FEDERAL REGISTER

VOLUME 20 NUMBER 134

Washington, Tuesday, July 12, 1955

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 20—RETENTION PREFERENCE REGULATIONS FOR USE IN REDUCTION IN FORCE

MISCELLANEOUS AMENDMENTS

1. Effective upon publication in the FEDERAL REGISTER, § 20.5 (f) is amended to read as follows:

§ 20.5 *Actions.* * * *

(f) *Exceptions.* An exception to the regular order of selection or to the provisions of this section governing actions in a reduction in force may be made only when necessary to retain an employee engaged on necessary duties which cannot be taken over without undue interruption to the activity, by an employee with higher retention standing. In such cases, each employee affected adversely by the exception must be notified of the reasons and of his right to appeal to the Commission for a review of such reasons: *Provided,* That until December 31, 1955, in the liquidation of U. S. Army Forces, Austria, an individual notice will not be required to employees adversely affected. The reasons for deviation from the normal order of selection shall be recorded on the retention register which will be available for inspection by all employees. All employees shall be advised of their right to appeal such deviation from the normal order of selection by which they are adversely affected.

2. Effective upon publication in the FEDERAL REGISTER, § 20.6 (a) is amended to read as follows:

§ 20.6 *Notice to employees*—(a) *Proposed action.* Each employee who is to be separated from the rolls, furloughed for more than thirty (30) days, or reduced in grade or pay, in a reduction in force, under the regulations in this part, shall be given a notice in writing, stating specifically the action proposed in his case and the reasons therefor, at least thirty (30) days, and not more than ninety (90) days, except as provided in paragraph (e) of this section, in advance of the effective date of the action: *Provided,* That until December 31, 1955, in the liquidation of U. S. Army Forces, Austria, advance notices of reduction in force may be issued without regard to whether their effective date occurs more than ninety (90) days after issuance of the notice.

3. Effective upon publication in the FEDERAL REGISTER, § 20.8 (b) is amended to read as follows:

§ 20.8 *Special regulations relating to consolidation and liquidations.* * * *

(b) Whenever it has been determined that all positions in the entire agency or an entire competitive area are to be abolished within a period of three (3) months or less, actions may be taken with regard to individual employees in any retention subgroup at administrative discretion: *Provided,* That until December 31, 1955, in the liquidation of U. S. Army Forces, Austria, action may be taken to select employees for reduction in force action without regard to relative ranking by retention credits even though the period of liquidation may exceed three (3) months. Employees reached for separation under this paragraph shall be given individual notices in writing conforming generally to the notice requirements under § 20.6 but containing a statement of the authority which requires the liquidation and of the time period in which the liquidation is to be accomplished.

(Secs. 11, 19, 58 Stat. 390, 391; 5 U. S. C. 860, 868)

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

[F. R. Doc. 55-5557; Filed, July 11, 1955; 8:46 a. m.]

PART 27—EXCLUSION FROM PROVISIONS OF THE FEDERAL EMPLOYEES PAY ACT OF 1945, AS AMENDED, AND THE CLASSIFICATION ACT OF 1949, AS AMENDED, AND ESTABLISHMENT OF MAXIMUM STIPENDS FOR POSITIONS IN GOVERNMENT HOSPITALS FILLED BY STUDENT OR RESIDENT TRAINEES

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; STUDENT PRACTICAL NURSES

1. Effective July 1, 1955, the item set out below is added to § 27.1:

(Continued on p. 4933)

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FEDERAL REGISTER

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CODIFICATION GUIDE

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

§ 27.1 *Exclusion from provisions of Federal Employees Pay Act and Classification Act.* * * *

Student practical nurses, Department of Health, Education, and Welfare, one year approved training.

2. Effective July 1, 1955, the item set out below is added to section 27.2.

§ 27.2 *Maximum stipends prescribed.* * * *

Student practical nurses, Department of Health, Education, and Welfare.

One year approved training, per month $100

(61 Stat. 727; 5 U. S. C. 1051–1058)

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

[F. R. Doc. 55-5571; Filed, July 11, 1955; 8:49 a. m.]

TITLE 6—AGRICULTURAL CREDIT

Chapter V—Agricultural Marketing Service, Department of Agriculture

PART 502—SPECIAL SCHOOL MILK PROGRAM

REVISION OF PART

Regulations are hereby revised and reissued for the operation of a Special School Milk Program, pursuant to the authority contained in section 201 (c) of the Agricultural Act of 1949, as amended by section 204, of the Agricultural Act of 1954.

Sec.
502.200 General purpose and scope.
502.201 Administration.
502.202 Advance of funds to States.
502.203 Accounting for program funds by States.
502.204 Use of funds.
502.205 Agreements between CCC and State Agencies.
502.206 Agreements between State Agencies and schools.
502.207 Agreements between CCC and private schools.
502.208 Reimbursement.
502.209 Pricing by schools.
502.210 Requirements for school participation.
502.211 Effective dates for reimbursement.
502.212 Administrative analyses and audits.
502.213 State agency records and reports.
502.214 Investigations.
502.215 Overclaims.
502.216 Definitions.
502.217 Miscellaneous provisions.
502.218 Program information.

AUTHORITY: §§ 502.200 to 502.218 issued under sec. 4, 62 Stat. 1070, 15 U. S. C. 714b. Interpret or apply sec. 201, 63 Stat. 1052, sec. 204, 68 Stat. 899, 7 U. S. C. 1446.

§ 502.200 *General purpose and scope.* This part announces the policies and prescribes the general regulations with respect to the operation of the Special School Milk Program under section 201 (c) of the Agricultural Act of 1949, as amended, and sets forth the general requirements for participation in the program beginning July 1, 1955. The pertinent part of section 201 (c) reads as follows:

Beginning September 1, 1954, and ending June 30, 1956, not to exceed $50,000,000 annually of funds of the Commodity Credit Corporation shall be used to increase the consumption of fluid milk by children in non-profit schools of high school grade and under.

§ 502.201 *Administration.* Within the United States Department of Agriculture, the Agricultural Marketing Service (hereinafter referred to as AMS) shall be responsible for administration of the Special School Milk Program and shall act for and on behalf of the Commodity Credit Corporation (hereinafter referred to as CCC). Responsibility for the administration of the program in schools within the various States, including the District of Columbia, shall be in the educational agency of the State (hereinafter referred to as the State Agency). In the event the laws of any State prohibit the State Agency from disbursing funds to any class of schools (hereinafter referred to as private schools), AMS shall administer the program in such schools.

§ 502.202 *Advance of funds to States.* (a) AMS shall initially apportion at least 75 percent of the funds made available to AMS by CCC among the States on the basis of the apportionment formula set forth in section 4 of the National School Lunch Act. These funds shall be advanced to the States on a quarterly basis.

(b) AMS reserves the right to request any State Agency to justify its need for additional funds prior to the advancement of the fourth quarterly payment. In the event that a State Agency does not justify the need for all or a portion of its fourth quarterly payment, it shall notify AMS of the amount it is unable to use. At the same time, it shall release to AMS unneeded amounts of any of the funds previously advanced to it.

(c) In the event that a State Agency justifies the need for funds in excess of its initial apportionment, AMS shall provide additional funds up to an amount equal to the State's share of any funds withheld by AMS, as determined by use of the formula cited in this section.

(d) Any portion of a State's share of funds that it is unable to use shall, after return to the Department, be made available to other States which have justified a need for additional funds.

(e) Following the close of the Federal fiscal year, any funds advanced to a State that remain unobligated under the Special School Milk Program shall be returned to AMS within 30 days after a demand is made by AMS. The State shall also pay to AMS any interest paid or credited to it by reason of the deposit of any returned funds.

(f) A part of the funds available under the formula cited in this section to any State unable to disburse funds to private schools shall be reserved by AMS, on the basis of the comparative enrollments in public and private schools within the State, for direct disbursement by AMS to private schools within such States.

§ 502.203 *Accounting for program funds by States.* The State Agency shall maintain a separate account of all Federal funds advanced to it under the program and shall maintain a current record of payments made to schools and the unexpended balance remaining on hand. All payments made from such funds shall be made only upon properly certified vouchers.

§ 502.204 *Use of funds.* Funds made available under this program shall be used to encourage the increased consumption of milk through reimbursement payments to schools in connection with the purchase of milk for service to children in schools.

§ 502.205 *Agreements between CCC and State Agencies.* CCC shall enter into agreements with State Agencies for the administration of the program within the States.

§ 502.206 *Agreements between State Agencies and schools.* State Agencies shall enter into written agreements with schools setting forth the terms and conditions under which the State Agencies will reimburse the schools in connection with the purchase of milk for service to children in the schools. Such agreements shall contain, as a minimum, the requirements of § 502.210.

§ 502.207 *Agreements between CCC and private schools.* In those States in which AMS will administer the program in private schools, CCC shall enter into written agreements with such private schools, setting forth the terms and conditions under which AMS will reimburse the schools in connection with the purchase of milk for service to children in the schools.

§ 502.208 *Reimbursement.* (a) Reimbursement to schools serving Type A or B lunches under the National School Lunch Program shall be made for milk purchased for service to children, except that reimbursement shall not be made for the first half pint of milk served as part of a Type A or a Type B lunch. The maximum reimbursement rate for such schools shall be 4 cents per half pint. For all other schools the maximum reimbursement rate shall be 3 cents per half pint for milk purchased for service to children.

(b) Less-than-maximum rates of reimbursement shall be assigned, or assigned rates shall be adjusted, if circumstances indicate such action is advisable.

(c) In schools operating a food service outside the National School Lunch Program, a portion of the milk served to children may be excluded from reimbursement if such action is deemed advisable in order to encourage the continued expansion of the service of complete noonday lunches.

(d) Schools operating the program in more than one school attendance unit may be regarded as a single school or as individual schools for reimbursement purposes. If regarded as a single school, reimbursement shall not be made at a rate in excess of 3 cents per half pint unless all units are serving Type A or Type B meals under the National School Lunch Program.

(e) A boarding or institutional school serving more than one meal a day shall, at the time it applies for participation, submit for approval the methods and practices under which it plans to encourage increased consumption of milk by children.

§ 502.209 *Pricing by schools.* Maximum use of the reimbursement payments received under this program shall be made by schools to reduce the price of separate servings of milk to children. Schools shall reflect the full amount of such payments in reduced prices to children below the cost of the milk to the school, except that such payments may be used by schools to defray within-school distribution costs. Within-school distribution costs shall not exceed one cent per half pint. Exceptions to this provision may be granted in instances where schools can provide sufficient justification of the need for a within-school distribution cost margin fractionally above one cent; and such exceptions shall be subject to periodic reviews.

§ 502.210 *Requirements for school participation.* (a) Any nonprofit school is eligible to apply for participation in the Special School Milk Program. Application for participation shall be written and shall be made to the State Agency, except that in those States in which AMS administers the program in private schools, application shall be made to AMS. In approving the application, the State Agency or AMS shall designate the effective date on which the school may begin operations.

(b) Schools participating in the program shall meet the following minimum requirements, which requirements shall be included in the agreements entered into betweeen the schools and State Agencies and between the private schools and CCC:

(1) Conduct a nonprofit food service in the school, or in the event no other food service is maintained by the school, conduct a nonprofit milk service in the school;

(2) Claim reimbursement only for milk as defined in this part;

(3) Use reimbursement payments to reduce prices in accordance with provisions of § 502.209;

(4) Submit monthly claims for reimbursement in accordance with procedural requirements established by AMS; and

(5) Maintain such records and furnish such reports and documents as are prescribed by the State Agency or by AMS. All invoices, receipts and records pertaining to the Special School Milk Program shall be maintained for a period of three years after the end of each Federal fiscal year's operations. Records shall be made available for audit purposes to the State Agency and AMS, or to AMS in the case of a private school which contracts directly with CCC.

§ 502.211 *Effective dates for reimbursement.* The State Agency or AMS may grant written approval to any school to begin operations under this program prior to the processing of the school's application. Such approval shall be attached to the application. Reimbursement shall be made for any milk served in accordance with the requirements of this part from the date upon which the school was authorized to begin operations: *Provided, however,* That no reimbursement shall be made for milk that was served more than 30 days prior to the receipt of the school's application by the State Agency or AMS: *Provided, further,* That in no event shall reimbursement be made by any State Agency for milk served prior to the effective date of the State Agency's agreement with CCC.

§ 502.212 *Administrative analyses and audits.* The State Agency shall provide AMS with full opportunity to conduct administrative analyses and audits of all operations of the State Agency under this program. The State Agency shall make available its records, including the receipt and expenditure of funds under the program, upon reasonable request by AMS. AMS shall also have the right to make audits of the records and operations of any participating school.

§ 502.213 *State Agency reports and records.* Within 30 days after the end of each calendar month, the State Agency shall make a report to AMS concerning the operation of the Special School Milk Program for that month, on a form provided by AMS. The State Agency shall maintain for a period of three years after the end of each Federal fiscal year's operations, all records pertaining to the Special School Milk Program.

§ 502.214 *Investigations.* The State Agency shall promptly investigate all complaints received or irregularities noted in connection with the operation of the Special School Milk Program in participating schools and shall take appropriate action to correct any irregularities.

§ 502.215 *Overclaims.* Overclaims made by schools which may be discovered during audits, administrative visits, or by other means, shall be collected from the school either by direct refund or by deduction from subsequently filed claims. Any amounts thus recovered by the State Agency may be used to pay other claims of the same Federal fiscal year. However, if recovery is not made by the State Agency until after all claims of the Federal fiscal year have been paid at the assigned rate, the amounts so recovered shall be returned to AMS.

§ 502.216 *Definitions*—(a) *State.* The 48 States and the District of Columbia.

(b) *Nonprofit school.* (1) Any school which is a public school of high school grade and under within the definition of the statutes of the State, and

(2) Any private school of high school grade and under exempt from income tax under the Internal Revenue Code, as amended. The term "school" as used in this part includes, where applicable, the authorized sponsoring agency which has entered into the Special School Milk Program agreement for the school.

(c) *Nonprofit food or milk service.* Food or milk service maintained by or on behalf of the school for the benefit of the children, all of the income from which is used solely for the operation or improvement of such food or milk service.

(d) *Milk.* Fluid whole milk, flavored or unflavored, which meets the State and local standards for unflavored whole milk as to butterfat content and sanitation.

(e) *Cost of milk.* The purchase price paid by the school to the milk distributor for milk delivered to the school. This does not include any amount paid to the milk distributor for the rental of or installment purchase of milk service equipment.

(f) *Within-school distribution costs.* Direct expenses incurred by the school

in connection with the sale, handling and service of milk. This may include expenses incident to acquisition or rental of necessary milk service equipment.

§ 502.217 *Miscellaneous provisions*—(a) *Disqualifications and compliance clause.* Any State Agency or any school participating in the Special School Milk Program may be disqualified by AMS from future participation if it fails to comply with the provisions of the regulations in this part, its agreement with CCC or the State Agency, or other pertinent rules, regulations or instructions. This does not preclude the possibility of other action being taken through other means available where considered necessary by AMS. Fraud in the payment of, or claiming for, reimbursement under the Special School Milk Program will be prosecuted under applicable Federal statutes. If any part of the money received by the State Agency in connection with the Special School Milk Program, by any improper or negligent action, is diminished, lost, misapplied, or diverted from the program by the State Agency, or by any school to which funds are disbursed, AMS may order such money to be replaced with funds from sources within the State and, until replaced, may direct that no subsequent payments shall be made to the State Agency or to such school. The State Agency shall have full opportunity to submit additional evidence, explanation or information concerning instances of noncompliance or diversion of funds, before AMS makes its final determination in such cases.

(b) *Saving clause.* AMS may waive, withdraw, or amend, at any time, any or all of the provisions of this part: *Provided, however,* That such action shall not be taken without prior notice to the State Agency.

§ 502.218 *Program information.* Schools desiring information concerning or applying for participation in the Special School Milk Program should make a written request to their State educational agency, except as provided for below:

(a) Private schools in the States of Delaware, Maine, Maryland, New Jersey, Pennsylvania, and West Virginia should make written requests to:

Food Distribution Division, AMS, United States Department of Agriculture, 139 Centre Street, Room 506, New York 13, N. Y.

(b) Private schools in the States of Alabama, Florida, South Carolina, Tennessee, and Virginia should make written requests to:

Food Distribution Division, AMS, United States Department of Agriculture, 50 Seventh Street NE, Room 252, Atlanta, Ga.

(c) Private schools in the States of Iowa, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin should make written requests to:

Food Distribution Division, AMS, United States Department of Agriculture, 226 West Jackson Boulevard, Room 1412, Chicago 6, Ill.

(d) Private schools in the States of Arkansas and Colorado should make written requests to:

Food Distribution Division, AMS, United States Department of Agriculture, 1114 Commerce Street, Room 1812, Dallas 2, Tex.

(e) Private schools in the States of Arizona, Idaho, Montana, Nevada, Utah and Washington should make written requests to:

Food Distribution Division, AMS, United States Department of Agriculture, Room 404, Appraisers Building, 630 Sansome Street, San Francisco 11, Calif.

Effective date. This part, as revised, shall become effective July 1, 1955.

Issued: July 6, 1955.

[SEAL] EARL L. BUTZ,
Assistant Secretary of Agriculture.

[F. R. Doc. 55-5560; Filed, July 11, 1955; 8:46 a. m.]

TITLE 4—ACCOUNTS

Chapter I—General Accounting Office

[Gen. Reg. 123]

PART 7—PASSENGER TRANSPORTATION SERVICES FOR THE ACCOUNT OF THE UNITED STATES

Correction

In Federal Register Document 55-5341, appearing at page 4701 of the issue for Saturday, July 2, 1955, the following changes should be made: In the list in § 7.6 the footnote designator 2, following Forms 1169b and 1169c, should read "1"; footnote 2 should be deleted.

TITLE 7—AGRICULTURE

Chapter III—Agricultural Research Service, Department of Agriculture

PART 301—DOMESTIC QUARANTINE NOTICES

SUBPART—PINK BOLLWORM

On June 2, 1955, there was published in the FEDERAL REGISTER (20 F. R. 3850) a notice of proposed rule making concerning amendments of the pink bollworm quarantine and the regulations thereunder (7 CFR, 1953 Supp. 301.52, 301.52-1 et seq., as amended, 19 F. R. 1787, 3809). After due consideration of all relevant matters presented, and under the authority of sections 8 and 9 of the Plant Quarantine Act of August 20, 1912, as amended (7 U. S. C. 161, 162) and section 3 of the Insect Pest Act of March 3, 1905 (7 U. S. C. 143), the quarantine and supplementary regulations are hereby revised to read as follows:

QUARANTINE

Sec.
301.52 Notice of quarantine.

REGULATIONS

301.52-1 Definitions.
301.52-2 Regulated area.
301.52-3 Regulated articles.
301.52-4 Unregulated movement of certain regulated articles.
301.52-5 Conditions governing movement of regulated articles.
301.52-6 Limited permits; designation of plants.
301.52-7 Articles originating outside the regulated area.
301.52-8 Cleaning or treating requirements for articles when contaminated.
301.52-9 Dealer-carrier permits.
301.52-10 Cancellation of certificates and permits.
301.52-11 Authorization of alternate treatments.
301.52-12 General certification, marking and labeling provisions.
301.52-13 Shipments for scientific purposes.

AUTHORITY: §§ 301.52 to 301.52-13 issued under sec. 1, 3, 33 Stat. 1269, 1270, sec. 9, 37 Stat. 318; 7 U. S. C. 141, 143, 162. Interpret or apply sec. 8, 37 Stat. 318, as amended; 7 U. S. C. 161.

QUARANTINE

§ 301.52 *Notice of quarantine.* Under the authority conferred by section 8 of the Plant Quarantine Act of August 20, 1912, as amended (7 U. S. C. 161) and after public hearings as required thereunder, the States of Arizona, Arkansas, Louisiana, New Mexico, Oklahoma, and Texas are hereby quarantined to prevent the spread of the pink bollworm, and under the authority contained in said Plant Quarantine Act (7 U. S. C. 151 et seq.) and in the Insect Pest Act of March 3, 1905 (7 U. S. C. 141 et seq.), the regulations hereinafter set forth shall govern the movement of pink bollworms and carriers thereof. Hereafter (a) okra and kenaf, including all parts of the plants; (b) cotton and wild cotton, including all parts of both cotton and wild cotton plants, seed cotton, cotton lint, linters, waste products, including motes, derived from the milling of cottonseed, gin waste, gin trash, all other forms of unmanufactured cotton fiber, cottonseed, cottonseed hulls, cottonseed cake, and cottonseed meal; (c) bagging and other containers and wrappers for cotton and cotton products; (d) railway cars, trucks, and other means of transportation which have been used in conveying regulated cotton or cotton products or which are contaminated therewith or with live pink bollworms; and (e) when contaminated with live pink bollworms or regulated cotton or cotton products, any other commodities, including picking, ginning, and oil mill equipment and other cotton processing machinery and cotton harvesting machinery, other farm equipment, farm household goods, and farm products; shall not be shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any person from any of said quarantined States into or through any other State or Territory or District of the United States in manner or method or under conditions other than those prescribed in the regulations hereinafter made and amendments thereto: *Provided,* That the requirements of this quarantine and of the rules and regulations supplemental hereto are hereby limited to the area in a quarantined State which is now, or which may hereafter be designated by the Administrator of the Agricultural Research Service as coming within the regulated area, as long as, in the judgment of the said Administrator, the enforcement of the said rules and regulations as to such regulated area shall be adequate to prevent the spread of the pink bollworm, except that such limita-

tion is further conditioned upon the affected State or States providing for and enforcing control of the intrastate movement of the regulated articles under the same conditions as those which apply to their interstate movement under the provisions of the currently existing Federal quarantine regulations, and upon their enforcing such control and sanitation measures with respect to such area or portions thereof as, in the judgment of the said Administrator, shall be deemed adequate to prevent the intrastate spread therefrom of the said insect infestation: *Provided further*, That whenever the Chief of the Plant Pest Control Branch shall find that facts exist as to pest risk involved in the movement of one or more of the articles to which the regulations supplemental hereto apply, making it safe to modify, by making less stringent, the requirements contained in any such regulations, he shall set forth and publish such finding in administrative instructions, specifying the manner in which the applicable regulations should be made less stringent, whereupon such modification shall become effective, for such period and for such portion of the regulated area and for such article or articles as shall be specified in said administrative instructions.

REGULATIONS

§ 301.52–1 *Definitions.* For the purposes of the regulations in this subpart the following words, names, and terms shall be construed respectively to mean:

(a) *Pink bollworm.* The insect known as the pink bollworm of cotton (Pectinophora gossypiella Saund.), in any stage of development.

(b) *Cotton.* All parts of cotton and wild cotton plants of the genera Gossypium and Thurberia, except cotton products.

(c) *Cotton products.* Seed cotton, cotton lint, linters, oil mill waste, gin waste, gin trash, all other forms of unmanufactured cotton fiber, cottonseed, cottonseed hulls, cottonseed cake, and cottonseed meal.

(d) *Seed cotton.* All forms of cotton lint from which the seed has not been separated.

(e) *Lint.* All forms of raw ginned cotton except linters and waste.

(f) *Linters.* All forms of unmanufactured cotton fiber separated from cottonseed after the lint has been removed, other than waste.

(g) *Gin waste.* All forms of unmanufactured waste cotton fiber (including gin motes) resulting from the ginning of seed cotton.

(h) *Oil mill waste.* Waste products, including motes, derived from the milling of cottonseed.

(i) *Gin trash.* All of the material produced during the cleaning and ginning of seed cotton, bollies or snapped cotton except the lint, cottonseed, and gin waste.

(j) *Okra (Hibiscus esculentus).* All parts of okra plants, including seeds and edible and dry pods.

(k) *Kenaf (Hibiscus cannabinus* L.). All parts of kenaf plants, including seeds and pods.

(l) *Regulated articles.* Products and articles that may move under the regulation in this subpart.

(m) *Approved.* Officially sanctioned by the Chief of the Plant Pest Control Branch.

