

amended by section 4(c) of the Narcotics Manufacturing Act of 1960 (74 Stat. 58), proposed that pharmaceutical preparations, containing nalorphine or any of its salts, when combined with active or inactive non-narcotic ingredients of the type used in medicinal preparations, be designated as Class "M" products.

After due notice and opportunity for public hearing, and after consideration of all relevant matters, it is hereby found that pharmaceutical preparations containing nalorphine or any of its salts, when combined with active or inactive non-narcotic ingredients of the type used in medicinal preparations, do not possess an addiction-forming or addiction-sustaining liability sufficient to warrant imposition of all the requirements of the Federal narcotic laws and do not permit recovery of a narcotic drug having an addiction-forming or addiction-sustaining liability, with such relative technical simplicity and degree of yield as to create a risk of improper use. Such preparations are hereby designated as Class "M" products subject to such requirements as are indicated for Class "M" products in 26 CFR 151.421-151.428.

Paragraph (b) of § 151.428 is amended by adding subparagraph (5), and revising the sentence immediately following subparagraph (5), as follows:

§ 151.428 Pharmaceutical preparations designated as Class "M" products.

(b) * * *

(5) Pharmaceutical preparations containing nalorphine, or any of its salts. Each preparation mentioned in subparagraphs (1), (2), (3), (4), and (5) of this paragraph shall not be limited by quantity of the narcotic drug, but the preparation shall contain active or inactive non-narcotic ingredients of the type used in medicinal preparations.

(26 U.S.C. 4702(a), as amended by sec. 4(c), Pub. Law 86-429 (74 Stat. 58), sec. 17, Pub. Law 86-429 (74 Stat. 67))

[SEAL] H. J. ANSLINGER,
Commissioner of Narcotics.

Approved: April 10, 1961.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 61-3377; Filed, Apr. 13, 1961; 8:50 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2327]

[Nevada 053893]

NEVADA

Withdrawing Lands for Use of Federal Aviation Agency as an Air Navigation Facility

By virtue of the authority vested in the Secretary of the Interior by section

4 of the act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 214), it is ordered as follows:

Subject to valid existing rights, the following-described public lands in Nevada are hereby withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws nor disposals of materials under the act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604) as amended, and reserved for use of the Federal Aviation Agency in the maintenance of air navigation facilities:

MOUNT DIABLO MERIDIAN

T. 27 N., R. 41 E.,
Sec. 19, E½SW¼.

The area described contains 80 acres.

JOHN M. KELLY,

Assistant Secretary of the Interior.

APRIL 7, 1961.

[F.R. Doc. 61-3354; Filed, Apr. 13, 1961; 8:46 a.m.]

[Public Land Order 2328]

[84302]

[Idaho 011982]

IDAHO

Restoration Under Section 24, Federal Power Act (Power Site Reserve No. 373; Project No. 20)

1. In DA-156-Idaho, the Federal Power Commission determined that the value of the following-described lands would not be injured or destroyed for purposes of power development by location, entry, or selection under the public land laws, subject to the provisions of section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818), as amended:

BOISE MERIDIAN

T. 9 S., R. 41 E.,
Sec. 10, S½NW¼.

Containing 80 acres.

2. Subject to the provisions of section 24 of the Federal Power Act, supra, the lands are hereby restored to operation of the public land laws, subject to valid existing rights and equitable claims, the requirements of applicable law, rules and regulations, and the provisions of any existing withdrawals, provided that until 10:00 a.m., on October 6, 1961, the State of Idaho shall have a preferred right to apply to select the lands in accordance with subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852). During this period, the State may also apply for the reservation to it or to any of its political subdivisions of any of the lands required for rights-of-way or materials sites in accordance with the provisions of section 24 of the Federal Power Act. This restoration is also subject to the prior rights of the licensee for Project No. 20 and its successors to use the land for power purposes as contemplated in the license for Project No. 20; and subject to the condition that in the event the said land is required for power purposes, any improvements or structures placed or maintained thereon which shall be found to interfere with such development, shall be removed or relocated as may be nec-

essary to eliminate interference with power development at no cost to the United States, its permittees or licensees; and subject to the condition that the United States, its permittees or licensees shall be held free of all liability for damages to such improvements or structures resulting from the operation of said power project; and subject to the condition that use and occupancy of said land as proposed will be conducted in such manner as not to increase the cost of operating and maintaining the power facilities under license in Project No. 20.

3. The lands have been open to applications and offers under the mineral leasing laws, and to locations under the United States mining laws.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Boise, Idaho.

JOHN M. KELLY,

Assistant Secretary of the Interior.

APRIL 7, 1961.

[F.R. Doc. 61-3355; Filed, Apr. 13, 1961; 8:47 a.m.]

Title 46—SHIPPING

Chapter II—Federal Maritime Board, Maritime Administration, Department of Commerce

SUBCHAPTER A—POLICY, PRACTICE AND PROCEDURE

[Gen. Order 41, 2d Rev., Amdt. 5]

PART 201—RULES OF PRACTICE AND PROCEDURE BEFORE THE FEDERAL MARITIME BOARD AND THE MARITIME ADMINISTRATION

Prehearing Conference; Written Evidence

Notice is hereby given of adoption of the amendments contained in the notice of proposed rule making appearing in the FEDERAL REGISTER issue of February 11, 1961 (26 F.R. 1223), without substantive change.

In accordance with the provisions of sec. 4, Administrative Procedure Act (5 U.S.C. 1003), it is found, for good cause shown, to be impracticable and not in the public interest to delay the effective date of said amendments; therefore, they are set forth below and shall be effective upon their publication in the FEDERAL REGISTER:

1. Amend the first sentence of § 201.94(a) to read as follows:

§ 201.94 Prehearing conference.

(a) Prior to any hearing the Board or presiding officer may direct all interested parties, by written notice, to attend one or more prehearing conferences for the purpose of considering any settlement under § 201.91, formulating the issues in the proceeding and determining other matters to aid in its disposition. * * *

2. Amend § 201.157(a) to read as follows:

§ 201.157 Written evidence.

(a) The use of written statements in lieu of oral testimony shall be resorted

to where the Examiner in his discretion rules that such procedure is appropriate. The statements shall be numbered in paragraphs, and each party in his rebuttal shall be required to list the paragraphs to which he does not object, those to which he does not object apart from argumentative or procedural matter, and those to which he objects, giving an indication of his reasons for objecting. Statistical exhibits shall contain a short commentary explaining the conclusions which the offerer draws from the data. Any portion of such testimony which is argumentative shall be excluded. Where written statements are used, copies of the statement and any rebuttal statement shall be furnished to all parties, as shall copies of exhibits. The Examiner shall fix respective dates for the exchange of such written statements and exhibits and of such written rebuttal statements and exhibits in advance of the hearing to enable study by the parties of such testimony. Thereafter the parties shall endeavor to stipulate as many of the facts set forth in the written testimony as they may be able to agree upon. Oral examination of witnesses shall thereafter be confined to facts which remain in controversy, and a reading of the written statements at the hearing will be dispensed with unless the presiding officer otherwise directs.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

Dated: April 10, 1961.

THOMAS LISI,
Secretary.

[F.R. Doc. 61-3366; Filed, Apr. 13, 1961;
8:48 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of the Treasury

SUBCHAPTER D—NAVIGATION REQUIREMENTS FOR CERTAIN INLAND WATERS

[CGFR 61-8]

PART 82—BOUNDARY LINES OF IN- LAND WATERS ATLANTIC COAST; DELAWARE BAY

Since Overfalls Lightship has been temporarily discontinued and replaced by Delaware Bay Approach Lighted Whistle Buoy "D" located approximately one mile to the Southwest of the lightship's former location, this amendment to 33 CFR 82.25 is an editorial change for the sole purpose of redescribing the location of the boundary lines for Delaware Bay and tributaries. Although Buoy "D" is used in lieu of Overfalls Lightship as a reference point, this change does not substantially alter the location of the boundary lines as last established and published in the FEDERAL REGISTER of November 27, 1956.

Because the amendment in this document is editorial in nature, it is hereby found that compliance with the Administrative Procedure Act respecting notice of proposed rule making, public rule making procedures thereon, and effective

date requirements thereof, is impracticable and unnecessary.

By virtue of the authority vested in me as Commandant, United States Coast Guard by Treasury Department Order No. 120, dated July 31, 1950 (15 F.R. 6521), to promulgate rules and regulations in accordance with the statute cited with the regulation below, the following amendment to § 82.25 is prescribed and shall become effective upon date of publication of this document in the FEDERAL REGISTER:

§ 82.25 Delaware Bay and tributaries.

A line drawn from Cape May East Jetty Light to Cape May Harbor Inlet Lighted Bell Buoy 2CM; thence to Delaware Bay Approach Lighted Whistle Buoy "D"; thence to the northernmost extremity of Cape Henlopen.

(Sec. 2, 28 Stat. 682, as amended, 33 U.S.C. 151)

Dated: April 7, 1961.

[SEAL] J. A. HIRSHFIELD,
Acting Commandant.

[F.R. Doc. 61-3376; Filed, Apr. 13, 1961;
8:49 a.m.]

Chapter II—Corps of Engineers, Department of the Army

PART 208—FLOOD CONTROL REGULATIONS

Fort Cobb Dam and Reservoir, Pond (Cobb) Creek, Oklahoma

Pursuant to the provisions of section 7 of the Act of Congress approved December 22, 1944 (58 Stat. 890; 33 U.S.C. 709), the following regulations are hereby prescribed to govern the use of the flood control storage above elevation 1342.0 in Fort Cobb Reservoir on Pond (Cobb) Creek, Oklahoma, and the operation of the Fort Cobb Dam for flood control purposes:

§ 208.27 Fort Cobb Dam and Reservoir, Pond (Cobb) Creek, Oklahoma.

