

by ocean bills of lading, showing that such charges are limited to the actual cost of transportation of the supplies from end of ship's tackle at the United States port of loading to end of ship's tackle at port of discharge, correctly assessed at the time of loading by the carrier for freight on a weight, measurement, or unit basis, and free of any other charges, (b) in the case of shipments to landlocked nations or areas, either (1) by through bills of lading from United States port to designated point of entry in such landlocked nation or area, or (2) by separate ocean bills of lading from United States port to foreign port and appropriately identified rail, truck or barge bills of lading, or other documents acceptable under good commercial practice, covering transportation charges from such foreign port to designated point of entry in such nation or area.

#### § 202.5 [Amendment]

6. Section 202.5 is amended by striking out "ocean" before "freight" both times it appears.

JAMES W. RIDDLEBERGER,  
Director, International  
Cooperation Administration.

AUGUST 30, 1960.

[F.R. Doc. 60-8270; Filed, Sept. 6, 1960;  
8:45 a.m.]

## Title 32—NATIONAL DEFENSE

### Chapter I—Office of the Secretary of Defense

#### SUBCHAPTER M—MISCELLANEOUS

#### PART 157—USE OF STANDARDIZATION DOCUMENTS ISSUED BY INDUSTRY GROUPS

The Deputy Assistant Secretary of Defense (Supply and Logistics) approved the following on August 9, 1956:

- Sec.
- 157.1 Purpose.
  - 157.2 Authority.
  - 157.3 Policy.
  - 157.4 Definitions.
  - 157.5 DoD participation and representation.
  - 157.6 DoD control of DoD requirements.
  - 157.7 Identification of approved industry documents.

AUTHORITY: §§ 157.1 to 157.7 issued under Chapter 145, Title 10, United States Code.

#### § 157.1 Purpose.

This part prescribes a uniform policy for implementation of that portion of DoD Directive 4120.3 Defense Standardization Program, documents to assure the most economic employment of standardization resources.

#### § 157.2 Authority.

The Defense Standardization Program is conducted under the authority of Chapter 145, Title 10, U.S.C. Responsibility for this program is assigned to the Assistant Secretary of Defense (Supply and Logistics) by DoD Directive 5126.1, (24 F.R. 6098). Administration of the Program is delegated to the Armed Forces Supply Support Center by DoD Directive 5154.14.

#### § 157.3 Policy.

In furtherance of the Defense Standardization Program, it is the policy of the Department of Defense to make maximum utilization of industry effort expended in the development of standardization documents. Industry standardization documents shall be used whenever considered feasible by the cognizant technical activity in the fields of research, design, development, and acquisition of material. DoD activities are encouraged to make optimum use of the facilities of industry groups in the development of industry standardization documents having a present or potential DoD use. An industry document which has received that degree of DoD approval presently required for issuance of a coordinated Federal or military specification or standard shall be approved for use within the Department of Defense. An industry document, coordinated and approved by a military service in the same manner as that service coordinates and approves military specifications and standards for limited coordination status, shall have the equivalent status. Only complete industry standardization documents of a specified issue will be selected by DoD for either coordinated status or limited coordination status equivalent. The referencing of industry standardization documents in their entirety, or in part, in military and Federal specifications and standards is authorized.

#### § 157.4 Definitions.

For purposes of this part, the following terms shall have the meanings described below:

(a) *Industry group.* A nongovernmental organization conducting professional standardization activities. (An individual or a concern organized for profit is not an industry group within the sense of this instruction.)

(b) *Industry document.* Any standardization document issued by an industry group, as herein defined, with the intent to establish common technical requirements (including requirements for a physical item, technical process, engineering practice, etc.)

#### § 157.5 DoD participation and representation.

The following principles shall govern DoD participation and representation in industry groups:

(a) *Participation.* (1) Military services shall participate to the extent practicable in the work of industry groups to further the objectives of the Defense Standardization Program. Participation shall be consistent with DoD Directive 5500.2, "Policies Governing Participation of DoD Liaison Representatives in Activities of Technical Societies, Associations and Groups".

(2) Each assignee shall provide or arrange for active DoD participation in those industry group projects in which DoD has a real interest based upon a current or anticipated military requirement. An assignee shall insure that DoD participation so provided or arranged for represents the interests of all the services and is in fact a DoD representation.

(3) Each assignee will ascertain prior to providing or encouraging DoD participation, that the industry project will result in a timely document. If it is determined that the efforts of the industry group will not have a timely result, then DoD efforts should be directed toward drafting an appropriate military document.

(b) *Representation.* While adequate DoD representation in the work of industry groups is essential to the attainment of DoD standardization objectives, excessive DoD representation in terms of numbers of official DoD participants is to be discouraged. The number of persons officially representing DoD as participants in projects of an industry group shall be consistent with the importance of the project to DoD and shall be limited to that minimum needed for effective representation of DoD interests.

(c) *Coordination of DoD effort.* (1) Each assignee will avoid unnecessary duplication of effort in standardization projects, whether military or industry.

(2) It is the responsibility of an assignee to keep other interested DoD activities and the Armed Forces Supply Support Center informed of industry standardization action pertinent to the Defense Standardization Program.

(3) In partial fulfillment of this responsibility to coordinate DoD standardization effort, each assignee shall, within the area of its assignments, provide for establishment and maintenance of DoD representation on committees of industry groups for matters pertaining to standardization and the development of specifications and standards to the extent that common interest exists and actual benefit to DoD results. A copy of a list of liaison representation identifying the industry groups will be furnished the Standardization Division, AFSSC, semiannually on 30 December and 30 June.

#### § 157.6 DoD control of DoD requirements.

Approval of an industry document for use in DoD procurement shall be granted only for a specified issue (see § 157.7(a)) which meets the requirements of the Department of Defense.

(a) *Approved industry documents having coordinated status.* An industry document which has received that degree of DoD approval presently required for issuance of a coordinated Federal or military specification or standard shall be approved for use within the Department of Defense. In order for an industry document to be approved for use, it must be subjected to the identical DoD administrative processes required for approval of a coordinated Federal or military specification or standard.

(1) *Existing industry documents.* With respect to existing industry documents, an assignee has the following standardization responsibilities within areas of its assignment:

(i) Select those having a potential for DoD use.

(ii) Establish projects for:

(a) Obtaining the requisite coordination within DoD on the documents selected;

(b) Obtaining such additional industry coordination as is necessary on these documents;

(c) Arranging for their final DoD approval; and

(d) Identifying them as approved industry documents in the index prescribed by § 157.7.

(2) *Proposed industry documents.* With respect to proposed industry documents, an assignee has the following standardization responsibilities within the area of its assignment:

(i) Maintain a continuing awareness of existing projects intended to result in an industry document.

(ii) Encourage industry groups to initiate new projects for documents which will satisfy a current or potential DoD requirement.

(iii) Insure active DoD participation (see § 157.5) in all projects in which DoD has a real interest based upon a current or anticipated DoD requirement.

(iv) Establish projects for:

(a) Obtaining formal coordination within the DoD on proposed industry documents resulting from these industry groups' projects;

(b) Submitting to the industry group concerned the official DoD comments on such a proposed document;

(c) Encouraging the industry group to make that circulation of the proposed industry document to industry which would be made were it a proposed DoD document;

(d) Ascertaining that the industry document finally promulgated is consistent with all essential DoD comments;

(e) Obtaining such additional industry coordination as is necessary;

(f) Arranging for final DoD approval; and

(g) Identifying the approved industry document in the index prescribed in § 157.7.

(b) *Approved industry documents having limited coordination status.* An industry document coordinated and approved by a military service in the same manner as that service coordinates and approves military specifications and standards for limited coordination status shall have the equivalent status.

(c) *Criteria for approval.* The primary criteria for determining whether an industry document will be approved for use by the Department of Defense are: The technical sufficiency of the document in terms of DoD requirements; the extent and degree to which an industry document is circulated for comment among, and is acceptable to, interested industry elements; and the assurance that sufficient copies of the document will be available to satisfy demands generated by DoD.

(1) When, in the judgment of the assignee, coordination of the industry document by the industry group has been effected to at least the minimum extent and degree required for a DoD-conducted industry coordination of a military specification or standard, the industry coordination process need not be repeated. If, however, the industry coordination by the industry group does not meet the foregoing coordination criterion, technical requirements of the

document may be incorporated into a military document and processed within the military series, after securing the required industry coordination.

(2) An industry document will not be approved for either coordinated-status equivalent or limited coordinated-status equivalent unless it has first been ascertained that:

(i) Sufficient copies are available from the industry source to handle the total estimated DoD demands at no more than a nominal charge for each copy, and

(ii) If the document is copyrighted, that the Government has been granted a royalty-free license for reproduction for its own use and for future reproduction on the contingency that the industry source may cease to make sufficient copies available at some future date.

#### § 157.7 Identification of approved industry documents.

Each industry document approved for use within the Department of Defense in accordance with the procedures herein prescribed shall be identified in a separate section of each existing departmental index entitled "Index of Military Specifications and Standards" and shall be bound integrally therewith. The departmental indexes are also referred to as "Military Indexes for Specifications and Standards (Vols. II, III, and IV)."

(a) *Identification data for industry documents.* A military series of numbers shall not be assigned to DoD-approved industry documents. The index will identify each such document by industry group, symbol, number, title, date of the most recent DoD-approved issue and Assignee Activity within DoD. (E.g., ASA C7.1-1953, 2d edition, Soft or Annealed Copper Wire, Specifications for.) Each listed industry document shall be identified in the index as either coordinated-status equivalent or limited coordinated-status equivalent. This identification of status will be in the same form as that now being used in the Index for identifying military specifications and standards as either coordinated or limited coordinated.

(b) *Identification of industry source.* Whenever the distribution requirements for an indexed industry document are to be met wholly or partially by the industry source, an appendix to the Index will list the name and mailing address of the industry distribution point for each indexed document except for any document generally available in technical or public libraries (e.g., Pharmacopoeia of the United States).

MAURICE W. ROCHE,  
Administrative Secretary.

[F.R. Doc. 60-8281; Filed, Sept. 6, 1960; 8:47 a.m.]

## Chapter V—Department of the Army

### SUBCHAPTER E—ORGANIZED RESERVE

#### PART 561—ARMY RESERVES

##### Discharges

Section 561.37 is revised to read as follows:

#### § 561.37 Separation from service.

(a) *Discharge of reservists on active duty or ACDUTRA (Active duty for training).* (1) Reservists on active duty or ACDUTRA may be discharged on the same basis as other enlisted members of the Active Army, except as indicated in subparagraph (2) of this paragraph and paragraphs (d) and (e) of this section.

(2) Reservists on 3 or 6 months Reserve Forces Act ACDUTRA may be discharged only for the reasons outlined in paragraph (c) (3), (6), (7), (9), (10), (11), (12), (17) and (18) of this section.

(b) *Discharge from Reserve duty status.* Enlisted members of the Army Reserve not on active duty or ACDUTRA may be discharged from their status as enlisted Reserves of the Army under the provisions of this section.

(c) *Authority to discharge.* Authority to discharge enlisted reservists for the following reasons is delegated to officers comparable to those authorized to discharge persons on active duty:

(1) Upon expiration of term of enlistment or period of obligated service.

(2) To permit immediate reenlistment of qualified reservists:

(i) At any time during the last 90 days of current enlistment, or

(ii) To meet length of service requirements for active duty tour, including active duty, and active duty for training.

(3) Upon enlistment, induction, or acceptance of appointment as a commissioned or warrant officer of any of the Armed Forces or as a Reserve enlisted member or officer thereof (other than appointment as a cadet or midshipman at one of the service academies or as a midshipman, United States Navy Reserve Officers Training Corps), except that:

(i) Discharge to enlist in a Regular component other than the Regular Army is not authorized for reservists within the 60-day period immediately preceding the effective date of orders to active duty or ACDUTRA other than annual active duty for training, or during the performance of active duty or ACDUTRA, including annual active duty for training.

(ii) Discharge of a reservist enlisted under a program in which he is required to enter upon and perform active duty or ACDUTRA for a specified period is not authorized under this paragraph for the purpose of enlisting in another Reserve component (including the Army National Guard of the United States) until the reservist has completed the active duty or ACDUTRA agreed upon in his enlistment contract.

(4) Upon acceptance of appointment as a commissioned officer of the Public Health Service or the Coast and Geodetic Survey.

(5) When discharge is determined to be appropriate because of nonavailability for service.

(6) When permanently physically disqualified for retention, unless eligible for transfer to the Retired Reserve.

(7) By reason of dependency or hardship.

(i) The criteria in § 582.2 of this chapter will be used as a general guide. When deemed more suitable, the individual will be transferred to the Standby

Reserve. The following criteria will also apply:

(a) Upon presentation of conclusive evidence that genuine personal hardship exists to such a degree as to prevent:

(1) Participation in training, or  
(2) Entry on active duty in the event of an emergency.

(b) Upon request of the reservist together with an affidavit showing he has four or more dependents.

(ii) When the reservist is a selective service registrant and his application does not provide sufficient basis for a clear cut decision, the appropriate State Director of Selective Service may be asked for a statement as to whether the individual would be deferred on the basis of the evidence presented if he were being considered for induction. The procedures prescribed in § 582.2 of this chapter will be followed.

