, 1945, and a Supplemental Indenture to be dated as of March 1, 1949. The interest rate on said bonds and the price to be received by Eastern are to be determined by the competitive bidding. Under the sinking fund provisions applicable to the proposed new bonds 100% of the issue would be retired at or before maturity.

The filing states that Eastern and its subsidiaries are engaged in an extensive construction program, which has required and will require substantial expenditures. Of the bonds to be sold, about $5,400,000 thereof are to be issued on the basis of the certification to the indenture trustee of existing property additions constructed or acquired since January 1, 1945, and represent 60% of such property additions. The balance of approximately $6,600,000 of the proceeds from the sale of the bonds will be deposited with the indenture trustee to be drawn down from time to time against the certification of additional net property additions. Eastern anticipates that a substantial amount of the cash so deposited will be drawn down during 1949 and the balance of the cash during 1950.

Eastern has heretofore filed with this Commission a Notification of Registration as a holding company under the act, which purports to limit such registration, in essence, to the provisions of section 11 (b) (2), and, only to the extent necessary to implement section 11 (b) (2), to the provisions of sections 11 (c), (d), (e), (f), and (g) and of sections 6 and 7. Following such registration, we instituted proceedings with respect to Eastern under section 11 (b) (2) of the act, and Eastern filed its answer admitting the material allegations of fact set forth in our notice and also filed, pursuant to section 11 (e) of the act, a plan of recapitalization designed to effectuate compliance with section 11 (b) (2). At a later date we consolidated the proceedings under section 11 (b) (2) with those involving the plan of recapitalization.

The instant filing is in the form of a declaration wherein Eastern has designated section 7 of the act, to the extent necessary to implement compliance with the provisions of section 11 (b) (2), and Rules U-20 to 24 inclusive, and Rule U-50, as being applicable to the proposed transactions. We consolidated the proceedings in respect of the said declaration with the aforementioned consolidated proceedings.

A hearing was held after appropriate notice, at which no one appeared in opposition to the proposed financing. However, the Committee for the holders of the 6% Cumulative Preferred stock of Eastern (the "Committee") submitted by a letter a statement of its views regarding the proposed financing. In that statement the Committee stated that it has no objection to the approval of the declaration "provided the Commission orders that the Indenture under which the new bonds are issued shall contain a provision to the effect that the pledge of property under it and all other terms and conditions of the Indenture are subject to change by the action of the Securities and Exchange Commission in the exercise of its powers under section 11, or any other applicable section, of the Public Utility Holding Company Act." The Committee went on to say that "we believe that such a provision would be declaratory of the Commission's inherent powers under the act but that it should be incorporated into the indenture for purposes of clarification and to obviate possible litigation in the future should the Commission order divestment of properties or otherwise alter the rights of the bondholders under the proposed indenture."

It appears that the Committee is concerned that the terms of the Supplemental Indenture relating to the pledge and release of properties and securities thereunder may prejudice its interests and contentions in the pending proceedings with respect to the recapitalization of Eastern. There are presently outstanding over $38,000,000 principal amount of 3½% First Mortgage and Collateral Trust Bonds secured by an Indenture which contains provisions, not proposed to be altered, for the pledge of property and securities which are similar to those in the proposed Supplemental Indenture securing the $12,000,000 principal amount of new bonds. It is clear therefore that the issuance of new bonds would not in substance create any additional prejudice to the Committee's position. We note that the Committee in its statement has admitted that the proposed provision is "only declaratory of the Commission's inherent powers under the act." The infusion in the Supplemental Indenture of such a provision, which is

in effect conceded by the Committee to be superfluous, would, if interpreted as meaning anything other than a declaration of the Commission's inherent power, lead to confusion and might be deleterious to the interests of the company. In view of the above, we believe it would be improper to adopt the provision urged by the Committee. However, our order herein will provide that jurisdiction shall be reserved to consider and determine all matters in the pending consolidated proceedings (File Nos. 59–76 and 54–126) not hereby considered and determined.

We have noted above that Eastern has registered for the limited purpose of compliance with section 11 (b) (2) and related sections, and that the proposed financing has been presented under the provisions of section 7 insofar as necessary to implement compliance with the provisions of section 11 (b) (2). Without attempting here to resolve whatever ultimate questions there may be as to the validity and scope of the form of registration, we have examined the financing in the light of its bearing upon the capital structure of Eastern and of related problems under section 11 (b) (2). On this basis we have found no reason to disapprove the issuance and sale of the proposed bonds.