The Bureau of Reclamation shall operate the Fort Cobb Dam and Reservoir in the interest of flood control as follows:

(a) Whenever the reservoir level is between elevation 1342.0, top of the conservation pool, and elevation 1354.8, top of flood control pool, the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir. All flood control releases shall be made in amounts which, when combined with local inflow below the dam, will not produce flows in excess of bankfull on Pond (Cobb) Creek downstream of the reservoir and on the Washita River downstream of their confluence. In order to accomplish this purpose, flows shall not exceed a 13.0-foot stage (1,300 cfs) on the USGS gage on Pond (Cobb) Creek near Fort Cobb, Oklahoma, river mile 5.0; a 19.0-foot stage (6,000 cfs) on the USGS gage on the Washita River near Anakarko, Oklahoma, river mile 305.0; or a 19.0-foot stage on the USGS gage near Bradley, Oklahoma, river mile 210.6.

(b) When the reservoir level exceeds elevation 1354.8, top of flood control pool, releases shall be made at the maximum rate possible and continued until the pool elevation recedes to elevation 1354.8 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation in immediate charge of operation of the Fort Cobb Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer showing the elevation of the reservoir level; number of river outlet works gates in operation with their respective openings and releases; uncontrolled spillway and municipal outlet works release; storage; tailwater elevation; reservoir inflow; available evaporation data; and precipitation in inches. Normally, one reading at 8:00 a.m., shall be shown for each day. Readings of all items except evaporation shall be shown for at least three observations a day when the reservoir level is above elevation 1342.0. Whenever the reservoir level rises to elevation 1342.0 and releases for flood regulation are necessary or appear imminent, the Bureau representative shall report at once to the District Engineer by telephone or telegraph and, unless otherwise instructed, shall report once daily thereafter in that manner until the reservoir level recedes to elevation 1342.0. These latter reports shall reach the District Engineer by 9:00 a.m., each day.

(d) The regulations of this section insofar as they govern use of the flood control storage capacity above elevation 1342.0 are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation in immediate charge of operations of the Fort Cobb Dam by any available means of communication and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, with a copy to the representative in charge of the Fort Cobb Dam.

(e) Flood control operation shall not restrict releases necessary for municipal, industrial and irrigation uses:

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and reservoir from major damage or inconsistent with safe routing of the inflow design flood.

(g) All elevations stated in this section are at Fort Cobb Dam and are referred to the datum in use at that location.

[Regs., Mar. 24, 1961, ENGCEW-E] (Sec. 7, 58 Stat. 890; 33 U.S.C. 709)

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

[F.R. Doc. 61-3346; Filed, Apr. 13, 1961;
8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 932]

[Docket No. AO-33-A24]

MILK IN FORT WAYNE, IND., MARKETING AREA

Decision on Proposed Amendments to Tentative Marketing Agreement and 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), a public hearing was held at Fort Wayne, Indiana, on August 2-4, 1960, pursuant to notice thereof issued on June 29, 1960 (25 F.R. 6294).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on March 17, 1961 (26 F.R. 2469; F.R. Doc. 61-2550) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

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

1. Extension of the marketing area.
2. Modification of the classification, transfer and allocation provisions.
3. The method of determining minimum prices.
4. Distribution of proceeds to producers.
5. Revision of provisions with respect to unpriced milk.
6. Obligations of nonpool distributing plants with route distribution in the marketing area.
7. Modification of definitions and other administrative provisions.

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

1. The marketing area should be extended to include all the territory within the counties of Adams, Allen, DeKalb, Huntington, Lagrange, Noble, Steuben, Wells, Whitley all in the State of Indiana, together with all municipal corporations therein and all institutions owned or operated by the Federal, State or County government located wholly or partially within the area.

The present marketing area is limited to the city of Fort Wayne in Allen County. The number of handlers currently regulated is seven. The extension of the marketing area would fully regulate approximately 15 additional handlers.

Presently regulated handlers distribute fluid milk products through the entire area proposed. One of these handlers distributes approximately 50 percent of his fluid products outside the present marketing area but within the area proposed. Two other handlers now regulated also have a substantial distribution in the nine counties proposed to be regulated. It is necessary to include the entire area to encompass the major sales areas of all handlers who would be brought under regulation by expansion of the market to include the territory in which presently regulated handlers have a substantial volume of their distribution. Order No. 32 handlers and handlers regulated by other orders distribute from 35 to more than 90 percent of the fluid milk products in each of the counties herein recommended to be included in the marketing area.

Several of the milk distributors located outside the present marketing area and disposing of fluid milk products in the nine-county area do have sales in Allen County, some of them within the present city limits of Fort Wayne. Producers supplying these handlers are intermingled with producers presently supplying the Fort Wayne market.

Dairy farmers delivering to plants in the nine-county area outside of the present marketing area receive prices for their milk which are based on uniform prices paid under the Fort Wayne, North Central or Northeastern Ohio orders, rather than on the utilization of their milk based on a classified price plan. Distributing plants located in the extended marketing area have a high Class I utilization as compared to the market-wide utilization of handlers now regulated. Hence, the operators of these distributing plants, on the average, pay less for Class I milk than do handlers presently regulated by the Fort Wayne order.

Most of the sales of all fully regulated handlers would be made within the proposed marketing area. Seventeen of the handlers to be fully regulated have little, if any, route distribution of fluid milk products outside the extended marketing area. Four fully regulated handlers would have sales outside the proposed area. Two of these handlers, with 75 percent of their route sales in the enlarged Fort Wayne area, would be regulated under the Indianapolis order if the Fort Wayne area was not extended. Another handler with 25 percent of his route distribution outside the proposed marketing area competes with unregulated milk distributors and with handlers regulated by Southern Michigan, Order No. 24. The fourth of these handlers sells less than 15 percent of his Class I sales outside the proposed area. Another handler located within the proposed marketing area distributed 90 percent or more of his sales of fluid milk products in the State of Ohio. It is anticipated that this handler will be only partially regulated under the Fort Wayne order.

Many of the milk distributors that would be regulated by the extension of the marketing area purchase their reserve supply of fluid milk from the Wayne Cooperative Milk Producers Association.

Fluid milk products sold for consumption in the principal communities in the proposed area must be approved by health authorities who administer health ordinances generally patterned after the United States Public Health Service Milk Ordinance and Code. Within this area the health standards are substantially identical. The marketing area as herein proposed to be extended is a practicable area for purposes of regulation in effectuating the declared policy of the Act.

The provisions of the present Fort Wayne order as amended by the changes recommended below will afford an appropriate regulation for the enlarged marketing area.

2. The provisions relating to classification, transfers and allocation of skim milk and butterfat should be modified.

The order presently provides for the classification of skim milk and butterfat according to the form in which, or the purpose for which, it is used as either Class I or Class II. This classified-use plan should be continued with only minor modifications.

The Class II classification should be modified to include any skim milk which is dumped after prior notification to and opportunity for verification by the market administrator. Skim milk and butterfat used for livestock feed to the extent that appropriate records for such utilization are maintained by the handler should also be classified as Class II. The only trade outlets for surplus milk for many handlers are located at considerable distances from processing plants. Transportation costs are such that it is uneconomical for these handlers to ship relatively small quantities of such unneeded items to processing plants. Skim milk and butterfat used to produce egg-nog or disposed of in bulk in the form of milk, skim milk, buttermilk and sweet cream to commercial food processors, manufacturers of candy, soup and bakery products and used in such products should be classified as Class II. The health departments having jurisdiction in the marketing area do not require that egg-nog be made from Grade A milk. Skim milk and butterfat used to produce products not generally required to be made from producer milk are customarily defined as Class II. If Class II classification were not provided for sales of these products, handlers would be placed at a disadvantage in competing for such sales. Health regulations require, however, that sour cream be made from Grade A milk. These regulations also require that sour cream products (i.e. products made from a sour cream base but with food additives) and labeled Grade A must be made from the Grade A milk supply. It has been long established that products required to be

made from Grade A milk are included in Class I. Therefore, any sour cream product that is labeled Grade A or sour cream should be retained in Class I milk.

The classification of shrinkage has been modified to accommodate changes herein recommended with respect to cooperative associations as handlers of their member producers' milk supply handled in farm bulk tanks and the diversion of milk from pool plants to the pool plant of another handler. The maximum shrinkage allowance of skim milk and butterfat in Class II should be limited to:

(a) Two percent of receipts of milk at a pool plant directly from producers, plus

(b) One and one-half percent of receipts from a cooperative association in farm bulk tanks except that, if the handler operating the pool plant files with the market administrator notice that he is purchasing such milk on the basis of farm weights determined by farm bulk tank calibrations, the applicable percentage should be 2 percent, plus

(c) One and one-half percent of receipts in bulk tanks from other pool plants, less

(d) One and one-half percent of the disposition in bulk tanks from pool plants to all other milk plants, and plus

(e) One-half percent of receipts of producer milk in the case of a cooperative association with respect to milk in farm bulk tanks, unless the operator of the pool plant purchases such milk on the basis of farm weights.

Plants which are operated in a reasonably efficient manner and for which accurate records of receipts and utilization are maintained should not have plant loss in excess of the maximums provided. Any shrinkage in excess of the maximum should be classified as Class I.