(8) For the convenience of the Government. For any of the following reasons:

(i) Reduction in authorized strength or by an order applicable to all members of a class of personnel specified in the order.

(ii) National health, safety, and interest.

(iii) Erroneous enlistment (which was not obtained by fraud on the part of the enlistee).

(iv) In the case of enlistees under the College Junior Program for women:

(a) Failure to apply for a Reserve commission within 3 months following college graduation.

(b) Failure to qualify for appointment. Discharge will be accomplished upon disapproval of application for appointment.

(c) Failure to accept proffered appointment. Discharge will be accomplished upon declination of appointment.

(v) In the case of women: marriage, pregnancy, parenthood, or custody of children under age 18.

(vi) For other good and sufficient reasons acceptable to the area commander.

(9) For security reasons.

(10) Because of unsuitability.

(11) Because of unfitness.

(12) Because of misconduct. In addition to those examples listed in AR 635-206 (Army regulations pertaining to discharge for misconduct) the following will be considered misconduct:

(i) Failure or refusal to comply with official orders to annual active duty for training.

(ii) For the obligated reservist. Unsatisfactory service which has continued for more than a year, such as

(a) When enforcement procedures have not resulted in satisfactory participation.

(b) When reservist has failed or refuses to reply to official correspondence.

(c) When enforcement procedures cannot be applied because reservist has failed to furnish an address through which he may be reached and efforts to locate him have been unsuccessful.

(iii) For the nonobligated reservists.

(a) If initial entry into military service was prior to 10 August 1955, failure to maintain eligibility for retention in the Ready Reserve as prescribed in pertinent Army Regulations.

(b) If initial entry was after 9 August 1955, failure to satisfactorily participate in required training.

(c) Failure or refusal to reply to official correspondence.

(13) Noncitizens, who:

(i) At time of release from active duty fail or refuse to give a permanent mailing address within the United States or its possessions, but give only an address in a foreign country.

(ii) Leave the United States for permanent residence in a foreign country.

(iii) Visit a foreign country of which a national for a period of 6 months or more.

(14) When found unacceptable for induction, as:

(i) When reported by Armed Forces Examining Stations as found not acceptable for induction.

(ii) When official information is received that reservist has been reclassified IV-F by Selective Service.

(iii) When it is reported by Selective Service authorities that the reservist is found to be a bona fide conscientious objector and if not classified 1-D (as a member of a Reserve component), would be classified 1-O (Conscientious Objector Available for Civilian Work Contributing to the Maintenance of the National Health, Safety, or Interest).

(15) Upon written request of the individual upon his becoming a regular or duly ordained minister of religion. A statement from the appropriate authority of the church, religious sect, or organization that the individual has met the requirements and has been duly ordained or appointed a minister must accompany the request for discharge.

(16) Upon application by an obligated reservist who is pursuing theological studies, obtaining ordination, or taking final vows in a religious order which requires separation from military status as a prerequisite to such training or taking of final vows. Application must be accompanied by a statement, signed by the appropriate official of the seminary or religious order, substantiating his request. Discharge will not be effected without prior approval of The Adjutant General.

(17) Minority.

(18) Homosexuality.

(d) *Dropping from rolls.* A reservist sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a civil court and whose sentence has become final, whether or not actually confined, may be dropped from the rolls of the Army. This action will be effected by officers exercising general courts-martial jurisdiction in special orders reading in part as follows:

By direction of the Secretary of the Army, Pvt (E-1) (name), (SN), (home address), (organization of assignment), is dropped from the rolls of the Army under the provisions of title 10, United States Code, subsection 1163(b), and paragraph 5, AR 140-178, by reason of conviction and sentence to confinement by civil court.

Individual will be furnished a copy of the orders but no discharge certificate will be issued.

(e) *Processing requirements*—(1)

*Board action.* (i) When discharge is under honorable conditions the commander concerned may effect discharge without board action.

(ii) When discharge is under conditions other than honorable, it will be effected only pursuant to the approved findings of a board of officers; unless the reservist waives board action.

(2) *Character of discharge.* A reservist will receive a final discharge predicated upon the character of service performed while serving in the Active Army and upon his conduct and the character of his participation in Reserve training, if participation was required.

(3) *Date of discharge.* (i) Except as shown in subdivision (ii) of this subparagraph or unless otherwise specifically directed by the Adjutant General, the date of discharge will be the date on which discharge action is actually accomplished by proper authority.

(ii) When discharged under the provisions of paragraph (c) (3) or (4) of this section, discharge action will be effected upon receipt of notification of entry into new status. The effective date of discharge will be the day prior to date of reservist's entry into the new status.

(iii) When discharged by reason of completion of service obligation, date of discharge may be the last day of the month preceding the month in which obligated service is completed.

(4) *Certificate of discharge.* Discharge certificates will be prepared and furnished as prescribed in pertinent Army regulations.

(5) *Reports of discharge to Selective Service System.* Reports are required by the Selective Service System when a deferred member of the Ready Reserve or a member of the Standby Reserve is discharged from his military status. A separate letter order will be used in effecting the complete separation of such individuals. No abbreviations will be used. The letter order will contain the information specified below and distribution will be shown on all such orders.

(i) *Standby reservists.* A copy of each letter order discharging a member of the Standby Reserve will be furnished the appropriate State Director of Selective Service. The letter order will include the:

(a) Reservist's Selective Service or Standby Reserve number.

(b) Phrase "removed from the Standby Reserve."

(c) Address.

(ii) *Ready reservists deferred from induction.* A copy of each letter order discharging a member of the Ready Reserve deferred from induction will be furnished the appropriate local Selective Service Board. The letter order will include the reservist's Selective Service number and address.

(6) *Procedures when undesirable discharge is contemplated after the following procedures and safeguards have been observed.* An individual subject to such discharge will be advised of the basis for the contemplated action in accordance with paragraph 6, AR 15-6, and afforded an opportunity to request or waive the privileges listed in subdivisions (i), (ii), (iii) and (iv) of this subparagraph.

(i) To have his case heard by a board of officers.

(ii) To appear in person before such board, subject to his availability.

(iii) To be presented by counsel, who, if reasonably available, should be a lawyer.

(iv) To submit statements in his own behalf.

[AR 140-178, 6 June 1960] (Sec. 280, 70A Stat. 14; 10 U.S.C. 280)

R. V. LEE,  
Major General, U.S. Army,  
The Adjutant General.

[F.R. Doc. 60-8266; Filed, Sept. 6, 1960;  
8:45 a.m.]

## Title 47—TELECOMMUNICATION

### Chapter I—Federal Communications Commission

#### PART 8—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

##### Measurement of Transmitter Power

The Commission having under consideration the desirability of making an editorial change in Part 8 of its rules and regulations;

It appearing that § 8.110(b) of the Commission's rules should be corrected to delete certain provisions thereof which were erroneously retained therein in the Commission's editorial Order of September 25, 1959 (Mimeograph No. 78469; 24 F.R. 8071); and

It further appearing that the amendment adopted herein is editorial in nature thus making compliance with the public notice and rule making procedures prescribed by section 4 (a) and (b) of the Administrative Procedure Act unnecessary, and for the same reason, compliance with the effective date provisions of section 4(c) of the Administrative Procedure Act is not required; and

It further appearing that the amendment adopted herein is issued pursuant to authority contained in sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and sec-

tion 0.341(a) of the Commission's Statement of Organization, Delegations of Authority and Other Information;

It is ordered, This 29th day of August, 1960, that effective September 9, 1960, Part 8 of the Commission's rules is amended as set forth below.

(Sec. 4, 48 Stat. 1086, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303.)

Released: August 30, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

1. Section 8.110(b) is amended to read as follows:

§ 8.110 Measurement of transmitter power.

(b) For the purpose of assuring adherence to the requirement of paragraph (a) of this section, each radio transmitter in a ship station which is rated by the manufacturer as being capable of a plate input power in excess of 200 watts or an antenna power in excess of 100 watts shall be fitted with the instruments necessary to determine the actual plate power to the transmitter whenever the latter is in use.

[F.R. Doc. 60-8295; Filed, Sept. 6, 1960;  
8:49 a.m.]

# Proposed Rule Making

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### [ 7 CFR Part 927 ]

[Docket No. AO-71-A40]

### MILK IN NEW YORK-NEW JERSEY MILK MARKETING AREA

#### Notice of Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the New York-New Jersey milk marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C., not later than the close of business the 18th day after publication of this decision in the *FEDERAL REGISTER*. The exceptions should be filed in quadruplicate.

**Preliminary statement.** The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order, were formulated, was conducted at Elmira, New York, on February 2-5, 1960 and at Utica, New York, on February 9-12, 1960, pursuant to notices thereof issued on October 2, 1959 (24 F.R. 8184) and January 11, 1960 (25 F.R. 293).

The material issues of record relate, in general terms, to the application of provisions of the order to milk transferred at the farm in bulk directly from a farm tank to a tank truck (hereinafter called "bulk tank milk") and more specifically to the following:

1. The circumstances and conditions under which bulk tank milk should qualify as pool milk.

2. The handler who should be held responsible for reporting, accounting, and pooling of bulk tank milk and for paying producers.

3. The pricing of bulk tank milk, including the point of pricing, the price fixed for such point, and the application of specified differentials both in connection with class prices and payments directly to producers or cooperative associations of producers.

**Findings and conclusions.** The following findings and conclusions on the mate-

rial issues are based on evidence presented at the hearing and the record thereof:

**All issues.** Under conditions prevailing in the New York-New Jersey milkshed, control by the producer over the handling of his milk is relinquished by him at his farm upon transfer of the milk from the producer's bulk tank into a tank truck. Accordingly, it is concluded that the order should be amended to reflect this basic fact.

Traditionally, the milk supply has been assembled through the operation of plants throughout the milkshed at which milk was received from the producer in 40-quart cans. In October 1959, milk was received from 49,719 producers at 691 plants. Under this method the function of delivering the milk from the farm to the plant is a responsibility of the producer and is performed by the producer either by hauling the milk himself or by hiring it hauled by a local trucker. In some instances (but not commonly) the hauling of milk in cans from farm to plant is done by the plant operator at the producer's expense.

Most of the milk delivered in cans is from farms within a radius of not more than 15 miles from the plant. The distance which milk may be hauled in cans is limited by the cost involved in relation to the alternative cost of assembly at country plants and reshipment in bulk to distant pasteurizing or manufacturing plants. Quality control and compliance with health authority requirements are also important factors limiting the distance which milk feasibly may be moved in cans.

Where milk is delivered by the producer in cans to the handler's plant, the plant is the place where the milk is weighed, where samples are taken for testing for butterfat and for quality control and where the cans are washed for reuse by the producer. The plant is the place where the milk is either accepted or rejected. It is the place where milk received from producers is cooled, it being a common practice to deliver uncooled milk produced the same morning it is delivered. It also is the place where the milk of the individual producer is mixed with that of other producers and, thus, loses its identity. The plant at which milk is received in cans is the point where control of the milk passes from the producer to the plant operator and at which the milk becomes susceptible of being either utilized at such plant in a manner chosen by the plant operator or moved by the plant operator to other plants for fluid distribution or for manufacturing. The system of country plants prevailing in the New York-New Jersey milkshed which has been developed as a means of assembling the milk supply was recognized when the order was originally issued and has since continued to be recognized. Milk is subject to regulation under the order only when received directly from

farms at a regulated (pool) plant. Minimum prices required by the order to be paid by the handler are adjusted for the location of the plant at which milk is received from producers.

The assembly of milk from farms by tank truck, however, differs significantly from the method employed in the assembly of milk in cans. When milk is transferred at the farm from the bulk tank in the producer's milk house to a tank truck operated by a person other than the producer, the point at which such transfer occurs is the point where several functions are performed, which in the case of milk delivered in cans are performed at the plant. Milk thus delivered has been cooled at the farm and consequently is not subject to an early delivery deadline as is the case with milk in cans. The producer's milk house becomes the place where the weight of the producer's milk is determined, the place where samples are taken for testing for butterfat and quality control and the place at which the individual producer's milk loses its identity by being mixed with milk of other producers. The farmer's milk house is the place where the individual producer's milk is accepted or rejected by the operator of the tank truck.

Not only are there significant additional functions performed by the operator of a bulk tank truck, but also the investment in equipment required for hauling bulk tank milk from farms is substantially greater than for equipment used for hauling milk in cans. Consequently, the function of moving bulk tank milk from farms to plants in the New York-New Jersey milkshed so far has been performed either by the plant operator (either proprietary or cooperative) or by a cooperative established by producers primarily for that purpose. Milk received in tank trucks from producers' farms is susceptible of being moved longer distances and to a much larger number of plants than is the case with milk picked up in cans. Such bulk tank milk may be moved in the tank truck where originally received directly to pasteurizing and bottling plants, to manufacturing plants, or to any of a number of assembly plants for reshipment in larger "over-the-road" tank trucks. Such bulk tank milk received directly from farms is more susceptible than can milk of being moved to either pool or nonpool plants.