Wherefore it is ordered, That the said declaration as amended be, and the same hereby is, permitted to become effective, subject, however, to the terms and conditions contained in Rule U-24 and to the following additional conditions:

(1) That the proposed issuance and sale of bonds by Eastern shall not be consummated until the results of competitive bidding pursuant to Rule U-50 shall have been made a matter of record in these proceedings and a further order shall have been entered by the Commission in the light of the record so completed, which order may contain such further terms and conditions as may then be deemed appropriate.

(2) That jurisdiction be reserved with respect to all fees and expenses of all counsel and of the financial adviser to be paid in connection with the proposed issuance and sale of bonds; and

It is further ordered, That jurisdiction be, and it hereby is, reserved to consider and determine all matters in the pending consolidated proceedings (File Nos. 59–76 and 54–126) not hereby considered and determined.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49-1978; Filed, Mar. 15, 1949; 8:47 a. m.]

[File No. 70–2059]

LONG ISLAND LIGHTING CO.

ORDER PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 9th day of March 1949.

Long Island Lighting Company, a registered holding company, having filed a declaration, as amended, pursuant to sections 6 (a) and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule U-50 promulgated thereunder, wherein it proposes to issue and sell $16,000,000 principal amount of sinking fund debentures maturing May 1, 1969; and

A hearing having been held with respect to such proposal at which interested persons were present, and the Commission having considered the record and deeming it appropriate in the public interest and in the interest of investors and consumers to permit the declaration, as amended, to become effective forthwith and to grant the request of declarant that the Commission except the issue and sale of said debentures from the competitive bidding requirements of Rule U-50:

It is hereby ordered, Pursuant to the provision of sections 6 (a) and 7 of the act, that the declaration, as amended, be, and hereby is, permitted to become effective forthwith, subject to the condition that declarant obtain the approval of the Public Service Commission of the State of New York to issue and sell the said debentures, and subject to the reservation of jurisdiction with respect to the price to be received by the declarant for the said debentures, the interest rate thereon, the redemption prices thereof, and all other terms and provisions of the indenture pursuant to which the debentures will be issued, and with respect to the fees and expenses to be incurred in connection with the proposed issue and sale.

It is further ordered, That the proposed issue and sale of the said debentures be, and hereby is, excepted from the competitive bidding requirements of Rule U-50.

A findings and opinion will follow.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49-1980; Filed, Mar. 15, 1949; 8:48 a. m.]

[File Nos. 70–1837, 70–2066]

NORTH AMERICAN CO. AND UNION ELECTRIC CO. OF MISSOURI

NOTICE OF FILING, NOTICE OF AND ORDER FOR HEARING, AND ORDER FOR CONSOLIDATION OF PROCEEDINGS

In the matter of The North American Company, Union Electric Company of Missouri; File Nos. 70–2066 and 70–1837.

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 9th day of March 1949.

Notice is hereby given that The North American Company ("North American"), a registered holding company and its subsidiary, Union Electric Company of Missouri ("Union"), a registered holding company and an electric utility company, have filed a joint application and declaration (File No. 70–2066) pursuant to the applicable provisions of the Public Utility Holding Company Act of 1935 ("Act") and the rules and regulations thereunder.

North American owns 100% of the outstanding Common Stock and 96.23% of the outstanding voting stock of Union. Under the terms of a plan, pursuant to section 11 (e) of the act, for liquidation and dissolution of North American Light & Power Company ("Light & Power"), a subsidiary of North American, which plan is in the process of consummation, North American will acquire, among other things, all of the outstanding Common Stock of Missouri Power & Light Company ("Missouri"), a public utility subsidiary of Light & Power, consisting of 1,500,000 shares with a par value of $5 per share.

Union is engaged primarily in the transmission, distribution and sale of electric energy, which it generates and purchases from its wholly owned electric utility subsidiary, Union Electric Power Company, an Illinois Corporation. The territory served by Union and its subsidiaries includes the City of St. Louis, Missouri and its environs, adjacent territory in Illinois including the City of East St. Louis, and areas surrounding Keokuk, Iowa and Osage, Missouri.