Uniformity of costs to handlers and simplicity of accounting are achieved if, so far as possible, Class I utilization each month is assigned to current receipts of producer milk. This can be accomplished by classification of closing inventory as Class II and allocation of opening inventory to Class I only when current receipts of producer milk (except allowable Class II shrinkage) are less than Class I sales. In such case the handler should pay the difference between the Class II price of such milk in the preceding month and the current Class I price. The volume on which this charge is made should not exceed the volume (in excess of allowable Class II shrinkage) for which producers were paid at the Class II price in the preceding month. It is concluded that this method of accounting for inventory will preserve the priority of assignment of current producer receipts to current Class I use for each month and therefore is more appropriate than using the proposed system of inventory variations.

Provisions relating to the transfers of fluid milk, skim milk or cream in bulk to nonpool plants should be revised. Transfers or diversions in the form of bulk milk, skim milk or cream to a nonpool plant located 250 miles or less from the Allen County Courthouse in Fort Wayne, Indiana, and from which fluid

milk products are disposed of on wholesale or retail routes or to other milk plants shall be classified as Class I unless certain conditions are met and the nonpool plant permits verification by the market administrator. If the receipts from Grade A dairy farmers at the nonpool plant are less than the total Class I utilization at such plant, the difference shall be assigned pro rata to receipts from a pool plant(s) and from any other plant(s) which is fully regulated under any order issued pursuant to the Act. The Fort Wayne market is not the regular source of reserve milk supplies for nonregulated markets. Therefore, the highest valued uses in such plants should be assigned to dairy farmers regularly supplying Grade A milk to the nonregulated market before milk from the Fort Wayne market is so assigned. The provisions herein outlined are provided to assure such assignment. The transfers of milk, skim milk or cream to a nonpool plant located 250 miles or less from the Allen County Courthouse in Fort Wayne, Indiana, and from which fluid milk products are not disposed of on wholesale or retail routes shall be classified as Class II except that: (1) If the nonpool plant transfers an equivalent amount of milk, skim milk or cream to a pool plant(s) such transfer shall be handled as if directly transferred between pool plants and shall be classified in accordance with § 932.44(a), and (2) if the nonpool plant transfers milk, skim or cream to a second nonpool plant with route distribution such transfer will be Class I unless it is established such transfers were for manufacturing use only.

The transfers of milk or skim milk in bulk to nonpool plants not regulated by an order and located more than 250 miles from the Allen County, Indiana, Courthouse should be classified as Class I. While it was proposed that a limitation of 150 miles be used, it is concluded that a limitation of 250 miles would more adequately describe an area wherein handlers may dispose of skim milk and butterfat not needed by order handlers for Class I purposes. There are within this radius ample facilities to handle all of the reserve supplies of whole milk of the market which are not needed for Class I use, and because of the transportation cost involved, it is impractical to move milk or skim milk any greater distance for other than Class I utilization. Within such an area it is possible for the market administrator to verify the utilization of such milk without incurring unreasonable expenses. Beyond that area the verification of such utilization would place an undue burden on the staff of the market administrator and the cost would be excessive. On the other hand, cream for manufacturing purposes being much less bulky may be shipped by handlers to outlets considerable distances from the marketing area. Under the proposal which has been recommended, herein, if the cream is moved without Grade A certification, if each container bears a tag or label stating that the contents are for manufacturing use only and the cream is invoiced as suitable for manufacturing use only, such cream could be classified as Class II if the market ad-

ministrator is given sufficient notification that he may physically verify that these requirements are complied with. Cream which has been handled in the manner described, can be assumed to be utilized in a Class II product. It will not be necessary for the market administrator to travel unnecessary distances to verify the utilization of cream which may not be utilized in Class I at the point of destination.

Skim milk and butterfat transferred or diverted in bulk to a plant fully regulated by another order should be classified as Class I unless allocated to another class under this or such other order, in which case it will be classified as Class II. In the event that such regulated nonpool plant receives skim milk and butterfat from two or more plants regulated by an order(s) other than that under which it is regulated the amount classified in each class shall be a pro rata share of such receipts allocated to that class.

The allocation procedure should be revised. Presently the allocation provision does not distinguish between other source milk received in bulk fluid form from such milk received in the form of powder or condensed. Neither does it distinguish the difference between other source milk received from regulated and unregulated sources. In general the procedure requires that skim milk and butterfat in producer milk in each pool plant be assigned to Class I before any other milk is so assigned. This is necessary to insure the effectiveness of the classified pricing system of the order. A method of assigning utilization of milk to receipts from different sources which will carry out this objective is set forth in detail in the order. The revised allocation procedure with respect to other source milk will facilitate the application of payments on unpriced milk. It will have the further effect of providing the same treatment of fluid milk products in consumer packages whether distributed on routes in the marketing area or to pool plants by handlers fully regulated under another order.

3. The method of determining minimum prices in the order should be modified.

The present order provides that the basic formula price shall be the highest of the prices paid dairy farmers by local condenseries, the price computed by using butter and cheese prices, or a butter-powder formula price. During the past six years the butter-cheese formula price has not been used as the basic formula price and it should be deleted from the amended order.

The order should be revised to provide the use of prices paid farmers at 10 midwest condenseries as a part of the basic formula price. The use of the higher of the present butter-powder formula or the average price paid dairy farmers at 10 midwest condenseries will appropriately reflect the nationwide market for most manufactured products. Had these prices been used during the past three years the basic formula price would have been increased an average of 4 to 5 cents.

The Class I price should be established at a level which, in conjunction with the Class II price hereinafter concluded to be appropriate, will result in returns to producers high enough to maintain an adequate, but not excessive, supply of quality milk to meet the requirements of consumers in the marketing area, including the necessary reserves. Class I prices must also be in alignment with those prevailing in other nearby regulated markets and should not be at levels which exceed the cost of obtaining milk of acceptable quality and regular availability from alternative sources. This objective can best be effectuated by establishing the Class I price for the Fort Wayne order at the level of the basic formula price plus \$1.20.

The order presently provides for seasonal differentials above the basic formula price that range from \$0.75 to \$1.60 per hundredweight seasonally and average \$1.16 on an annual basis. Until recently the resulting Class I price was adjusted as the relationship of the supply of producer milk to gross Class I sales varied. The supply demand provisions of the present order were suspended October 1, 1960, because of the wide and erratic movement of the supply-demand adjuster which was disrupting the normal inter-market alignment of class prices. During the past six years, prior to its suspension, the supply-demand adjuster added on an annual average slightly more than \$0.08 per hundredweight to the Class I price. Thus, the annual average differential as provided herein will approximate the same level of Class I prices as the current provisions of the Fort Wayne order. Seasonality in prices to producers should be reflected in a "Louisville Plan" discussed elsewhere in this decision.

The revision of the definitions of producer and producer milk and the extension of the marketing area are expected to make substantial changes in the amount of producer milk received at pool plants in this market. It is anticipated that the order regulating the handling of milk in the Indianapolis, Indiana, marketing area will also make changes in the amount of producer milk received and the total amount of gross Class I sales in the Fort Wayne marketing area. Under these circumstances it is very difficult to forecast accurately what the supply-demand relationships might be following the issuance of an amended order for this market. Based on the recent history of the market, a differential of \$1.20 should be used in determining the Class I price through March 31, 1963, and no provision should be made for its adjustment as the supply of producer milk may change in relation to Class I sales. During the intervening time sufficient data should become available to provide a basis for judgment as to the future level of the Class I price and the need for adjusting such price as the supplies may vary in relation to demand.

So that handlers and producers may know the cost of Class I milk early in the month the order is further modified to provide that the basic formula should be based on the designated prices of the preceding month rather than the current month. This modification will

make it possible for the market administrator to announce Class I prices for the current month on or before the 6th day of each month.

The basic formula is appropriate to use in determining the Class II price. The one recommended herein is slightly higher than the basic formula price provided in the present order. It will maintain the price for excess milk at the maximum level consistent with facilitating its movement to manufacturing outlets when not required for Class I purposes. It will further provide appropriate alignment with Class II prices in nearby Federal order markets.

It was proposed that a lower price be determined for butterfat used in the manufacture of butter during the months of April through July. The Class II milk utilized by handlers in this market is predominantly in the higher valued Class II products of cottage cheese and ice cream. During these months there is a demand within reasonable distances for butterfat for ice cream manufacturing. To provide a lower Class II price for that used in butter would tend to encourage handlers not to seek the higher valued outlets available. It is therefore concluded, that butterfat used to produce butter should not be priced seasonally.

Multiplying the Chicago butter price by 0.125 and by 0.115 will provide an appropriate means for adjusting the Class I and Class II prices, respectively, in this market for each one-tenth percent variation in the butterfat content of milk used in these classes.

The present order provides for the determination of the handler Class I butterfat differential by multiplying the Chicago butter price by 0.13. The Class II differential in the present order is determined in the same manner as provided herein. The revised handler Class I butterfat differential places more value on the skim portion of milk than prevails under the present order provisions. This differential will recognize the change in consumer demand for skim milk and butterfat and will give some encouragement to increase the disposition of butterfat in Class I outlets.

To coordinate the Class I price and the Class I butterfat differential, the Class I butterfat differential should be based on the average price of butter in the preceding month. This will provide handlers and producers with knowledge of the Class I price a month in advance of the present provisions of the order. The Class II price and butterfat differential should continue to be based on the current month's prices.

So that the returns to producers will reflect the actual value of their butterfat at the class prices the butterfat differential to producers should be calculated at the average of the Class I and Class II butterfat differentials weighted by the proportion of butterfat classified in each class during the month.

4. A "Louisville Plan" of fall production incentive payments should be utilized in distributing returns to producers to provide the incentive to level production that is provided by the seasonal Class I differentials in the present order.

Such a plan provides for setting aside a portion of the payments made by handlers for producer milk during the spring months of flush production and for the distribution of the amounts withheld to producers on the basis of their deliveries during the fall months of production.