Conversion by producers from can to bulk tank method of delivery did not attain noticeable proportions until about 1952. It was first recognized at a public hearing early in 1953. At the time of that hearing, there was only one bulk tank route in operation involving the milk of 17 farms. Following that hearing a recommended decision was issued (September 15, 1953, 18 F.R. 5595) in which it was concluded that the order should be amended to provide for f.o.b. farm pricing of bulk tank milk. It was

concluded in the final decision, however, (December 15, 1953, 18 F.R. 8444) that such amendments were not justified under conditions prevailing at that time. In a decision issued December 28, 1955 (20 F.R. 10168) dealing with the application of location differentials to bulk tank milk, it was found that as of June 1955, milk was received by bulk tank from only 115 producers. As of January 1957, only about two percent of milk received at pool plants was from farms with bulk tanks. Such farms represented less than one percent of the total number of producers. As of January 1959, there were 3,526 producers with bulk tanks. These producers delivered approximately 14 percent of the total quantity of milk received from producers and represented about 7 percent of the total number of producers. Milk from these bulk tank producers was received by 102 handlers and 172 different plants. Such plants were distributed generally throughout the milkshed. Some bulk tank milk was being received at about 35 percent of the total number of plants (443) receiving milk from more than 25 producers and was being received by 47 percent of the handlers operating such plants. By October 1959, the number of producers with farm bulk tanks had increased to about 3,884, constituting approximately 8 percent of the total number of producers. Milk of producers who thus far have converted to bulk has in some instances been hauled more than 200 miles from farms to city plants. More commonly, however, bulk tank milk is moved shorter distances to country receiving plants.

Numerous problems and difficulties are being encountered in regulating the handling of bulk tank milk with existing provisions of the order, under which pooling depends upon delivery direct from the farm to a pool plant and under which minimum class prices and the uniform prices paid to producers reflect the location of the plant to which such delivery is made. Numerous administrative problems associated with bulk tank handling have arisen, particularly where milk is received at several plants, some pool and some nonpool, in the same month and where a given tank load of milk is unloaded at two or more plants of the same or different handlers on the same day. There exists, of course, an incentive for handlers to operate in a manner resulting in the maximum exclusion from the pool of milk used for fluid use outside the marketing area and in the maximum inclusion in the pool of milk in Class I-A and Class III uses. There also is an incentive and opportunity for selecting one of several plants for the receipt of bulk tank milk, with or without manipulation of hauling charges, so as to distort, and impinge upon the effectiveness of, the minimum price provisions of the order, particularly in the case of relatively long hauls of bulk tank milk.

Various maneuvers are undertaken for accomplishment of these objectives. Among those specifically reported are the following:

1. A handler operating a pool distributing plant directed his tank truck

driver to stop at a nonpool plant to have the milk "checked in" at the nonpool plant as if there received and then to proceed to the pool plant for actual delivery and use. Object was to exclude from the pool, milk distributed on routes outside the marketing area.

2. A handler directed one of his bulk tanks to "by-pass" his pool plant and go directly to a nonpool distributing plant for fluid use outside the marketing area. Object was to exclude such milk from the pool.

3. A handler operating a nonpool distributing plant with only a small proportion of his fluid sales inside the marketing area directed his tank truck driver to have the milk "checked in" at a pool plant as if there received, and then to proceed to his nonpool plant for actual delivery and use. Object was to include in the pool, milk distributed for fluid use inside the marketing area.

4. The operator of a nonpool distributing plant directed his tank truck driver to "by-pass" his nonpool plant headquarters and to proceed directly from farms to a pool manufacturing plant. Object was to include in the pool the surplus milk associated with his unregulated fluid operations.

5. Handlers operating distributing plants in the Metropolitan district (1-10 mile zone) brought in bulk tank milk direct from farms. One handler directed his tank truck driver to "check in" at a country plant to have the milk recorded as if there received and then to proceed to the city plant for actual delivery and use. Another handler did not employ the "check in" practice but requested the farmers to authorize transportation charges substantially exceeding the cost of transportation. Object in both instances was to avoid payment for milk at minimum order prices applicable at a 1-10 mile zone plant.

6. A handler operating a pool plant from which milk is distributed both inside and outside the marketing area obtained a portion of his supply from a nonpool plant and discovered, after receiving what was intended to be nonpool milk from the nonpool plant, that the milk, in fact, was moved by tank truck direct from farms to his own pool plant. In this instance the object was defeated inadvertently.

7. A handler operating a pool receiving plant transferred a portion of the milk from farm pickup tank trucks to a larger over-the-road tanker at a point some distance from his pool plant with such milk moved to a fluid distributing plant outside the marketing area. A portion of the milk from farm pickup trucks not thus transferred moved instead to the handler's pool plant. Such quantities were reported as received from an arbitrarily selected portion of the producers from whom milk was received in the tank truck since it was not possible, because the milk of several producers was commingled in the tank truck, actually to identify the producers of that portion of the truck load not transferred to the over-the-road tanker.

8. A handler operating bulk tank routes unloaded a given truck load of milk at each of three different plants.

This type of practice may or may not be designed to achieve any particular objective of the handler other than effectuation of a logical and realistic method of operation. It does, however, raise obvious questions in the application of present order provisions, particularly as to the applicable location differential both in connection with the handler's pool obligation and in payment of producers and as to who is to be regarded as the responsible handler, or handlers.

These enumerated practices are illustrative of the inherent flexibility of bulk tank milk handling which distinguished it from can milk and demonstrate the need for order amendment as herein provided. Where some handlers are in a position to move milk, after receiving it from farmers, so as to significantly influence the minimum price required to be paid for such milk, a question is raised as to whether the order is effectuating as effectively as possible its purposes of establishing prices which are uniform as to all handlers and of insuring an equitable distribution of returns to producers.

Issue No. 1. The order should be amended to provide for (1) the establishment of bulk tank "units" in which all bulk tank milk received from farmers will be included, (2) the designation of each such unit as either a pool or nonpool unit, and (3) the circumstances and conditions under which the pool status of a unit may be changed, and under which milk may be shifted among, removed from, or added to, established units.

Amendment of the order to provide for regulating bulk tank milk by units defined other than in terms of milk which is received from farmers at a particular plant is designed to recognize those various differences (above set forth) in the handling of bulk tank milk, compared with milk delivered in cans, which result in the substantially greater degree of flexibility which characterizes bulk tank milk and distinguishes it from can milk. Such amendment also, of course, is designed to provide a more effective and equitable means of identifying that milk which is to be pooled and to facilitate and implement the pricing of bulk tank milk as herein set forth.

Such a unit for reporting and accounting purposes under the order should include the milk received by bulk tank truck from one or more farms which the handler receiving the milk elects, subject to specified limitations, to include in the unit. It should be required, however, that all bulk tank milk received from farmers by the handler be included in a unit (either pool or nonpool) established by the handler if the milk may reasonably be considered to have any relationship to, or association with, the market. Accordingly, all bulk tank milk received at a pool plant or a plant distributing milk in the marketing area or handled in a tank truck together with pool milk should be included in an established (either pool or nonpool) unit.

As much freedom as possible should be accorded the handler in the establishment of units to best fit his pattern or system of operation. The farms included in a single unit need not be restricted or limited in terms of requir-

ing physical handling in the same tank truck or plant. That is, the milk in a given tank truck may be included in two or more units and a given unit may include all or a portion of the milk in two or more tank trucks. Similarly, the milk in a given unit may be moved in its entirety to different plants on different days or a portion to one plant and a portion to another plant on the same day. The principal requirement as to the milk which may be included in a single unit should be that there be a single place or headquarters where the basic records of the receipts and butterfat test of milk from each farm are maintained together with records showing the plant or plants to which such milk is moved. This is essential to permit the necessary verification of receipts and utilization of milk by units as reported by handlers. At the same time, this type of standard will permit and facilitate the establishment of bulk tank units better adapted to the way bulk tank milk is handled.

Each bulk tank unit also should be designated by a name indicating as precisely as practicable the geographic location of the farms included in the unit. Names such as "Orange County Unit" and "Middletown Unit" are visualized. Use of such names is primarily for identification of units and particularly as a means of distinguishing among two or more units operated by the same handler. The same geographic name could be used by two or more handlers, but if a given handler has more than one unit in the same area, a further refinement in name might be necessary such as "Delaware County Unit No. 1" and "Delaware County Unit No. 2".

It is essential, of course, to provide appropriate standards pursuant to which milk in bulk tank units is to qualify as pool milk. The standards for pooling bulk tank units should parallel those for pool plants insofar as practicable. Accordingly, the requirements for pool units (as for pool plants) should depend in some degree upon whether the unit includes milk from farms located within or outside of the area normally and historically supplying the marketing area. Such area (hereinafter called "regular supply area") presently is defined in the order (§ 927.25(b)) and should be recognized in the application of pool unit requirements except that, for pool unit purposes, a slightly expanded area should be recognized because of its application in terms of farm, rather than plant, locations. Thus, for purposes of applying pool unit requirements, it will be necessary to require that a single bulk tank unit include only farms which either are all located inside the regular supply area or all located outside such area.

Bulk tank milk should be pooled, of course, only if it is handled and used primarily for servicing the marketing area. In line with this principle, a bulk tank unit which is to be pooled should include milk only from farms fully approved by a marketing area health authority as a source of milk for fluid use in the marketing area and from which, at the time of its inclusion in, or addi-

tion to, a pool bulk tank unit, such milk is being received at a pool plant.

Pool bulk tank units comprised of farms located in the regular supply area should be subject to the same operating requirements (set forth in § 927.26) as pool plants similarly located.

Bulk tank units comprised of farms located outside the regular supply area should be pooled in each of the months of July through March if at least 25 percent of the milk in the unit is delivered to pool plants, and in the months of April, May and June only if during the preceding October-December period not less than 60 percent of the milk received by the handler from farms comprising the unit was delivered to a pool plant. These requirements are comparable to those presently applicable to pool plants similarly located and are necessary as one means of measuring association with the market.

The requirements for pooling bulk tank milk should be sufficiently flexible to permit appropriate adjustment in the supply of pool milk in line with market requirements on a year-round basis. However, handlers should not be free to shift milk in and out of the pool at will seasonally or otherwise at frequent intervals on an opportunity basis. Accordingly, order provisions have been drawn to permit a handler to make a farm, from which he is receiving pool milk in cans, a part of a pool bulk tank unit at any time. A handler also is permitted to add other farms to a pool unit at any time except for necessary limitations which recognize and are consequences of, action previously taken by the handler causing milk to shift from pool to nonpool status.

More specifically, a handler may shift a farm from a pool bulk tank unit to nonpool status on the first of any month. After having caused such a shift in status, however, the handler is not permitted to resume pooling the milk from that particular farm until after a complete April, May, June period has elapsed. Moreover, if a handler causes bulk tank milk (either by farms or entire pool units) to become nonpool in the months of July through November, he is not permitted to add any farm to any of his pool units until the first of the following July other than a farm from which he has received milk in cans at a pool plant for at least 30 days immediately preceding.

These provisions do not restrict the freedom with which handlers may add new farms to pool bulk tank units except as a result of prior action by the handler in causing milk to become nonpool. Neither do these provisions prevent any handler from receiving the milk of any farmer. The limitations are in terms of milk which may not be pooled. Similarly, these provisions do not limit the opportunity of a producer to shift his milk from one handler to another or to have his milk pooled unless he chooses to deliver his milk to a handler who has become ineligible to pool the milk of additional producers. A handler is not precluded from taking back and pooling the milk of a pro-

ducer who shifts to another handler unless the shift is from pool to nonpool status and under an arrangement involving participation of the handler from whom the milk was shifted. It is not feasible, however, to attempt to recognize prior association of a handler with a particular farm without some limit as to time. Consequently, the restriction on the freedom of a handler to add new farms to pool units should apply also to farms lost prior to July 1 preceding.

Since the restrictions on addition of farms to pool units are triggered by action of the handler causing milk to become nonpool, it is important that actions which are to be so construed are clearly defined. They are as follows: (1) Notice by the handler filed with the market administrator that he desires to terminate the pool status of an established pool bulk tank unit. (2) notice by the handler filed with the market administrator of the transfer of a farm from a pool unit to a nonpool unit. (3) operation of a pool unit so as to result in cancellation of pool status for failure to meet the operating requirements of § 927.26, and (4) arrangements in collaboration with other handlers. This latter action means that a handler who participates in an arrangement for shifting farms from a pool unit to another handler as nonpool milk will be in the same position as if he had transferred the farms to one of his own nonpool units. Moreover, to prevent circumvention of the purposes of the provision, the handler to whom the milk of pool farms is transferred and handled as nonpool milk, or an affiliate of either the transferor handler or the handler receiving the milk as nonpool milk, will be precluded from later pooling the milk of such farms until after a complete April-May-June period has elapsed. When such an arrangement is found by the market administrator, he will notify the handlers involved of such finding, following which the handlers will have opportunity of proving that the market administrator's finding is not correct. If such proof is presented the market administrator's finding will be rescinded. Also, to minimize controversy and to permit adjustments for inadvertent errors, the handler will be permitted to elect at a later date to have the milk considered as not having been shifted to nonpool status and thus be relieved of restrictions resulting from having caused milk to become nonpool.

Bulk tank units declared by the handler to be nonpool units should be recognized and treated under the order as nonpool only if they are so operated that they do not become substantially involved in handling Class I-A milk. A declared nonpool bulk tank unit will automatically become a pool bulk tank unit in any month in which the percentage of milk classified in Class I-A is equivalent to that which would automatically make a plant that is otherwise nonpool become a temporary pool plant. Here again, this provision parallels existing provisions with respect to pool plants.