(n) *Certificate.* An approved document issued by an inspector evidencing the apparent freedom of regulated articles from the pink bollworm.

(o) *Limited permit.* An approved document issued by an inspector to allow movement of noncertified, regulated articles to or from approved gins, oil mills, or processing or manufacturing plants.

(p) *Dealer-carrier permit.* An approved document issued to persons engaged in ginning, manufacturing, processing, or handling regulated articles for subsequent movement from or within the regulated area, or to persons moving regulated articles from or within the regulated area.

(q) *Infestation (infested).* The presence of the pink bollworm. ("Infested" shall be construed accordingly.)

(r) *Moved (movement and move).* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any person from any part of the regulated area in any State, into or through any other State, Territory, or District of the United States. ("Movement" and "move" shall be construed accordingly.)

(s) *Chief of the Branch.* The Chief of the Plant Pest Control Branch.

(t) *Inspector.* An inspector of the United States Department of Agriculture.

(u) *Heat treatment.* Treatment of cottonseed at an approved plant whereby the cottonseed is heated to a temperature of 150° F. for a minimum period of 30 seconds, under the supervision of an inspector, and subsequently protected from contamination.

(v) *Alternate treatment.* A treatment applied under the observation of an inspector in accordance with methods selected by him from administratively authorized procedures known to be effective under the conditions applied.

§ 301.52–2 *Regulated area.* The following are hereby designated as a single, continuous regulated area within the meaning of the regulations in this subpart:

Arizona. Counties of Cochise, Graham, Greenlee, and Santa Cruz, and all of Pima County except that portion lying west of the west line of Range 9 East.

Arkansas. Counties of Calhoun, Clark, Columbia, Conway, Crawford, Dallas, Franklin, Garland, Hempstead, Hot Springs, Howard, Johnson, Lafayette, Little River, Logan, Miller, Montgomery, Nevada, Ouachita, Perry, Pike, Polk, Pope, Scott, Sebastian, Sevier, Union, and Yell.

Louisiana. Parishes of Allen, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Cameron, Claiborne, De Soto, Jefferson Davis, Lincoln, Natchitoches, Red River, Sabine, Union, Vermilion, Vernon, and Webster.

New Mexico. Counties of Catron, Chaves, Curry, De Baca, Dona Ana, Eddy, Grant, Hidalgo, Lea, Luna, Otero, Quay, Roosevelt, Sierra, Socorro, and Valencia.

Oklahoma. The entire State.

Texas. The entire State.

§ 301.52–3 *Regulated articles.* The following shall not be moved from or within the regulated area except as hereinafter provided: cotton; cotton products; okra; kenaf; bagging and other containers and wrappers for cotton and cotton products; railway cars, trucks, and other means of transportation which have been used in conveying regulated cotton or cotton products or which are contaminated therewith or with live pink bollworms; and, when contaminated with live pink bollworms or regulated cotton or cotton products, any other commodities, including picking, ginning, and oil mill equipment and other cotton processing machinery and cotton harvesting machinery, other farm equipment, farm household goods, and farm products. Live pink bollworms shall not be removed from any State, or Territory or the District of Columbia into any other State, or Territory, or the District of Columbia, except as hereinafter provided.

§ 301.52–4 *Unregulated movement of certain regulated articles.* No restrictions are imposed on the movement within the regulated area of baled or unbaled lint, cottonseed cake, and cottonseed meal; nor upon the movement to any destination of samples of lint and linters of the usual trade size: *Provided*, That the bales of lint or linters from which the samples have been taken have been produced in an approved gin or oil mill and the samples have been subsequently protected from contamination; nor upon the movement to any destination of bagging and other containers and wrappers for cotton and cotton products not contaminated with either live pink bollworms, or regulated cotton or cotton products; nor upon the movement to any destination of any means of transportation which have been used in conveying regulated cotton or cotton products but are not within § 301.52–8, except as otherwise provided in § 301.52–5 (d) (2) (iv).

§ 301.52–5 *Conditions governing movement of regulated articles*—(a) *Seed cotton.* Seed cotton produced in the regulated area may be moved within or from such area without limited permit or certificate, if destined to another point within the regulated area or to a contiguous nonregulated area, solely for ginning at a gin approved to receive such seed cotton.

(b) *Baled lint.* Baled lint produced at approved gins in the regulated area may be moved from the regulated area to a nonregulated area under a certificate if it has been given standard or equivalent compression at an approved plant or has been given approved fumigation under the supervision of an inspector and has been subsequently protected from contamination. For the purposes of such compression, baled lint may be moved under limited permit to an approved plant in an adjacent nonregulated area.

(c) *Baled linters.* (1) Baled linters produced at an approved plant from cottonseed that has received an approved treatment and has been subsequently protected from contamination may be

moved from the regulated area to any destination under a certificate.

(2) Baled linters produced at an approved plant from untreated cottonseed and given standard or equivalent compression at an approved plant or other approved treatment and subsequently protected from contamination may be moved from the regulated area to any destination under a certificate.

(3) Baled linters produced at an approved plant from untreated cottonseed may be moved under limited permit to any destination within the regulated area in New Mexico, Oklahoma, or Texas; to any noncotton-producing State; or to an approved cellulose plant at any location; for processing.

(d) *Cottonseed.* (1) Cottonseed produced at approved gins in that part of the regulated area in Arkansas, Arizona, or Louisiana, or in those counties of New Mexico or Texas where gins are required to heat treat cottonseed as a continuous process of ginning[1] may be moved under certificate to any destination if such cottonseed has received an approved heat treatment at the gin where produced and is subsequently protected from contamination.

(2) Cottonseed produced in Oklahoma and in those counties of Texas and New Mexico where the gins are not required to heat treat cottonseed as a continuous process of ginning may be moved when it meets the requirements of any one of the following procedures:

(i) Such seed may be moved without certificate or limited permit to approved oil mills located in Oklahoma or those counties in Texas or New Mexico where gins are not required to heat treat cottonseed as a continuous process of ginning, for processing.

(ii) Such seed may be moved under limited permit to approved oil mills located in that part of the regulated area where gins are required to heat treat cottonseed as a continuous process of ginning, for treatment upon arrival.

(iii) Such seed may be moved under certificate to any destination when it has received an approved treatment under supervision of an inspector and is subsequently protected from contamination.

(iv) Railway cars, trucks, and other means of transportation moving such seed in accordance with any of the procedures specified in this subparagraph must be cleaned or treated under the supervision of an inspector immediately after unloading.

(e) *Cottonseed cake and meal.* Cottonseed cake and meal produced at an approved oil mill in the regulated area from treated or untreated seed and subsequently protected from contamination may be moved to any destination within the regulated area without restriction, but may be moved to destinations in a nonregulated area only under a certificate.

(f) *Cottonseed hulls.* (1) Cottonseed hulls produced at an approved oil mill from cottonseed that has been given approved treatment and subsequently protected from contamination may be moved to any destination under a certificate.

(2) Cottonseed hulls produced at an approved oil mill from untreated cottonseed may be moved under limited permit to any destination within that part of the regulated area in New Mexico, Oklahoma, or Texas, or to any noncotton-producing State, for utilization. Such products may be certified for movement to any destination after they have received an approved treatment under the supervision of an inspector and have been subsequently protected from contamination.

(g) *Oil mill waste.* (1) Oil mill waste produced at an approved oil mill from cottonseed that has been given an approved treatment and has been subsequently protected from contamination may be moved to any destination under a certificate.

(2) Oil mill waste produced from untreated seed may be moved under a certificate to any destination after it has received approved fumigation or other approved treatment.

(h) *Cottonseed meats.* All cottonseed meats (whole cottonseed from which the hulls or outer coverings have been removed) produced from untreated cottonseed may be moved under limited permit for further processing to any approved mill within that part of the regulated area in New Mexico, Oklahoma, or Texas. Cottonseed meats from treated cottonseed, when subsequently protected from contamination, may be moved to an approved oil mill in the regulated area without certificate or limited permit and may be moved to any destination under a certificate.

(i) *Baled gin waste.* Baled gin waste produced at approved gins in the regulated area may be moved under a certificate to nonregulated areas after such baled gin waste has received an approved treatment under the supervision of an inspector.

(j) *Gin trash.* Gin trash may be moved from a regulated area to any destination under a certificate when such gin trash has been given an approved fumigation or other approved treatment under the supervision of an inspector and has been subsequently protected from contamination.

(k) *Kenaf.* Kenaf produced in the regulated area may be moved without certificate or limited permit to any destination when produced under such conditions as in the judgment of the inspector render it free from infestation. Otherwise, it may be moved only under a certificate after it has received an approved treatment under the supervision of an inspector.

(l) *Okra—(1) Okra seed.* Okra seed produced in the regulated area may be moved to any destination under a certificate after such seed has received an approved fumigation under the supervision of an inspector.

(2) *Edible okra.* (i) Edible okra produced in Texas may be moved under a certificate to any destination during the period December 1 to March 31, inclusive, when produced under such conditions as in the judgment of the inspector render it free from infestation.

(ii) Edible okra produced in Texas during the period April 1 to November 30, inclusive, may be moved to any destination under a certificate which may be issued if the okra has been produced under such conditions as in the judgment of the inspector render it free from infestation or has been processed or treated under the supervision of an inspector in accordance with methods selected by him from administratively authorized procedures known to be effective under the conditions applied.

(iii) Edible okra produced in Texas during the period April 1 to November 30, inclusive, when shipped via common carrier by the holder of a dealer-carrier permit authorizing such shipment and when suitably identified on the container thereof with a stamp as required by the inspector, may be moved without certificate or limited permit to any destination in the noncotton-producing States of Colorado, Connecticut, Delaware, Idaho, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming; or the District of Columbia; or the following cities in cotton-producing States: Chicago, Illinois; Kansas City and Wichita, Kansas; Kansas City, Missouri; and Louisville, Kentucky; for immediate processing or consumption therein.

(iv) Edible okra produced in any other part of the regulated area may be moved without restriction to any destination when produced under such conditions as in the judgment of the inspector render it free from infestation. Otherwise, it must be processed or treated as provided in subdivision (ii) of this subparagraph or must meet the requirements of subdivision (iii) of this subparagraph.

§ 301.52–6 *Limited permits; designation of plants.* Limited permits will be issued as authorized in this subpart for the movement of noncertified, regulated articles to such gins, oil mills, warehouses, or processing or manufacturing plants as may be authorized and designated by the Chief of the Branch for manufacturing, processing, or treatment incidental to preparing such products for certification. As a condition of such authorization and designation, operators of the gins, oil mills, warehouses, or processing or manufacturing plants must agree in writing to handle regulated articles, as to segregation of processed and nonprocessed products, efficient functioning of processing equipment, disposition of waste, use of uncontaminated containers for processed products, and prevention of contamination of processed products, and to maintain the identity of regulated and nonregulated products, in such a manner as to prevent the spread of the pink bollworm; and to maintain such other sanitary safeguards and restrictions against the establishment and spread of infestation as may be required by the inspector.

[1] The Chief of the Branch will make public a list or a map of the regulated area showing the counties in which gins are required to heat treat cottonseed as a continuous process of ginning.

§ 301.52–7 *Articles originating outside the regulated area.* (a) Articles of a kind covered by § 301.52, except cotton harvesting or ginning machinery, originating in the United States but outside the regulated area may be moved from the regulated area under certification without processing, fumigation or other treatment, if, while in the regulated area, these articles have been handled and stored in such a manner as to maintain their identity and prevent infestation or contamination with other regulated articles, otherwise such products will require the same treatment as products originating in the regulated area.

(b) Regulated articles imported into the regulated area in accordance with the provisions of §§ 319.8, 319.8–1, et seq. of this chapter shall, before movement from the regulated area, meet the requirements of this subpart applicable to regulated articles produced in such area.

§ 301.52–8 *Cleaning or treating requirements for articles when contaminated.* Railway cars, trucks, and other means of transportation; bagging and other containers and wrappers for cotton and cotton products; picking, ginning; and oil mill equipment, and other cotton processing machinery and cotton harvesting machinery; other farm equipment; farm household goods; farm products; and any other commodities; which are contaminated with live pink bollworms, or with cotton or cotton products originating within the regulated area or imported thereinto from contiguous areas of Mexico may be moved from or within the regulated area only after they have been freed from such contamination by cleaning or treatment to the satisfaction of an inspector, after which cleaning or treatment no certificate or limited permit will be required except as prescribed by an inspector for bagging, for other containers and wrappers for cotton and cotton products, and for cotton processing or harvesting machinery; and as provided elsewhere in this subpart. Cotton harvesting machinery or cotton ginning machinery, that has been used or otherwise kept within the regulated area will be deemed contaminated and may be moved to a nonregulated area or to that part of the regulated area in Arizona, Arkansas, or Louisiana from any part of the regulated area not in one of these three States only if it has been cleaned and given an approved fumigation and is covered by a certificate.

§ 301.52–9 *Dealer-carrier permits.* As a condition of issuance of certificates or limited permits for the movement of regulated articles, those engaged in ginning, manufacturing, processing, handling, or moving such regulated articles originating or stored in, or imported from contiguous areas of Mexico into, regulated areas, shall (a) make application for a dealer-carrier permit to the Plant Pest Control Branch, Federal Building, San Antonio 6, Texas, and (b) agree to maintain an accurate record of receipts and sales, shipments, or services, when so required by an inspector (which record will be available at all times for examination by an inspector), and (c) agree to carry out any and all conditions, treatments, precautions, and sanitary measures which may be required by the inspector.

§ 301.52–10 *Cancellation of certificates and permits.* Any certificates, limited permits, or dealer-carrier permits issued under the regulations in this subpart may be withdrawn or cancelled and further certificates or permits refused, whenever, in the judgment of the Chief of the Branch, the further use of such certificates or permits might result in the dissemination of the pink bollworm.

§ 301.52–11 *Authorization of alternate treatment.* When in the judgment of the Chief of the Branch procedures of heat treatment, processing, fumigation or other treatment more effective than that provided in this subpart have been developed, inspectors may allow use of such administratively authorized procedures when the procedures are known to be effective under the conditions applied. When the method of treatment provided in this subpart is found unsatisfactory by the Chief of the Branch, he is authorized to promulgate administrative instructions altering it or substituting other requirements.

§ 301.52–12 *General certification, marking, and labeling provisions.* (a) To obtain certificates or limited permits under the regulations in this subpart application shall be made either to the local inspector or to the Plant Pest Control Branch, Federal Building, San Antonio 6, Texas.[2]

(b) Certificates or limited permits required under the regulations in this subpart shall be securely attached to the outside of each container of regulated articles and in the case of regulated articles shipped without containers they shall be securely attached to the articles themselves. However, in the case of regulated articles shipped by carlot or in bulk by freight, the certificates or permits shall be securely attached to the waybills or other shipping papers which accompany the shipment and in the case of movement by road vehicle, such certificates or permits shall accompany the vehicle. When moved, each container of regulated articles, or the regulated article itself when shipped without a container, shall also bear such marking and labeling as may be necessary, in the judgment of the inspector, to identify the material.

(c) The United States Department of Agriculture shall not be responsible for any costs incident to inspection or treatment, other than the services of inspectors.

§ 301.52–13 *Shipments for scientific purposes.* Live pink bollworms may be removed from any State, Territory, or the District of Columbia into any other State or Territory or the District of Columbia, and other products or articles subject to the requirements of the regulations in this subpart may be moved, for scientific purposes, on such conditions and under such safeguards as may be prescribed by the Chief of the Branch. The container of such pink bollworms or products or articles or if there is no container, the item itself shall bear, securely attached to the outside thereof, an identifying tag from the Plant Pest Control Branch showing compliance with such conditions.

APPENDIX

Application for certificates or limited permits may be made to the field project leader, addressing Pink Bollworm Control, Plant Pest Control Branch, P. O. Box 2749, or Room 571 Federal Building (Telephone CApitol 5–1692, Ext. 274), San Antonio 6, Texas, or the nearest inspector.

Inspectors may be reached by addressing Pink Bollworm Inspector, Plant Pest Control Branch, at the following stations:

ARIZONA

Address	Town	Telephone
P. O. Box 2694, 232 Post Office Bldg.	Tucson	4-1311.

ARKANSAS

P. O. Box 271, 700 S. Pine St.	Hope	PRospect 7-5835.
P. O. Box 596, 210 Securities Bldg.	Magnolia	645.
P. O. Box 504	Russellville	
P. O. Box 1223	Texarkana	2-7822.

LOUISIANA

P. O. Box 1731, USDA Bldg., 1517 Sixth St.	Alexandria	3-2574, Ext. 2.
P. O. Box 137, 623 Second St.	Jennings	777-W.
P. O. Box 148, 3721 Harvard	Lake Charles	4086.
P. O. Box 50, 307 Cale	Mansfield	1366.
P. O. Box 453, 204 Farmerville St., Apt. 12	Ruston	2089-J.
P. O. Box 3386, 501 Ockley St.	Shreveport	7-6144.

NEW MEXICO

P. O. Box 849, B-4, U. S. Post Office & Courthouse	Las Cruces	JAckson 6-2751.

OKLAHOMA

P. O. Box 823, 223 Hall-Briscoe Bldg.	Chickasha	41.
P. O. Box 1133, 513 Federal Bldg.	Muskogee	7-8073.

[2] See Appendix for list of field stations.

TEXAS

Address	Town	Telephone
P. O. Box 2277, 301 Federal Bldg	Abilene	4-8321.
P. O. Box 482, Jim Wells County Courthouse	Alice	970.
P. O. Box 840, 307 E. Ave. D	Alpine	2259.
703 Biggs Ter	Arlington	AR5-21909.
P. O. Box 1467, 2212 Avenue G	Bay City	8417.
P. O. Box 1188, 313 Bee County Courthouse	Beeville	1879.
P. O. Box 269, Room 21, Post Office Bldg	Big Spring	3-2081.
P. O. Box 931, Apt. 8, Reese Apartments	Brenham	3311.
P. O. Box 943, 350 Ringgold Road, Ft. Brown	Brownsville	2-2516.
P. O. Box 327, Room 34, Astin Bldg	Bryan	
P. O. Box 228, 208 Avenue D. NW	Childress	WE-7-3261.
P. O. Box 1134, Room 4, First State Bank Bldg	Columbus	PE-2-2300.
209 Katz Bldg	Corpus Christi	TUlip 2-7613.
P. O. Box 552, Room 18, Buchel Bldg	Cuero	5-4522.
P. O. Box 2745 (TSCW Sta.), 1022 Alice St	Denton	C-5301.
P. O. Box 569, Room 203, Federal Bldg	Eagle Pass	1015.
P. O. Box 1110, Rooms 11 and 13, Post Office Bldg	Edinburg	3-1471.
11 U. S. Courthouse	El Paso	3-5411—301.
P. O. Box 252	Fabens	9.
P. O. Box 1968, 213 S. H St	Harlingen	3-2887.
P. O. Box 695, 206 Adickes Bldg	Huntsville	1536.
P. O. Box 522, 219 Travis Bldg	Jacksonville	6151.
P. O. Box 6, 105 Houston St	Kaufman	4711.
P. O. Box 116, 302 Nichols St	Kenedy	533.
P. O. Box 1593, 1211 Houston St	Laredo	3-4811.
P. O. Box 1616, 203 Veterans Administration Bldg	Lubbock	POrter 5-7391.
P. O. Box 1263, 16 S. 15th St	McAllen	6-3631.
315 N. Tennessee St	McKinney	2-2153.
P. O. Box 604, 708 E. Palestine	Mexia	1257.
P. O. Box 31, Post Office Bldg	Mission	488.
P. O. Box 553, 413 N. Jefferson Ave	Mt. Pleasant	4-3876.
P. O. Box 846, U. S. Post Office Bldg	Nacogdoches	4-4800.
P. O. Box 192, Room 105-B, Federal Office Bldg	Paris	3-3406.
P. O. Box 1166, 302 Post Office Bldg	Pecos	Hickory 5-3725.
P. O. Box 264, Cotton Insect Warehouse	Port Lavaca	JAckson 4-2141.
P. O. Box 706, Room 8, Weeks Bldg	Raymondville	MUrray 9-2734.
P. O. Box 141, Courthouse	Rio Grande City	171-M.
P. O. Box 1107, Room 16, Nueces County Bldg	Robstown	3336.
P. O. Box 1031, Room 205, Schiller Bldg	Rosenberg	NOrthfield 2-3152.
P. O. Box 650, 212 Post Office Bldg	San Angelo	6338.
644 South Main, Building No. 30	San Antonio	CA-6-5321—110.
P. O. Box 7, Post Office Bldg	San Benito	100.
P. O. Box 48, Room 32, Guadalupe County Agricultural Bldg	Seguin	2143.
P. O. Box 655, Room 2, Taft Bldg	Taft	295.
P. O. Box 870, 210 Post Office Bldg	Taylor	EL-2-3812.
P. O. Box 1700, 1912 Herring Natl. Bank Bldg	Vernon	2-7501.
P. O. Box 1576, 2300 Circle Rd	Waco	4-6082.
P. O. Box 52, 220 Post Office Bldg	Waxahachie	2102.
P. O. Box 361, Room 220, Henson Bldg	Weslaco	377.

These amendments combine into a single, continuous area the previous heavily and lightly infested pink bollworm regulated areas, and extend the combined area by the addition thereto of the Arkansas counties of Calhoun Clark, Conway, Crawford, Dallas, Franklin, Garland, Hot Springs, Johnson, Logan, Montgomery, Ouachita, Perry, Pike, Polk, Pope, Scott, Sebastian, Union, and Yell.

Another amendment more specifically defines oil mill waste as included in the quarantine and regulations. In addition, other amendments modify present procedures for the movement either within the regulated area or to points outside thereof, of regulated articles, particularly with reference to the movement of okra.

Slight modifications have also been made in the requirements for the movement from or within the regulated area of cotton harvesting and ginning machinery.

No substantial changes have been made in § 302.52–10 or § 301.52–11 hereof, but these sections are included with the amended regulations in order to have the document complete as now issued.

The foregoing amendments should be made effective as soon as possible in order to be of maximum benefit in preventing the interstate spread of pink bollworms. Good cause is found, therefore, for issuing them effective less than 30 days after publication in the FEDERAL REGISTER, as provided in section 4 of the Administrative Procedure Act (5 U. S. C. 1003).

These amendments shall be effective on and after July 12, 1955.

The quarantine and regulations issued September 30, 1953, as amended effective April 1, 1954, and June 22, 1954 (7 CFR, 1953 Supp. 301.52, 301.52–1 to 301.52–14, inclusive, 19 F. R. 1787, 3809), and administrative instructions (P. P. C. 606 effective September 9, 1954, and P. P. C. 604, amended, effective September 15, 1954) contained in 7 CFR Supp. 301.52b and 301.52a, 19 F. R. 5675, 5965, shall cease to be effective on the effective date of the quarantine and regulations set forth above. Such administrative instructions relate to the movement of fumigated or treated gin trash and cottonseed and cottonseed products. Provision for the movement of such commodities is made in the regulations, and notice of rule making with respect thereto was published in the FEDERAL REGISTER. Therefore under section 4 of the Administrative Procedure Act (5 U. S. C. 1003) it is found upon good cause that further notice and rule making proceedings with respect to the termination of said instructions would be impracticable and unnecessary and good cause is found for making the termination of such instructions effective less than 30 days after publication hereof in the FEDERAL REGISTER.

Done at Washington, D. C., this 6th day of July 1955.

[SEAL] M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F. R. Doc. 55–5593; Filed, July 11, 1955; 8:52 a. m.]

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

[1026 (Upland Cotton '55)–1, Amdt. 1]

PART 722—COTTON

SUBPART—COTTON MARKETING QUOTAS FOR 1955 UPLAND CROP

RATE OF PENALTY

Basis and purpose. Section 346 (a) of the Agricultural Adjustment Act of 1938, as amended, provides that whenever farm marketing quotas are in effect with respect to any crop of cotton, the producer shall be subject to a penalty on the farm marketing excess at a rate per pound equal to 50 percent of the parity price per pound for cotton as of June 15 of the calendar year in which such crop is produced. When the Cotton Marketing Quota Regulations for the 1955 Crop of Upland Cotton were approved by the Secretary of Agriculture on June 3, 1955, the parity price per pound for upland cotton as of June 15, 1955, was not available and the exact rate of penalty could not be included in such regulations. Such parity price is now available and the purpose of the amendment contained herein is to establish and include in the regulations the exact rate of penalty per pound of upland cotton for the 1955 crop of such cotton.