Under the plan proposed by producers and herein adopted the amount withheld from the pool would be eight percent of the Class I price times the hundredweight of producer milk deliveries during the months of April, May, and June. One-third of this set aside would be added to the value of producer milk in determining the uniform prices during each of the following months of September, October, and November. This is the same rate as provided for in the Indianapolis order. Thus, alignment of prices with this market is facilitated.

This incentive plan will tend to encourage a more even pattern of production throughout the year. In this way, an appropriate impetus is provided to obtain greater production during the fall months of normally low seasonal production and to discourage the production of unnecessary milk supplies in the spring months of flush production. The average of blend prices to producers for April, May and June during the past three years has been about 80 cents per hundredweight below the blend prices for September, October and November. It is estimated that the Louisville plan will increase the average seasonal difference in blend prices to producers from 80 cents per hundredweight to more than \$1.00. Thus, this incentive plan provides a substitute for the seasonal pricing provisions on the present order.

5. The provisions of the present order with respect to compensatory payments on unpriced milk at pool plants should be modified to apply only when receipts from producers exceed 110 percent of Class I utilization at all plants in the market during the month.

When the total market receipts of producer milk are less than 110 percent of total Class I sales during a month it is possible that some handlers would have to purchase milk from outside the market for their Class I sales. In the past, when supplies of producer milk in the Fort Wayne market have been low relative to Class I sales other nearby sources have also been in short supply. Under these circumstances, there is no competitive advantage to be gained by the use of other source milk, and compensatory payments would not be necessary in this market.

No compensatory payment should be required on milk which is classified and priced as Class I under any other Federal order. The alignment of Class I prices for the Fort Wayne, Indiana, market with those for other Federal orders prevents any significant competitive advantage to Fort Wayne handlers who purchase other Federal order milk.

Because of the number and locations of the additional plants which will be brought under regulation it is appropriate that the compensatory payment on other source milk allocated to Class I should be adjusted to reflect the location of the plant at which such other source milk was received from farmers. This

will tend to equalize the cost of unpriced other source milk among regulated handlers.

Other source milk used in the form of nonfat dry milk or condensed skim milk should be considered to be from a source at the location of the pool plant at which it is used. The plant where such products are made would be difficult to ascertain and the transportation cost is relatively small for such concentrated products.

6. Under the present order handlers who have route distribution of Class I milk in the marketing area from nonpool plants must pay the difference between the Class I and Class II price on the volume disposed of from routes in the area. In connection with the expansion of the marketing area operators of such nonpool distributing plants should be given the choice of paying dairy farmers from whom they receive Grade A milk the use value of such milk as computed pursuant to all terms and provisions of the order or making payments to the producer-settlement fund in accordance with the present order.

The effectiveness of the minimum price regulation can be maintained by providing alternative methods of determining compensatory payments at a nonpool distributing plant. Subject to proper reporting and the maintenance of adequate records, the operator of such plant should be given an opportunity to choose between payment into the producer-settlement fund of:

(1) An amount equal to the volume of Class I milk disposed of in the marketing area times the difference between the applicable Class I and Class II prices, or

(2) The amount by which total payments to dairy farmers delivering to such plant are less than the total obligation to producers which would be due if such plant were a pool plant.

If the partially regulated handler elects to make payments under the first option, the regulation would be protected in the same manner and to the same extent as is provided with respect to compensatory payments on other source milk at pool plants. If the handler chooses to pay the full utilization value of his milk either directly to his own farmers, or by combination of payments to his farmers and to the producer-settlement fund, he will not have an advantage in terms of the minimum order class prices on his sales of Class I milk in the marketing area. His total minimum obligation for milk will be determined in the same manner as if he were a fully regulated handler. Affording this second option to partially regulated nonpool plants will adequately protect the regulatory plan in this market. Handlers in a position to use this option do not exist to an extent which would permit any significant diversion of the revenue derived from Class I sales in the marketing area to handlers only incidentally associated with the market and thereby dissipate the returns to dairy farmers who are primarily engaged in producing an adequate and dependable supply of approved milk for the marketing area. Neither is there any likeli-

hood that handlers who might exercise this option would be able to secure a competitive advantage over fully regulated handlers in the procurement of milk from dairy farmers.

Under this option, the operator of the nonpool plant would be required to file a complete report of receipts and utilization. From such reports, subject to audit, the value of his milk would be computed at the class prices and adjusted for location and butterfat content in the same manner as for a pool plant. From this utilization value the market administrator would subtract the payments to the Grade A dairy farmers who constitute the regular supply of milk for the nonpool plant as verified from the producer payroll. Only such payments would be allowed as had been made to such farmers by the 15th day following the end of the month. The payment would be the gross amount paid to such farmers for milk at the nonpool plant. Bona fide deductions for supplies and services, such as hauling, would be allowed as authorized in writing by the dairy farmer.

The assessment of administrative expense should depend upon which option is chosen by the nonpool distributor. If he elects to make a compensatory payment on his in-area sales he should be required to pay administrative expense only on such quantities of milk disposed of in the marketing area. If he elects the payment to his own dairy farmers based on the utilization value of his milk he should pay administrative expense on his entire receipts of milk from Grade A dairy farmers and any other receipts from unpriced sources which are allocated to Class I milk. The second option necessitates as much verification of the reports and utilization by the market administrator as at a pool plant and the assessment should be computed on the same basis.

7. Due both to the length of time since the order was last revised and to the expansion of the marketing area as provided herein it is desirable to revise certain definitions and administrative provisions of the order.

The Fort Wayne order was last revised in 1954. Since that date many changes in marketing milk in this area have occurred. The largest cooperative association now operates pool plants under the Northeastern Ohio marketing order. There are extensive intermarket movements of milk by handlers regulated under the Chicago, South Bend-La Porte-Elkhart and North Central Ohio orders and by handlers in the Indianapolis, Indiana, market. While at the time of the hearing only a small portion of the supply of producer milk was handled through farm bulk tanks, it is anticipated that this form of marketing milk will develop rapidly. These and other changes in the market provided the basic reasons for the revision of the order as herein provided.

Producer should be defined as a person, other than a producer-handler, who produces Grade A milk, in conformity with the sanitation requirements issued by duly constituted health authorities and whose milk is received at a pool plant or diverted within the limits provided

herein. The present order provides that a producer must have certification issued by the Fort Wayne Board of Health. With the extension of the marketing area as outlined herein to include areas beyond the city limits of Fort Wayne it is practical and necessary to provide that any dairy farmer who produces Grade A milk in conformity with sanitation requirements issued by any duly constituted health authority should be eligible to become a producer under this order.

To designate clearly what milk will be subject to the pricing and pooling provisions of this order a handler should be defined as:

(1) Any person in his capacity as the operator of a pool plant;

(2) The operator of any nonpool distributing plant with route distribution in the area;

(3) A cooperative association with respect to milk of its members diverted for the account of such association from a pool plant to a nonpool plant; or

(4) A cooperative association with respect to the milk of those producer members which is delivered from the farm to the pool plant of another handler for the account of the cooperative association. The milk so delivered shall be considered as having been received by the cooperative association at the location of the plant to which it was delivered.

The handler receives the milk of producers and thus must be held responsible for reporting its receipt and utilization. The handler is the one responsible for the payment for producer milk at not less than specified minimum prices. Producer-handlers and other operators of distributing plants should be handlers in order that the market administrator may require reports of such persons to determine their status at any given time.

The present order provides that any cooperative association is a handler with respect to (1) producer milk caused by it to be delivered to a pool plant for which milk such association is authorized to receive payment, or (2) milk certified by the Fort Wayne Board of Health for disposition within the marketing area as fluid milk which such association caused to be delivered, for its account, to a nonpool plant. It was proposed to amend this provision to provide that any cooperative association operating a nonpool plant within the marketing area would be a handler with respect to milk as outlined in points (1) and (2) of the previous sentence. The expansion of the marketing area to include nine counties in Indiana and the increase in the receipt of milk at pool plants in farm bulk tanks make such a provision impractical under the present marketing conditions in this area. The definition of a handler contained herein will provide for specific accountability of the milk to be priced and pooled under the order.

Producer-handler should be defined as a dairy farmer who operates a distributing plant but receives no milk from other dairy farmers or nonpool plants. It is further provided, that the maintenance, care and management of the

dairy animals and other resources necessary to produce his own farm milk production and the processing and/or distribution of fluid milk products must be the personal enterprise and at the personal risk of the producer-handler.

A distributing plant should be defined as a plant in which fluid milk products are processed and packaged and from which Grade A fluid milk products are disposed of on a route in the marketing area.

A supply plant should be defined as a plant at which milk is received from dairy farmers and from which Grade A fluid milk products are moved to a distributing plant.

A pool plant should meet certain performance standards in order to determine its status as a regular and substantial supplier of fluid milk in the marketing area. In order to qualify as a pool plant a distributing plant should (1) dispose of 10 percent or more of its total receipts of Grade A milk on routes in the marketing area, and (2) have a total disposition of fluid milk products on routes equal to 50 percent or more of its total receipts of Grade A milk. In order to qualify as a pool plant a supply plant should move to and have utilized at distributing pool plants 50 percent or more of its receipts from dairy farmers. If a supply plant meets this pooling requirement during each of the months of September through December, it should retain pool status during the following January through August unless the operator of the supply plant notifies the market administrator in writing before the first day of the month of his intention to withdraw his plant as a pool plant. If a supply plant becomes a nonpool plant it shall thereafter be a nonpool plant until it again meets the shipping requirements set forth herein.