It is necessary, of course, for effective administration of the order to make pro-

vision requiring timely reporting by handlers of the establishment of bulk tanks units and of changes in such units in essentially the same fashion as for plant operations. However, it is reasonable to expect some inadvertent reporting errors relating to bulk tank units pending time for becoming familiar with new provisions. Accordingly, provision is made that where a handler has failed to report all bulk tank milk as a part of either a pool or nonpool unit, or where errors in reporting are apparent, the market administrator will tentatively assign bulk tank producers to units and so notify the handler who will then have 10 days in which to correct the tentative assignment. If not so corrected, the market administrator's tentative assignment will become final.

Provisions also are made for public announcement by the market administrator of the names of handlers operating pool bulk tank units, together with the name of each such unit and the location of the headquarters. Prompt announcement should be made when the status of a unit is changed from pool to nonpool and when pool units are established or shifted from nonpool to pool status. Such announcements are primarily for the purpose of making information available to handlers purchasing milk from operators of bulk tank units. In this connection, and since minimum order prices are required to be paid to a cooperative association operating a pool bulk tank unit, provisions are made for imposing on such cooperative association any compensatory payment obligation resulting from its sale of nonpool bulk tank milk to another handler. Prompt announcement also should be made by the market administrator of the names of handlers who have become ineligible to add farms to pool bulk tank units. Such information is material to the decisions of producers regarding delivery of milk to handlers in this category.

At the present time a plant other than a designated regular pool plant becomes a temporary pool plant on the basis of the percentage of milk received at the plant, both in cans and in bulk tank direct from farms, which is classified in Class I-A. In order to avoid changing the substance of these requirements, it is necessary to revise the language of the temporary pool plant provisions (§ 927.29) so that the required classification percentages will continue to apply to the combined volume of can milk and bulk tank unit milk received at the plant. To provide equity between distributing plants receiving milk from pool bulk tank units and those receiving milk from pool plants, handlers who desire a nondesignated plant to remain nonpool should be permitted to allocate Class I-A milk to pool bulk tank unit milk and thus reduce the Class I-A percentage of the balance of the milk in the plant to a point where the plant would not be required to be pooled, just as they are now permitted to allocate Class I-A milk to receipts from pool plants.

The accounting and assignment provisions of the order have been revised in

numerous places for the purpose of requiring milk from pool bulk tank units to be accounted for and assigned in the same manner as milk from pool plants. One change in assignment, however, has been made for the purpose of reducing the chance that pool bulk tank unit milk will carry the burden of the surplus associated with a handler's nonpool distribution outside the marketing area. This change requires the prior assignment of pool bulk tank milk to Class I-B rather than a pro rata assignment of pool and nonpool milk to Class I-B and Class III as is presently the case.

Since provision is made herein for the application of accounting and assignment provisions of the order to milk in pool bulk tank units in substantially the same manner as to milk in pool plants, it is recognized that provisions of this order and those of other orders will need to be coordinated further to avoid the possibility of regulation under more than one order.

**Issue No. 2.** The person who operates, or is responsible for operating, the bulk tank truck or trucks in which milk is received at the farm is the person who should be recognized as the handler and held responsible for establishing pool bulk tank units, and for reporting, accounting, pooling and paying producers for such milk. Effectuation of this principle requires that provision be made for establishment of pool bulk tank units by the following persons and for regulation of such persons as handlers under the order: (1) The operators of pool plants; and (2) cooperative associations which do not operate plants but which receives milk from farms in a tank truck and deliver milk to pool plants of other handlers. These are the persons who at the present time are handling bulk tank milk for the New York-New Jersey marketing area. In addition, as is now the case with respect to milk of members received at a pool plant of another handler, a cooperative association which does not operate the bulk tank routes may elect to report and collect for milk of its members in a pool bulk tank unit operated by another handler.

**Issue No. 3.** It is concluded that (1) the price at which bulk tank milk is accounted for to the pool should be the minimum class price adjusted for location of the farm (milk house) at which the milk is transferred from the farm tank to a tank truck; (2) payments by handlers directly to individual producers should be adjusted to reflect all location differentials (transportation, nearby and direct delivery) based on location of farms where bulk tank milk is received by the handlers and should be subject to any tank truck service charge specifically authorized by the producer but not in excess of 20 cents per hundredweight; and (3) payment required by handlers to be made to a cooperative which is the responsible handler and operates the bulk tank route should be at the price reflecting transportation and direct delivery differentials applicable at the handler's plant where the milk is delivered by such cooperative. Where the cooperative merely elects to report and collect but does not operate the bulk

tank route, payment by the handler to the cooperative should be at the price reflecting transportation and direct delivery differentials applicable according to location of the farms.

It has been previously found herein that delivery of bulk tank milk takes place at the farm and that control of the milk passes to the handler at the farm. The farm is the place where bulk tank milk is acquired by the handler for marketing. Once so acquired, the plant or plants to which the milk may be delivered depends upon decisions of the handler rather than the producer. Under such circumstances, the handler's decision as to the plant or plants to which bulk tank milk may be delivered after receipt by him at the farm is not a factor appropriately to be reflected in the minimum producer price.

With bulk tank handling, a particular farm is no longer associated with a particular plant, at least not to the same degree as with delivery in cans. Accordingly, adjustment of producer prices for bulk tank milk based on plant locations does not reflect farm locations to the same degree as for milk delivered in cans. Pricing bulk tank milk at the farms permits establishment of class prices and adjustments properly reflecting the location value of the milk regardless of the number and location of plants to which the milk may be delivered by the handler.

The pricing of bulk tank milk f.o.b. farm eliminates the incentive for handlers to attempt to make it appear that the plant of receipt is other than the plant where the milk is actually received and handled. It also eliminates incentives for receiving milk at a plant at which a lower price applies even though delivery to some other plant would be dictated on the basis of overall operating efficiency. Where the producer price depends upon the plant or plants to which the handler chooses to move the milk, the producer has only a speculative notion of what his price is going to be. Moreover, it is impossible to determine the plant of actual delivery in instances where a tank truckload of milk is delivered to more than one plant. Such instances require application of some arbitrary rule for determining the point of pricing, such as the first plant of delivery, the plant receiving the largest volume or the plant in the nearest zone. Such an arbitrary selection for pricing purposes produces unrealistic results, obstructs operating economies and leads to unnecessary administrative problems and complications. Even where split loads are not involved but where delivery is to more than one plant in the same month, the complicated and undesirable procedure of accounting for the milk and payment of producers at more than one price would be required.

A primary problem associated with f.o.b. farm pricing is the determination of location differentials for farms. The New York-New Jersey supply area covers a large territory. Plant location differentials previously have been established by 10-mile zones throughout the supply area. A considerable volume of milk is

received in nearly all of these zones. Minimum producer uniform prices vary within a range of from 49 cents over to 24 cents under the announced price for the 201-210 mile zone.

Plant zones are based on the shortest highway mileage distance from the plant to the nearest of a specified list of basing points. It would be administratively impossible to zone each individual farm by exactly the same method. Approximately the same results would be achieved by zoning farms by the method presently prescribed in the order for farms in the nearby differential area, that is, by zoning each township by the same method used for zoning plants and assigning that zone to each farm in the township. This latter method, therefore, should be used in zoning farms for this purpose. In Delaware and Maryland, where there are no townships and where milk is received from only a relatively few producers, zones should be established by counties rather than townships.

Except for the nearby differential, location differentials in the New York-New Jersey order depend solely upon the location at which milk is received by the handler from the producer. They are not, and should not be, affected by the type of operation conducted at that location. Under present order provisions, milk is deemed to be received from the producer at a plant. However, it has been concluded herein that the order should be amended to recognize that bulk tank milk is received by the handler at the farm.

Location differentials should continue to be applied at the point where milk is received from producers. In order that this may be done and at the same time recognize that the farm is the point at which bulk tank milk is received, the location differentials (identified in the order as transportation and direct delivery differentials) applicable at the farm for bulk tank milk should be the same differentials, and at the zone rates, as those applicable to milk received in cans at a plant in the same zone.

The pricing of bulk tank milk f.o.b. farm was opposed by one producer group on the basis that this method would eliminate the opportunity of the farmer to obtain a higher price by delivering his milk to a point where a higher price applies because of location differentials. The basis for this view appears to be largely illusory in that higher minimum prices which are obtainable only when they involve additional expense by the producer do not necessarily mean higher net prices. Moreover, since the prices established by the order are minimums, the producer still has the opportunity to sell his milk to the handler who will pay him the highest price at his farm. In addition, under the order amendments herein provided, the opportunity exists for producers, through their cooperative associations, to attempt to improve their price by delivering the milk to a handler at the handler's plant. Provision is made that a cooperative handler which operates a bulk tank unit and delivers the milk to another handler's plant shall be paid not less than the minimum pro-

ducer price at that plant. The cooperative incurs the expense of transportation and must account to the pool for the milk at class prices reflecting the location of its producers' farms. Any net margin for the cooperative from such operation will thus be available to provide higher returns to members of the association.

Other proposals were made that location differentials would depend upon the location of the plant nearest the metropolitan area when delivery is to more than one plant in the same month, and that the direct delivery differential applicable to a farmer's price depend upon the plant where the handler delivered the milk instead of the point where the producer delivered the milk to the handler. Still another proposal was that cooperative associations of producers be permitted to choose a point within the range of farm locations at which their price would be determined. All of these proposals are inconsistent with the conclusion, supported by findings herein, that the price should be established at the point where the producer delivers the milk to the handler. Such proposals, therefore, should not be adopted.

Any bulk tank unit may include milk from farms located in more than one zone. In recognition of this fact, and to avoid the necessity of allocating classification to milk received from each zone, the method of applying transportation differentials in accounting for bulk tank milk should be modified by use of a weighted average transportation differential for each classification in each unit and in determining the handler's net pool obligation for the unit. The effectuating amendments provide for computation and use of such weighted average. The amendments also provide a revised method of calculating the butter-cheese adjustment so that the same limitation as to rate beyond the 325-mile zone presently applicable to plants also will apply to bulk tank milk.

Under the traditional method of pricing milk the handler pays a price f.o.b. his plant. The cost of transporting milk from that point to a customer of the handler is borne by the handler and is a matter of no concern to the individual producer. However, the basic plant price has varied among plants reflecting their location in relation to the primary market. The producer has been responsible for getting his milk to the plant. He has been free to bargain for transportation from farm to plant. Some farms poorly located with respect to type of roads, distance to improved highways and distance from a plant pay what is necessary to have their milk hauled to a plant. Farm to plant hauling charges in New York State average nearly 20 cents per hundredweight.

Some of the proposals considered at the hearing were for f.o.b. farm pricing of milk with no deduction for hauling from farm to first plant. One reason advanced in justification of these proposals was that handlers currently are paying premiums for bulk tank milk either in cash or by not charging for transportation, or both. Cash premiums reported being paid to bulk tank produc-

ers ranged from 5 to 25 cents per hundredweight together with either no charge for hauling or a hauling charge of less than the amount of the cash premium. Other reasons advanced in support of these proposals were that potential savings in plant operating costs would furnish the money to offset transportation costs; and that the use of bulk tanks increases the producer's costs. Other parties proposed that milk be basically priced f.o.b. farm but that deductions for cost of transportation be permitted. Reasons advanced in justification of this proposal are that handlers' plant costs are not a factor affecting the value of milk from a particular farm; that increased costs to producers do not mean increased value to handlers; that premiums paid to producers for bulk tank milk are a reflection of factors other than the value of bulk tank milk, as such, including such factors as larger volume of milk per producer, competition to retain or gain volume for efficient handling; and that there are many farms in the milkshed where handlers would not go to pick up bulk tank milk if they were not permitted to charge for transportation.

Distance from a farm to the principal market for milk is not the only location factor affecting the value of milk f.o.b. the farm. Condition of roads, miles of poor roads, location of milk house in relation to highways, topography, and volume of production all have an effect on the value. It is not administratively feasible to attempt to determine the effect on value of all these factors for each farm in the milkshed. It would be illogical to charge the individual producer for costs incurred by the handler after he has purchased the milk.

On the other hand, a producer cannot deliver his milk at the farm to a tank truck of a handler unless the handler brings a tank truck to his farm. Accordingly, the producer should be permitted to bargain with the handler on the matter of furnishing his farm with tank truck service. Under existing and foreseeable conditions, handlers receiving bulk tank milk should not make a charge which would reduce the farm price below the present f.o.b. plant price less average farm to plant hauling costs. The amount of the service charge, therefore, should be limited to 20 cents. The handler should be required to produce evidence of the results of the bargaining with the producer in the form of a signed authorization from the producer, and should be required to keep the authorization current by using it not later than at the time the producer is paid each month. Such authorization also should become invalid if no part of the authorized charge is made for a period of six months.

The fact that producers are permitted to bargain for tank truck service does not mean an end to premiums or "free hauling." Those producers who have a desirable and well-located supply of milk will still be in a position to bargain with handlers for a premium rather than a service charge. The authorized service charge, however, should constitute a method of introducing sufficient flexi-

bility into f.o.b. farm pricing to enable all producers with bulk tanks to find and retain outlets for their milk. Some degree of flexibility in the pricing of bulk tank milk is essential in that the potential economies of bulk assembly can be realized only if it is allowed to develop in a natural, logical and economic fashion.