Missouri is engaged in the transmission, distribution and sale of electric energy and also owns and operates a natural gas distribution system and is engaged in minor businesses such as the supplying of hot water heating, water, and ice. The electric system of Missouri is interconnected with Union's system and Missouri presently purchases a substantial part of its energy requirements from Union. All of Missouri's operations are conducted in the State of Missouri. By an order of this Commission dated April 14, 1942, under section 11 (b) (1) of the act, North American has been directed, among other things, to sever its relationship, direct or indirect with Missouri.

All interested persons are referred to said application-declaration which is on file in the office of this Commission for a statement of the transactions therein proposed, which are summarized below:

Applicants-declarants assert that the electric properties of Missouri and Union constitute an integrated public utility system within the meaning of the act and request that the Commission's order of April 14, 1942, be modified to the extent necessary to permit North American, following the acquisition of all the Common Stock of Missouri from Light & Power, to transfer its entire holdings of 1,500,000 shares of such stock to Union and to acquire from Union in consideration therefor 600,000 additional shares of Common Stock, without par value, of Union. Union proposes to issue to North American such 600,000 additional shares of its Common Stock and to acquire in consideration therefor the 1,500,000 shares of Common Stock of Missouri. North American will record the 1,500,000 shares of Missouri stock on its books at approximately $8,066,248, an amount equivalent to its underlying net asset value after deduction of the amount of plant acquisition adjustments shown upon the books of Missouri as at the close of the month preceding the date when North American receives such stock, and will reduce its investment in Light & Power by the amount at which North American records the Missouri stock. North American proposes to record the

600,000 shares of Union stock on its books at the same amount at which North American will record the Missouri stock. Union proposes to record the Missouri stock at a similar amount and will capitalize the 600,000 shares of its Common Stock issued in consideration thereof at $4,000,000, or approximately the average stated value of its Common Stock immediately prior to the issuance of such 600,000 shares and will credit capital surplus in the amount of approximately $4,066,248. Applicants-declarants assert that for the purpose of the proposed transactions the 600,000 shares of Common Stock of Union were valued on the basis of recent sales of such stock to North American for cash and that such basis of evaluation is in excess of the net book value of the Common Stock of Union.

Sections 6 (b), 6 (a) and 7, 9 (a), 10, 11 (b) (1) and 12 (d) of the act and Rules U-23, U-43, U-44 and U-50 thereunder are designated by applicants-declarants as applicable to the proposed transactions. It is asserted that the Missouri Public Service Commission has jurisdiction over the proposed transactions. Applicants-declarants state that the specifications as to the procedure considered necessary or appropriate to be followed in this proceeding will be made during the course of the hearing herein, as provided in Rule III (e) of the Commission's rules of practice.

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a public hearing be held with respect to the proposed transactions for the purpose of affording an opportunity to all interested persons to present evidence and to be heard with respect to the proposed transactions contained in said joint application-declaration; and

Applicants-declarants having heretofore filed a joint application-declaration and amendments thereto (File No. 70–1837) regarding the proposed issue and sale by Union to North American of 367,500 additional shares of its Common Stock for an aggregate consideration of $5,000,000 and the Commission having ordered a hearing with respect to said joint application-declaration directing that such hearing be held on April 19, 1949 (Holding Company Act Release Nos. 8228 and 8819); and

It further appearing that the proceeding in File No. 70–1837 involves questions of law and fact common to the proceeding with respect to the joint application-declaration in File No. 70–2066 and that the evidence offered with respect to each of the matters may have a bearing on the other and that substantial savings in time, effort, and expense will result if said matters are consolidated:

It is ordered, That the proceeding regarding the joint application-declaration in File No. 70–1837 and the proceeding involved in File No. 70–2066 be, and the same hereby are, consolidated.

It is further ordered, That a hearing be held on said matters, as consolidated, on April 19, 1949, at 10:00 a. m., e. s. t., at the office of the Securities and Exchange Commission, 425 Second Street NW., Washington, D. C. On such date the hearing room clerk will advise as to the room in which such hearing will be held. Any person desiring to be heard in connection with these proceedings or proposing to intervene, who has not heretofore done so, shall file with the Secretary of the Commission on or before April 12, 1949, a written request relative thereto, as provided by Rule XVII of the Commission's rules of practice.

It is further ordered, That the same officer heretofore designated to preside at the hearing in the proceeding involved in File No. 70–1837 shall preside at such consolidated hearing.