The revised definition of a pool plant is necessary to insure (1) that the producers sharing in the uniform price of the marketwide pool be those delivering to plants from which a substantial portion of the milk received at such a plant is disposed of as fluid milk products in the marketing area; and (2) that the receipts of those plants which primarily serve markets outside the marketing area be excluded from sharing in the pool. Thus, it is provided that those plants that make sales of fluid milk products on routes in the marketing area equal to 10 percent or more of total receipts of Grade A milk should be regarded as pool plants.

Distributing plants normally distribute on routes a high proportion of their receipts of Grade A milk as fluid milk products. Disposition of not less than 50 percent of its Grade A receipts on routes in the form of fluid milk products in any month would indicate that the plant is primarily a milk distributing plant. Route disposal would serve to distinguish those plants that may qualify as pool plants through route distribution from those which must qualify as supply plants. Route is defined in the order to include all deliveries of fluid milk products other than a delivery in bulk form to any milk processing plant.

The present order provides that a distributing plant be a pool plant if 10 percent of its receipts is disposed of as Class I on routes which are wholly or partially within the marketing area. Thus, a plant could qualify as a pool plant with only a very small percentage of its Class I disposition within the marketing area. Requiring 10 percent of its receipts to be disposed of within the marketing area will insure that a plant, to be pooled, has a substantial association with the market. This revised requirement will not affect the status of any distributing plant now pooled under the order.

Producer milk should be defined as all skim milk and butterfat received at a pool plant directly from producers or from a cooperative association, and milk diverted by the operator of a pool plant or by a cooperative association under specified conditions. In the Fort Wayne marketing area the operators of pool plants do not generally divert milk production of a producer to the pool plant of another handler. However, circumstances do occasionally arise when it is more practical and economic to move milk directly from the farm to the pool plant of another handler. Therefore, it is reasonable to permit such movements of milk between pool plants. The purpose of the diversion privilege is to facilitate the movement of milk to nonpool plants when all of the supply of Grade A milk in the market is not needed for Class I purposes. Allowing for unlimited diversion to nonpool plants during those months when the reserve supplies of milk are heaviest will contribute to the economic movement of milk to nonpool plants. Unlimited diversion, however, is neither necessary nor desirable during the other months of the year when producer milk regularly associated with the market is needed to supply the Class I needs of the market. However, it is necessary during the short supply season to enable handlers to divert milk on weekends or holidays or under unusual circumstances when the milk is not needed to fill the Class I needs of the market. It is, therefore, provided that the operator of a pool plant may divert the milk production of a producer from a pool plant to a nonpool plant for any number of days during the months of January through August. Diversion by the operator of a pool plant to a nonpool plant should be limited to not more than one-half of the days of production of such producer during the months of September through December. A cooperative association would be similarly limited to the diversion of the milk production of its producer members from a pool plant or directly from the farm to a nonpool plant.

Milk diverted for the account of the operator of a pool plant, or a cooperative association, from a pool plant to a nonpool plant shall be considered to have been received at the pool plant from which diverted.

Other source milk should be defined as all skim milk and butterfat contained in fluid milk products received by a handler at his plant(s) (except producer milk, inventory of fluid milk products at the beginning of the month, and fluid milk

products received from pool plants), products other than fluid milk products from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month and any disappearance of nonfluid milk products not otherwise accounted for. Any receipts from a producer-handler would be other source milk since such person is neither a producer nor the operator of a pool plant.

Fluid milk product should be defined to mean milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk disposed of for fluid consumption (other than in hermetically sealed cans), cream, sweet or sour, any mixture of cream and milk or skim milk (except frozen cream, aerated cream products, eggnog, milk shake mixes, ice cream, ice cream mixes, other frozen desserts and sterilized products packaged in hermetically sealed containers) and sour cream products labeled Grade A. The items designated as fluid milk products pursuant to this definition are those products, which, when disposed of by handlers, are considered as Class I milk.

Provision should be made for payment of interest on overdue obligations. The requirement that interest be paid on overdue obligations will encourage prompt payments, thereby making for efficient transactions under the order. Dates on which accounts are due under the order allow adequate time for payment of the principal without an interest charge. A rate equal to one-half of one percent with respect to any unpaid obligation, to or from the market administrator, is an appropriate and economically sound payment for each month or fraction thereof that the obligation is overdue. Under this provision, any unpaid portion of the obligation would be increased one-half of one percent on the first day of the month following the date such obligation is due and on the first day of each succeeding month until such obligation is paid. This procedure will give reasonable time to receive actual payments of obligations before the application of interest.

The maximum rate of the marketing service assessment should be increased from 4 cents to 5 cents per hundredweight. The additional producers whose milk will be brought under regulation by the expansion of the marketing area deliver their milk to plants scattered over a wide area. The number of producers delivering to each of these plants is relatively small. The cost of performing marketing services for such producers thus is expected to be greater per hundredweight of milk produced than for the present producers whose milk is delivered to plants concentrated in or near the city of Fort Wayne. The proposed rate is a maximum and may be reduced if experience indicates that a lesser amount is sufficient to cover the cost of performing the services.

The order has been completely redrafted to properly coordinate the provisions of the regulation in its entirety.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of

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

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

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

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

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

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Fort Wayne, Indiana, Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Fort Wayne, Indiana, Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL

REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Referendum order; determination of representative period; and designation of referendum agent. It is hereby directed that a referendum be conducted to determine whether the issuance of the attached order amending the order regulating the handling of milk in the Fort Wayne, Indiana, marketing area, is approved or favored by the producers, as defined under the terms of the order, as hereby proposed to be amended, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of February 1961 is hereby determined to be the representative period for the conduct of such referendum.

Richard J. Connolly is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (15 F.R. 5177), such referendum to be completed on or before the 30th day from the date this decision is issued.

Issued at Washington, D.C., April 10, 1961.

JOHN P. DUNCAN, Jr.,
Assistant Secretary.

Order¹ Amending the Order Regulating the Handling of Milk in the Fort Wayne, Indiana, Marketing Area

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

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AUTHORITY: §§ 932.0 to 932.95 issued under secs. 1-18, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 932.0 Findings and determinations.

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

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

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

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

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

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

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

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to (i) all receipts within the month of milk from producers, including milk of such handler's own production, (ii) any other source milk allocated to Class I pursuant to § 932.46 (c) and (d) and the corresponding steps of § 932.47, and (iii) the amount of milk for which a payment is computed pursuant to § 932.62 (a) (2) or (b) (2).

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

§ 932.1 Act.

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

§ 932.2 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the United States authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 932.3 Department.

Department means the United States Department of Agriculture.

§ 932.4 Person.

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

§ 932.5 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines:

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

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

§ 932.6 Fort Wayne, Indiana, marketing area.

Fort Wayne, Indiana, marketing area, hereinafter called the "marketing area," means all the territory within the counties of Adams, Allen, De Kalb, Huntington, Lagrange, Noble, Steuben, Wells, and Whitley, all in the State of Indiana, together with all municipal corporations therein and all institutions owned or operated by the Federal, State or County Government located wholly or partially within the county.

§ 932.7 Producer.

Producer means any person, except a producer-handler, who, in compliance with the Grade A inspection requirements of a duly constituted health authority, produces milk for distribution as fluid milk products within the marketing area or produces milk acceptable for fluid consumption at Federal, State or municipal institutions, which milk is received at a pool plant or is diverted pursuant to § 932.14.

§ 932.8 Handler.

Handler means:

(a) Any person in his capacity as the operator of a pool plant(s); or

(b) The operator of any nonpool distributing plant with route distribution in the area; or

(c) A cooperative association with respect to milk of its producer members diverted for the account of such association from a pool plant to a nonpool plant; or

(d) A cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant(s) of another handler for the account of the cooperative association, if the cooperative association, on or before the first day of the month in which such milk is received from producers, has notified, in writing, both the market administrator and the handler to whom the milk is delivered that it wishes to be the handler for such milk. The cooperative association shall be considered the handler for such milk effective the first day of the month following receipt of such notice and milk so delivered shall be considered as having been received by the cooperative association at a pool plant at the location of the plant to which it was delivered.

§ 932.9 Producer-handler.

Producer-handler means a person who:

(a) Operates a distributing plant at which no fluid milk or fluid milk products are received during the month except that of his own farm milk production or that which is transferred from a pool plant(s); and

(b) Assumes as his personal enterprise and risk the processing and/or distribution of fluid products and the maintenance, care and management of dairy animals and other resources necessary to produce his own farm milk production.

§ 932.10 Distributing plant.

Distributing plant means any plant at which fluid milk products are processed and packaged and from which Grade A fluid milk products are disposed of on a route(s) in the marketing area.

§ 932.11 Supply plant.

Supply plant means any plant at which Grade A milk is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

§ 932.12 Pool plant.

Pool plant means:

(a) A distributing plant, other than that of a producer-handler or one described in § 932.61, from which during the month:

(1) Disposition of fluid milk products in the marketing area on routes is equal to 10 percent or more if its total receipts of Grade A milk; and

(2) Total disposition of fluid milk products on routes is equal to 50 percent or more of its total receipts of Grade A milk;

(b) A supply plant from which during the month 50 percent or more of its receipts of Grade A milk from dairy farmers is moved to and received at a pool plant(s) described in paragraph (a) of this section. Any supply plant that was a pool plant during each of the months of September through December shall continue to be a pool plant the following months of January through August unless the operator of such plant notifies the market administrator in writing before the first day of any such month of his intention to withdraw such plant as a pool plant, in which case such plant shall thereafter be a nonpool plant until it again meets the shipping requirements set forth in this paragraph.

§ 932.13 Nonpool plant.

Nonpool plant means any milk processing or distributing plant in any month in which it is not a pool plant.

§ 932.14 Producer milk.