A proposal was made by handlers that if the order is amended to price bulk tank milk f.o.b. farms, it also should be amended by changing the definition of Class III milk to include bulk tank milk lost because of accidents between the producer's milk house and the plant and bulk tank milk rejected at the plant because of contamination with pesticides or antibiotics. These are problems involved in the handling of milk after delivery of the milk by the producer to the handler. Producers should not be required by provisions of the order to underwrite handling losses to a degree greater than presently provided for under the order. If, as asserted, the handling of bulk tank milk involves additional risks to which the handler otherwise is not exposed, the necessary protection against such loss should be sought from other sources.

**Rulings on proposed findings and conclusions.** Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision. In addition, all contentions of the parties presented for the record have been considered and whether or not specifically mentioned herein, any suggestions, requests, briefs, inconsistent with this decision are denied.

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

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

(b) The parity prices of milk as determined pursuant to Section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended,

are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

**Recommended marketing agreement and order amending the order.** The following order amending the order regulating the handling of milk in the New York-New Jersey milk marketing area 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 the same as those contained in the order, as hereby proposed to be amended:

1. Amend § 927.6 by changing that portion thereof preceding the proviso to read as follows: "Producer" means any dairy farmer whose milk is delivered by other than a tank truck direct from a farm to a pool plant or is delivered to a handler at a farm included in a pool bulk tank unit of such handler.

2. Amend that portion of § 927.7 preceding paragraph (b) to read as follows: "Handler" means (a) any person who engages in the handling of milk or products therefrom, which milk was received at a pool plant, at a farm included in a pool bulk tank unit, or at a plant approved by any health authority as a source of milk for the marketing area.

3. Amend § 927.7(c) to read as follows:

(c) Any cooperative association with respect to milk which it causes to be delivered from producers to any other handler for the account of such association and for which such association receives payment.

4. Add a new § 927.11 to read as follows:

#### § 927.11 Farm.

"Farm" means the production facilities and resources supplying milk to a milk house of a dairy farmer. The location of the farm shall be deemed to be the same as the location of the milk house, and in the event of a change in the location of the dairy farmer's milk house, any question as to whether milk received from the new milk house is from the same or a different farm shall be determined by the market administrator.

5. Add a new § 927.12 to read as follows:

#### § 927.12 Pool bulk tank unit.

"Pool bulk tank unit" means a bulk tank unit established pursuant to § 927.24 and which meets the requirements of a pool bulk tank unit pursuant to such section."

6. Change the heading "Pool Plants" to "Pool Plants and Bulk Tank Units" and add a new § 927.24 as follows:

#### § 927.24 Bulk tank units.

Any handler receiving milk at farms in a tank truck shall establish such farms in one or more bulk tank units, each consisting of one or more farms, in accordance with provisions of this section.

(a) Handlers who may establish and be responsible for pool bulk tank units are as follows:

(1) A handler who operates a pool plant;

(2) A cooperative handler who does not operate a plant but who receives milk from farms in a tank truck and delivers such milk to plants of other handlers: *Provided*, That such cooperative handler shall deliver at least 25 percent of such milk to a pool plant during the first month in which such unit is made a pool bulk tank unit.

(b) The handler may establish the bulk tank units in any manner chosen by him, subject to the following limitations:

(1) Each bulk tank unit shall have a headquarters where the basic record of receipts and butterfat tests of milk from each farm are maintained and where the destination of each tank truck and the volume of milk delivered by each tank truck receiving such milk is recorded.

(2) Each bulk tank unit shall be given a name indicating the general geographic area from which the milk is received.

(3) The handler shall declare whether each bulk tank unit is to be operated as a pool bulk tank unit or a nonpool bulk tank unit. Farms from which the milk is to be pooled shall be established in a separate unit from those which are not to be pooled.

(4) Farms in the area specified in paragraph (e) of this section shall be in units separate from farms in the area specified in paragraph (f) of this section.

(c) A handler may declare that a bulk tank unit is to be operated as a pool bulk tank unit and may add a farm to a pool bulk tank unit at any time except as set forth in subparagraphs (1) through (5) of this paragraph.

(1) If the unit is a declared nonpool unit or if the farm is a part of a declared nonpool unit of such handler, the unit or farm may be changed to a pool status only beginning the first of a month upon notice to the market administrator by not later than the 10th of such month.

(2) The milk of such unit or farm must be delivered to a pool plant on or immediately prior to the date on which it is to be pooled and be under full approval for fluid use by the health authority of authorities approving such plant.

(3) No nonpool bulk tank unit may be declared to be a pool bulk tank unit, no new pool bulk tank unit may be established, and no farm may be added to a pool bulk tank unit in the period of December through June if the handler caused, as specified in paragraph (d) of this section, any pool bulk tank unit or any farm of a pool bulk tank unit to become nonpool in the period of July through November immediately preceding: *Provided*, That this limitation shall

not prevent the handler from including in a pool bulk tank unit a farm from which the handler received milk in cans at a pool plant on each of the 30 days immediately preceding: *Provided further*, That this limitation shall not apply to a farm which was a part of the handler's pool bulk tank unit at some time since the preceding July 1st and was not subsequently caused by the handler to become nonpool.

(4) If the handler caused, pursuant to paragraph (d) of this section, a farm to become nonpool at any time, such handler may not make such farm a part of a pool bulk tank unit until after the passage of a complete April, May, June period following the time the handler caused such farm to become nonpool: *Provided*, That if a handler is substantially under the same management, control, or ownership as a handler or other person who either caused a farm to become nonpool pursuant to paragraph (d) of this section, or received the milk as nonpool milk, or if the handler is the person who received the milk as nonpool milk, such handler may not make such farm a part of a pool bulk tank unit until after the passage of a complete April, May, June period following the time the farm was caused to become nonpool.

(5) A handler may transfer a farm from one pool bulk tank unit to another of his pool bulk tank units on the first of any month upon notice to the market administrator by not later than the 10th of such month.

(d) A handler may cause a pool bulk tank unit or a farm which is a part of a pool bulk tank unit to become nonpool by the methods set forth in subparagraphs (1) through (4) of this paragraph: *Provided*, That the failure of a bulk tank unit to meet the pool requirements set forth in paragraph (f) of this section or the failure of a bulk tank unit pooled pursuant to paragraph (g) of this section to continue to be so pooled shall not be considered for purposes of this paragraph to be a change of pool status caused by the handler.

(1) The handler may make a declared pool bulk tank unit a declared nonpool bulk tank unit effective the first of any month upon notice to the market administrator not later than the 10th of such month.

(2) The handler may transfer a farm from a pool bulk tank unit to a nonpool bulk tank unit effective the first of any month upon notice to the market administrator by not later than the 10th of such month.

(3) The handler may so operate a bulk tank unit located in the area specified in paragraph (e) of this section that its pool status is cancelled pursuant to § 927.27.

(4) The handler may arrange for the milk of a farm in his pool bulk tank unit to be delivered to another person as nonpool milk. Any delivery of milk by a farm in a handler's pool bulk tank unit to another person as nonpool milk shall be considered to have been arranged by such handler unless such handler can establish that such other person is not substantially under the same management, control, or ownership as such

handler and that such handler was in no way a party to such nonpool delivery.

(e) A declared pool bulk tank unit must be operated to meet the requirements set forth in § 927.26 if the farms of such unit are located in the following area: New York; New Jersey; the counties of Addison, Rutland, and Bennington in Vermont; the county of Berkshire in Massachusetts; or in Pennsylvania outside the counties of Adams, Bedford, Berks, Blair, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Mifflin, Montgomery, Montour, Northumberland, Perry, Philadelphia, Schuylkill, Snyder, Union, and York. Failure to meet such requirements shall make such declared pool bulk tank unit subject to suspension and cancellation pursuant to the procedure set forth in § 927.27.

(f) A declared pool bulk tank unit made up of farms located outside the area specified in paragraph (e) of this section shall be a pool bulk tank unit in the months of July through March if at least 25 percent of the milk in such bulk tank unit is delivered in such month to pool plants, and shall be a pool bulk tank unit in the months of April through June only if 60 percent of the milk of such unit was received at pool plants during the period of October through December immediately preceding or if such handler received no milk of such unit from farms of such unit in the preceding October through December.

(g) A declared nonpool bulk tank unit shall become a pool bulk tank unit in any month in which the classification of milk of such bulk tank unit is such that, had the unit been a plant, it would have been a pool plant pursuant to § 927.29: *Provided*, That such bulk tank unit is established by a handler specified in paragraph (c) of this section.

(h) Each handler shall report to the market administrator, not later than the 20th day of the month in which this paragraph becomes effective, the name and headquarters of each bulk tank unit established by him, the identification of the farms included in each unit, and his declared status (pool or nonpool) of each bulk tank unit. Thereafter, each handler shall report by not later than the 10th day of the month any changes in units during the preceding month and as of the first of such month.

(i) Whenever the market administrator finds that a handler has received bulk tank milk from a farm required to be included in an established bulk tank unit but which has not been so included, he shall tentatively assign such farm to a bulk tank unit and promptly notify the handler of such action. Unless otherwise requested by the handler within 10 days of such notice, the tentative assignment by the market administrator will become final.

(j) Whenever the market administrator finds that a handler has caused milk to become nonpool pursuant to paragraph (d) (4) of this section he shall promptly notify the handler of such finding. Within 10 days of such notice the handler may (1) claim that the failure to include the milk involved as pool

milk was an error and, in such event, the market administrator shall pool such milk and rescind his finding, or (2) offer to submit proof that he had not caused such milk to become nonpool. In the latter event, the market administrator shall examine such proof and shall either rescind his original finding or confirm it. Failure to respond to the market administrator's notice shall be deemed to confirm the finding.

(k) The market administrator shall publicly announce the names of handlers establishing pool bulk tank units and the names and headquarters of such bulk tank units. He shall also publicly announce any change in the pool status of such bulk tank units, and the names of handlers who, pursuant to § 927.24(c) (3), are ineligible to add farms to a pool bulk tank unit.

7. Amend that portion of § 927.26 preceding the proviso in paragraph (b) to read as follows:

#### § 927.26 Operating requirements.

The person operating a pool plant designated pursuant to §§ 927.25 or 927.28 or a declared pool bulk tank unit consisting of farms in the area specified in § 927.24(e) shall meet each of the following requirements:

(a) Be willing to dispose of as Class I-A milk in the marketing area milk received at the plant or on the bulk tank unit from dairy farmers.

(b) Keep such control over the sanitary conditions under which milk received at the plant or on the bulk tank unit is produced and handled that the milk can meet the requirements of a source of milk for the marketing area.

8. Amend § 927.27 by inserting after the section reference "§ 927.28" in the first sentence thereof the words "or of a declared pool bulk tank unit consisting of farms in the area specified in § 927.24(e)."

9. Amend § 927.27(c) by inserting the words "or bulk tank unit" immediately after the word "plant" wherever such word appears.

10. Amend § 927.27(d) to read as follows:

(d) In the case of suspension pursuant to this section of the designation of one or more plants or bulk tank units for failure to meet the requirements of § 927.26 (a) or (c), the handler operating such plant or bulk tank unit may select, prior to the effective date of such suspension, one or more other pool plants or pool bulk tank units consisting of farms in the area specified in § 927.24 (e) to be substituted for the plants or bulk tank units suspended, if, during the preceding month, the quantity of milk received from producers at such substituted plants or bulk tank units was not less than the quantity of milk received from producers at the suspended plants or bulk tank units. The handler may also select the order in which plant or bulk tank unit 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 or bulk tank units suspended.

11. Amend § 927.27(e) by adding the words "or bulk tank unit" immediately after the first word "plant" and deleting the words "of the plant as a pool plant" immediately after the second word "designation."

12. Amend § 927.27(f) by inserting the words "or bulk tank unit" immediately after the first word "plant," and inserting the words "or pool bulk tank unit" immediately preceding the proviso.

13. Add the words "or the bulk tank unit meets the requirements of § 927.24 (g)" in the parenthetical phrase of the proviso of § 927.27(f) immediately after the section reference "§ 927.29."

14. Amend § 927.27(g) by adding the words "or pool bulk tank unit" immediately after the first word "plant".

15. Amend § 927.27(g) (1) and (2) by adding the words "or pool bulk tank units consisting of farms in the area specified in § 927.24(e)" immediately after the section reference "§ 927.28".

16. Amend § 927.27(g) (3) by adding the words "or bulk tank unit" after the word "plant" appearing before the proviso: deleting the words "pool plant" in the proviso, and adding the words "or bulk tank unit" after the second word "plant" in the proviso.

17. Amend § 927.27(h) by adding "or pool bulk tank unit" after the first word "plant".

18. Amend § 927.27(h) (1) and (2) by adding the words "or pool bulk tank unit" after the first word "plant", adding the words "bulk tank unit" after the second word "plant", and deleting the words "at all pool plants".

19. Amend § 927.27(h) (3) by adding the words "or bulk tank unit" after the first word "plant", adding the words "or pool bulk tank unit" after the second word "plant", and deleting the words "of such plant" after the word "designation".