Cotton is presently being harvested in the southernmost areas of the United States and it is necessary that the amendment set forth herein be made effective at the earliest possible date in order that the exact rate of penalty may be made known to producers who desire to market cotton and to buyers who are charged in the regulations with the duty of collecting penalty on the cotton marketed subject to the penalty and the lien for the penalty. Accordingly, it is hereby determined and found that compliance with the notice, procedure, and effective date requirements of the Administrative Procedure Act (5 U. S. C. 1003) is impractical and contrary to the public interest and the amendment contained herein shall be effective upon filing of this document with the Director, Division of the Federal Register of the National Archives.

Section 722.666 of the Cotton Marketing Quota Regulations for the 1955 Crop of Upland Cotton (20 F. R. 3979) is hereby changed to read as follows:

§ 722.666 *Rate of penalty.* The rate of penalty for lint cotton is 50 percent of the parity price for cotton as of June 15, 1955, as provided in section 346 (a) of the act. The parity price for cotton as of June 15, 1955, is hereby determined to be 35.34 cents per pound. The rate of penalty for cotton as calculated on the basis of such parity price shall be 17.7 cents per pound of lint cotton.

(Sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interprets or applies secs. 301, 346; 52 Stat. 38, as amended; 7 U. S. C. 1301, 1346)

Done at Washington, D. C., this 7th day of July 1955. Witness my hand

and the seal of the Department of Agriculture.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 55-5596; Filed, July 11, 1955; 8:53 a. m.]

[1026 (ELS Cotton '55)-1, Amdt. 1]

PART 722—COTTON

SUBPART—COTTON MARKETING QUOTAS FOR 1955 EXTRA LONG STAPLE CROP

RATE OF PENALTY

Basis and purpose. Section 347 (c) of the Agricultural Adjustment Act of 1938, as amended, provides that the applicable penalty rate for extra long staple cotton under section 346 of the act shall be the higher of 50 per centum of the parity price or 50 per centum of the support price for extra long staple cotton as of the date specified in section 346, which date is June 15 of the calendar year in which the crop is produced. When the cotton marketing quota regulations for the 1955 crop of extra long staple cotton were approved by the Secretary of Agriculture on June 3, 1955, the parity price per pound for extra long staple cotton as of June 15, 1955, was not available and the exact rate of penalty could not be determined and included in such regulations. Such parity price and the support price are now available and the purpose of the amendment contained herein is to establish and include in the regulations the exact rate of the penalty per pound for the 1955 crop of extra long staple cotton.

Cotton is presently being harvested in the southernmost areas of the United States and it is necessary that the amendment set forth herein be made effective at the earliest possible date in order that the exact rate of penalty may be made known to producers who desire to market cotton, and to buyers, who are charged in the regulations with the duty of collecting the penalty on cotton marketed subject to the penalty and the lien for the penalty. Accordingly, it is hereby determined and found that compliance with the notice, procedure, and effective date requirements of the Administrative Procedure Act (5 U. S. C. 1003) is impractical and contrary to the public interest, and the amendment contained herein shall be effective upon filing of this document with the Director, Division of the Federal Register, The National Archives.

Section 722.1266 of the Cotton Marketing Quota Regulations for the 1955 Crop of Extra Long Staple Cotton, (20 F. R. 3989), is hereby changed to read as follows:

§ 722.1266 *Rate of penalty.* The rate of penalty for extra long staple cotton is the higher of 50 percent of the parity price for extra long staple cotton as of June 15, 1955, or 50 percent of the support price for extra long staple cotton of the 1955 crop as provided in section 347 (c) of the act. The parity price for extra long staple cotton as of June 15, 1955, is 73.3 cents per pound, which is higher than the support price of 55.20 cents per pound as of June 15, 1955, for extra long staple cotton of the 1955 crop as determined pursuant to the Agricultural Act of 1949, as amended. The rate of penalty for extra long staple cotton, as calculated pursuant to the foregoing provisions, shall be 36.6 cents per pound of extra long staple lint cotton.

(Sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interpret or apply secs. 301, 346, 347; 52 Stat. 38, as amended; 7 U. S. C. 1301, 1346, 1347)

Done at Washington, D. C., this 7th day of July 1955. Witness my hand and the seal of the Department of Agriculture.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 55-5597; Filed, July 11, 1955; 8:54 a. m.]

[Amdt. 4]

PART 728—WHEAT

SUBPART—WHEAT MARKETING QUOTAS FOR 1955 CROP

EXTENSION OF TIME LIMITS FOR FARMERS NOT PROPERLY NOTIFIED

The amendment herein is issued under the Wheat Marketing Quota provisions of the Agricultural Adjustment Act of 1938, as amended, for the purpose of providing for the sending of a notice of the farm marketing quota and farm marketing excess, and for extending the period within which the farmer may apply for a downward adjustment in his farm marketing excess and within which he may avoid or postpone the penalty by storage or delivery of the excess wheat to the Secretary in any case where a proper notice had not previously been sent to the operator of the farm in time to provide him sufficient opportunity to apply for a downward adjustment of his farm marketing excess and to store or deliver his farm marketing excess to avoid or postpone the penalty under existing regulations.

Since the only purpose of the amendment is to extend time limits for the benefit of producers on farms for which proper notices of rights under the present regulations had not previously been sent, it is hereby found that compliance with the notice, procedure, and 30-day effective date provisions of section 4 of the Administrative Procedure Act is unnecessary. Therefore, the amendment herein shall become effective upon the date of its publication in the FEDERAL REGISTER.

A new § 728.598 is added to read as follows:

§ 728.598 *Farms for which proper notice of 1955 farm marketing quota and farm marketing excess of wheat was not issued.* Where, for any reason, proper notice of the farm marketing quota and farm marketing excess and of the producer's right to obtain a downward adjustment in the farm marketing excess for his farm on account of actual production, and of his right to store or deliver to the Secretary the farm marketing excess of wheat established for the farm was not issued to the producer in sufficient time to allow him 30 days prior to the time in which he was required to make application for a downward adjustment, or to store or deliver to the Secretary the farm marketing excess, as prescribed by §§ 728.560, 728.561, 728.582 and 728.583, the producer shall be so notified by the county committee on Form MQ-93—Wheat (1955) and the producer may, within 30 days from the date such notice is mailed to him apply to the county committee for a downward adjustment in the amount of the farm marketing excess and may within 30 days from the date such notice is mailed store or deliver to the Secretary the farm marketing excess as provided in §§ 728.561, 728.582 and 728.583. In the event application for downward adjustment in the farm marketing excess is made by the producer, a revised notice on Form MQ-93—Wheat (1955) showing the results of the determinations of the county committee shall be mailed to the operator of the farm and also to the applicant if he is not such operator.

(Sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interprets or applies 55 Stat. 203, as amended; 7 U. S. C. 1340)

Done at Washington, D. C., this 7th day of July 1955.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 55-5594; Filed, July 11, 1955; 8:53 a. m.]

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

Subchapter H—Determination of Wage Rates

[Sugar Determination 863.8]

PART 863—SUGARCANE; FLORIDA

FAIR AND REASONABLE WAGE RATES FOR PERIOD JULY 1, 1955—JUNE 30, 1956

Pursuant to the provisions of section 301 (c) (1) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation, and consideration of the evidence obtained at the public hearing held in Clewiston, Florida on May 5, 1955, the following determination is hereby issued:

§ 863.8 *Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in Florida during the period July 1, 1955, through June 30, 1956*—(a) *Requirements.* A producer of sugarcane in Florida shall be deemed to have complied with the wage provisions of the act during the period July 1, 1955, through June 30, 1956, if all persons employed on the farm in production, cultivation or harvesting work shall have been paid in accordance with the following:

(1) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates as agreed upon between the producer and the worker, but after July 1, 1955, or the date of publication of this section in the FEDERAL

REGISTER, whichever is later, not less than the following:

(i) *For work performed on a time basis.*

	Cents per hour
(a) Tractor drivers and operators of mechanical harvesting or loading equipment	70.0
(b) All other workers	60.0

(ii) *For work performed on a piecework basis.* The piecework rate for any operation shall be as agreed upon between the producer and the worker: *Provided,* That the hourly rate of earnings of each worker employed on piecework during each pay period (such pay period not to be in excess of two weeks) shall average for the time involved not less than the applicable hourly rate prescribed in subdivision (i) of this subparagraph.

(2) *Compensable working time.* For work performed under subparagraph (1) of this paragraph, compensable working time includes all time which the worker spends in the performance of his duties except time taken out for meals during the work day. Compensable working time commences at the time the worker is required to start work and ends upon completion of work in the field. However, if the producer requires the operator of mechanical equipment, driver of animals, or any other class of worker to report to a place other than the field, such as an assembly point, tractor shed, etc., located on the farm, time spent in transit to and from the field is compensable working time. Any time spent in performing work directly related to the principal work performed by the worker, such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting point or labor camp to the farm is not compensable working time.

(3) *Equipment necessary to perform work assignment.* The producer shall furnish without cost to the worker any equipment required in the performance of any work assignment. However, a charge may be made for equipment furnished any worker for the cost of such equipment in the event of its loss or destruction through negligence of the worker. Equipment includes, but is not limited to, hand and mechanical tools and special wearing apparel, such as boots and raincoats, required to discharge the work assignment.

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

(b) *Subterfuge.* The producer shall not reduce the wage rates to workers below those determined in this section through any subterfuge or device whatsoever.

(c) *Claim for unpaid wages.* Any person who believes he has not been paid in accordance with this determination may file a wage claim with the local County Agricultural Stabilization and Conservation Office against the producer on whose farm the work was performed. Such claim must be filed within two years from the date the work with respect to which the claim is made was performed. Detailed instructions and wage claim forms are available at the local county ASC office. Upon receipt of a wage claim the county office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The county ASC committee shall arrange for such investigation as it deems necessary and the producer and worker shall be notified in writing of its recommendation for settlement of the claim. If either party is not satisfied with the recommended settlement, an appeal may be made to the State Agricultural Stabilization and Conservation Office, Cheops Building, Gainesville, Florida, which shall likewise consider the facts and notify the producer and worker in writing of its recommendation for settlement of the claim. If the recommendation of the State ASC Committee is not acceptable, either party may file an appeal with the Director of the Sugar Division, Commodity Stabilization Service, U. S. Department of Agriculture, Washington 25, D. C. All such appeals shall be filed within 15 days after receipt of the recommended settlement from the respective committee, otherwise such recommended settlements will be applied in making payments under the act. If a claim is appealed to the Director of the Sugar Division, his decision shall be binding on all parties insofar as payments under the act are concerned.

STATEMENT OF BASES AND CONSIDERATIONS

(a) *General.* The foregoing determination establishes the fair and reasonable wage rates to be paid for work performed by persons employed on the farm in the production, cultivation, or harvesting of sugarcane in Florida during the period from July 1, 1955 through June 30, 1956, as one of the conditions with which producers must comply to be eligible for payments under the act.

(b) *Requirements of the act and standards employed.* Section 301 (c) (1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugar beets or sugarcane with respect to which an application for payment is made shall have been paid in full for all such work, and shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing; and in making such determinations the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i. e., cost of living, prices of sugar and by-products, income from sugar beets, and cost of production), and the differences in conditions among various producing areas.

(c) *1955–56 wage determination.* This determination continues unchanged the wage levels and other provisions of the 1954–55 wage determination, except that the provision for reduced wage rates for workers between 14 and 16 years of age has been eliminated.

A public hearing was held in Clewiston, Florida on May 5, 1955 at which interested persons presented testimony with respect to fair and reasonable wage rates during the period July 1, 1955 through June 30, 1956. At this hearing representatives of producers noted that current sugar prices were lower than last year and that indicated returns to producers from sugarcane were less; that acreage restrictions have increased unit costs of production; and that living costs for wage earners have declined during the past year. Because of these factors, producers recommended that wage rates not be increased but be continued at the same level as in the 1954–55 wage determination. A labor union spokesman, representing a union which negotiates a contract with one producer for a portion of the field workers employed on the farm, recommended a minimum wage of $1.25 per hour. This recommendation was based primarily on the need for workers to increase earnings to a point more nearly in line with budgetary living requirements and because of an indicated ability of the larger producers to pay the recommended wage rate.

At the hearing and through investigations, information has been solicited as to the employment in sugarcane of workers between 14 and 16 years of age and as to the perquisites customarily furnished workers by the producers without charge. Information available indicates that the principal Florida sugarcane producers have a minimum age requirement of 18 and none of the producers witnesses reported the employment of workers between 14 and 16 years of age. The available information on perquisites indicate that most workers receive various non-cash benefits in addition to cash wages. Upon inquiry as to the advisability of altering the perquisite provision or deleting it from the wage determination, most producer representatives recommended that the provision be continued without change. The labor representative stated that the furnishing of perquisites in lieu of cash wages should eventually be eliminated but a specific recommendation was not made.

Consideration has been given to the recommendations and supporting testimony presented at the hearing and in supplemental briefs, to the standards customarily considered in wage determinations, to information obtained through investigations, to the returns, costs and profits of producers in Florida, to current crop and price conditions, and to other pertinent factors. An examination of these factors does not indicate a basis for changing the wage levels of the determination. As in recent years, the preponderance of unskilled field work is performed on a piecework or task basis by British West Indian farm workers while the more skilled work is usually performed by resident domestic workers. The average hourly earnings for sugarcane cutters on piecework have been between 20 and 40 cents per hour above the minimum hourly rates of the wage determination. The average hourly wages of time-rated

workers generally have also exceeded the determination rates.

The provision for reduced rates for workers between 14 and 16 years of age has been eliminated on the grounds that such provision is no longer necessary in this area since few, if any, workers within this age bracket are employed in sugarcane production. The elimination of the provision is expected to have no effect on the wage level for sugarcane work in the area.

No change is made in the prerequisite provision of this determination. However, the information obtained suggests further examination to determine in the light of equity to both producers and workers, the advisability of continuing such a provision in future wage determinations for this area.

After consideration of all the factors, the wage rates and other provisions of this determination are deemed to be fair and reasonable.

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

(Sec. 403, 61 Stat. 932; 7 U. S. C. 1153. Interprets or applies Sec. 301, 61 Stat. 929; 7 U. S. C. 1131)

Issued this 7th day of July 1955.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 55-5598; Filed, July 11, 1955; 8:54 a. m.]

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

[Lemon Reg. 596, Amdt. 1]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

Findings. a. Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 19 F. R. 7175; 20 F. R. 2913), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

b. It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rule making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and this amendment relieves restriction on the handling of lemons grown in the State of California or in the State of Arizona.

Order, as amended. The provisions in paragraph (b) (1) (ii) of § 953.703 (Lemon Regulation 596; 20 F. R. 4711) are hereby amended to read as follows:

(ii) District 2: 700 carloads.

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

Dated: July 7, 1955.

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

[F. R. Doc. 55-5590; Filed, July 11, 1955; 8:52 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6260]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

C. G. OPTICAL CO. AND BENJAMIN D. RITHOLZ

Subpart—*Advertising falsely or misleadingly:* § 13.170 *Qualities or properties of product or service.* Subpart—*Securing agents or representatives falsely or misleadingly:* § 13.2140 *Qualities or properties of product.* In connection with the offering for sale, sale, or distribution of eyeglasses, disseminating, etc., any advertisements by means of the United States mails, or in commerce, or by any means to induce, etc., the purchase in commerce, of respondents' eyeglasses which advertisements represent, directly or by implication, that the eyeglasses sold by respondents, made pursuant to the results of tests of the eyes using respondents' devices, will correct, or are capable of correcting, defects in vision of persons unless expressly limited to those persons approximately forty years of age and older who do not have astigmatism or diseases of the eye and who require only simple magnifying or reducing lenses; prohibited.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Cease and desist order, C. G. Optical Company et al., Chicago, Ill., Docket 6260, May 22, 1955]

In the Matter of C. G. Optical Company, a Corporation, and Benjamin D. Ritholz, Individually

This proceeding was heard by Earl J. Kolb, hearing examiner, upon the complaint of the Commission which charged respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act, in connection with the sale and distribution of eyeglasses through and by means of a self-testing device designated "Self-Test Opto-meter", and upon a stipulation for a consent order, which was entered into by respondents with counsel for the complaint, following the filing of respondents' answer.

By the terms of said stipulation for consent order, which disposed of all the issues in the proceeding and was duly approved by the Director and Assistant Director of the Bureau of Litigation, respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record in the matter might be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations, and it was further provided thereby that the answer theretofore filed by respondents was to be withdrawn, and that the parties expressly waived a hearing before the hearing examiner or the Commission, the filing of exceptions or oral argument before the Commission, and all other procedure before the hearing examiner and the Commission to which the respondents might be entitled under the Federal Trade Commission Act or the rules of practice of the Commission.

Respondents further agreed in said stipulation that the order to cease and desist issued in accordance therewith should have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived all right, power, and privilege to challenge or contest the validity of such order, and it was further provided that said stipulation, together with the complaint, should constitute the entire record in the matter; that the complaint might be used in construing the terms of the order issued pursuant to said stipulation; and that said order might be altered, modified, or set aside in the manner prescribed by statute for the orders of the Commission.

Thereafter said hearing examiner made his initial decision in which he set forth the aforesaid matters; his conclusion, in view of his consideration of said stipulation and the order contained therein, that the same provided for an appropriate disposition of the proceeding; his acceptance of same, which he made a part of the record; and his jurisdictional findings with respect to respondents and their business, the Commission's jurisdiction of the subject matter of the proceeding and of said respondents, and the interest of the public in the proceeding; and in which he issued his cease and desist order.

Thereafter said initial decision, including said order, as announced and decreed by "Decision of the Commission and Order to File Report of Compliance", dated May 20, 1955, became, on May 22, 1955, pursuant to Rule XXII of the Commission's rules of practice, the decision of the Commission.

Said order to cease and desist is as follows:

It is ordered, That respondents, C. G. Optical Company, a corporation, and its officers, and respondent Benjamin D. Ritholz, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of eyeglasses, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that the eyeglasses sold by respondents, made pursuant to the results of tests of the eyes using respondents' devices, will correct, or are capable of correcting, defects in vision of persons unless expressly limited to those persons approximately forty years of age and older who do not have astigmatism or diseases of the eye and who require only simple magnifying or reducing lenses.

2. Disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of their eyeglasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains the representation prohibited in paragraph 1 hereof.

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

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

Issued: May 20, 1955.

By the Commission.

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

[F. R. Doc. 55-5568; Filed, July 11, 1955; 8:48 a. m.]

[Docket 6285]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

ADVANCE SPECTACLE CO., INC., AND MICHAEL M. EGEL

Subpart—*Advertising falsely or misleadingly:* § 13.170 *Qualities or properties of product or service.* Subpart—*Securing agents or representatives falsely or misleadingly:* § 13.2140 *Qualities or properties of product.* In connection with the offering for sale, sale, or distribution of eyeglasses, disseminating, etc., any advertisement by means of the United States mails, or in commerce, or by any means to induce, etc., the purchase in commerce, of respondents' eyeglasses, which advertisements represent, directly or by implication, that the eyeglasses sold by respondents, made pursuant to the results of tests of the eyes using respondents' devices, will correct, or are capable of correcting, defects in vision of persons unless expressly limited to those persons approximately forty years of age and older who do not have astigmatism or diseases of the eye and who require only simple magnifying lenses; prohibited.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Cease and desist order, Advance Spectacle Company, Inc., et al., Chicago, Ill., Docket 6285, May 22, 1955]

In the Matter of Advance Spectacle Company, Inc., a Corporation, and Michael M. Egel, Individually and as an Officer of Advance Spectacle Company, Inc.

This proceeding was heard by Earl J. Kolb, hearing examiner, upon the complaint of the Commission which charged respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act, in connection with the sale and distribution of eyeglasses through and by means of a self-testing device designated "14 Lens Sample Card", and upon a stipulation for a consent order, which was entered into by respondents with counsel for the complaint, following the filing of respondents' answer.

By the terms of said stipulation for consent order, which disposed of all the issues in the proceeding and was duly approved by the Director and Assistant Director of the Bureau of Litigation, respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record in the matter might be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations, and it was further provided thereby that the answer theretofore filed by respondents was to be withdrawn, and that the parties expressly waived a hearing before the hearing examiner or the Commission, the filing of exceptions or oral argument before the Commission, and all other procedure before the hearing examiner and the Commission to which the respondents might be entitled under the Federal Trade Commission Act or the rules of practice of the Commission.

Respondents further agreed in said stipulation that the order to cease and desist issued in accordance therewith should have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived all right, power, and privilege to challenge or contest the validity of such order, and it was further provided that said stipulation, together with the complaint, should constitute the entire record in the matter; that the complaint might be used in construing the terms of the order issued pursuant to said stipulation; and that said order might be altered, modified, or set aside in the manner prescribed by statute for the orders of the Commission.

Thereafter said hearing examiner made his initial decision in which he set forth the aforesaid matters; his conclusion, in view of his consideration of said stipulation and the order contained therein, that the same provided for an appropriate disposition of the proceeding; his acceptance of same, which he made a part of the record; and his jurisdictional findings with respect to respondents and their business, the Commission's jurisdiction of the subject matter of the proceeding and of said respondents, and the interest of the public in the proceeding; and in which he issued his cease and desist order.

Thereafter said initial decision, including said order, as announced and decreed by "Decision of the Commission and Order to File Report of Compliance", dated May 20, 1955, became, on May 22, 1955, pursuant to Rule XXII of the Commission's rules of practice, the decision of the Commission.

Said order to cease and desist is as follows:

It is ordered, That respondents Advance Spectacle Company, Inc., a corporation, and its officers, and respondent Michael M. Egel, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of eyeglasses, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that the eyeglasses sold by respondents, made pursuant to the results of tests of the eyes using respondents' devices, will correct, or are capable of correcting, defects in vision of persons unless expressly limited to those persons approximately forty years of age and older who do not have astigmatism or diseases of the eye and who require only simple magnifying lenses.

2. Disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of their eyeglasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains the representation prohibited in paragraph 1 hereof.

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

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

Issued: May 20, 1955.

By the Commission.

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

[F. R. Doc. 55-5569; Filed, July 11, 1955; 8:48 a. m.]

[Docket 5227]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

JOSEPH TRINER CORP.

Subpart—*Advertising falsely or misleadingly:* § 13.170 *Qualities or properties of product or service.* Order modifying in certain particulars, among other things, prior cease and desist or-

der, issued June 27, 1945, 40 F. T. C. 668, 10 F. R. 8538, as in said "Order Reopening Proceeding and Granting in Part and Denying in Part Petition for Modification of Findings as to the Facts and of Order to Cease and Desist", below set forth, so as to require respondent, its officers, etc., in connection with the offer for sale, etc., of respondent corporation's medicinal preparation variously designated as "Triner's Bitter Wine", etc., or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same names or any other name, to cease and desist, as thus modified, from disseminating, etc., any advertisements by means of the United States mails, or in commerce, or by any means to induce, etc., the purchase in commerce, of said preparation, which advertisements represent, directly or by implication: (a) That said preparation is a cure or remedy for stomach disorders, faulty digestion, headache, nervousness, fatigue, or insomnia, or that it has any therapeutic value in the treatment of such conditions in excess of providing temporary relief from headaches when due to constipation; (b) that said preparation cleanses the stomach or intestines or keeps the intestines clean; (c) that the use of said preparation will raise the general vitality of the body, increase the resistance of the body to germs, or prevent or aid in the prevention of colds.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Order modifying cease and desist order, Joseph Triner Corporation, Chicago, Ill., Docket 5227, May 26, 1955]

This matter coming on to be heard upon petition of respondent Joseph Triner Corporation, filed February 25, 1955, to reopen the proceeding and to modify the findings as to the facts and order to cease and desist, and upon answer thereto filed by the Legal Adviser on Deceptive Practices, Bureau of Litigation, opposing in part, and interposing no objection in part thereto; and

The Commission having duly considered the matter and having concluded that respondent's petition for modification should be granted in part and denied in part, as hereinafter indicated, and that the proceeding accordingly should be reopened for that purpose:

It is ordered, That said petition to reopen be, and it hereby is, granted.