Producer milk means all skim milk and butterfat which is:

(a) Received at a pool plant directly from producers or from a cooperative association; or

(b) Physically received at a pool plant directly from producers; or

(c) Diverted by the operator of a pool plant or by a cooperative association, subject to the following conditions:

(1) The operator of a pool plant may divert the milk production of a producer to the pool plant of another handler for not more than one-half of the days of production during the month;

(2) During January through August the operator of a pool plant or a cooperative association may divert the milk production of a producer from a pool plant to a nonpool plant (other than that of a producer handler) on any number of days during the month and during the months of September through December on not more than one-half of the days of production of such producer during the month;

(3) Milk diverted for the account of the operator of a pool plant shall be considered to have been received at the pool plant from which diverted; and

(4) Milk diverted for the account of a cooperative association shall be considered to have been received at the location of the pool plant from which diverted.

§ 932.15 Other source milk.

Other source milk means all skim milk and butterfat contained in:

(a) Receipts during the month of fluid milk products except:

(1) Fluid milk products received from pool plants;

(2) Producer milk; and

(3) Inventory of fluid milk products on hand at the beginning of the month;

(b) Products, other than fluid milk products, from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month; and

(c) Any disappearance of nonfluid milk products not otherwise accounted for.

§ 932.16 Fluid milk product.

Fluid milk product means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk disposed of for fluid consumption (other than in hermetically sealed cans), cream, sweet or sour, and any mixture of cream and milk or skim milk (except frozen cream, aerated cream products, eggnog, milk shake mixes, ice cream, ice cream mixes, other frozen desserts and sterilized products packaged in hermetically sealed containers) and sour cream products labeled Grade A.

§ 932.17 Route.

Route means a delivery (including delivery by a vendor or sale from a plant or plant store) of any fluid milk product, other than a delivery in bulk form to any milk processing plant.

§ 932.18 Chicago butter price.

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

MARKET ADMINISTRATOR

§ 932.20 Designation.

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

§ 932.21 Powers.

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

(a) Administer its terms and provisions;

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

(c) Make such rules and regulations as are necessary to effectuate its terms and provisions; and

(d) Recommend amendments to the Secretary.

§ 932.22 Duties.

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

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

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

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

(d) Pay from the funds received pursuant to § 932.86, the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses, except those incurred under § 932.85, that are necessarily incurred by him in the maintenance and functioning of his office, and in the performance of his duties;

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

(f) Submit his books and records to examination by the Secretary, and furnish such information and reports as the Secretary may request;

(g) Verify all reports and payments of each handler by audit, or such other investigation as may be necessary, of such handler's records and facilities and of the records and facilities of any other person upon whose utilization the classification of skim milk and butterfat depends;

(h) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports or payments required by this part;

(i) Prepare and disseminate to producers, handlers and the public, general information as he deems necessary;

(j) On or before the dates specified herein, publicly announce by posting in

a conspicuous place in his office and by such other means as he deems appropriate, the following:

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

(2) The 14th day of each month, the uniform price and the producer butterfat differential for the preceding month;

(k) On or before the 12th day after the end of each month report to each cooperative association which so requests the amount and class utilization of milk caused to be delivered by such association, either directly or from producers who have authorized such association to receive payments for them to each handler to whom the cooperative sells milk. For the purpose of this report the milk caused to be so delivered by an association shall be prorated to each class in the proportion that the total receipts of milk received from producers by such handler were used in each class.

REPORTS, RECORDS AND FACILITIES

§ 932.30 Reports of receipts and utilization.

By mailing on or before the 6th day after the end of each month, or by delivery not later than the 8th day after the end of the month, each handler, except a producer-handler and a handler pursuant to § 932.61, shall report to the market administrator for such month, reporting separately for each of his pool plants, in the detail and on the forms prescribed by the market administrator, as follows:

(a) The quantities of skim milk and butterfat contained in:

(1) Receipts of milk from producers, including receipts of the handler's own production;

(2) The quantities of skim milk and butterfat contained in milk and milk products received from other pool plants and a cooperative association which is a handler pursuant to § 932.8(d);

(3) The quantities of skim milk and butterfat contained in other source milk, including milk which has been classified and priced under other Federal orders;

(b) The inventories of skim milk and butterfat on hand at the beginning and the end of the month;

(c) The utilization of all skim milk and butterfat required to be reported by this section, including a separate statement of the disposition of Class I milk outside the marketing area; and

(d) Such other information with respect to the receipts and utilization of milk and milk products as the market administrator may require.

§ 932.31 Payroll reports.

(a) Each handler, except a producer-handler and a handler pursuant to § 932.61 or § 932.62, shall report to the market administrator in the detail and on forms prescribed by the market administrator the following:

(1) On or before the 25th day after the end of each month for each producer or cooperative association from whom

milk was received during the preceding month the following:

- (i) His name and address;
- (ii) The total pounds and butterfat content of milk received during the month;
- (iii) The amount of any deductions authorized in writing by such producer to be made from payments due for milk delivered; and
- (iv) The prices paid and the net amount of the payment to each producer;

(b) Each handler operating a nonpool distributing plant who does not elect to make payments as required pursuant to § 932.62(a) shall report to the market administrator on or before the 25th day after the end of the month for each dairy farmer from whom milk was received the same information as required pursuant to paragraph (a)(1) of this section.

§ 932.32 Other reports.

Each producer-handler and each handler pursuant to § 932.61 shall make reports to the market administrator at such time and in such manner as the market administrator may request.

§ 932.33 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations together with such facilities as are necessary for the market administrator to verify or establish the correct data which are required to be reported pursuant to this part and the payments required to be made pursuant to this part.

§ 932.34 Retention of records.

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

CLASSIFICATION

§ 932.40 Skim milk and butterfat to be classified.

The skim milk and butterfat to be reported by each handler pursuant to § 932.30 shall be classified each month by the market administrator pursuant to the provisions of § 932.41 through § 932.47.

§ 932.41 Classes of utilization.

Subject to the conditions set forth in §§ 932.42 to 932.47 the classes of utilization shall be as follows:

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

(1) Disposed of in the form of fluid milk products, except those classified pursuant to paragraphs (b) (2), (3), (4), and (5); and

(2) Not accounted for as Class II.

(b) *Class II.* Class II shall be:

(1) All skim milk and butterfat used to produce any product other than a fluid milk product;

(2) All skim milk and butterfat disposed of in bulk to commercial food processors and used in a food product;

(3) All skim milk authorized by the market administrator to be dumped;

(4) All skim milk and butterfat accounted for as disposed of for livestock feed;

(5) The inventories of fluid milk products on hand at the end of the month;

(6) The shrinkage of other source milk; and

(7) In shrinkage of skim milk and butterfat, respectively, not to exceed the following:

(i) Two percent of the milk received at a pool plant directly from producers; plus

(ii) One and one-half percent of receipts from a cooperative association in farm bulk tanks, except that, if the handler operating the pool plant files with the market administrator notice that he is purchasing such milk on the basis of farm weights determined by farm bulk tank calibrations, the applicable percentage shall be two percent; plus

(iii) One and one-half percent of receipts in bulk tanks from other pool plants; less

(iv) One and one-half percent of disposition in bulk tanks from pool plants to all other milk plants; and plus

(v) One-half percent of receipts of producer milk by a cooperative association with respect to milk delivered in farm bulk tanks, unless the exception provided in subdivision (ii) of this paragraph applies.

§ 932.42 Assignment of shrinkage.

The market administrator shall determine the assignment of shrinkage to Class II as follows:

(a) Determine the total shrinkage of skim milk and butterfat for each handler; and

(b) Assign the shrinkage of skim milk and butterfat pro rata between milk received (1) directly from producers, from a cooperative association in its capacity as a handler and from other pool plants and (2) other source milk received in the form of fluid milk products.

§ 932.43 Responsibility of handlers.

In establishing the classification of skim milk and butterfat as required by this part, the burden rests upon the handler who first receives such skim milk or butterfat to establish to the

satisfaction of the market administrator that such skim milk or butterfat should not be classified as Class I.

§ 932.44 Transfers.

Skim milk and butterfat disposed of by handler, either by transfers or diversions shall be classified:

(a) As Class I if transferred in the form of fluid milk products to and utilized at the pool plant of another handler unless utilization as Class II is claimed by both handlers in their reports pursuant to § 932.30, and the amount of skim milk or butterfat so assigned to Class II does not exceed the amount of skim milk or butterfat remaining in Class II at either plant after the subtraction of other source milk pursuant to § 932.46. In no case shall the assignment to Class I in the transferee plant exceed the difference between its total receipts of milk and milk products and its total utilization of such milk and milk products in Class II.