20. Amend § 927.27(h) (4) by adding the words "or bulk tank units" after the first word "plants" and adding the words "and pool bulk tank units" after the second word "plants".

21. Amend § 927.29(a) by adding the words "and bulk tank units" after the words "dairy farmers" and adding the following proviso: "Provided, That at the option of the handler the plant shall not be a pool plant if less than 25 percent of such milk from other than pool bulk tank units is classified in Class I-A".

22. Amend § 927.29(b) by adding the words "or bulk tank units" after the first words "dairy farmers", adding the words "and bulk tank units" after the words "dairy farmers" where they appear the second and third times, and adding the following proviso: "Provided, That at the option of the handler the plant shall not be a pool plant if less than 10 percent of such milk from other than pool bulk tank units is classified in Class I-A."

23. Amend § 927.29(c) by adding the words "and bulk tank units" after the words "dairy farmers".

24. Amend § 927.29(d) by adding the words "and bulk tank units" after the words "dairy farmers" appearing before the first proviso, and by adding the words "and bulk tank units" after the word "farmers" wherever such word appears in the second proviso.

25. Amend § 927.33 by adding the words "or bulk tank units" after the words "dairy farmers" in the first sentence thereof.

26. Amend § 927.33(b) by adding the words "or bulk tank units" immediately after the words "dairy farmers".

27. Amend § 927.34 by adding the words "or bulk tank unit operation" after the words "plant operation".

28. Amend § 927.35(a) by adding the words "pool bulk tank units" after the first words "pool plants" and adding, in the proviso, the words "or from pool bulk tank units" immediately before the words "shall be assigned".

29. Amend § 927.35(a) (1) by adding the words "or bulk tank units" after the words "dairy farmers".

30. Amend § 927.35(a) (2) by adding a new subdivision (v) to read as follows:

(v) Milk received from declared pool bulk tank units.

31. Amend § 927.35(b) by adding the words "from pool bulk tank units" immediately after the words "from pool plants".

32. Renumber § 927.35 (c), (d), (e), (f), and (g) to (d), (e), (f), (g), and (h), respectively, and add a new § 927.35(c) to read as follows:

(c) After assignments prescribed in paragraphs (a) and (b) of this section, milk from pool bulk tank units shall be assigned as far as possible to Class I-B milk.

33. Amend new § 927.35(d) by changing the paragraph references from "(a) and (b)" to "(a), (b), and (c)".

34. Amend new § 927.35(e) by changing the paragraph references to read "(a) through (d)", by adding the words, "from pool bulk tank units" immediately after the first words "from producers", and adding the words "from nonpool bulk tank units" after the words "not producers".

35. Amend new § 927.35(f) by changing the paragraph references to read "(a) through (e)", by adding the words "from pool bulk tank units" after the words "from producers", and adding the words "from nonpool bulk tank units" after the words "not producers".

36. Amend § 927.36 by adding a third proviso immediately prior to paragraph (a) to read as follows: "Provided further, That if the market administrator finds it necessary to promulgate formal rules with respect to bulk tank units, he shall follow the procedure set forth in this section."

37. Amend § 927.40 by deleting the second sentence thereof and substituting therefor the following: "Any handler who purchases or receives during any month milk from a cooperative association of producers which is also a handler but which does not operate the plant or the bulk tank unit receiving the milk from producers 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 pursuant to this section subject to the differentials and adjustments set forth in §§ 927.41 through 927.44 and § 927.71(c) applicable at the location where the milk is received from pro-

ducers. Any handler who purchases or receives during any month milk from a cooperative association of producers which is also a handler and the plant or the bulk tank unit receiving the milk from producers 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 pursuant to this section subject to the differentials and adjustments set forth in §§ 927.41 through 927.44 and § 927.71(c) applicable at the plant at which the milk is first received."

38. Amend § 927.42 preceding the table to read as follows:

#### § 927.42 Transportation differentials.

The class prices set forth in § 927.40 and the fluid skim differential set forth in § 927.44 shall be subject to a transportation differential determined in accordance with paragraphs (a) through (d) of this section.

(a) The market administrator shall determine a freight zone for each pool plant and for each plant at which milk or milk products subject to the provisions of §§ 927.83 and 927.84 is received from dairy farmers or is first found. Such freight zone shall be the shortest highway mileage from the plant to the nearest of the following points as computed by the market administrator from data contained in Mileage Guide No. 5, without supplements, issued on July 20, 1949, effective August 21, 1949, by the Household Goods Carriers' Bureau, Agent, Washington, D.C.: Mount Vernon or Yonkers in the State of New York; Tenaflly, Glen Ridge, East Orange, Elizabeth, Hackensack, Hillside, Irvington, or Passaic in the State of New Jersey. The freight zone for plants located in New York City, Nassau, and Suffolk Counties in the State of New York, or in Essex, Hudson, and Union Counties in the State of New Jersey shall be in the 1-10 mile zone. The market administrator shall publicly announce the freight zones for pool plants.

(b) The market administrator shall determine and publicly announce a freight zone for each minor civil division (township, borough, incorporated village, or city) within the nearby differential area or in which farms included in a pool bulk tank unit are located by computing the shortest highway mileage distance from the nearest point in the minor civil division to the nearest point specified in paragraph (a) of this section, using the mileage guide specified in such paragraph supplemented by United States Geological Survey maps. In states where the smallest governmental unit except for incorporated cities or villages is the county, a zone for the county shall be determined in the same manner as for minor civil divisions. The zone for each farm shall be the zone of the minor civil division or county in which the farm is located.

(c) The differential rates applicable at plants shall be as set forth in the following schedule:

39. Amend § 927.42 by adding the following paragraph after the table therein.

(d) The differential rate applicable to each pool bulk tank unit shall be com-

puted each month as follows: multiply the volume of milk received from farms in each zone by the rate for that zone as set forth in the schedule in paragraph (c) of this section, add the resulting values for all zones of the bulk tank unit, divide such sum by the total volume of milk received by the bulk tank unit and round to the nearest 0.1 cent. Rates shall be computed separately for columns B and C of such schedule.

40. Amend § 927.43 by deleting that portion thereof beginning with the second proviso and substituting therefor the following: "Provided further, That if such milk received from producers at a plant or in a bulk tank unit with a minus Class III transportation differential of more than four cents, there shall be deducted from the amount so credited an amount computed by multiplying the volume of such milk by a rate per hundredweight equal to the amount by which the Class III differential for the plant or bulk tank unit exceeds four cents. With respect to each plant or bulk tank unit at which milk received from producers is reported by the handler to have been utilized (either at the plant where received or at another plant), in an amount exceeding an average of 4,000 pounds per day in the manufacture of butter or of Cheddar, American Cheddar, Colby, washed curd, or part skim Cheddar cheese, the market administrator shall publicly disclose (a) the location of the plant at which the milk was received from producers or the name of the bulk tank unit, and (b) the name of the handler operating such plant or bulk tank unit. Such public disclosure shall be made monthly on the basis of handlers' monthly reports, and may be made more frequently on the basis of such other utilization reports as may be required by the market administrator.

41. Amend the first sentence in § 927.50 by adding the words "at each of his bulk tank units" after the words "pool plants".

42. Amend § 927.50(a) by adding the words "from bulk tank units" after the words "dairy farmers".

43. Amend § 927.50(b) by adding the words "or bulk tank unit" after the word "plant" in each of the places where such word appears.

44. Amend § 927.53(d) by adding the words "and pool bulk tank units" after the word "plant".

45. Amend § 927.65(a) by adding at the end thereof the words "or pool bulk tank unit";

46. Amend § 927.65(c) by adding the words "or bulk tank unit" after the word "plant" in each place where such word appears.

47. Amend § 927.65(d) to read as follows:

(d) Deduct, in the case of each plant or bulk tank unit nearer than the 201-210 mile zone, and add, in the case of each plant or bulk tank unit farther than the 201-210 mile zone, the sum obtained by multiplying the milk received from producers at plants by the zone differential set forth in column B

of the schedule in § 927.42(c) applicable at the plant, and for milk in bulk tank units, by the weighted average column B differential computed pursuant to § 927.42(d) applicable to the bulk tank unit.

48. Amend § 927.65(g) to read as follows:

(g) Add together the handler's net pool obligation for all plants and bulk tank units.

49. Amend § 927.70 by adding after the first proviso therein the following: "Provided further, That for milk received in a bulk tank unit there may be deducted a tank truck service charge under the following conditions: The charge does not exceed 20 cents per hundredweight; it is authorized in writing by the producer; it is made not later than the date on which the producer is required to be paid; and a period of not more than six months has elapsed after the date of the authorization during which no charge has been made."

50. Amend § 927.71(a) by changing the section reference from "927.42" to "927.42(c)" and adding to the paragraph (a) the following: "or, in the case of bulk tank units, the zone of the farm at which the milk is received."

51. Amend § 927.71(b)(1) preceding the proviso to read as follows: "(1) A zone for each farm within the nearby differential area shall be computed as specified in § 927.42(b)."

52. Amend § 927.71(c) by changing that portion preceding the table to read as follows:

(c) *Direct delivery differentials.* For milk received from producers at plants located in the areas specified in the following table, and for milk received in bulk tank units from producers at farms located in the areas specified in the following table, the handler shall pay to producers, in addition to that required by other provisions of this section, the amounts set forth below:

53. Amend § 927.83(a)(1) to read as follows:

(1) It was derived from milk received at a plant or at farms in a bulk tank unit from dairy farmers not defined as producers pursuant to § 927.6 or received from a handler designated as a producer-handler pursuant to § 927.15.

54. Amend § 927.83(b)(2) by deleting that portion prior to the words "is not regulated" and by substituting the following: "If the first plant which received the milk from which the milk or milk product is derived is located in the 401-425 mile zone or in some zone nearer the marketing area, and the handling of such milk—"

55. Amend § 927.83(b)(3) by deleting that portion prior to the words "is not regulated", and by substituting the following: "If the first plant which received the milk from which the milk or milk product is derived is located farther from the marketing area than the 401-425 mile zone, and the handling of such milk—"

56. Amend § 927.90 by adding the words "or at farms in a bulk tank unit" after the first word "plants".

Issued at Washington, D.C., this 1st day of September 1960.

ROY W. LENNARTSON,  
Deputy Administrator,  
Agricultural Marketing Service.

[F.R. Doc. 60-8291; Filed, Sept. 6, 1960; 8:48 a.m.]

## [ 7 CFR Part 1003 ]

### HANDLING OF DOMESTIC DATES PRODUCED OR PACKED IN A DESIGNATED AREA OF CALIFORNIA

#### Notice of Proposed Rule Making With Respect to Approval of Expenses of the Date Administrative Committee for the 1960-61 Crop Year and Fixing a Rate of Assessment for Such Crop Year

Consideration is being given to a proposal regarding approval of expenses of the Date Administrative Committee for the 1960-61 crop year and the fixing of a rate of assessment for that crop year. Such action is to be taken pursuant to §§ 1003.71 and 1003.72 of Marketing Agreement No. 127, as amended, and Order No. 103, as amended (7 CFR Part 1003), regulating the handling of domestic dates produced or packed in a designated area of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The Date Administrative Committee (established under the aforesaid marketing agreement and order) has unanimously recommended, for the 1960-61 crop year beginning August 1, 1960, a budget of expenses in the total amount of \$41,175 and an assessment rate at 15 cents per hundred pounds of assessable dates. Such amount of expenses and assessment rate are specified in the proposal, hereinafter set forth. The assessable poundage is estimated by the committee at 27.45 million pounds.

Consideration will be given to any written data, views, or arguments pertaining thereto which are received by the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than the eighth day after the date of publication of this notice in the FEDERAL REGISTER. Such material should be submitted in triplicate.

The proposal is as follows:

§ 1003.305 Expenses of the Date Administrative Committee and rate of assessment for the 1960-61 crop year.

(a) *Expenses.* Expenses in the amount of \$41,175 are reasonable and likely to be incurred by the Date Administrative Committee for its maintenance and functioning during the crop year beginning August 1, 1960.

(b) *Rate of assessment.* Each handler shall pay to the Date Administrative

Committee, in accordance with the provisions of Marketing Agreement No. 127, as amended, and this part, an assessment at the rate of 15 cents per hundredweight of dates which he handles or has verified for handling or for further processing during the crop year beginning August 1, 1960, which assessment rate is hereby fixed as each handler's pro rata share of the aforesaid expenses.

Dated September 1, 1960.

FLOYD F. HEDLUND,  
Deputy Director,  
Fruit and Vegetable Division.

[F.R. Doc. 60-8292; Filed, Sept. 6, 1960;  
8:49 a.m.]

## ATOMIC ENERGY COMMISSION

[10 CFR Part 40]

### SOURCE MATERIAL

#### Notice of Proposed Rule Making

The following proposed amendment to Part 40 constitutes an over-all revision of 10 CFR Part 40, "Control of Source Material."

With certain specified exceptions, the proposed amendment requires a license for the receipt of title to, and the receipt, possession, use, transfer, import or export of source material. The following amendment would establish the procedures and criteria for the issuance of such licenses and the terms and conditions of such issuances. The procedures, terms and conditions are substantially similar to those set forth in Part 30, "Licensing of Byproduct Material."