The Division of Public Utilities of the Commission having advised the Commission that it has made a preliminary examination of the joint application-declaration in File No. 70–2066 and that, upon the basis thereof, in addition to the issues heretofore specified in Holding Company Act Release No. 8228 (File No. 70–1837) the following matters and questions are presented for consideration without prejudice, however, to the presentation of additional matters and questions upon further examination:

1. Whether and to what extent the portion of the Commission's order of April 14, 1942, relating to Missouri should be modified so as to permit the proposed transfer of the securities of Missouri to Union;

2. Whether the proposed acquisition by Union from North American of the Common Stock of Missouri meets the standards of section 10 of the act, and particularly the requirements of sections 10 (c) (1) and 10 (c) (2);

3. Whether the proposed transfer by North American of the securities of Missouri to Union satisfies the requirements of section 12 (d);

4. Whether the proposed issue and sale by Union of 600,000 shares of additional Common Stock is exempt from the provisions of sections 6 (a) and 7 of the act pursuant to the provisions of section 6 (b), and if so, whether terms and conditions should be prescribed with respect to the proposed transactions in the public interest or for the protection of investors and consumers and, if so, what such terms and conditions should be; or if such proposed issue and sale of additional Common Stock is found subject to section 7, then whether the requirements of such section are satisfied;

5. Whether the proposed acquisition by North American from Union of the 600,000 additional shares of Common Stock to be issued by Union satisfies the requirements of section 10 of the act, and particularly the requirements of section 10 (c) (1);

6. Whether the proposed accounting treatment of the several transactions on the books of the respective applicants-declarants is proper;

7. Whether the fees, commissions and other expenses to be incurred are for necessary services and reasonable in amount; and

8. Generally, whether any terms and conditions with respect to the proposed transactions should be prescribed in the public interest or for the protection of investors or consumers and, if so, what such terms and conditions should be;

It is further ordered, That particular attention be directed at said hearing to the foregoing matters and questions and to the issues heretofore specified in Holding Company Act Release No. 8228.

It is further ordered, That jurisdiction be, and hereby is, reserved to separate either for hearing, in whole or in part, or for disposition, in whole or in part, any of the issues, questions, or matters hereinbefore set forth or which may hereafter arise, or to consolidate with those proceedings other filings, or to take such other action as may appear to be necessary for the orderly, prompt, and economical disposition of the matters involved.

It is further ordered, That the Secretary of the Commission shall serve a copy of this notice by registered mail on The North American Company, Union Electric Company of Missouri, the Missouri Public Service Commission and the City of St. Louis, Missouri; that notice be given to all other persons by publication of this notice in the FEDERAL REGISTER and by general release of the Commission, distributed to the press and mailed to the mailing list for releases under the Public Utility Holding Company Act of 1935.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 49-1981; Filed, Mar. 15, 1949; 8:48 a. m.]

[File No. 70-2077]

NORTHERN NATURAL GAS CO.

NOTICE OF FILING

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 10th day of March 1949.

Notice is hereby given that a declaration has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") by Northern Natural Gas Company ("Northern Natural"), a registered holding company. The declarant designates sections 6 and 7 of the act as applicable to the proposed transactions.

Notice is further given that any interested person may, not later than March 28, 1949, at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues, if any, of fact or law raised by said declaration proposed to be controverted, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time thereafter such declaration as filed, or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated pursuant to said act, or the Commission may exempt such transac-

tions as provided in Rules U-20 (a) and U-100 thereof.

All interested persons are referred to said declaration which is on file in the office of this Commission for a statement of the transactions therein proposed which are summarized below:

Northern Natural proposes to issue and sell for cash 406,000 additional shares of Common Stock, par value $10 per share. In connection with such issue and sale, Northern Natural proposes to issue to the holders of its outstanding 2,030,000 shares of Common Stock transferable warrants carrying: (1) the right to subscribe until April 18, 1949 for shares of Common Stock on the basis of one share for each five shares of Common Stock held of record at the close of business on March 30, 1949, at a price per share, which is to be supplied by amendment, and (2) the conditional privilege to subscribe at the same subscription price per share (subject to pro rata allotment) for any number of additional shares of Common Stock not subscribed for through (a) the exercise of rights to subscribe, and (b) the acceptance by employees of the Company of an offer to them to subscribe for shares of said Common Stock. The offer to employees will be made to the Company's regular full-time employees (approximately 1250) and will accord such employees (including officers and directors) the right to subscribe at the subscription price, during the subscription period, for Common Stock in an amount not to exceed 10 shares per employee, from the number of shares offered and not subscribed for by the exercise of the rights to subscribe.