(b) As Class I if transferred in the form of fluid milk products to and utilized at a plant operated by a producer-handler;

(c) As Class I if transferred in the form of bulk fluid milk products to, and utilized at, a nonpool plant that is a fully regulated plant under another order issued pursuant to the Act, unless allocated to another class under such other order, in which case it will be Class II. In the event such nonpool plant receives skim milk and butterfat from two or more plants regulated by an order(s) other than that under which it is regulated the amount classified in each class shall be a pro rata share of such receipts allocated to that class;

(d) As Class I if transferred, in the form of bulk milk or skim milk, to and utilized at a nonpool plant, except as specified in paragraphs (b) and (c) of this section, located more than 250 miles from the Allen County Courthouse in Fort Wayne, Indiana, using the shortest accessible highway distance available for such transportation;

(e) (1) As Class I milk if transferred in the form of bulk milk, skim milk or cream to and utilized at a nonpool plant except as specified in paragraphs (b), (c), and (d) of this section located 250 miles or less from the Allen County Courthouse in Fort Wayne, Indiana, (using the shortest accessible highway distance available for such transportation) from which fluid milk products are disposed of on wholesale or retail routes or to other milk plants, unless:

(i) The transferring handler claims Class II use in his report submitted pursuant to § 932.30; and

(ii) The operator of a nonpool plant maintains books and records which are made available for examination upon request by the market administrator and which are adequate for verification of such Class II use;

(2) If these conditions are met the market administrator shall classify as follows:

(i) Determine the use of all skim milk and butterfat in such nonpool plant; and

(ii) Allocate receipts from Grade A farmers to the highest use beginning with Class I. Allocate transferred milk to Class I to the extent remaining, except that if receipts from this and other Federal orders exceed the amount remaining, the amount of such transferred milk allocated to Class I shall be determined by prorating the remaining Class I utilization in accordance with the receipts from all such plants at the transferee plant;

(f) As Class II milk if diverted or transferred in bulk in the form of milk, skim milk, or cream to a nonpool plant located 250 miles or less from the Allen County Courthouse in Fort Wayne, Indiana (using the shortest accessible highway distance available for such transportation) and from which fluid milk is not disposed of on wholesale or retail routes, except that:

(1) If such nonpool plant transfers milk, skim milk, or cream to a pool plant, an equal amount of skim milk and butterfat transferred to such nonpool plant from pool plants shall be deemed to have been transferred directly to the pool plant(s) receiving such milk and shall be classified pursuant to the provisions of paragraph (a) of this section; and

(2) If such nonpool plant transfers milk, skim milk, or cream to a second nonpool plant which distributes fluid milk on wholesale or retail routes, skim milk or butterfat transferred from the pool plant to the first nonpool plant shall be Class I milk to the extent of the amount so transferred to such second nonpool plant unless it is established that the milk, skim milk, or cream was transferred to the second nonpool plant without Grade A certification and with each container labeled or tagged to indicate that the contents were for manufacturing use only and that the shipment was so invoiced; and

(g) As Class I if transferred in the form of bulk cream to and utilized at a nonpool plant located more than 250 miles from the Allen County Courthouse in Fort Wayne, Indiana, (using the shortest accessible highway distance available for such transportation) except as specified in paragraphs (b) and (c) of this section, unless the handler:

(1) Claims classification as Class II; and

(2) Established that (i) such cream was transferred without Grade A certification, (ii) each container was tagged or labeled to show that the contents were for manufacturing use only, (iii) the transfers of such cream was invoiced as suitable for manufacturing use only, and (iv) affords the market administrator at least 24 hours prior notice so that he may verify such shipment.

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

For each month, the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to this part and compute the total pounds of skim milk and butterfat, respectively,

in each class at each of the plants of such handler.

§ 932.46 Allocation of skim milk classified.

The pounds of skim milk in each class allocated to producer milk shall be determined each month for each handler as follows:

(a) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified pursuant to § 932.41(b) (7);

(b) Subtract from the pounds of skim milk in Class I the pounds of skim milk received in the form of fluid milk products in consumer-type packages subject to the pricing and pooling provisions of another order issued pursuant to the Act and disposed of as Class I in the same package as received: *Provided*, That this paragraph shall not apply to skim milk in any product if the same product is processed and packaged in the same size and type of container in the pool plant during the month;

(c) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II, the pounds of skim milk received as other source milk other than in the form of fluid milk products;

(d) Subtract from the total pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in other source milk received in the form of fluid milk products, except as specified in paragraphs (b) and (e) of this section;

(e) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk subject to the Class I pricing and payment provisions of another order issued pursuant to the Act, except as specified in paragraph (b) of this section;

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

(g) Subtract from the pounds of skim milk remaining in each class, the pounds of skim milk received from pool plants of other handlers in such class pursuant to § 932.44(a);

(h) Add to the remaining pounds of skim milk in Class II the pounds subtracted pursuant to paragraph (a) of this section; and

(i) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk in milk received from producers, subtract such excess from the remaining pounds of skim milk in each class in series beginning with Class II. Any amount so subtracted shall be known as overage.

§ 932.47 Allocation of butterfat classified.

Allocate the pounds of butterfat in each class to producer milk in the same manner as that prescribed for skim milk in § 932.46.

§ 932.48 Computation of total producer milk in each class.

The amounts computed pursuant to §§ 932.46 and 932.47 shall be combined

into one total for each class and the weighted average butterfat content of producer milk in each class shall be determined.

MINIMUM PRICES

§ 932.50 Basic formula price.

The basic formula price per hundredweight of milk to be used in determining class prices for each month shall be the higher of the prices per hundredweight of milk of 3.5 percent butterfat content computed by the market administrator pursuant to paragraphs (a) and (b) of this section rounded to the nearest cent:

(a) The average of the basic (or field) prices ascertained to have been paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator by the Department or by the companies indicated as follows:

Present Operator and Location

Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus amounts pursuant to subparagraphs (1) and (2) of this paragraph:

(1) From the Chicago butter price, subtract three cents, and then multiply by 4.2; and

(2) From the simple average of the weighted averages of the carlot prices per pound of spray and roller process nonfat dry milk solids for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department, deduct 5.5 cents and multiply by 8.2.

§ 932.51 Class prices.

The respective minimum prices per hundredweight to be paid by each handler, f.o.b. his plant, for milk received from producers or from a cooperative association during the month shall be as follows:

(a) Class I milk price. Through March 31, 1963 the price for Class I milk of 3.5 percent butterfat content shall be the basic formula price for the preceding month plus \$1.20; and

(b) Class II milk price. The price for Class II milk of 3.5 percent butterfat content shall be the basic formula price.

§ 932.52 Butterfat differentials to handlers.

For each class of milk containing more or less than 3.5 percent butterfat, the class price calculated pursuant to § 932.51 shall be increased or decreased, respectively, for each one-tenth of a percent of butterfat at a rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.125;

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

§ 932.53 Location differentials to handlers.

For that milk which is received from producers at a pool plant located 60 miles or more from the Allen County Courthouse, Fort Wayne, Indiana, by the shortest accessible highway distance as determined by the market administrator, and which is transferred to another pool plant in the form of fluid milk products and assigned to Class I milk pursuant to the proviso of this section, or otherwise classified as Class I milk, the price specified in § 932.51(a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Allen County Courthouse, Fort Wayne, Indiana (miles):	Rate per hundredweight (cents)
60 but less than 70	10.0
For each additional 10 miles or fraction thereof an additional	1.5

In calculating such adjustment transfers may be assigned to Class I only to the extent that Class I disposition at the transferee plant exceeds receipts from producers and cooperative associations pursuant to § 932.8(d) at such plant. Such assignment to transferor plants shall be made first to plants at which no location adjustment credit is applicable and then in sequence to plants at which the lowest rate of such adjustment credit would apply.

§ 932.54 Equivalent price provision.

Whenever the provisions of this part require the market administrator to use a specific price (or prices) for milk or any milk product for the purpose of determining minimum class prices or for any other purpose and the specific price is not reported or published, the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with the price specified.

APPLICATION OF PROVISIONS

§ 932.60 Producer-handler.

Sections 932.40 through 932.54 and §§ 932.61 through 932.86 shall not apply to a producer-handler.

§ 932.61 Handlers subject to other Federal orders.

In the case of any handler who the Secretary determines disposes of a greater portion of his milk as Class I milk in another marketing area regulated by another milk marketing agreement or order issued pursuant to the Act and whose milk is classified and priced under such other order, the provisions of this part shall not apply except that the handler shall, with respect to his total receipts of skim milk and butterfat, make reports to the market administrator at such time and in such manner as the market administrator may require and he shall allow verification of such reports by the market administrator.

§ 932.62 Obligations of handler operating a nonpool distributing plant.

In lieu of payments required pursuant to §§ 932.80 through 932.85, each handler, other than a producer-handler or one exempt pursuant to § 932.61, who operates, during the month, a nonpool distributing plant, shall pay to the market administrator for deposit in the producer-settlement fund and the administrative assessment fund, as the case may be, as follows:

(a) If such handler so elects in writing at the time of reporting pursuant to § 932.30, the amounts computed as follows:

(1) On or before the 13th day after the end of the month, for the producer-settlement fund, an amount equal to the difference between the value of the Class I milk disposed of during the month in the marketing area on routes at the applicable Class I price for the month and the value of such milk at the Class II price; and

(2) On or before the 13th day after the end of the month, as his pro rata share of expense of administration, the rate specified in § 932.86 with respect to Class I milk disposed of in the marketing area on routes; or

(b) Except as the handler may elect the option pursuant to paragraph (a) of this section, he shall pay the amounts as follows:

(1) On or before the 25th day after the end of the month, for the producer-settlement fund, the amount specified in paragraph (a)(1) of this section, or any plus amount resulting from the following computation, whichever is less:

(i) Compute an amount equal to the value of milk which would be computed pursuant to § 932.70 for milk received from dairy farmers at such plant for such month if such plant had been a pool plant; and

(ii) Deduct the gross payments made by the handler to dairy farmers for milk received at such plant for such month. Gross payments to be included in this computation shall be limited to cash payments made to the dairy farmer or his assignee on or before the date of the report pursuant to § 932.31(b), plus the value of any supplies as evidenced by a delivery ticket signed by the dairy farmer; and

(2) On or before the 13th day after the end of the month, as his pro rata share of the expense of administration, an amount equal to that which would have been computed pursuant to § 932.86 had such plant been a pool plant.

§ 932.63 Rate of payment on other source milk.