Under the proposed amendment, the definition of the term "source material" is revised to bring it into closer conformance with that contained in the Atomic Energy Act of 1954. "Source Material" is defined as (1) uranium or thorium, or any combination thereof, in any physical or chemical form, but does not include special nuclear material, or (2) ores which contain by weight one-twentieth of one percent (0.05 percent) or more of (a) uranium, (b) thorium or (c) any combination thereof. The amendment would exempt from the licensing requirements chemical mixtures, compounds, solutions or alloys containing less than 0.05 percent source material by weight. As a result of this exemption, the change in the definition of source material is not expected to have any effect on the licensing program.

Pursuant to section 62 of the Atomic Energy Act of 1954, as amended, licenses are not required for quantities of source material which, in the opinion of the Commission, are unimportant. The proposed amendment would exempt from the licensing requirements the receipt, possession, use and transfer of thorium when contained in incandescent gas mantles, vacuum tubes, welding rods, and certain other finished products, and uranium contained in counterweights installed in aircraft. The Commission has found that possession and use in the United States of source material in these quantities or products are not of significance to the common defense and secu-

rity and that such activities under the conditions specified can be conducted without any unreasonable hazard to life or property. Carriers, warehousemen and the United States Post Office, to the extent that they transport or store source material in the regular course of carriage for another, and persons acquiring or transferring source material under contract with and for the account of the Commission are also exempted from the licensing requirements.

Section 62 of the Act prohibits the conduct of certain activities relating to source material "after removal from its place of deposit in nature" unless such activities are authorized by license issued by the Atomic Energy Commission. The Act does not, however, require a license for the mining of source material, and the proposed regulations, as in the case of the current regulations, do not require a license for the conduct of mining activities. Under the present regulation, miners are required to have a license to transfer the source material after it is mined. Under the proposed regulation below, the possession and transfer of unrefined and unprocessed ores containing source material would be exempted.

The proposed amendment contains a general license to receive title to source material without regard to quantity; and to export small quantities of source material to certain foreign countries. The Commission has found that such exports will not be inimical to the interests of the United States. The amendment also establishes the criteria pursuant to which the Commission will issue specific licenses authorizing the export of larger quantities of source material.

The proposed amendment would generally license possession and use of up to 15 pounds of contained uranium or thorium or any combination thereof at any one time by certain classes of users, namely, physicians, pharmacists, and research and commercial institutions. (Individual members of the general public therefore would not be generally licensed). This general license is subject to an annual possession limit of 150 pounds of contained uranium or thorium or any combination thereof. Under this provision many users of small quantities of uranium would be relieved of the necessity of obtaining a specific license. Such general licensees would also be exempted from compliance with the provisions of Part 20 of this chapter.

Notice is hereby given that adoption of the following rules is contemplated. All interested persons who desire to submit written comments and suggestions for consideration in connection with the proposed rules should send them, in triplicate, to the Secretary, U.S. Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation, within sixty days after publication of this notice in the FEDERAL REGISTER.

#### GENERAL PROVISIONS

- Sec. 40.1 Purpose.
- 40.2 Scope.
- 40.3 License requirements.
- 40.4 Definitions.
- 40.5 Communications.
- 40.6 Interpretations.

#### EXEMPTIONS

- Sec. 40.11 Exemption for persons acquiring or transferring source material under contract with and for the account of the Commission.
- 40.12 Carriers.
- 40.13 Unimportant quantities of source material.
- 40.14 Specific exemptions.

#### GENERAL LICENSES

- 40.20 Types of licenses.
- 40.21 General license to receive title to source material.
- 40.22 Small quantities of source material.
- 40.23 General licenses to export.

#### LICENSE APPLICATIONS

- 40.31 Applications for specific licenses.
- 40.32 Requirements for approval of applications for specific licenses.
- 40.33 Standards for issuance of export licenses.

#### LICENSES

- 40.41 Terms and conditions of licenses.
- 40.42 Expiration.
- 40.43 Renewal of licenses.
- 40.44 Amendment of licenses at request of licensee.
- 40.45 Commission action on application to renew or amend.
- 40.46 Inalienability of licenses.
- 40.47 License requirement for persons possessing source material on the effective date of the regulation in this part.

#### TRANSFER OF SOURCE MATERIAL

- 40.51 Transfer of source material.

#### RECORDS AND INSPECTIONS

- 40.61 Records.
- 40.62 Inspections.
- 40.63 Tests.

#### MODIFICATIONS AND REVOCATION OF LICENSES

- 40.71 Modification, revocation and termination of licenses.

#### ENFORCEMENT

- 40.81 Violations.

#### SCHEDULE

- 40.90 Schedule A.

AUTHORITY: §§ 40.1 to 40.90 issued under sec. 161, 68 Stat. 948; 42 U.S.C. 2201. Interpret or apply secs. 62, 63, 64, 65, 182, 183, 68 Stat. 932, 933, 953, 954, 42 U.S.C. 2092, 2093, 2094, 2095, 2232, 2233. For the purposes of sec. 223, 68 Stat. 958; 42 U.S.C. 2273, sec. 40.42(c) issued under sec. 161b, 68 Stat. 948; 42 U.S.C. 2201(b) and secs. 40.62 and 40.63 issued under sec. 161 p., 68 Stat. 950; 42 U.S.C. 2201 p.

#### GENERAL PROVISIONS

##### § 40.1 Purpose.

(a) The regulations in this part establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, deliver, or import into or export from the United States source material and establish and provide for the terms and conditions upon which the Commission will issue such licenses.

(b) The regulations contained in this part are issued pursuant to the Atomic Energy Act of 1954, as amended (68 Stat. 919).

##### § 40.2 Scope.

Except as provided in §§ 40.11 to 40.14, the regulations in this part apply to all persons in the United States.

## PROPOSED RULE MAKING

## § 40.3 License requirements.

No person subject to the regulations in this part shall receive title to, receive, possess, use, transfer, deliver, or import into or export from the United States any source material after removal from its place of deposit in nature, except as authorized in a specific or general license issued by the Commission pursuant to the regulations in this part.

## § 40.4 Definitions.

As used in this part:

(a) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto;

(b) "Commission" means the Atomic Energy Commission or its duly authorized representatives;

(c) "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government;

(d) "License", except where otherwise specified, means a license issued pursuant to the regulations in this part;

(e) "Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent or agency of the foregoing;

(f) "Pharmacist" means an individual registered by a state or territory of the United States, the District of Columbia or the Commonwealth of Puerto Rico to compound and dispense drugs, prescriptions and poisons.

(g) "Physician" means an individual licensed by a state or territory of the United States, the District of Columbia or the Commonwealth of Puerto Rico to dispense drugs in the practice of medicine.

(h) "Source Material" means (1) uranium or thorium, or any combination thereof, in any physical or chemical form or (2) ores which contain by weight one-twentieth of one percent (0.05 percent) or more of (i) uranium, (ii) thorium or (iii) any combination thereof. Source material does not include special nuclear material.

(i) "Special nuclear material" means (1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material; or (2) any material artificially enriched by any of the foregoing;

(j) "United States", when used in a geographical sense, including all territories and possessions of the United States, the Canal Zone and Puerto Rico;

(k) "Unrefined and unprocessed ore" means ore in its natural form prior to

any processing, such as grinding, roasting or beneficiating, or refining;

(l) Other terms defined in section 11 of the Act shall have the same meaning when used in the regulations in this part.

## § 40.5 Communications.

All communications concerning the regulations in this part should be addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

## § 40.6 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

## EXEMPTIONS

## § 40.11 Exemption for persons acquiring or transferring source material under contract with and for the account of the Commission.

The regulations in this part do not apply to any person to the extent that such person receives possession of source material owned by the Atomic Energy Commission, or transfers, delivers, or exports source material owned by the Commission under and in accordance with a contract with and for the account of the Commission. In any such case, such person's obligations with respect to the source material are governed by the applicable contract between such person and the Commission.

## § 40.12 Carriers.

Common and contract carriers, warehousemen, and the United States Post Office Department are exempt from the requirements for a license set forth in section 62 of the Act and from the regulations in this part to the extent that they transport or store source material in the regular course of carriage for another or storage incident thereto.

## § 40.13 Unimportant quantities of source material.

(a) Any person is exempt from the regulations in this part and from the requirements for a license set forth in section 62 of the Act to the extent that such person receives, possesses, uses, transfers, delivers, or imports into or exports from the United States source material in any chemical mixture, compound, solution, or alloy in which the source material is by weight less than  $\frac{1}{50}$  of 1 percent (0.05 percent) of the mixture, compound, solution or alloy.

(b) Any person is exempt from the regulations in this part and from the requirements for a license set forth in section 62 of the Act to the extent that such person receives, possesses, uses, transfers, or imports into the United States unrefined and unprocessed ore containing source material; provided, that, except as authorized in a specific license, such person shall not refine or process such ore. The exemption contained in

this paragraph shall not be deemed to authorize the export of source material.

(c) Any person is exempt from the regulation in this part and from the requirements for a license set forth in section 62 of the Act to the extent that such person receives, possesses, uses, transfers, or imports into the United States:

(1) Any quantity of thorium contained in (i) incandescent gas mantles; (ii) vacuum tubes; or (iii) welding rods;

(2) Source material contained in the following products: (i) Glazed ceramic tableware, provided that the glaze contains not more than 20 percent source material; (ii) Glassware containing not more than 10 percent material; but not including glass brick, pane glass, ceramic tile or other glass or ceramic used in construction;

(3) Photographic film, negatives, and prints containing uranium or thorium;

(4) Any finished product or part fabricated of, or containing tungsten or magnesium-thorium alloys: *Provided*, That the thorium content of the alloy does not exceed 4 percent by weight and that the exemption contained in this subparagraph shall not be deemed to authorize the chemical, physical or metallurgical treatment or processing of any such product or part; and

(5) (i) Uranium contained in aircraft counterweights installed in aircraft; provided that any such counterweight has been impressed with a statement, clearly legible after plating, which states "Caution-Radioactive Material-Uranium": *And provided further*, That the exemption contained in this paragraph shall not be deemed to authorize the chemical, physical, metallurgical or other treatment or processing of any such counterweight or the installation in, or removal from, an aircraft of any such counterweight, without a specific license from the Commission.

(ii) The exemptions contained in this section shall not be deemed to authorize the manufacture of any of the products described herein.

## § 40.14 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulation in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

## GENERAL LICENSES

## § 40.20 Types of licenses.

Licenses for source material are of two types: general and specific. The general licenses provided in this part are effective without the filing of applications with the Commission or the issuance of licensing documents to particular persons. Specific licenses are issued to named persons upon applications filed pursuant to the regulations in this part.

## § 40.21 General license to receive title to source material.

A general license is hereby issued authorizing the receipt of title to source

material without regard to quantity. This general license does not authorize any person to receive, possess, deliver, use, import, export, or transfer source material.

#### § 40.22 Small quantities of source material.

(a) A general license is hereby issued authorizing use and transfer of not more than fifteen (15) pounds of source material at any one time by persons in the following categories:

(1) Pharmacists using the source material solely for the compounding of medicinals;

(2) Physicians using the source material for medicinal purposes;

(3) Persons receiving possession of source material from pharmacists and physicians in the form of medicinals or drugs;

(4) Commercial and industrial firms, and research, educational and medical institutions for research, development, educational, or commercial purposes; *And provided*, That no such person shall pursuant to this general license receive more than a total of 150 pounds of source material in any one calendar year: *And provided further*, That the general license contained in this paragraph shall not be deemed to authorize the export of source material, except as authorized in a specific or general license issued pursuant to this part.

(b) Persons who receive, possess, use, or transfer source material pursuant to the general license issued in program (a) of this section are exempt from the provisions of Part 20 of this chapter to the extent that such receipt, possession, use, or transfer are within the terms of such general license: *Provided, however*, That this exemption shall not be deemed to apply to any such person who is also in possession of source material under a specific license issued pursuant to this part.

#### § 40.23 General licenses to export.

(a) A general license, designated AEC-GRO-SMA, is hereby issued authorizing the export at any one time of up to three (3) pounds of source material from the United States to any foreign country or destination except countries or areas listed in § 40.90. Each person exporting source material pursuant to this general license shall file with the Collector of Customs or the Postmaster one copy, in addition to those otherwise required, of the Shipper's Export Declaration covering each export, and mark such copy for transmittal to the Division of Licensing and Regulation of the United States Atomic Energy Commission, Washington 25, D.C.

(b) A general license, designated AEC-GRO-SMB, is hereby issued authorizing the export of incandescent gas mantles containing thorium, without regard to quantity, from the United States to any foreign country or destination except countries or destinations listed in § 40.90.

#### LICENSE APPLICATIONS

#### § 40.31 Applications for specific licenses.

(a) Applications for specific licenses should be filed in quadruplicate on Form

AEC-2, "Application for Source Material License", or Form AEC-7, "Application for Source Material Export License", as appropriate, with the United States Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation. Applications may also be filed in person at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C., or the Commission's offices at Germantown, Maryland.

(b) The Commission may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(c) Applications and documents submitted to the Commission in connection with applications will be made available for public inspection in accordance with the provisions of the regulations contained in Parts 2 and 9 of this chapter.

(d) An application for a license filed pursuant to the regulations in this part will be considered also as an application for licenses authorizing other activities for which licenses are required by the Act: *Provided*, That the application specifies the additional activities for which licenses are requested and complies with regulations of the Commission as to applications for such licenses.