It is further ordered, That paragraphs four and five of the findings as to the facts herein be modified by deleting from each of said paragraphs the phrase "poor appetite", that paragraph six in said findings be deleted, and that paragraph seven thereof be renumbered as paragraph six.

It is further ordered, That the order to cease and desist herein be modified by deleting from paragraph 1 (a) thereof the phrase "poor appetite", by deleting paragraph 2 in its entirety, and by renumbering paragraph 3 as paragraph 2 and deleting from said paragraph the concluding clause "or which fails to comply with the requirements set forth in paragraph 2 hereof."

It is further ordered, That in all other respects respondent's petition for modification be, and it hereby is, denied.

Issued: May 26, 1955.

By the Commission.

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

[F. R. Doc. 55-5570; Filed, July 11, 1955; 8:49 a. m.]

TITLE 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T. D. 53835]

PART 21—CARTAGE AND LIGHTERAGE

IDENTIFICATION CARDS AND FINGERPRINTING OF CUSTOMS CARTMEN AND LIGHTERMEN

As the result of an employee's suggestion, the Bureau has considered the question whether a duplicate copy of an identification card of a licensed cartman or lighterman or employee thereof, customs Form 3873, is needed as a customs record. Consideration has also been given to the question whether the fingerprinting of a licensed bonded cartman or lighterman or his employees serves a good purpose at all ports.

It has been decided that the questions whether duplicate identification cards and fingerprinting of customs bonded cartmen or lightermen are required at any port are matters which may properly be determined on a local basis and that the Customs Regulations should be amended to so provide. Accordingly, § 21.2 of the Customs Regulations is amended as follows:

1. The fourth sentence is amended by deleting "two photographs" and substituting therefor "a photograph (or two if required for purposes of local administration)".

2. The fifth sentence is amended to read: "If required for purposes of local administration, the fingerprints of such person shall be taken on customs Form 3872 and at the time of the filing of the application."

3. The seventh sentence is amended to read: "If required for purposes of local administration, the identification card shall be prepared in duplicate."

4. The ninth sentence is amended by inserting ", when required," after the word "duplicate".

(Secs. 565, 624, 46 Stat. 747, 759; 19 U. S. C. 1565, 1624)

[SEAL] RALPH KELLY, *Commissioner of Customs.*

Approved: July 5, 1955.

H. CHAPMAN ROSE, *Acting Secretary of the Treasury.*

[F. R. Doc. 55-5572; Filed, July 11, 1955; 8:49 a. m.]

[T. D. 53836]

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

FREE ENTRY; GOVERNMENT PERSONNEL AND EVACUEES

Section 1 of the act of June 30, 1955, entitled "An Act relating to the free importation of personal and household effects brought into the United States under Government orders, and for other purposes", superseding Public Law 633 of 1942 (T. D. 50678 and T. D. 53304), is published for your information and guidance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Act of June 27, 1942, entitled "An Act to exempt from duty personal and household effects brought into the United States under Government orders", as amended (U. S. C., title 50 App., secs. 801 and 802), is hereby amendd to read as follows: "That under regulations to be prescribed by the Secretary of the Treasury, after consultation with such agencies as he shall consider to be substantially interested, the personal and household effects (with such limitation on the importation of alcoholic beverages and tobacco products as the Secretary may prescribe) of any person in the service of the United States who returns to the United States upon the termination of assignment to extended duty (as defined in the above-authorized regulations) at a post or station outside the customs territory of the United States, or of returning members of his family who have resided with him at such post or station, or of any person evacuated to the United States under Government orders or instructions, may be brought into customs territory of the United States without the payment of any duty or tax imposed upon, or by reason of, importation."

(b) The amendment made by subsection (a) shall be effective with respect to articles entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 1955, and before July 1, 1958.

Since section 1 of the act of June 30, 1955, supersedes Public Law 633, 77th Congress, as amended, and consultation having been had between representatives of the Treasury Department and substantially interested agencies, the Customs Regulations are hereby amended as follows:

1. The caption of Part 54, Certain Importations Free of Duty During the War, is amended to read as set forth above.

2. Section 54.2 is amended to read as follows:

§ 54.2 *Free entry of personal and household effects of certain classes of persons in the service of the United States, or of their families, and of evacuees.* (a) Under section 1 of the act of June 30, 1955, free entry may be accorded to the personal and household effects (with the limitation on alcoholic beverages and tobacco products prescribed by paragraph (c) of this section) of any person in the service of the United States who returns to the United States upon the termination of assignment to extended duty at a post or station outside the customs territory of the United States, or of returning members of his family who have resided with him at such post or station, or of any person evacuated to the United States under Government orders or instructions, provided such effects are entered or withdrawn from warehouse, for consumption before July 1, 1958.

(b) The privilege does not apply to articles imported for sale, or for the account of any person not specified in the act, but the term "personal effects" as used in the statute is not confined to that class of articles described in paragraph 1798 (b) (1), Tariff Act of 1930,

as amended (19 U. S. C. 1201, par. 1798 (b) (1)); nor is any period of use, such as is prescribed by paragraph 1632, Tariff Act of 1930 (19 U. S. C. 1201, par. 1632), applicable to household effects entered under this act.

(c) Not more than one wine gallon of alcoholic beverages and not more than one hundred cigars may be imported by any person under the act, except that no alcoholic beverages or cigars shall be accorded free entry under the act in addition to either of such products concurrently imported by the person in connection with his return to the United States and accorded free entry under the provisions of paragraph 1798 (c) (2) (A) or (B), Tariff Act of 1930, as amended (19 U. S. C. 1201, par. 1798 (c) (2) (A) or (B).

(d) Collectors of customs shall be satisfied in all cases that the effects imported free of duty under the act are the personal and household effects of the importer, particularly in those cases where the quantity of effects imported may appear to be an unreasonable quantity for personal or household use.

(e) Except as it may otherwise be deemed proper in accordance with the provisions of paragraph (f) or (g) of this section, no person, or member of his family, shall be allowed free entry of personal or household effects under the act where the person returns to the United States pursuant to Government orders or instructions which authorized him initially to proceed to a foreign post or station and return to the United States upon termination of temporary duty.

(f) The requirement of the act that the person "returns to the United States upon the termination of assignment to extended duty" shall be considered met upon the necessary proof being submitted that any one of the following cases is applicable:

(1) The person is returning from duty outside the customs territory of the United States of at least 140 days duration.

(2) The person is returning after the termination of an assignment to permanent duty at a post or station outside customs territory of the United States, regardless of the duration of the duty.

(3) The person returns to the United States under Government orders at any time after leaving the United States for extended duty of not less than 140 days outside the customs territory of the United States.

(4) The person, although not returning to the United States, is ordered by the Government agency involved from duty at a post or station outside the customs territory of the United States to duty at another post or station outside the customs territory of the United States necessitating the return to the United States of his personal and household effects.

(g) In any case where the limitation on the quantity of alcoholic beverages and tobacco products which may be exempted from duty and tax under paragraph (c) of this section, or the failure of the person to meet the requirement that he be returning from "extended duty", as explained in paragraph (f) of this section, will cause undue hardship to the person through no fault of his own, but rather because of the nature of his assignment or other hardship circumstances, the Commissioner of Customs, upon receipt of a request from the Government agency involved, may waive the limitation or the requirement, as the case may be, if he deems such waiver warranted by the facts.

(h) All articles for which free entry is claimed under the act shall be entered or withdrawn in accordance with the requirements prescribed by the Tariff Act of 1930. Collectors of customs shall accord free entry under the act upon the production of satisfactory proof that the articles are entitled to the benefits thereof. Customs Form 6061 may be used as a declaration and entry for articles granted exemption from duty and tax under the act when entry is made in the name of the person who is entitled to the benefits of the statute. Such declaration and entry shall be verified by the customs officer by an inspection of the owner's travel orders, unless other evidence is furnished which satisfies the collector that the effects were brought into the United States in connection with the person's return to the United States upon the termination of assignment to extended duty, as explained in paragraph (f) of this section, or in connection with the return of members of his family who have resided with him at such post or station, or in connection with the evacuation of a person to the United States under Government orders or instructions. If the collector accepts an inspection of the owner's travel orders as evidence that the effects were brought into the United States within the requirements of the act, the owner's travel orders shall be identified on the entry, which shall be handled like a free baggage declaration. The date of the person's last departure from the United States shall be indicated on the declaration and entry. The inward foreign manifest covering a shipment entered on customs Form 6061 shall be liquidated by noting thereon "Free on C. F. 6061, C. R. 54.2."

(i) No invoice shall be required for articles accorded free entry under the act (secs. 1, 2, 56 Stat. 461, as amended, 50 U. S. C. App. 801, 802); (secs. 481, 484, 498, 46 Stat. 719, 722, as amended, 728; 19 U. S. C. 1481, 1484, 1498).

3. Treasury decisions 50678, 50869, 53304, shall be noted as marginal reference to § 54.2.

4. Treasury decision 53578 shall be noted as marginal reference to § 54.2 (h).

(Sec. 624, 46 Stat. 759; 19 U. S. C. 1624)

[SEAL] RALPH KELLY,
Commissioner of Customs.

Approved: July 6, 1955.

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

[F. R. Doc. 55-5573; Filed, July 11, 1955; 8:49 a. m.]

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State

[Dept. Reg. 108.261]

PART 44—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE REFUGEE RELIEF ACT OF 1953

CLASSES OF APPLICANTS; ASSURANCE OF EMPLOYMENT, HOUSING, AND AGAINST BECOMING A PUBLIC CHARGE

Part 44, Chapter I, Title 22 of the Code of Federal Regulations, is hereby amended in the following respects:

1. Paragraph (c) *Escapees in NATO and other countries* of § 44.2 *Classes of applicants under the Refugee Relief Act of 1953*, is amended to read as follows:

(c) *Escapees in NATO and other countries.* This class shall consist of refugees who (1) because of persecution or fear of persecution on account of race, religion or political opinion, fled from the Union of Soviet Socialist Republics or other Communist, Communist-dominated, or Communist-occupied area of Europe including those parts of Germany under military occupation by the Union of Soviet Socialist Republics, (2) cannot return thereto because of fear of persecution on account of race, religion or political opinion, (3) at the time of application for a visa are residing within the European continental limits of the member nations of the North Atlantic Treaty Organization, or in Turkey, Sweden, Iran, or in Zone "A" of the Free Territory of Trieste, and (4) are not nationals of the area in which they reside. The NATO countries within European continental limits include Belgium, Denmark, The Federal Republic of Germany, France, Greece, Italy, Luxembourg, the Netherlands, Norway, Portugal and islands under the jurisdiction of any such country if immediately adjacent thereto. An immigrant visa issued to an alien within the class described in this paragraph shall be issued only in one of the NATO countries specified, or in Turkey, Sweden, Iran, or in Zone "A" of the Free Territory of Trieste, and shall bear the notation "P. L. 203-4 (a) (3)" in the space provided for nonquota classification.

2. Section 44.3 *Assurance of employment, housing, and against becoming a public charge* is amended as follows:

a. Paragraph (c) (1) and (3) is amended to read as follows:

(c) *Assurance of employment.* (1) The assurance that an alien will be suitably employed without displacing some other person from his employment shall provide such information as may be required to satisfy the Administrator, the consular officer, and the immigration officer that (i) suitable activities for salary, wages, or other economic gain are to be made available to the alien by the individual citizen or citizens furnishing the assurance, (ii) the wages or compensation offered are not less than the prevailing rate for like activity in the community where the employment will be performed, (iii) the employment is

of a permanent or indefinite nature and will be available at the time of arrival of the alien in the United States, and (iv) no person will be displaced from his employment by reason of the activities to be performed by such alien. Except as provide in paragraph (g) of this section, the assurance of employment shall show the specific address in the United States at which the employment is available, the type of employment, and the terms and conditions thereof, including the rate or range of compensation to be paid.

* * * * *

(3) Except as is provided in paragraph (g) of this section, every sponsor who gives an assurance of employment for an alien shall, prior to the submission of the assurance, request through the local office of the State Employment Service serving the area of proposed employment a signed statement from the United States Employment Service consisting of a finding and recommendation with regard to the authenticity and bona fides of the employment assurance: *Provided*, That this requirement shall not apply in the case of an alien who is coming to the United States for employment consisting of the pursuit of a full course of study, as provided in subparagraph (2) of this paragraph. Such statement shall accompany the assurance of employment and shall be submitted in duplicate. In making its finding with regard to the authenticity and bona fides of an assurance of employment, the Employment Service will consider such factors as (i) the existence of a valid offer of employment, (ii) the status of the assurer as a bona fide employer, (iii) the non-displacement of American workers, (iv) whether the employment will be temporary or seasonal in duration, and (v) whether the terms and conditions of the employment are substantially less favorable to the alien than to other workers similarly employed in the area of prospective employment. As a possible basis for granting a priority in the consideration of the alien's visa application, the local office of the State Employment Service may include in its finding a statement concerning the urgent need for the alien's services or skills in the United States, if it finds that the alien will be employed in a capacity calling for such services or skills. A sponsor giving an assurance of employment shall establish any claim to priority consideration under section 12 (1) of the act with the local office of the State Employment Service.

b. Paragraph (g) is amended to read as follows:

(g) *Procedure in case of alien whose sponsor desires endorsement of recognized organization.* (1) A United States citizen who desires to sponsor a known or unknown alien and have his assurance of employment, housing, and against becoming a public charge underwritten by a recognized organization shall use Form DSR–8 in accordance with the instructions printed thereon.

(2) Any organization which desires to be recognized by the Administrator as an organization entitled to underwrite and endorse an assurance of employment, housing, and against becoming a public charge given by individual sponsors shall execute and submit in duplicate to the Administrator Form DSR–7, "Application for recognition of organization". Any such undertaking shall constitute an agreement on the part of the organization, subject to such limitations as may be expressly set forth in the application for recognition, to assume the obligations of the individual citizen or citizens giving an assurance of employment, housing, and against becoming a public charge, in the event such citizen or citizens fail to meet his or their obligations under the act.

(3) With respect to the submission of Form DSR–8, one of the following alternative procedures shall be required in connection with the assurance of employment:

(i) The submission of a statement of a finding and recommendation from the local office of the United States (or the State) Employment Service serving the area of proposed employment concerning the authenticity and bona fides of the assurance of employment. An uncertified copy of the clearance order (Form ES 560) shall be attached to the Form DSR–8; or

(ii) A recognized organization may accept the responsibility for recommending to the Administrator that an assurance of specific employment is authentic and bona fide. The acceptance of this responsibility by the recognized organization shall be signified by an endorsement, stamped in the margin of page 3 of Form DSR–8, reading "Agency Endorsed Job Assurance", and by the signature in the space provided in section 3 of Form DSR–8 of an authorized representative of such organization's national headquarters. The executed Form DSR–8 shall contain the following data: (*a*) Type of employment; (*b*) desirable special skills or other qualifications required, including a description of the experience, physical condition, education, and other basic factors necessary or required by the employer; (*c*) specific address of employment; (*d*) terms of employment, including the hours of work, and the rate of pay (either hourly, weekly, or monthly), room and board, tips or other remuneration which might be considered a part of the total compensation to be paid; (*e*) a statement to the effect that the wages offered are prevailing wages in the area of employment; (*f*) a statement as to whether the employment offered is to be permanent, indefinite, or temporary; and (*g*) a brief summary of the duties involved in the prospective employment; or

(iii) A recognized organization may accept the responsibility for recommending to the Administrator that an assurance of employment in a specified category and in a particular locality is authentic and bona fide. The acceptance of this responsibility by the recognized organization shall be signified by an endorsement, stamped in the margin of page 3 of Form DSR–8, reading "Agency Endorsed Job Assurance", and by the signature in the space provided in section 3 of Form DSR–8 of an authorized representative of such organization's national headquarters. The executed Form DSR–8 shall contain the following data: (*a*) Specific employment category in a particular locality (city or county); (*b*) desirable skills or other qualifications required, including a description of the experience, physical condition, education, and other basic factors necessary or required by employers in the particular job category; (*c*) address of place of employment, to be indicated by the words "care of the sponsor"; (*d*) name and address of employer, to be indicated by the words "care of the sponsor"; (*e*) terms of employment, including the hours of work, and the rate of pay (hourly, weekly, or monthly), room and board, tips, or other remuneration which might be considered a part of the total compensation which is being paid to employees engaged in the specified employment category and which will be paid to the alien after his arrival in the United States; (*f*) a statement to the effect that the wages to be paid are prevailing wages in the area of employment; (*g*) a statement as to whether the employment offered is to be permanent, indefinite, or temporary; and (*h*) a brief summary of the duties involved in the prospective employment. If the procedure outlined in this subdivision is used, it shall be the obligation of the recognized organization to notify the Administrator, as soon as possible after the alien arrives at his destination in the United States, concerning the specific address of employment, and the name and address of the alien's actual employer.

(Sec. 4, 63 Stat. 111; 5 U. S. C. 151c)

The regulations contained in this order shall become effective upon publication in the FEDERAL REGISTER. The provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C. 1003) relative to notice of proposed rule making and delayed effective date are inapplicable to this order because the regulations contained therein involve foreign affairs functions of the United States.

Dated: July 6, 1955.

SCOTT MCLEOD,
Administrator,
Bureau of Security
and Consular Affairs.

[F. R. Doc. 55–5555; Filed, July 11, 1955; 8:45 a. m.]

TITLE 31—MONEY AND FINANCE: TREASURY

Chapter II—Fiscal Service, Department of the Treasury

Subchapter A—Bureau of Accounts

PART 211—DELIVERY OF CHECKS AND WARRANTS TO ADDRESSES OUTSIDE THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS

REPORTS OF CHECKS OR WARRANTS WITHHELD

Part 211, Subchapter A, Chapter II, Title 31 of the Code of Federal Regulations of the United States of America (appearing also as Treasury Department Circular No. 655, dated March 19, 1941, as amended) is hereby amended by re-

vising paragraph (d) of § 211.4 to read as follows:

(d) Checks withheld from delivery pursuant to the provisions of this part are to be deposited in the general account of the Treasurer of the United States for credit to the deposit fund of the Secretary of the Treasury, 20X6048, Proceeds of Withheld Foreign Checks. The deposit will be made on Standard Form Certificate of Deposit No. 201, prepared in accordance with applicable Treasury instructions.

(Sec. 5, 54 Stat. 1087; 31 U. S. C. 127)

[SEAL] W. RANDOLPH BURGESS,
Acting Secretary of the Treasury.

JULY 6, 1955.

[F. R. Doc. 55-5575; Filed, July 11, 1955; 8:49 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

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

Appendix C—Public Land Orders

[Public Land Order 1183]

[Misc. 435461]

COLORADO

REVOKING EXECUTIVE ORDER OF JUNE 24, 1914, CREATING POWER SITE RESERVE NO. 443

By virtue of the authority vested in the President by section 1 of the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141) and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

The Executive order of June 24, 1914, reserving the following-described lands as Power Site Reserve No. 443 is hereby revoked:

SIXTH PRINCIPAL MERIDIAN

T. 8 N., R. 72 W.,
Sec. 1, SW¼, SW¼SE¼.

The areas described aggregate 200 acres.

The lands are withdrawn for Power Site Reserve No. 147 by the Executive order of July 1, 1910.

ORME LEWIS,
Assistant Secretary of the Interior.

JULY 5, 1955.

[F. R. Doc. 55-5552; Filed, July 11, 1955; 8:45 a. m.]

[Public Land Order 1184]

[Colorado 010842]

COLORADO

RESERVATION OF LANDS WITHIN PIKE NATIONAL FOREST AS FREMONT EXPERIMENTAL FOREST

By virtue of the authority vested in the President by the act of June 4, 1897 (30 Stat. 34, 36; 16 U. S. C. 473) and otherwise, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the following-described public lands within the Pike National Forest in Colorado are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining but not the mineral-leasing laws, and reserved for use of the Forest Service, Department of Agriculture, as the Fremont Experimental Forest, in connection with research projects being conducted in furtherance of the act of May 22, 1928 (45 Stat. 699; 16 U. S. C. 581, 581a-581k) as amended:

SIXTH PRINCIPAL MERIDIAN

T. 14 S., R. 68 W.,
Sec. 2, S½NE¼, SE¼.

The areas described aggregate 240 acres.

This order shall take precedence over but not otherwise affect the existing reservation of the lands for national forest purposes.

ORME LEWIS,
Assistant Secretary of the Interior.

JULY 5, 1955.

[F. R. Doc. 55-5553; Filed, July 11, 1955; 8:45 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

MITIGATION OF EFFECT OF LIMITATIONS AND OTHER PROVISIONS

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D. C., within the period of thirty days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in sections 1313 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 339, 917; 26 U. S. C. 1313, 7805)

[SEAL] PAUL K. WEBSTER,
Acting Commissioner of Internal Revenue.

The following regulations are hereby prescribed under subchapter Q, part II, of the Internal Revenue Code of 1954:

MITIGATION OF EFFECT OF LIMITATIONS AND OTHER PROVISIONS

§ 1.1311 (a) *Statutory provisions; correction of error; general rule.*

SEC. 1311. *Correction of error*—(a) *General rule.* If a determination (as defined in section 1313) is described in one or more of the paragraphs of section 1312 and, on the date of the determination, correction of the effect of the error referred to in the applicable paragraph of section 1312 is prevented by the operation of any law or rule of law, other than this part and other than section 7122 (relating to compromises), then the effect of the error shall be corrected by an adjustment made in the amount and in the manner specified in section 1314.

§ 1.1311 (a)-1 *Introduction.* (a) Part II of subchapter Q provides certain rules for the correction of the effect of an erroneous treatment of an item in a taxable year which is closed by the statute of limitations or otherwise, in cases where, in connection with the ascertainment of the tax for another taxable year, it has been determined that there was an erroneous treatment of such item in the closed year.

(b) In most situations falling within this part the correction of the effect of the error on a closed year can be made only if either the Commissioner or the taxpayer has taken a position in another taxable year which is inconsistent with the erroneous treatment of the item in the closed year. If a refund or credit would result from the correction of the error in the closed year, then the Commissioner must be the one maintaining the inconsistent position. For example, if the taxpayer erroneously included an item of income on his return for an earlier year which is now closed and the Commissioner successfully requires it to be included in a later year, then the correction of the effect of the erroneous inclusion of that item in the closed year may be made since the Commissioner has maintained a position inconsistent with the treatment of such item in such closed year. On the other hand, if an additional assessment would result from the correction of the error in the closed year, then the taxpayer must be the one maintaining the inconsistent position. For example, if the taxpayer deducted an item in an earlier year which is now closed and he successfully contends that the item should be deducted in a later year, then the correction of the effect of the erroneous deduction of that item in the closed year may be made since the taxpayer has taken a position inconsistent with the treatment of such item in such earlier year.

(c) There are two special circumstances which fall within this part but which do not require an inconsistent position be maintained. One of these circumstances relates to the inclusion of an item of income in the correct year and the other relates to the allowance of a deduction in the correct year. In the first situation, if the Commissioner takes the position by a deficiency notice or before the Tax Court that an item of in-

come should be included in the gross income of a taxpayer for a particular year and it is ultimately determined that such item was not so includible, then such item can be included in the income of the proper year if that year was not closed at the time the Commissioner took his position. In the second situation, if the taxpayer claims that a deduction should be allowed for a particular year and it is ultimately determined that the deduction was not allowable, then the taxpayer may take the deduction in the proper year if that year was not closed at the time the taxpayer first claimed a deduction.