The following rates of payment on other source milk to be applied pursuant to § 932.70 shall be effective only in the months when the total receipts of producer milk are 110 percent or more of the total amount from all sources classified as Class I:

(a) On other source milk received other than in the form of fluid milk products, subtract the Class II price adjusted by the Class II butterfat differential from the Class I price adjusted by the Class I butterfat differential; and

(b) On other source milk received in the form of fluid milk products, subtract the Class II price adjusted by the Class II butterfat differential from the Class I price adjusted by the Class I butterfat differential, and adjust such difference by the location differential applicable at a pool plant of the same location as the nonpool plant(s) supplying such other source milk. Such adjustment to be made first at the nonpool plant at which no location differential applies and then in sequence at the plants at which the lowest location differential would apply.

DETERMINATION OF PRICES TO PRODUCERS

§ 932.70 Computation of value of producer milk.

The value of milk received from producers during the month by each handler shall be the sum resulting from the following computations:

(a) For each handler who received milk from producers multiply the quantity of milk received from producers in each class, as computed pursuant to § 932.48, by the applicable respective class prices (adjusted pursuant to §§ 932.52 and 932.53);

(b) Multiply the pounds of overage deducted from each class pursuant to § 932.46(i) and the corresponding step of § 932.47 by the applicable class price;

(c) Multiply the skim milk and butterfat subtracted from Class I pursuant to § 932.46(c) and the corresponding step of § 932.47 by the rate as determined pursuant to § 932.63(a);

(d) Multiply the difference between the Class II price for the preceding month and the Class I price for the current month by the lesser of:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 932.46(f) and the corresponding step of § 932.47; or

(2) The amount of producer milk allocated to Class II (except shrinkage) during the preceding month;

(e) Multiply the skim milk and butterfat subtracted from Class I pursuant to § 932.46(d) and the corresponding step of § 932.47 by the rate pursuant to § 932.63(b); and

(f) Multiply the skim milk and butterfat subtracted from Class I pursuant to § 932.46(f) and the corresponding step of § 932.47 by the rate pursuant to § 932.63(a) or (b), as the case may be, which:

(1) Is in excess of the sum of:

(i) The quantity for which payment is computed pursuant to paragraph (d) of this section; and

(ii) The quantity subtracted from the preceding month from Class II pursuant to § 932.46(e) and the corresponding step of § 932.47; and

(2) Is also not in excess of the quantity subtracted from Class II pursuant to § 932.46(c) and (d) in the preceding month.

§ 932.71 Computation of the uniform price.

For each month, the market administrator shall compute the uniform price (f.o.b. pool plants at which no location adjustments are applicable) per hun-

dredweight of producer milk of 3.5 percent butterfat content, as follows:

(a) Combine into one total the values computed pursuant to § 932.70 for the producer milk received by all handlers who submit reports pursuant to § 932.30 and are not in violation of § 932.82 for the preceding month;

(b) Subtract for each of the months of April, May, and June an amount equal to 8 percent of the Class I price multiplied by the quantity of producer milk;

(c) Add during each of the months of September, October, and November, one-third of the total amount subtracted pursuant to paragraph (b) of this section;

(d) Subtract if the average butterfat content of producer milk included in these computations is greater than 3.5 percent or add if such average butterfat content is less than 3.5 percent an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential pursuant to § 932.72 and multiplying the resulting figure by the hundred weight of milk;

(e) Add an amount equal to the sum of the deduction to be made from producer payments for location differentials pursuant to § 932.73;

(f) Add an amount equal to one-half of the unobligated balance on hand in the producer-settlement fund, adjusting for paragraph (b) or (c) of this section, as the case may be;

(g) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) of this section; and

(h) Subtract not less than 4 cents nor more than 5 cents.

§ 932.72 Butterfat differential to producers.

In making payments pursuant to § 932.70 there shall be added to, or subtracted from, the uniform price of milk of 3.5 percent butterfat content, for each one-tenth of one percent of butterfat in such producer milk above or below 3.5 percent, as the case may be, a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a) and (b) of § 932.52 weighted by the pounds of butterfat in producer milk in Class I and II, respectively, with the result rounded to the nearest tenth of a cent.

§ 932.73 Location differential to producers.

In making payments for milk pursuant to § 932.80 a handler may deduct from the uniform price computed pursuant to § 932.71 the rate specified in § 932.53 applicable to the location of the pool plant at which such milk was received or deemed to have been received.

PAYMENTS

§ 932.80 Time and method of payment for producer milk.

Each handler shall make payment as follows:

(a) On or before the 17th day after the end of the month during which the milk was received, to each producer to whom payment is not made pursuant to

paragraph (c) of this section, at not less than the uniform price for such month computed pursuant to § 932.71, adjusted by the butterfat differential computed pursuant to § 932.72, subject to location adjustments to producers pursuant to § 932.73, and less the amount of the payment made pursuant to paragraph (b) of this section: *Provided*, That if by such date such handler has not received full payment pursuant to § 932.83, he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payment from the market administrator; he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator;

(b) On or before the last day of each month, to each producer for whom payment is not made pursuant to paragraph (d) of this section for milk received from him during the first 15 days of the month at not less than the Class II price for the preceding month;

(c) To a cooperative association with respect to milk for which the cooperative association is a handler on or before the 10th day of each month for milk which is caused to be delivered to such handlers during the preceding month at not less than the value of such milk at the applicable class prices; and

(d) Pay to a cooperative association, which is authorized to collect payments for its members and so requests, on or before the 13th and 28th days of each month in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, an amount equal to the gross sum due for all milk received from member producers, less amounts owed by each member producer to the handler for supplies purchased from him on prior written order as evidenced by a delivery ticket signed by the producer and also submit to the cooperative association the following:

(1) On or before the 10th day of each month written information which shows for each member producer:

(i) The total pounds of milk received during the preceding month;

(ii) The total pounds of butterfat contained in such milk;

(iii) The number of days on which milk was received; and

(iv) The amounts withheld by the handler in payment for supplies sold; and

(2) On or before the 24th day of each month, written information which shows for each member producer the total pounds of milk received during the first 15 days of the current month.

§ 932.81 Producer settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit the amounts subtracted pursuant to § 932.70(b) and appropriate payments made by handlers pursuant to § 932.62, § 932.82 and all appropriate payments pursuant to § 932.84 and out of which he shall make payments pursuant to §§ 932.83 and 932.71 (c) and all appropriate payments pursuant to § 932.84.

§ 932.82 Payments to the producer settlement fund.

On or before the 15th day after the end of each month, each handler shall pay to the market administrator any amount by which the value of his milk as computed pursuant to § 932.70 for such month, is greater than the amount owed by him for such milk at the appropriate uniform price adjusted by the producer butterfat and location differentials.

§ 932.83 Payments out of the producer settlement fund.

On or before the 17th day after the end of each month the market administrator shall pay to each handler any amount by which the value of his milk computed pursuant to § 932.70 for such month is less than the amount owed by him for such milk at the appropriate uniform prices adjusted by the producer butterfat and location differentials. If at such time the unobligated balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 932.84 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provision under which such error occurred.

§ 932.85 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 932.80, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association;

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section) make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of each

month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

§ 932.86 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of each month four cents per hundredweight, or such amount not exceeding four cents per hundredweight as the Secretary may prescribe with respect to:

(a) All receipts within the month of milk from producers, including milk of such handler's own production;

(b) Any other source milk allocated to Class I pursuant to § 932.46(c) and (d) and the corresponding steps of § 932.47; and

(c) The amount of milk for which a payment is computed pursuant to § 932.62 (a) (2) or (b) (2).

§ 932.87 Overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §§ 932.62, 932.82, 932.83, 932.84(a), 932.85(a), or 932.86 shall be increased one-half of one percent on the first day of the month following after the date such obligation is due and on the first day of each succeeding month until such obligation is paid. Any remittance received by the market administrator postmarked prior to the first of the month shall be considered to have been received when postmarked.

§ 932.88 Termination of obligations.

The provisions of this section shall apply to an obligation under this part for the payment of money.

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

(1) The amount of the obligation;

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

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market adminis-

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

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

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

MISCELLANEOUS PROVISIONS

§ 932.90 Effective time.

The provisions of this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 932.91.

§ 932.91 Suspension or termination.

The Secretary may suspend or terminate this part or any provision thereof whenever he finds that it obstructs or does not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 932.92 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under it, the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

§ 932.93 Liquidation.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected over and above the

amount necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 932.94 Agents.

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

§ 932.95 Separability of provisions.

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

[F.R. Doc. 61-3378; Filed, Apr. 13, 1961; 8:50 a.m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

[46 CFR Ch. II]

[Docket No. 934]

PREDATED BILLS OF LADING

Amended Notice of Proposed Rule Making

This amended notice supersedes the notice of proposed rule making in this docket published in the FEDERAL REGISTER, issue of March 29, 1961 (26 F.R. 2647).

Notice is hereby given pursuant to sections 17, Shipping Act, 1916, as amended (46 U.S.C. 816), and 204, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114), and in accordance with the requirements of section 4, Administrative Procedure Act (5 U.S.C. 1003), of proposed rule making regarding the practice by common carriers by water, as defined in section 1, Shipping Act, 1916, as amended (46 U.S.C. 801), of issuing "on board" bills of lading prior to the time the goods covered thereby are placed on board the vessel.

Such practice appears to be an unjust and unreasonable practice relating to or connected with the receiving, handling, storing, or delivering of property in violation of section 17, Shipping Act, 1916, as amended (46 U.S.C. 816), in that it misrepresents the facts with respect to the actual receipt of the cargo by the carrier. Such misrepresentation creates the material risk that it will operate to the detriment of persons who may extend credit, pay money, or in some other fashion change their position in reliance on such a bill of lading.

The proposed rule shall read as follows: "The issuance of an 'on Board' bill of lading by a common carrier by water as defined in section 1, Shipping Act, 1916, as amended (46 U.S.C. 801), before the cargo described therein is actually placed on board the vessel, constitutes an unjust and unreasonable practice related to or connected with the