(e) In his application, the applicant may incorporate by reference information contained in previous applications, statements or reports filed by the applicant with the Commission's Division of Licensing and Regulation: *Provided*, That such references are clear and specific.

#### § 40.32 Requirements for issuance of specific licenses.

An application for a specific license for purposes other than export will be approved if:

(a) The application is for a purpose authorized by the Act; and

(b) The applicant is qualified by reason of training and experience to use the source material for the purpose requested in such manner as to protect health and minimize danger to life or property; and

(c) The applicant's proposed equipment, facilities and procedures are adequate to protect health and minimize danger to life or property; and

(d) The issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.

#### § 40.33 Requirements for issuance of export licenses.

(a) An application for a license to export uranium will be approved if the Commission determines that:

(1) The proposed export is within the scope of and consistent with the terms of an agreement between the United States and the government of the recipient containing safeguards against di-

version of the material to military use; or

(2) The cumulative quantity of uranium specifically licensed for export to the consignee since July 1, 1957, does not exceed one hundred (100) kilograms: *Provided*, That the cumulative quantity specifically licensed for export to the recipient country since July 1, 1957, does not exceed one thousand (1,000) kilograms, excluding any amounts exported pursuant to either subparagraph (1) of this paragraph or § 40.23; and

(3) The export will not be inimical to the interests of the United States.

(b) An application for a license to export thorium will be approved if the Commission determines that the export will not be inimical to the interests of the United States.

#### LICENSES

#### § 40.41 Terms and conditions of licenses.

(a) Each license issued pursuant to the regulations in this part shall be subject to all the provisions of the Act, now or hereafter in effect, and to all rules, regulations and orders of the Commission.

(b) Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of the Act.

(c) Each person licensed by the Commission pursuant to the regulations in this part shall confine his possession and use of source material to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the regulations in this part shall carry with it the right to receive, possess, use and import source material and to deliver or transfer such material to other licensees within the United States authorized to receive such material.

(d) Each license issued pursuant to the regulations in this part shall be deemed to contain the provisions set forth in sections 183a to 183d, of the Act, whether or not said provisions are expressly set forth in the license.

(e) The Commission may incorporate in any license at the time of issuance, or thereafter by appropriate rule, regulation or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use, transfer, import and export of source material as it deems appropriate or necessary in order to:

(1) Promote the common defense and security;

(2) Protect health or to minimize danger to life or property;

(3) Protect restricted data;

(4) Require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be necessary or appropriate to effectuate the purposes of the Act and regulations thereunder.

#### § 40.42 Expiration.

Except as provided in § 40.43(b), each specific license shall expire no later than three years from the last day of the month in which it is issued.

## PROPOSED RULE MAKING

**§ 40.43 Renewal of licenses.**

(a) Applications for renewal of a specific license shall be filed in accordance with § 40.31.

(b) In any case in which a licensee, not less than thirty (30) days prior to expiration of his existing license, has filed an application in proper form for renewal or for a new license, such existing license shall not expire until the application for renewal or for a new license has been finally determined by the Commission.

**§ 40.44 Amendment of licenses at request of licensee.**

Applications for amendment of a license shall be filed in accordance with § 40.31 and shall specify the respects in which the licensee desires his license to be amended and the grounds for such amendment.

**§ 40.45 Commission action on applications to renew or amend.**

In considering an application by a licensee to renew or amend his license, the Commission will apply the applicable criteria set forth in §§ 40.32 and 40.33.

**§ 40.46 Inalienability of licenses.**

No license issued or granted pursuant to the regulations in this part shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing.

**§ 40.47 License requirement for persons possessing source material on the effective date of this amendment.**

(a) Any person who on the effective date of this amendment possesses source material received pursuant to a specific license issued by the Commission shall be deemed to possess such material pursuant to a license issued under the regulations in this part. Such license shall be deemed to include all terms and conditions incorporated in the previous license which are not inconsistent with or otherwise provided for in the regulations in this part and shall expire 90 days from the effective date of this amendment or on the expiration date contained in the previous license, whichever is later.

(b) Any person who on the effective date of this amendment possesses source material received pursuant to a general license issued by the Commission shall be deemed to possess such material pursuant to a license issued under the regulations in this part. To the extent that such possession is not authorized under an exemption or general license pursuant to §§ 40.11 to 40.14 or §§ 40.20 to 40.23, the license granted pursuant to this par-

agraph shall expire ninety (90) days from the effective date of this amendment.

## TRANSFER OF SOURCE MATERIAL

**§ 40.51 Transfer of source material.**

(a) No licensee shall transfer source material except as authorized pursuant to this section.

(b) Any licensee may transfer source material:

- (1) To the Commission;
- (2) To a specific or general licensee whose license authorizes him to receive such material;
- (3) To any person exempt from the regulations in this part to the extent permitted under such exemption; or
- (4) As otherwise authorized by the Commission in writing.

## RECORDS AND INSPECTIONS

**§ 40.61 Records.**

(a) Each person who receives source material pursuant to a license issued pursuant to the regulations in this part shall keep records showing the receipt, transfer, export and disposal of such source material.

**§ 40.62 Inspections.**

(a) Each licensee shall afford to the Commission at all reasonable times opportunity to inspect source material and the premises and facilities wherein source material is used or stored.

(b) Each licensee shall make available to the Commission for inspection, upon reasonable notice, records kept by him pursuant to the regulations in this chapter.

**§ 40.63 Tests.**

Each licensee shall perform, or permit the Commission to perform, such tests as the Commission deems appropriate or necessary for the administration of the regulations in this part, including tests of:

- (a) Source material;
- (b) Facilities wherein source material is utilized or stored;
- (c) Radiation detection and monitoring instruments; and
- (d) Other equipment and devices used in connection with the utilization or storage of source material.

## MODIFICATION AND REVOCATION OF LICENSES

**§ 40.71 Modification, revocation and termination of licenses.**

(a) The terms and conditions of each license shall be subject to amendment, revision, or modification by reason of amendments to the Act, or by reason of rules, regulations, or orders issued in accordance with the Act.

(b) Any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the

application or any statement of fact required under section 182 of the Act, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for violation of, or failure to observe any of, the terms and conditions of the Act, or the license, or of any rule, regulation or order of the Commission.

(c) Except in cases of wilfulness or those in which the public health, interest or safety requires otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements.

(d) The Commission may terminate a specific license upon request submitted by the licensee to the Commission in writing.

## ENFORCEMENT

**§ 40.81 Violations.**

An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person who wilfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

## SCHEDULE

**§ 40.90 Schedule A.**

Albania.  
Bulgaria.  
China, including Manchuria (and excluding Taiwan (Formosa)) (includes Inner Mongolia; the provinces of Tsinghai and Sikang; Sinkiang; Tibet; the former Kwantung Leased Territory, the present Port Arthur Naval Base Area and Liaoning Province).  
Communist-controlled area of Viet Nam.  
Czechoslovakia.  
East Germany (Soviet Zone of Germany and the Soviet Sector of Berlin).  
Estonia.  
Hungary.  
Latvia.  
Lithuania.  
North Korea.  
Poland (including Danzig).  
Outer Mongolia.  
Rumania.  
Union of Soviet Socialist Republics.

Dated at Germantown, Md., this 30th day of August 1960.

For the Atomic Energy Commission.

WOODFORD B. MCCOOL,  
Secretary.

[F.R. Doc. 60-8212; Filed, Sept. 6, 1960;  
8:45 a.m.]

# Notices

## DEPARTMENT OF THE TREASURY

### Bureau of Customs

[643.3]

#### BREWER'S DRIED YEAST FROM CUBA

##### Sales at Less Than Foreign Market Value

AUGUST 31, 1960.

Pursuant to section 201(b) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b)), notice is hereby given that there is reason to believe or suspect, from information presented to me, that the purchase price of brewer's dried yeast imported from Cuba is less or likely to be less than the foreign market value, as defined by sections 203 and 205, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162 and 164).

Customs officers are being authorized to withhold appraisement of entries of brewer's dried yeast from Cuba pursuant to § 14.9 of the Customs Regulations (19 CFR 14.9).

[SEAL]

D. B. STRUBINGER,

Acting Commissioner of Customs.

[F.R. Doc. 60-8289; Filed, Sept. 6, 1960; 8:48 a.m.]

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### MILITARY FACILITIES AFFECTING THE USE OF AIRSPACE

##### Development and Use

The Deputy Secretary of Defense approved the following on August 24, 1960:

REFERENCE: (a) Section 308(b) of the Federal Aviation Act of 1958 (Public Law 85-726).

I. *Purpose.* To establish responsibilities and procedures within the Department of Defense for compliance with (1) the provisions of Reference (a), and (2) the request of the Administrator of the Federal Aviation Agency for timely advice with respect to substantial changes in the utilization of military airports, landing areas, and missile and rocket sites which may affect the use of airspace, even when the change does not involve a facilities project. Reference (a) is quoted as follows:

In order to assure conformity to plans and policies for allocations of airspace by the Administrator under section 307 of this Act, no military airport or landing area, or missile or rocket site, shall be acquired, established, or constructed, or any runway layout substantially altered, unless reasonable prior notice thereof is given the Administrator so that he may advise with the appropriate committees of the Congress and other interested agencies as to the effects of such acquisition, establishment, construction, or alteration on the use of airspace by aircraft. In case of a disagreement between the Administrator and the Department of Defense or

the National Aeronautics and Space Administration the matter may be appealed to the President for final determination.

II. *Applicability.* This directive shall apply to all military facilities falling within the purview of Reference (a) located in geographical areas above which the Administrator, FAA, has jurisdiction over or control of the utilization of airspace, whether or not new facilities projects are directly involved. Facilities projects of types not within the general delineation in Reference (a), but which have possible airspace implications, may be processed as special cases within the framework of the provisions of this Directive.

### III. Responsibilities and procedures.—

A. *Actions Involving Facilities Projects.* In order to properly discharge the obligation imposed upon the Department of Defense by Reference (a), the following courses of action are prescribed for the DoD Agencies concerned:

1. Each military department may designate an appropriate level in its field organization at which cognizant commanders may communicate to the Airspace Utilization Division of the FAA, Washington, D.C., information as to proposed facilities projects originating at the field level which come within the purview of Reference (a), furnishing the information in sufficient detail to indicate the possible impact of each such project on utilization of airspace. This field level-FAA channel shall be used, as determined by each military department to be compatible with its programming procedures, in order to reduce the amount of detailed data required to be transmitted between the Office of the Secretary of Defense and the Administrator of the FAA.

2. In the submittal of annual military construction authorization programs to the Assistant Secretary of Defense (Properties and Installations) there shall be furnished by each military department concerned, information as to projects contained in its programs which come within the purview of Reference (a). Where the field level-FAA channel was utilized as provided in 1. above, the information to be furnished by the military department with the program should indicate only the fact and date of the contact with the Airspace Utilization Division. Otherwise, the information to be furnished with the program shall be as specified in 1. above.

3. It will be the responsibility of the ASD(P&I) to review this information promptly, and to forward it to the Administrator, FAA. When the program has been approved by the OSD, the ASD(P&I), will be responsible for notifying the Administrator, FAA, of any substantive departure from the information previously forwarded. Similarly, if the programs or individual projects subsequently are changed by the DoD, the Bureau of the Budget or the Congress,

either because of selection of a new project location or because the scope of a project has been revised substantially, it will be the responsibility of the ASD(P&I) so to notify the Administrator, FAA.

4. With respect to those projects required to be submitted for approval of the Secretary of Defense (or his designee) which come within the purview of Reference (a) and which are not contained in an annual military construction program, or which are contained in such a program but are not specifically located and/or identified therein, the military department involved shall submit the necessary information as indicated in 2. above, and the ASD(P&I) shall notify the Administrator, FAA, as appropriate.

5. With respect to those projects which come within the purview of Reference (a) but which are within the scope of approval authority of the military departments, including their subordinate commands, it shall be the responsibility of the approving authority to furnish to the Airspace Utilization Division of the FAA (see 1. above) the prior notification required with respect to such projects, and an information copy thereof to the OASD(P&I) through appropriate channels as determined by the respective military department.

6. In order to provide the earliest practicable notification of possible impact on airspace utilization, the military departments are encouraged to provide for consultation freely with appropriate offices of the FAA during developmental stages of military construction projects falling within the provisions of Reference (a) pending the required later formal notification.

B. *Actions not involving facilities projects.* The military departments shall furnish the Assistant Secretary of Defense (P&I) pertinent information whenever, in the opinion of the department concerned, substantial changes are programmed with respect to the utilization of military airports, landing areas, and missile and rocket sites which may have an impact upon FAA cognizance over the use of airspace. For example, significant changes in the types of air vehicles or in operating concepts, patterns or levels (numbers of movements) programmed for a military installation may generate airspace problems and should be made known to that Agency sufficiently in advance to permit action which may be necessary to accommodate the change. The ASD(P&I) shall be responsible for maintaining liaison with the Administrator, FAA (or his designee), for the purpose of furnishing appropriate information concerning such changes.

MAURICE W. ROCHE,  
Administrative Secretary.

[F.R. Doc. 60-8282; Filed, Sept. 6, 1960; 8:47 a.m.]