No fractional shares of Common Stock will be issued. Rights in excess of those necessary to subscribe for a full share may be sold or additional rights may be purchased to entitle the holder of the warrant to subscribe to one or more full shares of Common Stock.

Northern Natural states that the net proceeds to be received from the proposed issue and sale of shares of Common Stock, together with general funds of the Company will be applied toward the cost of its 1949 construction program, estimated in the amount of $13,845,000.

Northern Natural has filed applications with the State Corporation Commission of Kansas and the Nebraska State Railway Commission with respect to the proposed issuance of Common Stock.

Northern Natural requests that the Commission issue its order herein on or before March 30, 1949.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 49-1982; Filed, Mar. 15, 1949; 8:48 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 12892]

LIZA KELLER

In re: Bank account owned by and debt owing to the personal representatives, heirs, next of kin, legatees and distributees of Liza Keller, also known as Lisa Keller and as Louisa Keller, deceased. F-28-5283-C-1; E-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the personal representatives, heirs, next of kin, legatees and distributees of Liza Keller, also known as Lisa Keller and as Louisa Keller, deceased, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

2. That the property described as follows:

a. That certain debt or other obligation of Empire Trust Company, 120 Broadway, New York 5, New York, arising out of a checking account, entitled Miss Lisa Keller, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same, and

b. That certain debt or other obligation of Beneficial Corporation, 1300 Market Street, Wilmington 99, Delaware, in the amount of $264.41, as of December 29, 1948, representing proportionate distribution on Beneficial Loan Society Debentures, and those checks in payment thereof, drawn by said Beneficial Loan Society, payable to Miss Lisa Keller, numbered, dated and in the amounts as set forth below:

EXHIBIT A

Number	Date	Amount
A 1927	Feb. 27, 1940	$36.23
A 4073	Feb. 28, 1941	23.33
A 4066	Aug. 30, 1941	21.05
A 4038	Feb. 28, 1942	17.63
A 4024	Aug. 31, 1942	16.00
A 3725	Feb. 27, 1943	21.17
A 3688	Aug. 31, 1943	6.92
A 3476	Feb. 29, 1944	9.17
A 3354	Aug. 31, 1944	6.54
A 3801	Feb. 28, 1945	.74
A 2804	do	4.47
A 1520	Aug. 31, 1945	1.16

which checks are presently in the custody of said Beneficial Corporation, together with any and all rights to demand, enforce and collect the aforesaid debt or other obligation, and all rights in, to and under, including particularly the right to possession and presentation for collection and payment of the aforesaid checks,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the personal representatives, heirs, next of kin, legatees and distributees of Liza Keller, also known as Lisa Keller and as Louisa Keller, deceased, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the personal representatives, heirs, next of kin, legatees and distributees of Liza Keller, also known as Lisa Keller and as Louisa Keller, deceased, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on March 2, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-1954; Filed, Mar. 14, 1949; 8:52 a. m.]

[Vesting Order 12903]

AUGUST PETERS ET AL.

In re: Debts owing to August Peters and others. D-28-12554.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That each individual, whose name and last known address is set forth below, as follows:

Names and Addresses

August Peters, 212 Franz-Seldtestrasse, Altenweddingen, Germany. Elise Jacobs Schulze, Magdeburg, Stassfurterstrasse 15, Germany. Auguste Katharine Jacobs, 19a Falkenstrasse, Hannover, Germany. Gertrud Frieda Mathilde Heinze, 19a Falkenstrasse, Hannover, Germany. Hermann Jacobs, Pechau, near Magdeburg, Germany. Friedrich Jacobs, Berlin W. 30, Gleditschstrasse 47, Germany. Hulda Jacobs Wiese, Magdeburg, Stassfurterstrasse 15, Germany. Hermine Wolf Hartung, 91 Wanheimerstrasse, Duisburg a. Rhein, Germany. Friedrich Wolf, 2 Linastrasse, Helbra, near Mansfield, Germany. Luise (Louise) Stacke, 8 Kurt Hausmannstrasse, Schönebeck A. D. Elbe, Germany. Emma Heinemann, Parchau, near Magdeburg, Germany. Gustav (Gustave) Helmholz, 169 Mühlenstrasse, Wanzleben, Germany. Anna Scheuer, Magdeburg, Halleschestrasse 3, Germany. Hugo Marx, Magdebur, Knabenhauer, 46a, Germany. Else Michel, Altenweddingen, Bezirk-Magdeburg, Germany. Reinhold Meier, Altenweddingen, Bezirk-Magdeburg, Germany. Mina (Minna) Donath, 3 Friedrichstrasse, Löderburg near Stassfurt, Germany. Paul Bittner, Menz near Königsborn, Bezirk-Magdeburg, Germany.