§ 1.1311 (a)–2 *Purpose and scope of section 1311.* (a) Section 1311 provides for the correction of the effect of certain errors under circumstances specified in section 1312 when one or more provisions of law such as the statute of limitations would otherwise prevent such correction. Section 1311 may be applied to correct the effect of certain errors if, on the date of a determination (as defined in section 1313 (a) and the regulations thereunder), correction is prevented by the operation of any provision of law other than sections 1311 through 1315 and section 7122 (relating to compromises) and the corresponding provisions of prior revenue laws. Examples of provisions preventing such corrections are sections 6501, 6511, 6532, and 6901 (c), (d) and (e), relating to periods of limitations; section 6212 (c) and 6512 relating to the effect of petition to the Tax Court of the United States on further deficiency letters and on credits or refunds; section 7121 relating to closing agreements; and sections 6401 and 6514 relating to payments, refunds, or credits after the period of limitations has expired. Section 1311 may also be applied to correct the effect of an error if, on the date of the determination, correction of the error is prevented by the operation of any rule of law, such as *res judicata* or *estoppel.*

(b) The determination may be with respect to any of the taxes imposed by subtitle A of the Internal Revenue Code of 1954, by chapter 1 and subchapters A, B, D, and E of chapter 2 of the Internal Revenue Code of 1939, or by the corresponding provisions of any prior revenue act, or by more than one of such provisions. Section 1311 may be applied to correct the effect of the error only as to the tax or taxes with respect to which the error was made which correspond to the tax or taxes with respect to which the determination relates. Thus, if the determination relates to a tax imposed by chapter 1 of the Internal Revenue Code of 1954, the adjustment may be only with respect to the tax imposed by such chapter or by the corresponding provisions of prior law.

(c) Section 1311 is not applicable if, on the date of the determination, correction of the effect of the error is permissible without recourse to said section.

(d) If the tax liability for the year with respect to which the error was made has been compromised under section 7122 or the corresponding provisions of prior revenue laws, no adjustment may be made under section 1311 with respect to said year.

(e) No adjustment may be made under section 1311 for any taxable year beginning prior to January 1, 1932. See section 1314 (a).

(f) Section 1311 applies only to a determination (as defined in section 1313 (a) and §§ 1.1313 (a)–1 to 1.1313 (a)–4, inclusive) made after November 14, 1954. Section 3801 of the Internal Revenue Code of 1939 and the regulations thereunder apply to determinations, as defined therein, made on or before November 14, 1954. See section 1315.

§ 1.1311 (b) *Statutory provisions; correction of error; conditions necessary for adjustment.*

SEC. 1311. *Correction of error.* * * *

(b) *Conditions necessary for adjustment*—(1) *Maintenance of an inconsistent position.* Except in cases described in paragraphs (3) (B) and (4) of section 1312, an adjustment shall be made under this part only if—

(A) In case the amount of the adjustment would be credited or refunded in the same manner as an overpayment under section 1314, there is adopted in the determination a position maintained by the Secretary or his delegate, or

(B) In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under section 1314, there is adopted in the determination a position maintained by the taxpayer with respect to whom the determination is made,

and the position maintained by the Secretary or his delegate in the case described in subparagraph (A) or maintained by the taxpayer in the case described in subparagraph (B) is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be.

(2) *Correction not barred at time of erroneous action*—(A) *Determination described in section 1312 (3) (B).* In the case of a determination described in section 1312 (3) (B) (relating to certain exclusions from income), adjustment shall be made under this part only if assessment of a deficiency for the taxable year in which the item is includible or against the related taxpayer was not barred, by any law or rule of law, at the time the Secretary or his delegate first maintained, in a notice of deficiency sent pursuant to section 6212 or before the Tax Court of the United States, that the item described in section 1312 (3) (B) should be included in the gross income of the taxpayer for the taxable year to which the determination relates.

(B) *Determination described in section 1312 (4).* In the case of a determination described in section 1312 (4) (relating to disallowance of certain deductions and credits), adjustment shall be made under this part only if credit or refund of the overpayment attributable to the deduction or credit described in such section which should have been allowed to the taxpayer or related taxpayer was not barred, by any law or rule of law, at the time the taxpayer first maintained before the Secretary or his delegate or before the Tax Court of the United States, in writing, that he was entitled to such deduction or credit for the taxable year to which the determination relates.

(3) *Existence of relationship.* In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency (except for cases described in section 1312 (3) (B)), the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or petition (or amended petition) to the Tax Court of the United States for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination.

§ 1.1311 (b)–1 *Maintenance of an inconsistent position*—(a) *In general.* Under the circumstances stated in § 1.1312–1, § 1.1312–2, paragraph (a) of § 1.1312–3, § 1.1312–5, and § 1.1312–6, the maintenance of an inconsistent position is a condition necessary for adjustment. The requirement in such circumstances is that a position maintained with respect to the taxable year of the determination and which is adopted in the determination be inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, with respect to the taxable year of the error. That is, a position successfully maintained with respect to the taxable year of the determination must be inconsistent with the treatment accorded an item which was the subject of an error in the computation of the tax for the closed taxable year. Adjustments under the circumstances stated in paragraph (b) of § 1.1312–3 and in § 1.1312–4 are made without regard to the maintenance of an inconsistent position.

(b) *Adjustments resulting in refund or credit.* (1) An adjustment under any of the circumstances stated in §§ 1.1312–1, 1.1312–5, or 1.1312–6 which would result in the allowance of a refund or credit is authorized only if (i) the Commissioner, in connection with a determination, has maintained a position which is inconsistent with the erroneous inclusion, omission, disallowance, recognition, or nonrecognition, as the case may be, in the year of the error, and (ii) such inconsistent position is adopted in the determination.

Example. A taxpayer who keeps his books on the cash method erroneously included in income on his return for 1954 an item of accrued interest. After the period of limitations on refunds for 1954 had expired, the Commissioner asserted a deficiency for the year 1955 on the ground that the item of interest was received in 1955 and, therefore, was properly includible in gross income for that year. The taxpayer appealed to the Tax Court which in 1960 sustained the deficiency. By asserting a deficiency for 1955 based upon the inclusion of the interest item in that year, the Commissioner had maintained a position inconsistent with the inclusion of the interest item in 1954. As the determination (the decision of the Tax Court sustaining the deficiency) adopted such inconsistent position, an adjustment is authorized for the year 1954.

(2) An adjustment under circumstances stated in §§ 1.1312–1, 1.1312–5, or 1.1312–6 which would result in the allowance of a refund or credit is not authorized if the taxpayer with respect to whom the determination is made, and not the Commissioner, has maintained such inconsistent position.

Example. In the example in subparagraph (1) of this paragraph, assume that the Commissioner asserted a deficiency for 1955 based upon other items for that year but, in computing the net income upon which such deficiency was based, did not include the item of interest. The taxpayer appealed to the Tax Court and in his petition asserted that the interest item should be included in gross income for 1955. The Tax Court in

1960 included the item of interest in its redetermination of tax for the year 1955. In such case no adjustment would be authorized for 1954 as the taxpayer, and not the Commissioner, maintained a position inconsistent with the erroneous inclusion of the item of interest in the gross income of the taxpayer for that year.

(c) *Adjustments resulting in additional assessments.* (1) An adjustment under any of the circumstances stated in §§ 1.1312–2, 1.1312–3 (a), 1.1312–5, or 1.1312–6, which would result in an additional assessment is authorized only if (i) the taxpayer with respect to whom the determination is made has, in connection therewith, maintained a position which is inconsistent with the erroneous exclusion, omission, allowance, recognition, or nonrecognition, as the case may be in the year of the error, and (ii) such inconsistent position is adopted in the determination.

Example. A taxpayer in his return for 1950 claimed and was allowed a deduction for a loss arising from a casualty. After the taxpayer had filed his return for 1951 and after the period of limitations upon the assessment of a deficiency for 1950 had expired, it was discovered that the loss actually occurred in 1951. The taxpayer, therefore, filed a claim for refund for the year 1951 based upon the allowance of a deduction for the loss in that year, and the claim was allowed by the Commissioner in 1955. The taxpayer thus has maintained a position inconsistent with the allowance of the deduction for 1950 by filing a claim for refund for 1951 based upon the same deduction. As the determination (the allowance of the claim for refund) adopts such inconsistent position, an adjustment is authorized for the year 1950.

(2) An adjustment under the circumstances stated in §§ 1.1312–2, 1.1312–3 (a), 1.1312–5, or 1.1312–6 which would result in an additional assessment is not authorized if the Commissioner, and not the taxpayer, has maintained such inconsistent position.

Example. In the example in subparagraph (1) of this paragraph, assume that the taxpayer did not file a claim for refund for 1951 but the Commissioner issued a notice of deficiency for 1951 based upon other items. The taxpayer filed a petition with the Tax Court of the United States and the Commissioner in his answer voluntarily proposed the allowance for 1951 of a deduction for the loss previously allowed for 1950. The Tax Court took the deduction into account in its redetermination in 1955 of the tax for the year 1951. In such case no adjustment would be authorized for the year 1950 as the Commissioner, and not the taxpayer, has maintained a position inconsistent with the allowance of a deduction for the loss in that year.

§ 1.1311 (b)–2 *Correction not barred at time of erroneous action.* (a) An adjustment under the circumstances stated in paragraph (b) of § 1.1312–3 (relating to the double exclusion of an item of gross income) which would result in an additional assessment, is authorized only if assessment of a deficiency against the taxpayer or related taxpayer for the taxable year in which the item is includible was not barred by any law or rule of law at the time the Commissioner first maintained, in a notice of deficiency sent pursuant to section 6212 or before the Tax Court of the United States, that the item described in paragraph (b) of § 1.1312–3 should be included in the gross income of the taxpayer in the taxable year to which the determination relates.

(b) An adjustment under the circumstances stated in § 1.1312–4 (relating to the double disallowance of a deduction or credit), which would result in the allowance of a credit or refund, is authorized only if a credit or refund to the taxpayer or related taxpayer, attributable to such adjustment, was not barred by any law or rule of law when the taxpayer first maintained in writing before the Commissioner or the Tax Court that he was entitled to such deduction or credit for the taxable year to which the determination relates. The taxpayer will be considered to have first maintained in writing before the Commissioner or the Tax Court that he was entitled to such deduction or credit when he first formally asserts his right to such deduction or credit as, for example, in a return, in a claim for refund, or in a petition (or an amended petition) before the Tax Court.

(c) Under the circumstances of adjustment with respect to which the conditions stated in this section are applicable, the conditions stated in § 1.1311 (b)–1 (maintenance of an inconsistent position) are not required. See § 1.1312–3 (b) and § 1.1312–4 for examples of the application of this section.

§ 1.1311 (b)–3 *Existence of relationship in case of adjustment by way of deficiency assessment.* (a) Except for cases described in § 1.1312–3 (b), no adjustment by way of a deficiency assessment shall be made, with respect to a related taxpayer, unless the relationship existed both in the taxable year with respect to which the error was made and at the time the taxpayer with respect to whom the determination is made first maintained the inconsistent position with respect to the taxable year to which the determination relates. In the case of an adjustment by way of a deficiency assessment under the circumstance described in § 1.1312–3 (b) (where the maintenance of an inconsistent position is not required), the relationship need exist only at some time during the taxable year in which the error was made.

(b) If the inconsistent position is maintained in a return, claim for refund, or petition (or amended petition) to the Tax Court of the United States for the taxable year in respect to which the determination is made, the requisite relationship must exist on the date of filing such document. If the inconsistent position is maintained in more than one of such documents, the requisite date is the date of filing of the document in which it was first maintained. If the inconsistent position was not thus maintained, then the relationship must exist on the date of the determination as, for example, where at the instance of the taxpayer a deduction is allowed, the right to which was not asserted in a return, claim for refund, or petition to the Tax Court, and a determination is effected by means of a closing agreement or an agreement under section 1313 (a) (4).

§ 1.1312 *Statutory provisions; circumstances of adjustment.*

SEC. 1312. *Circumstances of adjustment.* The circumstances under which the adjustment provided in section 1311 is authorized are as follows:

(1) *Double inclusion of an item of gross income.* The determination requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(2) *Double allowance of a deduction or credit.* The determination allows a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer.

(3) *Double exclusion of an item of gross income*—(A) *Items included in income.* The determination requires the exclusion from gross income of an item included in a return filed by the taxpayer or with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year, or from the gross income of a related taxpayer; or

(B) *Items not included in income.* The determination requires the exclusion from gross income of an item not included in a return filed by the taxpayer and with respect to which the tax was not paid but which is includible in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(4) *Double disallowance of a deduction or credit.* The determination disallows a deduction or credit which should have been allowed to, but was not allowed to, the taxpayer for another taxable year, or to a related taxpayer.

(5) *Correlative deductions and inclusions for trusts or estates and legatees, beneficiaries, or heirs.* The determination allows or disallows any of the additional deductions allowable in computing the taxable income of estates or trusts, or requires or denies any of the inclusions in the computation of taxable income of beneficiaries, heirs, or legatees, specified in subparts A to E, inclusive (secs. 641 and following, relating to estates, trusts, and beneficiaries), of part I of subchapter J of this chapter, or corresponding provisions of prior internal revenue laws, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, or disallowed, omitted, or allowed, as the case may be, in respect of the related taxpayer.

(6) *Basis of property after erroneous treatment of a prior transaction*—(A) *General rule.* The determination determines the basis of property, and in respect of any transaction on which such basis depends, or in respect of any transaction which was erroneously treated as affecting such basis, there occurred, with respect to a taxpayer described in subparagraph (B) of this paragraph, any of the errors described in subparagraph (C) of this paragraph.

(B) *Taxpayers with respect to whom the erroneous treatment occurred.* The taxpayer with respect to whom the erroneous treatment occurred must be—

(i) The taxpayer with respect to whom the determination is made,

(ii) A taxpayer who acquired title to the property in the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, or

(iii) A taxpayer who had title to the property at the time of the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, if the basis of the property in the hands of the taxpayer with respect to whom the determination is made is determined under section 1015 (a) (re-

lating to the basis of property acquired by gift).

(C) *Prior erroneous treatment.* With respect to a taxpayer described in subparagraph (B) of this paragraph—

(i) There was an erroneous inclusion in, or omission from, gross income,

(ii) There was an erroneous recognition, or non-recognition, of gain or loss, or

(iii) There was an erroneous deduction of an item properly chargeable to capital account or an erroneous charge to capital account of an item properly deductible.

§ 1.1312–1 *Double inclusion of an item of gross income.* (a) Paragraph (1) of section 1312 applies if the determination requires the inclusion in a taxpayer's gross income of an item which was erroneously included in the gross income of the same taxpayer for another taxable year or of a related taxpayer for the same or another taxable year.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1). A taxpayer who keeps his books on the cash method erroneously included in income on his return for 1947 an item of accrued rent. In 1952, after the period of limitation on refunds for 1947 had expired, the Commissioner discovered that the taxpayer received this rent in 1948 and asserted a deficiency for the year 1948 which is sustained by the Tax Court of the United States in 1955. An adjustment in favor of the taxpayer is authorized with respect to the year 1947. If the taxpayer had returned the rent for both 1947 and 1948 and by a determination was denied a refund claim for 1948 on account of the rent item, a similar adjustment is authorized.

Example (2). A husband assigned to his wife salary to be earned by him in the year 1952. The wife included such salary in her separate return for that year and the husband omitted it. The Commissioner asserted a deficiency against the wife for 1952 with respect to a different item; she contested that deficiency, and the Tax Court entered an order in her case which became final in 1955. The wife would therefore be barred by section 6512 (a) from claiming a refund for 1952. Thereafter, the Commissioner asserted a deficiency against the husband on account of the omission of such salary from his return for 1952. In 1955 the husband and the Commissioner enter into a closing agreement for the year 1952 in which the salary is taxed to the husband. An adjustment is authorized with respect to the wife's tax for 1952.

§ 1.1312–2 *Double allowance of a deduction or credit.* (a) Paragraph (2) of section 1312 applies if the determination allows the taxpayer a deduction or credit which was erroneously allowed the same taxpayer for another taxable year or a related taxpayer for the same or another taxable year.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1). A taxpayer in his return for 1950 claimed and was allowed a deduction for destruction of timber by a forest fire. Subsequently, it was discovered that the forest fire occurred in 1951 rather than 1950. After the expiration of the period of limitations for the assessment of a deficiency for 1950, the taxpayer filed a claim for refund for 1951 based upon a deduction for the fire loss in that year. The Commissioner in 1955 allows the claim for refund. An adjustment is authorized with respect to the year 1950.

Example (2). The beneficiary of a testamentary trust in his return for 1949 claimed, and was allowed, a deduction for depreciation of the trust property. The Commissioner asserted a deficiency against the beneficiary for 1949 with respect to a different item and a final decision of the Tax Court of the United States was rendered in 1951, so that the Commissioner was thereafter barred by section 272 (f) of the Internal Revenue Code of 1939 from asserting a further deficiency against the beneficiary for 1949. The trustee thereafter filed a timely refund claim contending that, under the terms of the will, the trust, and not the beneficiary, was entitled to the allowance for depreciation. The court in 1955 sustains the refund claim. An adjustment is authorized with respect to the beneficiary's tax for 1949.

§ 1.1312–3 *Double exclusion of an item of gross income*—(a) *Items included in income or with respect to which a tax was paid.* (1) Paragraph (3) (A) of section 1312 applies if the determination requires the exclusion, from a taxpayer's gross income, of an item included in a return filed by the taxpayer, or with respect to which tax was paid, and which was erroneously excluded or omitted from the gross income of the same taxpayer for another taxable year or of a related taxpayer for the same or another taxable year.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). (i) A taxpayer received payments in 1951 under a contract for the performance of services and included the payments in his return for that year. After the expiration of the period of limitations for the assessment of a deficiency for 1950, the Commissioner issued a notice of deficiency to the taxpayer for the year 1951 based upon adjustments to other items, and the taxpayer filed a petition with the Tax Court of the United States and maintained in the proceeding before the Tax Court that he kept his books on the accrual basis and that the payments received in 1951 were on income that had accrued and was properly taxable in 1950. A final decision of the Tax Court was rendered in 1955 excluding the payments for 1951 income. An adjustment in favor of the Commissioner is authorized with respect to the year 1950, whether or not a tax had been paid on the income reported in the 1951 return.

(ii) Assume the same facts as in (i) except that the taxpayer had not included the payments in any return and had not paid a tax thereon. No adjustment would be authorized under section 1312 (3) (A) with respect to the year 1950. If the taxpayer, however, had paid a deficiency asserted for 1951 based upon the inclusion of the payments in 1951 income and thereafter successfully sued for refund thereof, an adjustment would be authorized with respect to the year 1950. (See paragraph (b) of this section for circumstances under which correction is authorized with respect to items not included in income and on which a tax was not paid.)

Example (2). A father and son conducted a partnership business, each being entitled to one-half of the net profits. The father included the entire net income of the partnership in his return for 1948, and the son included no portion of this income in his return for that year. Shortly before the expiration of the period of limitations with respect to deficiency assessments and refund claims for both father and son for 1948, the father filed a claim for refund of that portion of his 1948 tax attributable to the half of the partnership income which should have been included in the son's return. The court sustains the claim for refund in 1955. An adjustment is authorized with respect to the son's tax for 1948.

(b) *Items not included in income and with respect to which the tax was not paid.* (1) Paragraphs (3) (B) of section 1312 applies if the determination requires the exclusion from gross income of an item not included in a return filed by the taxpayer and with respect to which a tax was not paid, but which is includible in the gross income of the same taxpayer for another taxable year, or in the gross income of a related taxpayer for the same or another taxable year. This is one of the two circumstances in which the maintenance of an inconsistent position is not a requirement for an adjustment, but the requirements of § 1.1311 (b)–2 (a) must be fulfilled (correction not barred at time of erroneous action).

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). The taxpayer, A, who computes his income by use of the accrual method of accounting, performed in 1949 services for which he received payments in 1949 and 1950. He did not include in his return for either 1949 or 1950 the payments which he received in 1950, and he paid no tax with respect to such payments. In 1952 the Commissioner sent a notice of deficiency to A with respect to the year 1949, contending that A should have included all of such payments in his return for that year. A contested the deficiency on the basis that in 1949 he had no accruable right to the payments which he received in 1950. In 1955 (after the expiration of the period of limitations for assessing deficiencies with respect to 1950), the Tax Court sustains A's position. The Commissioner may assess a deficiency for 1950, since a deficiency assessment for that year was not barred when he sent the notice of deficiency with respect to 1949.

Example (2). B and C were partners in 1950, each being entitled to one-half of the profits of the partnership business. During 1950, B received an item of income which he treated as partnership income so that his return for that year reflected only 50 percent of such item. C, however, included no part of such item in any return and paid no tax with respect thereto. In 1952, the Commissioner sent to C a notice of deficiency with respect to 1950, contending that his return for that year should have reflected 50 percent of such item. C contested the deficiency on the basis that such item was not partnership income. In 1955, after the expiration of the period of limitations for assessing deficiencies with respect to 1950, the Tax Court sustained C's position. The Commissioner may assess a deficiency against B with respect to 1950 requiring him to include the entire amount of such item in his income since assessment of the deficiency was not barred when the Commissioner sent the notice of deficiency with respect to such item to C.

§ 1.1312–4 *Double disallowance of a deduction or credit.* (a) Paragraph (4) of section 1312 applies if the determination disallows a deduction or credit which should have been, but was not, allowed to the same taxpayer for another taxable year or to a related taxpayer for the same or another taxable year. This is one of the two circumstances in which the maintenance of an inconsistent position is not a requirement for an adjustment but the requirements of § 1.1311 (b)–2 (b) must be fulfilled (correction

not barred at time of erroneous action).

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1). The taxpayer, A, who computes his income by use of the accrual method of accounting, deducted in his return for the taxable year 1951 an item of expense which he paid in such year. At the time A filed his return for 1951, the statute of limitations for 1950 had not expired. Subsequently, the Commissioner asserted a deficiency for 1951 based on the position that the liability for such expense should have been accrued for the taxable year 1950. In 1955, after the period of limitations on refunds for 1950 had expired, there was a determination by the Tax Court disallowing such deduction for the taxable year 1951. A is entitled to an adjustment for the taxable year 1950. However, if such liability had been accrued for the taxable year 1946 instead of 1950, A would not be entitled to an adjustment, if a credit or refund with respect to 1946 was already barred when he deducted such expense for the taxable year 1951.

Example (2). The taxpayer, B, in his return for 1951 claimed a deduction for a charitable contribution. The Commissioner asserted a deficiency for such year contending that 50 percent of the deduction should be disallowed, since the contribution was made from community property 50 percent of which was attributable to B's spouse. The deficiency is sustained by the Tax Court in 1956, subsequent to the period of limitations within which B's spouse could claim a refund with respect to 1951. An adjustment is permitted to B's spouse, a related taxpayer, since a refund attributable to a deduction by her of such contribution was not barred when B claimed the deduction.

§ 1.1312–5 *Correlative deductions and inclusions for trusts or estates and legatees, beneficiaries, or heirs.* (a) Paragraph (5) of section 1312 applies to distributions by a trust or an estate to the beneficiaries, heirs, or legatees. If the determination relates to the amount of the deduction allowed by sections 651 and 661 or the inclusion in taxable income of the beneficiary required by sections 652 and 662 (including amounts falling within subpart D of subchapter J, relating to treatment of excess distributions by trusts), or if the determination relates to the additional deduction (or inclusion) specified in section 162 (b) and (c) of the Internal Revenue Code of 1939 (or the corresponding provisions of a prior revenue act), with respect to amounts paid, credited, or required to be distributed to the beneficiaries, heirs, and legatees, and such determination requires:

(1) The allowance to the estate or trust of the deduction when such amounts have been erroneously omitted or excluded from the income of the beneficiaries, heirs, or legatees; or

(2) The inclusion of such amounts in the income of the beneficiaries, heirs, or legatees when the deduction has been erroneously disallowed to or omitted by the estate or trust; or

(3) The disallowance to an estate or trust of the deduction when such amounts have been erroneously included in the income of the beneficiaries, heirs, or legatees; or

(4) The exclusion of such amounts from the income of the beneficiaries, heirs, or legatees when the deduction has been erroneously allowed to the estate or trust.

(b) The application of paragraph (a) (1) of this section may be illustrated by the following example:

Example. For the taxable year 1954, a trustee, directed by the trust instrument to accumulate the trust income, made no distribution to the beneficiary and returned the entire income as taxable to the trust. Accordingly the beneficiary did not include the trust income in his return for the year 1954. In 1957, a State court holds invalid the clause directing accumulation and determines that the income is required to be currently distributed. It also rules that certain extraordinary dividends which the trustee in good faith allocated to corpus in 1954 were properly allocable to income. In 1958, the trustee, replying upon the court decision, files a claim for refund of the tax paid on behalf of the trust for the year 1954 and thereafter files a suit in the District Court. The claim is sustained by the court (except as to the tax on the extraordinary dividends) in 1959 after the expiration of the period of limitations upon deficiency assessments against the beneficiary for the year 1954. An adjustment is authorized with respect to the beneficiary's tax for the year 1954. The treatment of the distribution to the beneficiary of the extraordinary dividends shall be determined under subpart D of subchapter J.

(c) The application of paragraph (a) (2) of this section may be illustrated by the following example:

Example. Assume the same facts as in the example in paragraph (b) of this section, except that, instead of the trustee's filing a refund claim, the Commissioner, relying upon the decision of the State court, asserts a deficiency against the beneficiary for 1954. The deficiency is sustained by final decision of the Tax Court of the United States in 1959, after the expiration of the period for filing claim for refund on behalf of the trust for 1954. An adjustment is authorized with respect to the trust for the year 1954.

(d) The application of paragraph (a) (3) of this section may be illustrated by the following example:

Example. A trustee claimed in the trust return for 1954 for amounts paid to the beneficiary a deduction to the extent of distributable net income. This amount was included by the beneficiary in gross income in his return for 1954. In computing distributable net income the trustee had included short and long-term capital gains. In 1958, the Commissioner asserts a deficiency against the trust on the ground that the capital gains were not includible in distributable net income, and that, therefore, the gains were taxable to the trust, not the beneficiary. The deficiency is sustained by a final decision of the Tax Court in 1960, after the expiration of the period for filing claims for refund by the beneficiary for 1954. An adjustment is authorized with respect to the beneficiary's tax for the year 1954, based on the exclusion from 1954 gross income of the capital gains previously considered distributed by the trust under section 662.

(e) The application of paragraph (a) (4) of this section may be illustrated by the following example:

Example. Assume the same facts as in the example in paragraph (d) of this section, except that, instead of the Commissioner's asserting a deficiency, the beneficiary filed a refund claim for 1954 on the same ground. The claim is sustained by the court in 1960 after the expiration of the period of limitations upon deficiency assessments against the trust for 1954. An adjustment is authorized with respect to the trust for the year 1954.

§ 1.1312–6 *Basis of property after erroneous treatment of a prior transaction.* (a) Paragraph (6) of section 1312 applies if the determination establishes the basis of property, and there occurred one of the following types of errors in respect of a prior transaction upon which such basis depends, or in respect of a prior transaction which was erroneously treated as affecting such basis:

(1) An erroneous inclusion in, or omission from, gross income, or

(2) An erroneous recognition or nonrecognition of gain or loss, or

(3) An erroneous deduction of an item properly chargeable to capital account or an erroneous charge to capital account of an item properly deductible.

(b) For this section to apply, the taxpayer with respect to whom the erroneous treatment occurred must be—

(1) The taxpayer with respect to whom the determination is made, or

(2) A taxpayer who acquired title to the property in the erroneously treated transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title in such a manner that he will have a basis ascertained by reference to the basis in the hands of the taxpayer who acquired title to the property in the erroneously treated transaction, or

(3) A taxpayer who had title to the property at the time of the erroneously treated transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, if the basis of the property in the hands of the taxpayer with respect to whom the determination is made is determined under section 1015 (a) (relating to the basis of property acquired by gift).

No adjustment is authorized with respect to the transferor of the property in a transaction upon which the basis of the property depends, when the determination is with respect to the original transferee or a subsequent transferee of such original transferee.

(c) The application of this section may be illustrated by the following examples:

Example (1). In 1949 taxpayer A transferred property which had cost him $5,000 to the X Corporation in exchange for an original issue of shares of its stock having a fair market value of $10,000. In his return for 1949 taxpayer A treated the exchange as one in which the gain or loss was not recognizable:

(i) In 1955 the X Corporation maintains that the gain should have been recognized in the exchange in 1949 and therefore the property it received had a $10,000 basis for depreciation. Its position is adopted in a closing agreement. No adjustment is authorized with respect to the tax of the X Corporation for 1949, as none of the three types of errors specified in paragraph (a) of this section occurred with respect to the X Corporation in the treatment of the exchange in 1949. Moreover, no adjustment is authorized with respect to taxpayer A, as he is not within any of the three classes of taxpayers described in paragraph (b) of this section.

(ii) In 1953 taxpayer A sells the stock which he received in 1949 and maintains that, as gain should have been recognized

in the exchange in 1949, the basis for computing the profit on the sale is $10,000. His position is confirmed in a closing agreement executed in 1955. An adjustment is authorized with respect to his tax for the year 1949 as the basis for computing the gain on the sale depends upon the transaction in 1949, and in respect of that transaction there was an erroneous nonrecognition of gain to taxpayer A, the taxpayer with respect to whom the determination is made.

Example (2). In 1950 taxpayer A was the owner of 10 shares of the common stock of the Z Corporation which had a basis of $1,500. In that year he received as a dividend thereon 10 shares of the preferred stock of the same corporation having a fair market value of $1,000. On his books, entries were made reducing the basis of the common stock by allocating $500 of the basis to the preferred stock, and on his return for 1950 he did not include the dividend in gross income.

(i) In 1951 taxpayer A made a gift of the preferred stock of the Z Corporation to taxpayer B, an unrelated individual. Taxpayer B sold the stock in 1953 and on his return for that year he reported the sale and claimed a basis of $1,000, contending that the dividend of preferred stock was taxable to A in 1950 at its fair market value of $1,000. The basis of $1,000 is confirmed by a closing agreement executed in 1955. An adjustment is authorized with respect to taxpayer A's tax for 1950, as the closing agreement determines basis of property, and in a prior transaction upon which such basis depends there was an erroneous omission from gross income of taxpayer A, a taxpayer who acquired title to the property in the erroneously treated transaction and from whom, immediately, the taxpayer with respect to whom the determination is made derived title.

(ii) Assuming the same facts as in (i) except that the common stock instead of the preferred stock was the subject of the gift, and the basis claimed by taxpayer B and confirmed in the closing agreement was $1,500. An adjustment is authorized with respect to taxpayer A's tax for 1950, as the closing agreement determines the basis of property, and in a prior transaction which was erroneously treated as affecting such basis there was an erroneous omission from gross income of taxpayer A, a taxpayer who had title to the property at the time of the erroneously treated transaction, and from whom, immediately, taxpayer B, with respect to whom the determination is made, derived title. The basis of the property in taxpayer B's hands with respect to whom the determination is made is determined under section 1015 (a) (relating to the basis of property acquired by gift).

Example (3). In 1950 taxpayer A sold property acquired at a cost of $5,000 to taxpayer B for $10,000. In his return for 1950 taxpayer A failed to include the profit on such sale. In 1953 taxpayer B sold the property for $12,000, and in his return for 1953 reported a gain of $2,000 upon the sale, which is confirmed by a closing agreement executed in 1955. No adjustment is authorized with respect to the tax of taxpayer A for 1950, as he does not come within any of the three classes of taxpayers described in paragraph (b) of this section.

Example (4). In 1950 a taxpayer who owned 100 shares of stock in Corporation Y received $1,000 from the corporation which amount the taxpayer reported on his return for 1950 as a taxable dividend. In 1952 Corporation Y was completely liquidated and the taxpayer received in that year liquidating distributions totalling $8,000. In his return for 1952 the taxpayer reported the receipt of the $8,000 and computed his gain or loss upon the liquidation by using as a basis the amount which he paid for the stock. The Commissioner maintained that the distribution in 1950 was a distribution out of capital and that in computing the taxpayer's gain or loss upon the liquidation in 1952, the basis of the stock should be reduced by the $1,000. This position is adopted in a closing agreement executed in 1955 with respect to the year 1952. An adjustment is authorized with respect to the year 1950 as the basis for computing gain or loss in 1952 depends upon the transaction in 1950, and in respect of the 1950 transaction (upon which the basis of the property depends) there was an erroneous inclusion in gross income of the taxpayer with respect to whom the determination is made.

Example (5). In 1946 a taxpayer received 100 shares of stock of the X Corporation having a fair market value of $5,000, in exchange for shares of stock in the Y Corporation which he had acquired at a cost of $12,000. In his return for 1946 the taxpayer treated the exchange as one in which gain or loss was not recognizable. The taxpayer sold 50 shares of the X Corporation stock in 1947 and in his return for that year treated such shares as having a $6,000 basis. In 1952, the taxpayer sold the remaining 50 shares of stock of the X Corporation for $7,500 and reported $1,500 gain in his return for 1952. After the expiration of the period of limitations on deficiency assessments and on refund claims for 1946 and 1947, the Commissioner asserted a deficiency for 1952 on the ground that the loss realized on the exchange in 1946 was erroneously treated as nonrecognizable, and the basis for computing gain upon the sale in 1952 was $2,500, resulting in a gain of $5,000. The deficiency is sustained by the Tax Court in 1955. An adjustment is authorized with respect to the year 1946 as to the entire $7,000 loss realized on the exchange, as the Court's decision determines the basis of property, and in a prior transaction upon which such basis depends there was an erroneous nonrecognition of loss to the taxpayer with respect to whom the determination was made. No adjustment is authorized with respect to the year 1947 as the basis for computing gain upon the sale of the 50 shares in 1952 does not depend upon the transaction in 1947 but upon the transaction in 1946.

§ 1.1312–7 *Law applicable in determination of error.* The question whether there was an erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition is determined under the provisions of the internal revenue laws applicable with respect to the year as to which the inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, was made. The fact that the inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, was in pursuance of an interpretation, either judicial or administrative, accorded such provisions of the internal revenue laws at the time of such action is not necessarily determinative of this question. For example, if a later judicial decision authoritatively alters such interpretation so that such action was contrary to such provisions of the internal revenue laws as later interpreted, the inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, is erroneous within the meaning of section 1312.

§ 1.1313 (a) *Statutory provisions; definition of determination.*

SEC. 1313. *Definitions*—(a) *Determination.* For purposes of this part, the term "determination" means—

(1) A decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) A closing agreement made under section 7121;

(3) A final disposition by the Secretary or his delegate of a claim for refund. For purposes of this part, a claim for refund shall be deemed finally disposed of by the Secretary or his delegate—

(A) As to items with respect to which the claim was allowed, on the date of allowance of refund or credit or on the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and

(B) As to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the Secretary or his delegate in reduction of the refund or credit, on expiration of the time for instituting suit with respect thereto (unless suit is instituted before the expiration of such time); or

(4) Under regulations prescribed by the Secretary or his delegate, an agreement for purposes of this part, signed by the Secretary or his delegate and by any person, relating to the liability of such person (or the person for whom he acts) in respect of a tax under this subtitle for any taxable period.

§ 1.1313 (a)–1 *Decision by Tax Court or other court as a determination.* (a) A determination may take the form of a decision by the Tax Court of the United States or a judgment, decree, or other order by any court of competent jurisdiction, which has become final.

(b) The date upon which a decision by the Tax Court becomes final is prescribed in section 7481.

(c) The date upon which a judgment of any other court becomes final must be determined upon the basis of the facts in the particular case. Ordinarily, a judgment of a United States district court becomes final upon the expiration of the time allowed for taking an appeal, if no such appeal is duly taken within such time; and a judgment of the United States Court of Claims becomes final upon the expiration of the time allowed for filing a petition for certiorari if no such petition is duly filed within such time.

§ 1.1313 (a)–2 *Closing agreement as a determination.* A determination may take the form of a closing agreement authorized by section 7121. Such an agreement may relate to the total tax liability of the taxpayer for a particular taxable year or years or to one or more separate items affecting such liability. A closing agreement becomes final for the purpose of this section on the date of its approval by the Commissioner.

§ 1.1313 (a)–3 *Final disposition of claim for refund as a determination*—(a) *In general.* A determination may take the form of a final disposition of a claim for refund. Such disposition may result in a determination with respect to two classes of items, i. e., items included by the taxpayer in a claim for refund and items applied by the Commissioner to offset the alleged overpayment. The time at which a disposition in respect of a particular item becomes final may depend not only upon what action is taken with respect to that item but also upon whether the claim for refund is allowed or disallowed.

(b) *Items with respect to which the taxpayer's claim is allowed.* (1) The disposition with respect to an item as to which the taxpayer's contention in the claim for refund is sustained becomes final on the date of allowance of the refund or credit if—

(i) The taxpayer's claim for refund is unqualifiedly allowed; or

(ii) The taxpayer's contention with respect to an item is sustained and with respect to other items is denied, so that the net result is an allowance of refund or credit; or

(iii) The taxpayer's contention with respect to an item is sustained, but the Commissioner applies other items to offset the amount of the alleged overpayment and the items so applied do not completely offset such amount but merely reduce it so that the net result is an allowance of refund or credit.

(2) If the taxpayer's contention in the claim for refund with respect to an item is sustained but the Commissioner applies other items to offset the amount of the alleged overpayment so that the net result is a disallowance of the claim for refund, the date of mailing, by registered mail, of the notice of disallowance (see section 6532) is the date of the final disposition as to the item with respect to which the taxpayer's contention is sustained.

(c) *Items with respect to which the taxpayer's claim is disallowed.* The disposition with respect to an item as to which the taxpayer's contention in the claim for refund is denied becomes final upon the expiration of the time allowed by section 6532 for instituting suit on the claim for refund, unless the suit is instituted prior to the expiration of such period, if—

(1) The taxpayer's claim for refund is unqualifiedly disallowed; or

(2) The taxpayer's contention with respect to an item is denied and with respect to other items is sustained so that the net result is an allowance of refund or credit; or

(3) The taxpayer's contention with respect to an item is sustained in part and denied in part. For example, assume that the taxpayer claimed a deductible loss of $10,000 and a consequent overpayment of $2,500 and the Commissioner concedes that a deductible loss was sustained, but only in the amount of $5,000. The disposition of the claim for refund with respect to the allowance of the $5,000 and the disallowance of the remaining $5,000 becomes final upon the expiration of the time for instituting suit on the claim for refund unless suit is instituted prior to the expiration of such period.

(d) *Items applied by the Commissioner in reduction of the refund or credit.* If the Commissioner applies an item in reduction of the overpayment alleged in the claim for refund, and the net result is an allowance of refund or credit, the disposition with respect to the item so applied by the Commissioner becomes final upon the expiration of the time allowed by section 6532 for instituting suit on the claim for refund, unless suit is instituted prior to the expiration of such period. If such application of the item results in the assertion of a deficiency, such action does not constitute a final disposition of a claim for refund within the meaning of § 1.1313 (a)–3, but subsequent action taken with respect to such deficiency may result in a determination under §§ 1.1313 (a)–1, 1.1313 (a)–2, or 1.1313 (a)–4.

(e) *Elimination of waiting period.* The necessity of waiting for the expiration of the 2-year period of limitations provided in section 6532 may be avoided in such cases as are described in paragraph (c) or (d) of this section by the use of a closing agreement (see § 1.1313 (a)–2) or agreement under § 1.1313 (a)–4 to effect a determination.

§ 1.1313 (a)–4 *Agreement pursuant to section 1313 (a) (4) as a determination—* (a) *In general.* (1) A determination may take the form of an agreement made pursuant to this section. This section is intended to provide an expeditious method for obtaining an adjustment under section 1311 and for offsetting deficiencies and refunds whenever possible. The provisions of sections 1311 through 1315 must be strictly complied with in any such agreement.

(2) An agreement made pursuant to this section will not, in itself, establish the tax liability for the open taxable year to which it relates, but it will state the amount of the tax, as then determined, for such open year. The tax may be the amount of tax shown on the return as filed by the taxpayer, but if any changes in the amount have been made, or if any are being made by documents executed concurrently with the execution of said agreement, such changes must be taken into account. For example, an agreement pursuant to this section may be executed concurrently with the execution of a waiver of restrictions on assessment and collection of a deficiency or acceptance of an overassessment with respect to the open taxable year, or concurrently with the execution and filing of a stipulation in a proceeding before the Tax Court of the United States, where an item which is to be the subject of an adjustment under section 1311 is disposed of by the stipulation and is not left for determination by the court.

(b) *Contents of agreement.* An agreement made pursuant to this section shall be so designated in the heading of the agreement, and it shall contain the following:

(1) A statement of the amount of the tax determined for the open taxable year to which the agreement relates, and if said liability is established or altered by a document executed concurrently with the execution of the agreement, a reference to said document.

(2) A concise statement of the material facts with respect to the item that was the subject of the error in the closed taxable year or years, and a statement of the manner in which such item was treated in computing the tax liability set forth pursuant to subparagraph (1) of this paragraph.

(3) A statement as to the amount of the adjustment ascertained pursuant to § 1.1314 (a)–1 for the taxable year with respect to which the error was made and, where applicable, a statement as to the amount of the adjustment or adjustments ascertained pursuant to § 1.1314 (a)–2 with respect to any other taxable year or years; and

(4) A waiver of restrictions on assessment and collection of any deficiencies set forth pursuant to subparagraph 3 of this paragraph.

(c) *Execution and effect of agreement.* An agreement made pursuant to this section shall be signed by the taxpayer with respect to whom the determination is made, or on the taxpayer's behalf by an agent or attorney acting pursuant to a power of attorney on file with the Internal Revenue Service. If an adjustment is to be made in a case of a related taxpayer, the agreement shall be signed also by the related taxpayer, or on the related taxpayer's behalf by an agent or attorney acting pursuant to a power of attorney on file with the Internal Revenue Service. It may be signed on behalf of the Commissioner by the district director, the assistant regional commissioner (appellate), or such other person as is authorized by the Commissioner. When duly executed, such agreement will constitute the authority for an allowance of any refund or credit agreed to therein, and for the immediate assessment of any deficiency agreed to therein for the taxable year with respect to which the error was made, or any close taxable year or years affected, or treated as affected, by a net operating loss deduction or capital loss carryover determined with reference to the taxable year with respect to which the error was made.

(d) *Finality of determination.* A determination made by an agreement pursuant to this section becomes final when the tax liability for the open taxable year to which the determination relates becomes final. During the period, if any, that a deficiency may be assessed or a refund or credit allowed with respect to such year, either the taxpayer or the Commissioner may properly pursue any of the procedures provided by law to secure a further modification of the tax liability for such year. For example, if the taxpayer subsequently files a claim for refund, or if the Commissioner subsequently issues a notice of deficiency with respect to such year, either may adopt a position with respect to the item that was the subject of the adjustment that is at variance with the manner in which said item was treated in the agreement. Any assessment, refund, or credit that is subsequently made with respect to the tax liability for such open taxable year, to the extent that it is based upon a revision in the treatment of the item that was the subject of the adjustment, shall constitute an alteration or revocation of the determination for the purpose of a redetermination of the adjustment pursuant to § 1.1314 (b)–1 (d).

§ 1.1313 (b)–(c) *Statutory provisions; definitions of taxpayer and related taxpayer.*

SEC. 1313. *Definitions.* * * *

(b) *Taxpayer.* Notwithstanding section 7701 (a) (14), the term "taxpayer" means any person subject to a tax under the applicable revenue law.

(c) *Related taxpayer.* For purposes of this part, the term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance was made, in one of the following relationships:

(1) Husband and wife,
(2) Grantor and fiduciary,
(3) Grantor and beneficiary,
(4) Fiduciary and beneficiary, legatee, or heir,
(5) Decedent and decedent's estate,
(6) Partner, or
(7) Member of an affiliated group of corporations (as defined in section 1504).

§ 1.1313 (c)–1 *Related taxpayer.* An adjustment in the case of the taxpayer with respect to whom the error was made may be authorized under section 1311 although the determination is made with respect to a different taxpayer, provided that such taxpayers stand in one of the relationships specified in section 1313 (c). The concept of "related taxpayer" has application to all of the circumstances of adjustment specified in § 1.1312–1 through § 1.1312–5; it does not apply in the circumstances specified in § 1.1312–6. If such relationship exists, it is not essential that the error involve a transaction made possible only by reason of the existence of the relationship. For example, if the error with respect to which an adjustment is sought under section 1311 grew out of an assignment of rents between taxpayer A and taxpayer B, who are partners, and the determination is with respect to taxpayer A, an adjustment with respect to taxpayer B may be permissible despite the fact that the assignment had nothing to do with the business of the partnership. The relationship need not exist throughout the entire taxable year with respect to which the error was made, but only at some time during that taxable year. For example, if a taxpayer on February 15 assigns to his fiancee the net rents of a building which the taxpayer owns, and the two are married before the end of the taxable year, an adjustment may be permissible if the determination relates to such rents despite the fact that they were not husband and wife at the time of the assignment. See § 1.1311 (b)–3 for the requirement in certain cases that the relationship exist at the time an inconsistent position is first maintained.

§ 1.1314 (a) *Statutory provisions; amount and method of adjustment; ascertainment of amount of adjustment.*

SEC. 1314. *Amount and method of adjustment*—(a) *Ascertainment of amount of adjustment.* In computing the amount of an adjustment under this part there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be the excess of—

(1) The sum of—

(A) The amount shown as the tax by the taxpayer on his return (determined as provided in section 6211 (b) (1) and (3), relating to the definition of deficiency), if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) The amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) The amount of rebates, as defined in section 6211 (b) (2), made.

There shall then be ascertained the increase or decrease in tax previously determined which results solely from the correct treatment of the item which was the subject of the error (with due regard given to the effect of the item in the computation of gross income, taxable income, and other matters under this subtitle). A similar computation shall be made for any other taxable year affected, or treated as affected, by a net operating loss deduction (as defined in section 172) or by a capital loss carryover (as defined in section 1212), determined with reference to the taxable year with respect to which the error was made. The amount so ascertained (together with any amounts wrongfully collected as additions to the tax or interest, as a result of such error) for each taxable year shall be the amount of the adjustment for that taxable year.

§ 1.1314 (a)–1 *Ascertainment of amount of adjustment in year of error.* (a) In computing the amount of the adjustment under sections 1311 to 1315, inclusive, there must first be ascertained the amount of the tax previously determined for the taxpayer as to whom the error was made for the taxable year with respect to which the error was made. The tax previously determined for any taxable year may be the amount of tax shown on the taxpayer's return, but if any changes in that amount have been made, they must be taken into account. In such cases, the tax previously determined will be the sum of the amount shown as the tax by the taxpayer upon his return and the amounts previously assessed (or collected without assessment) as deficiencies, reduced by the amount of any rebates made. The amount shown as the tax by the taxpayer upon his return and the amount of any rebates or deficiencies shall be determined in accordance with the provisions of section 6211 and the regulations thereunder.

(b) (1) The tax previously determined may consist of tax for any taxable year beginning after December 31, 1931, imposed by subtitle A of the Internal Revenue Code of 1954, by chapter 1 and subchapters A, B, D, and E of chapter 2 of the Internal Revenue Code of 1939, or by the corresponding provisions of prior internal revenue laws, or by any one or more of such provisions.

(2) After the tax previously determined has been ascertained, a recomputation must then be made under the laws applicable to said taxable year to ascertain the increase or decrease in tax, if any, resulting from the correction of the error. The difference between the tax previously determined and the tax as recomputed after correction of the error will be the amount of the adjustment.

(c) No change shall be made in the treatment given any item upon which the tax previously determined was based other than in the correction of the item or items with respect to which the error was made. However, due regard shall be given to the effect that such correction may have on the computation of gross income, taxable income, and other matters under chapter 1. If the treatment of any item upon which the tax previously determined was based, or if the application of any provisions of the internal revenue laws with respect to such tax, depends upon the amount of income (e. g. charitable contributions, foreign tax credit, dividends received credit), readjustment in these particulars will be necessary as part of the recomputation in conformity with the change in the amount of the income which results from the correct treatment of the item or items in respect of which the error was made.