is a resident of Germany, and a national of a designated enemy country (Germany);

2. That the personal representatives, heirs, next of kin, legatees and distributees of Wilhelm Theodor Peters, deceased, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

3. That the property described as follows: All those certain debts or other obligations owing to the persons whose names are set forth in subparagraph 1 hereof and the persons referred to in subparagraph 2 hereof, by Richter & Kaiser, Inc., 186 Remsen Street, Brooklyn, New York, in the total amount of $1,730.75, as of October 22, 1948, and any and all accruals thereto, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by the persons named in subparagraph 1 hereof and the personal representatives, heirs, next of kin, legatees and distributees of Wilhelm Theodor Peters, deceased, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof and the personal representatives, heirs, next of kin, legatees and distributees of Wilhelm Theodor Peters, deceased, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on March 2, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-1955; Filed, Mar. 14, 1949; 8:52 a. m.]

[Vesting Order 500A-249]

COPYRIGHTS OWNED BY IMPERIAL HOUSEHOLD MUSEUM, TOKYO, JAPAN, AND VERLAG VON GUSTAV FISCHER, JENA, GERMANY

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the persons (including individuals, partnerships, associations, corporations or other business organizations) referred to or named in Column 5 of Exhibit A attached hereto and made a part hereof and whose last known addresses are listed in said Exhibit A as being in a foreign country (the names of which persons are listed (a) in Column 3 of said Exhibit A as the authors of the works, the titles of which are listed in Column 2, and the copyright numbers, if any, of which are listed in Column 1, respectively, of said Exhibit A, and/or (b) in Column 4 of said Exhibit A as the owners of the copyrights, the numbers, if any, of which are listed in Column 1, and covering works the titles of which are listed in Column 2, respectively, of said Exhibit A, and/or (c) in Column 5 of said Exhibit A as others owning or claiming interests in such copyrights) are residents of, or are organized under the laws of, or have their principal places of business in, such foreign country and are nationals thereof;

2. That all right, title, interest and claim of whatsoever kind or nature, under the statutory and common law of the United States and of the several States thereof, of the persons referred to in Column 5 of said Exhibit A, and also of all other persons (including individuals, partnerships, associations, corporations or other business organizations), whether or not named elsewhere in this order including said Exhibit A, who are residents of, or which are organized under the laws of or have their principal places of business in, Germany or Japan, and are nationals of such foreign countries, in, to and under the following:

a. The copyrights, if any, described in said Exhibit A,

b. Every copyright, claim of copyright and right to copyright in the works described in said Exhibit A and in every issue, edition, publication, republication, translation, arrangement, dramatization and revision thereof, in whole or in part, of whatsoever kind or nature, and of all other works designated by the titles therein set forth, whether or not filed with the Register of Copyrights or otherwise asserted, and whether or not specifically designated by copyright number,

c. Every license, agreement, privilege, power and right of whatsoever nature arising under or with respect to the foregoing,

d. All monies and amounts, and all rights to receive monies and amounts, by way of royalty, share of profits or other emolument, accrued or to accrue, whether arising pursuant to law, contract or otherwise, with respect to the foregoing,

e. All rights of renewal, reversion or revesting, if any, in the foregoing, and

f. All causes of action accrued or to accrue at law or in equity with respect to the foregoing, including but not limited to the rights to sue for and recover all damages and profits and to request and receive the benefits of all remedies provided by common law or statute for the infringement of any copyright or the violation of any right or the breach of any obligation described in or affecting the foregoing,

is property of, and is property payable or held with respect to copyrights or rights related thereto in which interests are held by, and such property itself constitutes interests held therein by, the aforesaid nationals of foreign countries.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described in subparagraph 2 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The term "national" as used herein shall have the meaning prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on February 15, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

Column 1 Copyright numbers	Column 2 Titles of Works	Column 3 Names and last known nationalities of authors	Column 4 Names and last known addresses of owners of copyrights	Column 5 Identified persons whose interests are being vested
Unknown	Shosoin Gyommotsu zuroku, Vols. 1 and 2, July 1929; Vol. 3, December 1929; Vol. 4, December 1932; Vol. 5, December, 1933; Vol. 6, March 1931; Vol. 7, August 1934; Vol. 8, August 1936; Vol. 9, December 1936; Vol. 10, November 1937; Vol. 11, May 1938; and Vol. 12, February 1940 (together with accompanying notes, in English, for each volume) (illustrated catalogue of the Imperial treasures in the Shosoin).	Unknown	Imperial Household Museum, Tokyo, Japan (Nationality, Japanese)	Owner.
Do	Vegetationsbilder, Vols. 1-25 (1904-35).	Dr. G. Karsten and Dr. H. Schenck (editors) (nationalities not established).	Verlag von Gustav Fischer, Jena, Germany (nationality, German).	Do.

[F. R. Doc. 49-1959; Filed, Mar. 14, 1949; 8:52 a. m.]

[Vesting Order 12872]

HELENE DENTZAU

In re: Rights of Helene Dentzau under insurance contract. File No. F–28–3710–H–1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Helene Dentzau, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. 3000 AB, issued by the Metropolitan Life Insurance Company, New York, New York, to Helene Dentzau, together with the right to demand, receive and collect said net proceeds,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on March 2, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49–1996; Filed, Mar. 15, 1949; 8:53 a. m.]

[Vesting Order 12880]

CLARA KNAUTH AND ANTONIO KNAUTH

In re: Trust agreement dated 1901 between Clara Knauth, donor, and Antonio Knauth, trustee. File No. F–28–19112–G–1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Berta (Bertha) Knauth, Elisabeth (Elizabeth) Knauth, Helene Knauth and Karl Heinz Knauth, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That the issue, names unknown, of Elisabeth (Elizabeth) Knauth, of Helene Knauth and of Senta Knauth, deceased, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

3. That all right, title, interest and claim of any kind or character whatsoever of the persons identified in subparagraphs 1 and 2 hereof, and each of them, in and to and arising out of or under that certain trust agreement dated 1901 by and between Clara Knauth, donor, and Antonio Knauth, trustee, presently being administered by Theodore W. Knauth, successor trustee, 16 Charlton Street, New York 14, New York.

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof and the issue names unknown of Elisabeth (Elizabeth) Knauth, of Helene Knauth and of Senta Knauth, deceased, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on March 2, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49–1997; Filed, Mar. 15, 1949; 8:53 a. m.]

WILLEM NICOLAAS VAN DRANEN

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Willem Nicolaas van Dranen, de Bilt, The Netherlands; 6561; Property described in Vesting Order No. 291 (7 F. R. 9834, November 26, 1942) relating to United States Patent Application Serial No. 326,773 (now United States Letters Patent No. 2,313,304).

Executed at Washington, D. C., on March 9, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49–2000; Filed, Mar. 15, 1949; 8:53 a. m.]

JAMES L. SKERRITT

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

James L. Skerritt, Executor of the Estate of Richard H. Strongman, Deceased, New York, N. Y., 14194; Property described in Vesting Order No. 201 (8 F. R. 625, January 16, 1943), relating to United States Letters Patent No. 2,074,020.

Executed at Washington, D. C., on March 9, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49–2001; Filed, Mar. 15, 1949; 8:53 a. m.]

[Return Order 278]

DR. JACOB JACOBSON

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, be returned after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention To Return Published, and Property

Dr. Jacob Jacobson, New York, N. Y., Claim No. 34873, February 5, 1949 (14 F. R. 516); Property described in Vesting Order No. 666 (8 F. R. 5047, April 17, 1943), relating to United States Letters Patent No. 2,081,934. This return shall not be deemed to include the rights of any licensees under the above patent.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on March 9, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-1998; Filed, Mar. 15, 1949; 8:53 a. m.]

[Return Order 279]

ANTOINE GAZDA

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, be returned after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention to Return Published, and Property

Antoine Gazda, Providence, R. I., Claim No. A-136; October 15, 1948 (13 F. R. 6072): Property described in Vesting Order No. 1029 (8 F. R. 4206 April 2, 1943) relating to United States Letters Patent Nos. 2,367,572; 2,317,267 and Patent Applications Serial Nos. 269,681; 318,571; 334,446; 354,447 and 269,273. This return shall not be deemed to include the rights of any licensees under the above patents and patent applications.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on March 9, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-1999; Filed, Mar. 15, 1949; 8:53 a. m.]