(d) Any interest or additions to the tax collected as a result of the error shall be taken into account in determining the amount of the adjustment.

(e) The application of this section may be illustrated by the following example:

Example. (1) For the taxable year 1949 a taxpayer with no dependents, who kept his books on the cash receipts and disbursements method, filed a joint return with his wife disclosing adjusted gross income of $42,000, deductions amounting to $12,000, and a net income of $30,000. Included among other items in the gross income were salary in the amount of $15,000 and rents accrued but not yet received in the amount of $5,000. During the taxable year he donated $10,000 to the American Red Cross and in his return claimed a deduction of $6,300 on account thereof, representing the maximum deduction allowable under the 15-percent limitation imposed by section 23 (o) of the Internal Revenue Code of 1939 as applicable to the year 1949. In computing his net income he omitted interest income amounting to $6,000 and neglected to take a deduction for interest paid in the amount of $4,500. The return disclosed a tax liability of $7,788, which was assessed and paid. After the expiration of the period of limitations upon the assessment of a deficiency or the allowance of a refund for 1949, the Commissioner included the item of rental income amounting to $5,000 in the taxpayer's gross income for the year 1950 and asserted a deficiency for that year. As a result of a final decision of the Tax Court of the United States in 1955 sustaining the deficiency for 1950, an adjustment is authorized for the year 1949.

(2) The amount of the adjustment is computed as follows:

Tax previously determined for 1949	$7,788
Net income for 1949 upon which tax previously determined was based	30,000
Less: Rents erroneously included	5,000
Balance	25,000
Adjustment for contributions (add 15 percent of $5,000)	750
Net income as adjusted	25,750
Tax as recomputed	6,152
Tax previously determined	7,788
Difference	1,636
Amount of adjustment to be refunded or credited	1,636

(3) In accordance with the provisions of paragraph (c) of this section, the recomputation to determine the amount of the adjustment does not take into consideration the item of $6,000 representing interest received, which was omitted from gross income, or the item of $4,500 representing interest paid, for which no deduction was allowed.

§ 1.1314 (a)–2 *Adjustment to other barred taxable years.* (a) An adjustment is authorized under section 1311 with respect to a taxable year or years other than the year of the error, but only if

all of the following requirements are met:

(1) The tax liability for such other year or years must be affected, or must have been treated as affected, by a net operating loss deduction (as defined in section 172) or by a capital loss carryover (as defined in section 1212).

(2) The net operating loss deduction or capital loss carryover must be determined with reference to the taxable year with respect to which the error was made.

(3) On the date of the determination, the adjustment with respect to such other year or years must be prevented by some law or rule of law, other than sections 1311 through 1315 and section 7122 and the corresponding provisions of prior revenue laws.

(b) The amount of the adjustment for such other year or years shall be computed in a manner similar to that provided in § 1.1314 (a)–1. The tax previously determined for such other year or years shall be ascertained. A recomputation must then be made to ascertain the increase or decrease in tax, if any, resulting solely from the correction of the net operating loss deduction or capital loss carryover. The difference between the tax previously determined and the tax as recomputed is the amount of the adjustment. In the recomputation, no consideration shall be given to items other than the following: (1) The items upon which the tax previously determined for such other year or years was based, and (2) the net operating loss deduction or capital loss carryover as corrected. In determining the correct net operating loss deduction or capital loss carryover, no changes shall be made in taxable income (net income in the case of taxable years subject to the provisions of the Internal Revenue Code of 1939 or prior revenue laws), net operating loss or capital loss, for any barred taxable year, except as provided in section 1314. Section 172 and the corresponding provisions of prior revenue laws, and the regulations promulgated thereunder, prescribe the methods for computing the net operating loss deduction. Section 1212 and the corresponding provisions of prior revenue laws, and the regulations promulgated thereunder, prescribe the methods for computing the capital loss carryover.

(c) A net operating loss deduction or a capital loss carryover determined with reference to the year of the error may affect, or may have been treated as affecting, a taxable year with respect to which an adjustment is not prevented by the operation of any law or rule of law. In such case, the appropriate adjustment shall be made with respect to such open taxable year. However, the redetermination of the tax for such open taxable year is not made pursuant to sections 1311 to 1315, inclusive, and the adjustment for such open year and the method of computation are not limited by the provisions of said sections.

(d) The application of this section may be illustrated by the following example:

Example. The taxpayer is a corporation which makes its income tax returns on a calendar year basis. Its net income in 1949, computed without any net operating loss deduction was $10,000, but because of a net operating loss deduction in excess of that amount resulting from a carryback of a net operating loss claimed for 1950, it paid no income tax for 1949. On its return for 1950 it showed an excess of deductions over gross income of $14,000, and it paid no income tax for 1950. For the year 1951 its net income, computed without any net operating loss deduction, was $15,000, and a net operating loss deduction of $13,000 was allowed ($4,000 of which was attributable to the carryover from 1950 and $9,000 of which was attributable to the carryback of a net operating loss of $9,000 sustained in 1952). In 1957 the assessment of deficiencies or the allowance of refunds for all of said years are barred by the statute of limitations.

(i) A Tax Court decision entered in 1957 with respect to the taxable year 1953 constituted a determination under which an adjustment is authorized to the taxable year 1950, the year with respect to which the error was made. This adjustment increases income for said year by $15,000, so that instead of a net operating loss of $14,000, its corrected net income is $1,000 for 1950, and the tax computed on that income will be assessed as a deficiency for 1950. An adjustment is authorized under this section with respect to each of the years 1949 and 1951, as the tax liability for each year was treated as affected by a net operating loss deduction which was determined by a computation in which reference was made to the year 1950. In the recomputation of the tax for 1949, the net operating loss carryback from 1950 will be eliminated, and in the recomputation of the tax for 1951 the net operating loss carryover from 1950 will be eliminated; for each of the years 1949 and 1951 there will be an adjustment which will be treated as a deficiency for said year.

(ii) Assuming the same facts except that the correction with respect to the year 1950 increases the net operating loss for said year from $14,000 to $20,000. As a result of this correction, there will be no change in the tax due for 1949 and 1950. However, the net operating loss deduction for 1951 is recomputed to be $19,000, the aggregate of the $10,000 carryover from 1950 and the $9,000 carryback from 1952 (the carryover from 1950 is the excess of the $20,000 net operating loss for 1950 over the $10,000 net income for 1949, such 1949 income being determined without any net operating loss deduction). As a result of the correction of the net operating loss deduction for 1951, the tax recomputation will show no tax due for said year, and the adjustment for 1951 will result in a refund or credit of the tax previously paid. Moreover, computations resulting from this adjustment will disclose a net operating loss carryover from 1952 to 1953 of $4,000, that is, the excess of the $9,000 net operating loss for 1952 over the $5,000 net income for 1951 (such net income for 1951 being computed as the $15,000 reduced by the carryover of $10,000 from 1950, the carryback from 1952 not being taken into account). A further adjustment is authorized under section 1311 with respect to any subsequent barred year in which the tax liability is affected by a carryover of the net operating loss from 1952, inasmuch as such carryover from 1952 has been determined by a computation in which reference was made to 1950, the taxable year of the error.

§ 1.1314 (b) *Statutory provisions; amount and method of adjustment; method of adjustment.*

SEC. 1314. *Amount and method of adjustment.* * * *

(b) *Method of adjustment.* The adjustment authorized in section 1311 (a) shall be made by assessing and collecting, or refunding or crediting, the amount thereof in the same manner as if it were a deficiency determined by the Secretary or his delegate with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year or years with respect to which an amount is ascertained under subsection (a), and as if on the date of the determination one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year or years. If, as a result of a determination described in section 1313 (a) (4), an adjustment has been made by the assessment and collection of a deficiency or the refund or credit of an overpayment, and subsequently such determination is altered or revoked, the amount of the adjustment ascertained under subsection (a) of this section shall be redetermined on the basis of such alteration or revocation and any overpayment or deficiency resulting from such redetermination shall be refunded or credited, or assessed and collected, as the case may be, as an adjustment under this part. In the case of an adjustment resulting from an increase or decrease in a net operating loss which is carried back to the year of adjustment, interest shall not be collected or paid for any period prior to the close of the taxable year in which the net operating loss arises.

§ 1.1314 (b)–1 *Method of adjustment.* (a) If the amount of the adjustment ascertained pursuant to § 1.1314 (a)–1 or § 1.1314 (a)–2 represents an increase in tax, it is to be treated as if it were a deficiency determined by the Commissioner with respect to the taxpayer as to whom the error was made and for the taxable year or years with respect to which such adjustment was made. The amount of such adjustment is thus to be assessed and collected under the law and regulations applicable to the assessment and collection of deficiencies, subject, however, to the limitations imposed by § 1.1314 (c)–1. Notice of deficiency, unless waived, must be issued with respect to such amount or amounts, and the taxpayer may contest the deficiency before the Tax Court of the United States or, if he chooses, may pay the deficiency and later file claim for refund. If the amount of the adjustment ascertained pursuant to § 1.1314 (a)–1 or § 1.1314 (a)–2 represents a decrease in tax, it is to be treated as if it were an overpayment claimed by the taxpayer with respect to whom the error was made for the taxable year or years with respect to which such adjustment was made. Such amount may be recovered under the law and regulations applicable to overpayments of tax, subject, however, to the limitations imposed by § 1.1314 (c)–1. The taxpayer must file a claim for refund thereof, unless the overpayment is refunded without such claim, and if the claim is denied or not acted upon by the Commissioner within the prescribed time, the taxpayer may then file suit for refund.

(b) For the purpose of the adjustments authorized by section 1311, the period of limitations upon the making of an assessment or upon refund or credit, as the case may be, for the taxable year of an adjustment shall be considered as if, on the date of the determination, one year remained before the expiration of such period. The Commissioner thus has one year from the date of the determination within which to mail a notice of deficiency in respect of the amount of the adjustment where such adjustment is treated as if it were a deficiency. The

issuance of such notice of deficiency, in accordance with the law and regulations applicable to the assessment of deficiencies will suspend the running of the 1-year period of limitations provided in section 1314 (b). In accordance with the applicable law and regulations governing the collection of deficiencies, the period of limitation for collection of the amount of the adjustment will commence to run from the date of assessment of such amount. (See section 6502 and corresponding provisions of prior revenue laws.) Similarly, the taxpayer has a period of one year from the date of the determination within which to file a claim for refund in respect of the amount of the adjustment where such adjustment is treated as if it were an overpayment. Where the amount of the adjustment is treated as if it were a deficiency and the taxpayer chooses to pay such deficiency and contest it by way of a claim for refund, the period of limitation upon filing a claim for refund will commence to run from the date of such payment. See section 6511 and corresponding provisions of prior revenue laws.

(c) The amount of an adjustment treated as if it were a deficiency or an overpayment, as the case may be, will bear interest and be subject to additions to the tax to the extent provided by the internal revenue laws applicable to deficiencies and overpayments for the taxable year with respect to which the adjustment is made. In the case of an adjustment resulting from an increase or decrease in a net operating loss which is carried back to the year of adjustment, interest shall not be collected or paid for any period prior to the close of the taxable year in which the net operating loss arises.

(d) If, as a result of a determination provided for in § 1.1313 (a)–4, an adjustment has been made by the assessment and collection of a deficiency or the refund or credit of an overpayment, and subsequently such determination is altered or revoked, the amount of the adjustment ascertained under § 1.1314 (a)–1 and § 1.1314 (a)–2 shall be redetermined on the basis of such alteration or revocation, and any overpayment or deficiency resulting from such redetermination shall be refunded or credited, or assessed and collected, as the case may be, as an adjustment under section 1311. For the circumstances under which such an agreement can be altered or revoked, see paragraph (d) of § 1.1313 (a)–4.

§ 1.1314 (c) *Statutory provisions; amount and method of adjustment; adjustment unaffected by other items.*

SEC. 1314. *Amount and method of adjustment.* * * *

(c) *Adjustment unaffected by other items.* The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under this part, shall not be diminished by any credit or set-off based upon any item other than the one which was the subject of the adjustment. Other than in the case of an adjustment resulting from a determination under section 1313 (a) (4), the amount of the adjustment under this part, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item other than the one which was the subject of the adjustment.

§ 1.1314 (c)–1 *Adjustment unaffected by other items.* (a) The amount of any adjustment ascertained under § 1.1314 (a)–1 or § 1.1314 (a)–2 shall not be diminished by any credit or set-off based upon any item other than the one that was the subject of the adjustment.

(b) The application of this section may be illustrated by the following examples:

Example (1). In the example set forth in paragraph (e) of §1.1314 (a)–1, if, after the amount of the adjustment had been ascertained, the taxpayer filed a refund claim for the amount thereof, the Commissioner could not diminish the amount of that claim by offsetting against it the amount of tax which should have been paid with respect to the $6,000 interest item omitted from gross income for the year 1949; nor could the court, if suit were brought on such claim for refund, offset against the amount of the adjustment the amount of tax which should have been paid with respect to such interest. Similarly, the amount of the refund could not be increased by any amount attributable to the taxpayer's failure to deduct the $4,500 interest paid in the year 1949.

Example (2). Assume that a taxpayer included in his gross income for the year 1953 an item which should have been included in his gross income for the year 1952. After the expiration of the period of limitations upon the assessment of a deficiency or the allowance of a refund for 1952, the taxpayer filed a claim for refund for the year 1953 on the ground that such item was not properly includible in gross income for that year. The claim for refund was allowed by the Commissioner and as a result of such determination an adjustment was authorized under section 1311 with respect to the tax for 1952. If, in such case, the Commissioner issued a notice of deficiency for the amount of the adjustment and the taxpayer contested the deficiency before the Tax Court of the United States, the taxpayer could not in such proceeding claim an offset based upon his failure to take an allowable deduction for the year 1952; nor could the Tax Court in its decision offset against the amount of the adjustment any overpayment for the year 1952 resulting from the failure to take such deduction.

(c) If the Commissioner has refunded the amount of an adjustment under section 1311, the amount so refunded may not subsequently be recovered by the Commissioner in any suit for erroneous refund based upon any item other than the one that was the subject of the adjustment.

Example. In the example set forth in paragraph (e) of § 1.1314 (a)–1, if the Commissioner had refunded the amount of the adjustment, no part of the amount so refunded could subsequently be recovered by the Commissioner by a suit for erroneous refund based on the ground that there was no overpayment for 1949, as the taxpayer had failed to include in gross income the $6,000 item of interest received in that year.

(d) If the Commissioner has assessed and collected the amount of an adjustment under section 1311, no part thereof may be recovered by the taxpayer in any suit for refund based upon any item other than the one that was the subject of the adjustment.

Example. In example (2) of paragraph (b) of this section, if the taxpayer had paid the amount of the adjustment, he could not subsequently recover any part of such payment in a suit for refund based upon the failure to take an allowable deduction for the year 1952.

(e) If the amount of the adjustment is considered an overpayment, it may be credited, under applicable law and regulations, together with any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made such overpayment. Likewise, if the amount of the adjustment is considered as a deficiency, any overpayment by the taxpayer of any internal revenue tax may be credited against the amount of such adjustment in accordance with the applicable law and regulations thereunder. (See section 6402 and the corresponding provisions of prior revenue laws.) Accordingly, it may be possible in one transaction between the Commissioner and the taxpayer to settle the taxpayer's tax liability for the year with respect to which the determination is made and to make the adjustment under section 1311 for the year with respect to which the error was made or for a year which is affected, or treated as affected, by a net operating loss deduction or a capital loss carryover from the year of the error.

§ 1.1314 (d)–(e) *Statutory provisions; amount and method of adjustment; no adjustments for years prior to 1932; not applicable to tax imposed by subtitle C.*

SEC. 1314. *Amount and method of adjustment.* * * *

(d) *Periods for which adjustments may be made.* No adjustment shall be made under this part in respect of any taxable year beginning prior to January 1, 1932.

(e) *Taxes imposed by subtitle C.* This part shall not apply to any tax imposed by subtitle C (sec. 3101 and following relating to employment taxes).

§ 1.1315 *Statutory provisions; effective date.*

SEC. 1315. *Effective data*—(a) *In general.* This part shall apply only to determinations (as defined in section 1313 (a)) made after the 90th day after the date of enactment of this title.

(b) *Transitional provision.* Notwithstanding any other provision of this title, section 3801 of the Internal Revenue Code of 1939 shall apply to determinations (as defined in subsection (a) of such section) made on or before such 90th day as if this title had not been enacted.

[F. R. Doc. 55–5578; Filed, July 11, 1955; 8:50 a. m.]

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

INVOLUNTARY LIQUIDATION OF LIFO INVENTORIES

Notice is hereby given that, pursuant to the Administrative Procedure Act, approved June 11, 1946, the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments per-

taining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D. C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in sections 1321 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 342, 917; 26 U. S. C. 1321, 7805).

[SEAL] T. COLEMAN ANDREWS,
Commissioner of Internal Revenue.

The following regulations are hereby promulgated under section 1321 of the Internal Revenue Code of 1954:

§ 1.1321 *Statutory provisions; involuntary liquidation of lifo inventories.*

SEC. 1321. *Involuntary liquidation of lifo inventories*—(a) *Adjustment of taxable income and resulting tax.* If, for any taxable year ending after June 30, 1950, and before January 1, 1955, the closing inventory of a taxpayer inventorying goods under the method provided in section 22 (d) of the Internal Revenue Code of 1939 reflects a decrease from the opening inventory of such goods for such year, and if the taxpayer elects, at such time and in such manner and subject to such regulations as the Secretary or his delegate may prescribe, to have this section apply, and if it is established to the satisfaction of the Secretary or his delegate, in accordance with such regulations that such decrease is attributable to the involuntary liquidation of such inventory as defined in section 22 (d) (6) (B) of the Internal Revenue Code of 1939 (as modified by subsection (b) of this section), and if the closing inventory of a subsequent taxable year, ending before January 1, 1956, reflects a replacement, in whole or in part, of the goods so previously liquidated, then the taxable income of the taxpayer otherwise determined for the year of such involuntary liquidation shall be increased by an amount equal to the excess, if any, of the aggregate cost of such goods reflected in the opening inventory of the year of involuntary liquidation over the aggregate replacement cost, or decreased by an amount equal to the excess, if any, of the aggregate replacement cost of such goods over the aggregate cost thereof reflected in the opening inventory of the year of the involuntary liquidation. The taxes imposed by this chapter (and by chapters 1 and 2 of the Internal Revenue Code of 1939) for the year of such liquidation, for preceding taxable years, and for all taxable years intervening between the year of liquidation and the year of replacement shall be redetermined, giving effect to such adjustments. Any increase in such taxes resulting from such adjustments shall be assessed and collected as a deficiency but without interest, and any overpayment so resulting shall be credited or refunded to the taxpayer without interest.

(b) *Definitions.* For purposes of this section, the term "involuntary liquidation" shall have the meaning given to it in section 22 (d) (6) (B) of the Internal Revenue Code of 1939 and, in addition, it shall mean a failure, as referred to in that section, on the part of the taxpayer due, directly and exclusively, to disruption of normal trade relations between countries. For purposes of this section, the words "enemy" and "war", as used in such section 22 (d) (6) (B), shall be interpreted, pursuant to regulations prescribed by the Secretary or his delegate, in such a way as to apply to circumstances, occurrences and conditions, lacking a state of war, which are similar, by reason of a state of national preparedness, to those which would exist under a state of war.

(c) *Specidl rules.* Subparagraphs (C) and (E) of section 22 (d) (6) of the Internal Revenue Code of 1939, to the extent that they refer to any taxpayer subject to subparagraph (A) of such section or to the adjustments specified in or resulting from the effect of subparagraph (A) of such section, shall apply to a taxpayer subject to this section or to adjustments specified in or resulting from the effect of this section as though they specifically referred to this section. If, for any taxable year ending after June 30, 1950, and before January 1, 1953, subparagraph (C) of such section 22 (d) (6) applies with respect to involuntary liquidations of goods of the same class subject to both subparagraph (A) of such section and to this section, the involuntary liquidations of such goods subject to this section shall be considered for the purpose of such subparagraph (C) as having occurred before the involuntary liquidations of such goods subject to subparagraph (A) of such section 22 (d) (6). For the purpose of this subsection, and with respect to the taxable years covered by this section, the reference in subparagraph (E) of such section 22 (d) (6) to section 734 (d) shall be taken as a reference to section 452 (d) of the Internal Revenue Code of 1939, and, with respect to any taxable year to which any provision of the Internal Revenue Code of 1939 may not be applicable, references in such subparagraph to such provision shall, where applicable, be deemed a reference to the corresponding provision of the Internal Revenue Code of 1954.

§ 1.1321–1 *Involuntary liquidation of lifo inventories.* (a) Section 22 (d) (6) (B) of the Internal Revenue Code of 1939 provides as follows:

(B) *Definition of involuntary liquidation.* The term "involuntary liquidation", as used in this paragraph, means the sale or other disposition of goods inventoried under the method described in this subsection, either voluntary or involuntary, coupled with a failure on the part of the taxpayer to purchase, manufacture, or otherwise produce and have on hand at the close of the taxable year in which such sale or other disposition occurred such goods as would, if on hand at the close of such taxable year, be subject to the application of the provisions of this subsection, if such failure on the part of the taxpayer is due, directly and exclusively, (i) to enemy capture or control of sources of limited foreign supply; (ii) to shipping or other transportation shortages; (iii) to material shortages resulting from priorities or allocations; (iv) to labor shortages; or (v) to other prevailing war conditions beyond the control of the taxpayer.

(b) (1) If, during any taxable year ending after June 30, 1950, and before January 1, 1955, the disruption of normal trade relations between countries, or one or more of the conditions attributable to a state of national preparedness and beyond the control of the taxpayer, as prescribed by section 22 (d) (6) (B) of the Internal Revenue Code of 1939, as modified by section 1321 (b) of the Internal Revenue Code of 1954, should render it impossible during such period for a taxpayer using the last-in first-out inventory method to have on hand at the close of the taxable year a stock of merchandise in kind and description like that included in the opening inventory for the year, or in a quantity equal to that of the opening inventory, the resulting inventory decrease for the year will be regarded, at the election of the taxpayer, as reflecting an involuntary liquidation subject to replacement. If the taxpayer notifies the Commissioner within the period prescribed below that he intends to effect a replacement of the liquidated stock, in whole or in part, and that he desires to have applied in his case the involuntary liquidation and replacement provisions of section 1321, and if he establishes to the satisfaction of the Commissioner the involuntary character of the liquidation to which his stock has been subjected, effect shall be given, when replacement has been made, in whole or in part, but only to the extent made in taxable years ending before January 1, 1956, to an adjustment of taxable income for the year of liquidation in the amount of the difference between the replacement costs incurred and the original inventory cost of the liquidated base stock inventory that is replaced. The notification is to be given within 6 months after the filing by the taxpayer of his income tax return for the year of the liquidation. However, if the liquidation occurs in a taxable year ending after December 31, 1953, the notification may be given at any time within 3 months after the promulgation of regulations under section 1321, or prior to the expiration of the 6-month period following the filing of the return, whichever expiration date later occurs.

(2) If the replacement costs exceed such inventory costs, the taxable income of the taxpayer otherwise computed for the year of liquidation shall be reduced by an amount equal to such excess. If the replacement costs are less than the inventory costs, taxable income otherwise computed for the year of liquidation shall be increased to the extent of such difference. Any deficiency in the income of excess profits tax of the taxpayer, or any overpayment of such taxes, attributable to such adjustment shall be assessed and collected or credited or refunded to the taxpayer without interest.

(c) (1) A failure on the part of the taxpayer to have on hand in his closing inventory for the taxable year merchandise of the kind, description, and quantity of that reflected in his opening inventory will be considered as an involuntary liquidation only if it is established to the satisfaction of the Commissioner that such failure is due wholly to his inability to purchase, manufacture, or otherwise produce and procure delivery of such merchandise during the taxable year of liquidation by reason of the disruption of normal trade relations between countries or by reason of certain war conditions, described in section 22 (d) (6) (B) of the Internal Revenue Code of 1939, as modified by section 1321 (b). Such war conditions are (i) shortages in the source of foreign supply by reason of capture or control by an enemy; (ii) shipping or other transportation shortages; (iii) material shortages resulting from priorities or allocations; (iv) labor shortages; and (v) similar war conditions beyond the control of the taxpayer. For the purpose of the preceding sentence, the words "enemy" and "war" shall be interpreted to apply to circumstances, occurrences, and conditions lacking a state of war, which are similar, by reason of a state of national preparedness, to those which would exist under a state of war.

(2) The various directives, orders, regulations, and allotments issued by the Federal Government in connection with national preparedness are among such circumstances and conditions which might be recognized as effecting an involuntary liquidation under this section. Likewise, a voluntary compliance with a request of an authorized representative of the Federal Government made upon an industry or an important segment thereof, or a voluntary allocation of materials by an industry or important segment thereof sanctioned by the Federal Government, if made in connection with the national preparedness program, might be considered as such a circumstance or condition. Similarly, so much of an inventory decrease as is directly and exclusively attributable to the Federal Government's stockpiling program for periods during which an item is not subject to allotment shall also be considered as subject to the provisions of section 1321. Thus, so much of an inventory decrease as is due wholly to the effect of directives, orders, regulations, or allotments issued pursuant to the Defense Production Act of 1950, as amended (50 U. S. C. App. 2061), or to any other circumstance or condition which is solely dependent upon other action taken by the Federal Government in furtherance of the national preparedness program, ordinarily shall be considered as an involuntary liquidation under section 1321 and this section; however, to the extent that such a decrease is due to the disposition of goods acquired in violation of such directives, orders, regulations, or allotments, such decrease shall not be considered as such an involuntary liquidation. An inventory decrease due directly and exclusively to a disruption of normal trade relations between countries shall be considered as an involuntary liquidation subject to the rules and requirements prescribed in this section, including the requirement that the taxpayer establish to the satisfaction of the Commissioner the cause of the involuntary liquidation. A disruption of normal trade relations between countries may be reflected by unusual export limitations imposed by a foreign government, by unusual exchange restrictions, or by other unusual circumstances or conditions beyond the control of the taxpayer.

(3) A voluntary shift by the taxpayer, in the exercise of business judgment, to merchandise of a different character, description, or use, or to merchandise processed out of a substantially different kind of raw materials while raw materials of the type originally used are still available will not be considered as an involuntary liquidation notwithstanding the fact that such a shift in merchandise stocked was prompted by a shifting market demand attributable to the above conditions. The term "involuntary liquidation" presupposes a physical inability to maintain a normal inventory as distinguished from a financial or business disinclination on the part of the taxpayer to do so.

(d) If the taxpayer would have the involuntary liquidation and replacement provisions applicable with respect to any inventory decrease, he must so elect within the time prescribed by this section. In making such election, the taxpayer shall attach to his return and make a part thereof, or he shall furnish separately to the Commissioner, a statement setting forth the following matters: (1) The desire of the taxpayer to invoke the involuntary liquidation and replacement provisions; (2) a detailed list or other identifying description of the items of merchandise claimed to have been subjected to involuntary liquidation and the extent to which replacement is intended; (3) the circumstances relied upon as rendering the taxpayer unable to maintain throughout the taxable year a normal inventory of the items involved, including evidence of the applicable inventory control figures for the beginning and the close of the taxable year submitted to the appropriate Federal agency in control of defense production (or if none, a statement to that effect), allotments applied for, allotments received, and reason for failure to place allotments received; (4) detailed proof of such circumstances to the extent that they may not be the subject-matter of common knowledge; (5) a full description of what efforts were made on the part of the taxpayer to effect replacement during the taxable year and the result of such efforts; and (6) in the case of an election made pursuant to an extension of time granted by the Commissioner, the circumstances relied upon as justifying the election at such time, together with a disclosure of the extent, if any, to which replacements have already been made.

(e) The election of the taxpayer to treat an involuntary decrease of inventory as subject to the replacement adjustments is to be exercised separately for each taxable year reflecting such a decrease and the election, once exercised with respect to a given year, shall be irrevocable with respect to the particular decrease involved and its replacement, and shall be binding for the year of liquidation, the year of replacement, and all prior, intervening, and subsequent years to the extent that such prior, intervening, and subsequent years are affected by the adjustments authorized. The ultimate replacement and the resulting adjustment for the year of liquidation may have consequences, among others, in the earnings and profits of intervening years and the inventory accounts of subsequent years. They may have consequences in the prior years by reason of adjustments in net operating loss or unused excess profits credit carrybacks, and in intervening and subsequent taxable years by reason of adjustments in carry-overs. Adjustments are to be made for the several years affected consistent with the adjustments made for the year of liquidation. Detailed records shall be maintained such as will enable the Commissioner, in his examination of the taxpayer's returns for the year of replacement, readily to verify the extent of the inventory decrease claimed to be involuntary in character and the facts upon which such claim is based, all subsequent inventory increases and decreases, and all other facts material to the replacement adjustment authorized. For taxable years subject to the Internal Revenue Code of 1939, an election under § 39.22 (d)–7 (e) of Regulations 118 or § 29.22 (d)–7 of Regulations 111 to have the involuntary liquidation and replacement provisions of section 22 (d) (6) of the Internal Revenue Code of 1939 apply with respect to any inventory decrease for taxable years to which such section applies, shall be given the same effect as if such election had been made under this section. (See section 7807 (b) (2).)

(f) Notwithstanding the ultimate purchase price or the cost of production ultimately incurred by the taxpayer in effecting replacement of a stock involuntarily liquidated, the merchandise reflecting the replacement shall be taken into purchases and included in the closing inventory for the year of replacement, and shall be included in the inventories of subsequent taxable years, at the inventory cost figure of the merchandise replaced.

(g) The goods reflected in any inventory increase in a year subsequent to a year of involuntary liquidation, to the extent that they constitute items of the kind and description liquidated in prior years, whether or not in a year of involuntary liquidation, shall be deemed, in the order of their acquisition, as having been acquired by the taxpayer in replacement of like goods most recently liquidated and not previously replaced. In a case involving involuntary liquidations of goods of the same class subject to the provisions of both section 22 (d) (6) (A) of the Internal Revenue Code of 1939 and section 1321 of the Internal Revenue Code of 1954, the involuntary liquidations of such goods subject to the provisions of section 1321 shall, for the purpose of replacements made in taxable years ending before January 1, 1953, be considered as having occurred prior to the involuntary liquidations of such goods subject to the provisions of section 22 (d) (6) (A) of the Internal Revenue Code of 1939. To the extent that the items of increase are allocated to items liquidated voluntarily, no adjustment will be required or permitted. Such replacement merchandise will be carried in the inventory at its actual cost of acquisition. To the extent that replacements are allocated to items involuntarily liquidated, however, the provisions of this section shall apply, both with respect to adjustments for the year of liquidation and other taxable years affected and with respect to inventory computations for the year of replacement and all subsequent taxable years.

(h) In some cases it may appear that, at the time of the filing of the income tax return for the year of replacement, or within three years thereafter, an adjustment with respect to the income or excess profits taxes for the year of the involuntary liquidation, or for some prior, intervening, or subsequent taxable year, is prevented by the running of the statute of limitations, by the execution of a closing agreement, by virtue of a court decision which has become final, or by reason of some other provision or rule of law other than section 7122 (relating to compromises) and other than the inventory replacement provisions. The adjustments provided for in connection with the involuntary liquidation and re-

placement of inventory shall nevertheless be made, but only if, within a period of three years after the date of the filing of the income tax return for the year of replacement, a notice of deficiency is mailed or a claim for refund is filed. No credit or refund will be allowed under such circumstances, whether within or without such three-year period, in the absence of a claim for refund duly filed; nor will a resulting deficiency be assessed or collected under section 6213 (d) relating to waivers of restrictions. The issuance of the statutory notice of deficiency or the filing of a claim for refund are statutory conditions upon which depend the provisions of section 22 (d) (6) (E) of the Internal Revenue Code of 1939, referred to in section 1321 (c) of the Internal Revenue Code of 1954. The adjustment authorized by section 22 (d) (6) (E) of the Internal Revenue Code of 1939 is limited further to the tax attributable solely to the replacement adjustments. The amount of the adjustment shall be computed by reference to the amount of the tax previously determined, and without regard to factors affecting the taxable year involved to which no effect was given in such prior determination. The tax previously determined shall be ascertained in accordance with the principles stated in section 452 (d) of the Internal Revenue Code of 1939. Any deficiency paid or any overpayment credited or refunded under these circumstances shall not be subject to recovery on a claim for refund or a suit for the recovery of an erroneous refund in any case in which such claim or suit is based upon factors other than those giving rise to the adjustments made.

§ 1.1321–2 *Liquidation and replacement of lifo inventories by acquiring corporations.* For additional rules in the case of certain corporate acquisitions referred to in section 381 (a), see section 381 (c) (5) and the regulations thereunder.

[F. R. Doc. 55–5577; Filed, July 11, 1955; 8:49 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 907]

[Docket No. AO–212–A10]

HANDLING OF MILK IN MILWAUKEE, WIS., MARKETING AREA

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

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk, of the recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Milwaukee, Wisconsin, marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., not later than the close of business the 5th day after publication of this decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The hearing, on the record of which the proposed amendment to the tentative marketing agreement and to the order, as amended, was formulated, was conducted at Milwaukee, Wisconsin, June 15 and 16, 1955, pursuant to notice thereof which was issued on June 8, 1955 (20 F. R. 4140).

The material issues on the record were:

1. Modification of the supply-demand adjustment;
2. Class I price differentials;
3. Calculation of producer bases;
4. Amount of allowable shrinkage in Class IV and allocation of shrinkage;
5. Verification and certification of use of milk in nonfluid milk plants;
6. Use of midwest condensary paying prices as an alternative formula for establishing the Class III price; and
7. Various changes in order language for the purpose of bringing the language up to date, particularly to clarify language with respect to classification and allocation.

Findings and conclusions. The following findings and conclusions are based upon evidence contained in the record of the hearing:

1. *Supply-demand adjustment.* The supply-demand adjustment provisions should be changed in a manner to conform with changes in the corresponding provisions of the Chicago order.

An automatic adjustment of Class I and Class II prices is provided in the order based on the volume of milk received and sales under the Chicago order. The supply-demand ratio is the percentage relationship, during the most recent 12-month period for which data are available, of sales of Class I and Class II milk under the Chicago order to receipts of milk from producers under that order. The difference of this percentage from 72 percent is multiplied by three cents for each full percent of difference, to arrive at the price adjustment.

Proposals were made by producer associations to modify or suspend the supply-demand price adjustment in the order. The general purpose of the various proposals was to lessen or eliminate the price deductions now resulting from the adjustment factor.

One proposal was made to combine the milk receipts and utilization in the Milwaukee and Chicago markets to give a broader basis for the price adjustment. The supply-demand price adjustment in this market is now based only on data for receipts and utilization in the Chicago market. The average level of utilization in the Milwaukee market is higher than that experienced in the Chicago market. The fact that this market is a smaller market, with an individual-handler method of pooling, and that it can depend on the Chicago pool for reserve supplies, undoubtedly influences this difference in utilization.

In view of these differences in the character of the two markets, it is apparent that other parts of the supply-demand provisions would need to be re-examined and probably reconstructed if the data for the two markets were combined. Also, the rate of adjustment, which is now three cents per full percent of difference of the supply-demand ratio from 72 percent, might need to be different. Furthermore, unless the same change could be made under the Chicago order, the price relationship between the two markets would be disturbed.

Testimony during the hearing pointed to the need for coordinating the prices in this market with those for the Chicago market. It was indicated that this market obtains reserve supplies from Chicago pool plants. The market is within the Chicago milkshed and there is a general intermingling of producers for the two markets. Producers readily shift from one market to the other. These facts substantiate a continuance of the present order price relationship to the Chicago market. Milwaukee area prices are equivalent to the Chicago order prices adjusted for the mileage zone in which the Milwaukee market is located.

In a recommended decision on proposals to amend the Chicago order issued June 29, 1955, on the record of a hearing held on May 9 and 10, 1955, it is concluded that certain modifications should be made in the supply-demand price adjustment under that order. The proposed modification would add a factor governing price adjustment, which would be the difference of the current supply-demand ratio from the corresponding ratio calculated three months previously. This difference would be added to or subtracted from the current supply-demand ratio (depending on the direction of the change) and the result would be termed an "adjusted supply-demand ratio." The rate of two cents per full percent of difference of this "adjusted supply-demand ratio" from 72 percent would be the adjustment applied to Class I and Class II prices. In the recommended decision on the Chicago order, it is concluded that this would be an appropriate modification of the supply-demand adjustment so as to hasten changes in prices when there is a change in the trend of utilization.

In view of the close relationship of this market to the Chicago market, a similar change in the supply-demand adjustment for this market appears appropriate. Examination of the effect of such a supply-demand adjustment in recent years, shows that it would have resulted in about the same range of price adjustment as the adjustments effective since mid–1952 (including the effect of the 24-cent limitation). The modified supply-demand adjustment would have resulted in a quicker response at times when there was a change in the trend of utilization. It would have resulted in an earlier increase of Class I and Class II price differentials in response to changing supply and demand conditions in the

latter part of 1954 and early 1955. The supply-demand adjustment effective under the order during this period remained at the lower limit of 24 cents until April, 1955. The supply-demand adjustment, as proposed to be modified, would have resulted in a minus adjustment of eight cents per hundredweight in May 1955 as compared to the adjustment of minus 18 cents which was effective. For June this year the adjustment would have been a minus 4 cents instead of 15 cents.

This appears to be an appropriate modification of the supply-demand adjustment based on the evidence in the record.

Issues No. 2, 3, 4, 5, 6, and 7. Action on issues numbered 2 through 7, inclusive, is reserved for a further decision on this record.

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

(b) The 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 amended, and as hereby proposed to be further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

Rulings on proposed findings and conclusions. Briefs were filed which contained statements of fact, proposed findings and conclusions, and arguments with respect to the provisions of the proposed amendments. Every point covered in the briefs was carefully considered along with the evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. To the extent that the findings and conclusions proposed in the briefs are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of the facts found and stated in connection with the conclusions in this recommended decision.

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

1. In § 907.51 (a) delete the words "current supply-demand ratio" and the words "supply-demand ratio", and substitute therefor, in both instances, the words "adjusted supply-demand ratio".

2. In § 907.51 (a) delete the words "3 cents", and substitute the words "2 cents".

3. In § 907.51 (e) delete subparagraph (4) and substitute the following:

(4) If the current supply-demand ratio is greater or less than the current supply-demand ratio computed by the market administrator during the third delivery period immediately preceding, add or subtract the difference, respectively, to or from the percentage computed pursuant to subparagraph (3) of this paragraph. The result is the "adjusted supply-demand ratio"; and if the current supply-demand ratio does not differ from that computed during the third delivery period preceding, the current supply-demand ratio shall be the, "adjusted supply-demand ratio".

Issued at Washington, D. C., this 7th day of July, 1955.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 55-5592; Filed, July 11, 1955; 8:52 a. m.]

[7 CFR Part 972]

[Docket No. AO-177-A14]

HANDLING OF MILK IN TRI-STATE MARKETING AREA

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

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to a proposed marketing agreement and order, as amended, regulating the handling of milk in the Tri-State marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the 10th day after publication of this decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The hearing, on the record of which the proposed marketing agreement and order, as amended, were formulated, was conducted at Gallipolis, Ohio, on January 18, 19, and 20, 1955, pursuant to notice thereof issued on December 28, 1954 (19 F. R. 9426).

The material issues of record were concerned with the following:

(1) Establishment of a separate Federal order covering the "Huntington-Ashland marketing area," which would include the counties of Boyd and Greenup in Kentucky; the counties of Lawrence, Jackson, Gallia, and Meigs in Ohio; and the counties of Cabell, Jackson, Mason, and Wayne in West Virginia.

(2) Expansion of the marketing area to include certain additional territory.

(3) Revision of the "handler" definition relative to the handling of milk by cooperatives.

(4) Revision of definitions of classes of milk and establishment of a new class of milk (Class IV) for pricing purposes.

(5) Modification of the level of Class I milk and Class II milk prices and price differentials between the various districts of the marketing area.

(6) The application of the Class I price provisions to milk distributed in one district from a plant located in another district.

(7) Exemption from the order for plants supplying milk in the low production season only.

(8) Inclusion of a provision for the year-round allocation of Class I sales to "supply" plants bases upon amount of milk utilized in Class I during the low production season.

(9) Revision of the pricing formula for Class III milk (manufacturing uses).

(10) Certain changes in order language for clarity and administrative purposes.

(11) The emergency nature of marketing conditions.

Findings and conclusions. (1) A separate marketing order for the "Huntington-Ashland market" should not be established.

A producer's organization proposed that a separate marketing order be established for the Huntington-Ashland market. Such order would regulate a marketing area consisting of Boyd and Greenup Counties in Kentucky; Lawrence, Jackson, Gallia, and Meigs Counties in Ohio; and Cabell, Jackson, Mason, and Wayne Counties in West Virginia.

The producer members of the proponent organization are regular suppliers of milk to the proposed separate marketing area; their sales of milk are made almost exclusively to handlers with plants located in Huntington and Ashland. The principal reasons offered to justify the establishment of a separate order for the Huntington-Ashland market were as follows: (1) the present 30-cent spread, between districts, in Class I price differentials has encouraged handlers from other districts to extend their milk routes into the Huntington-Ashland market and to take Class I sales away from producers who normally supply this market; and (2) the redefinition of "fluid milk plant" made effective in May 1954 has caused milk from "outside" sources to be brought into the market and in some cases to be placed in a higher classification than locally produced milk. The combination of these factors has resulted in a lower-valued utilization of locally produced milk and reduced returns to regular pro-

ducers (a problem alleged to be peculiar to the Huntington-Ashland portion of the Tri-State marketing area). Proponents contended further than establishment of a separate market order would not create any difficult administrative problems.

Testimony was introduced into the record also to show that the Huntington district is characteristically different from the rest of the Tri-State marketing area. Proponents stated that the Huntington district is a fluid milk market without manufacturing facilities and without the problem, faced by the remainder of the Tri-State area, of disposing of surplus milk; that the Huntington market is basically an industrial area with very little agricultural activity; and that the Huntington market is a centralized and concentrated community market in contrast to the scattered nature of the other segments of the Tri-State marketing area.

Opposition of other producer groups to this proposal was based upon the following concepts: (1) the problems set forth by its proponents can be resolved readily within the framework of the present order; (2) the Huntington-Ashland district is not a separate and distinct milk marketing area since it is dependent upon other districts for part of its milk supply and also as a market for some of its producer milk; and (3) creation of a separate market order for the Huntington-Ashland area would not in any way change the economics of marketing within the Tri-State marketing area as a whole.

The differences in producer prices between the Huntington district (which includes Ashland) and the other districts of the marketing area were established specifically for the purpose of encouraging a flow of milk into the Huntington area from an area where milk supplies were in excess. Producer milk received at Huntington and Ashland plants has been and still is insufficient to fill the regular requirements of the Huntington district during the low production season of the year. For example, in November 1954, producer receipts were about 5,147,000 pounds while Class I and Class II usage was about 5,297,000 pounds. In December 1954, the shortage of producer milk was even greater: producer receipts were only 5,499,000 pounds and Class I and Class II usage was 5,879,000 pounds. The actual shortage of locally produced milk was considerably greater than is shown by these data since such figures do not reflect the sales made in the Huntington district by distributors located in other districts. In view of all of these factors it may be concluded that the Huntington district still is deficient in local milk supply at least five months out of the year. The primary reason for displacement of producer milk lies in the wide seasonal variation in the production of milk in the Huntington-Ashland area. It is noted that on an annual basis the supply-demand relationship in this area is fairly well in balance and that leveling of the seasonal production pattern on the basis of the current annual volume would contribute greatly to a solution of the problems set forth by proponents.

While it may be true that the Tri-State area as a whole does differ from many other federal order marketing areas in that it consists of several widely separated communities, still the several segments of the marketing area do have certain common marketing characteristics and problems. There are mutual areas of supply as well as mutual markets. For example, Meigs County, Ohio, is supplied with milk from handlers located in Marietta, Athens, Gallipolis, Ashland, and Huntington; Pike County, Ohio, is served from Portsmouth, Athens, and Jackson; Jackson County, West Virginia, is served from Ashland, Huntington, Gallipolis, and Athens. In fact, it is difficult to find any instance in which the particular district is served only by handlers located in that district or a district where handlers confine their sales to such district alone.

A separate order would not change the economics of the milk supply and demand relationships that exist throughout the Tri-State area; therefore, the price relationships among the various important segments of the entire market might be expected to be the same whether such area is regulated by one, or more than one, order. A separate order for Huntington-Ashland would not necessarily alter the inter-district movements of milk which are currently taking place and are even greater than in prior years. Also, a separate order in and of itself would not change the seasonal production pattern which appears to be a main element in the problems of producers for the Huntington district.

It is concluded from consideration of the above that a separate order for the Huntington-Ashland market should not be established.

(2) The present marketing area should be expanded.

Other proposals concerning the marketing area definition requested that the presently defined area be expanded to include certain additional territories now being served by handlers under the order. A producer organization requested inclusion of Greenup County, Kentucky, Lawrence County (now partly included), Gallia County (now partly included), Jackson County, Pike County (now partly included), Ohio; and Cabell County (now partly included), Jackson County, Mason County (now partly included), and Wayne County (now partly included), West Virginia. A handlers' group requested the addition of Carter County, Kentucky. It was contended, in general, that the marketing area should be so expanded because (1) political subdivisions below the county level are difficult of delineation from a marketing standpoint and that the present definition in terms of townships leads to considerable confusion, and (2) the wholesale and retail routes of handlers have expanded into several communities adjacent to the present marketing area.

Handlers from Athens, Gallipolis, Huntington, and Ashland are now selling milk in Jackson County, West Virginia. This county is now undergoing considerable industrial development and is a potentially large market for handlers under the Tri-State order. Inclusion of this county was opposed by a milk distributor who operates a plant located in the county. This distributor testified that he is paying producers on the basis of the Charleston, West Virginia, prices which are currently, and usually have been, equal to or higher than prices under the Tri-State order. It does not appear that Tri-State handlers are at a competitive disadvantage with the unregulated handler since they have been able to develop business in Jackson County in the absence of regulation and no other competitive problem involving farm prices for milk was presented. It is concluded that the marketing area should not be expanded to include Jackson County, West Virginia.

Handlers from Ashland are currently selling milk in Carter County, Kentucky. Proponent contended that Ashland handlers have developed a market for pasteurized milk in this county. Proponent further contended that he is encountering unfair competition in Carter County from two unregulated milk distributors, one located at Olive Hill, and another at Morehead, who pay lower than order prices to their farmers. Inclusion of Carter County under the order was opposed by the distributor whose plant is located at Morehead, Kentucky. This distributor stated that about 20 percent of his business is done in Carter County and that he would not be able to continue operations if he were forced to pay Tri-State prices for his milk supply.

It should be noted that although the proponent handler stated that his delivery routes extend as far as Morehead, the location of the plant of his principal competitor for the Carter County market, extension of the marketing area to include Morehead was not requested by proponent. The record does not indicate why competition from the Morehead distributor is unfair in a portion of Carter County while apparently not unfair at Morehead. Proponent did not show that competition from non-regulated handlers is causing any greater hardship than might be experienced in any fringe sales area. It is not reasonable to assume that because a competitive milk distributor sells a small quantity of milk in a particular community or county that such fact in itself is sufficient reason for coverage of such area by regulation. It is concluded that the Tri-State marketing area should not be expanded to include Carter County, Kentucky.

No opposition was expressed to an expansion of the marketing area to include in their entirety, Gallia, Lawrence, and Meigs Counties in Ohio; Greenup County in Kentucky; and Cabell, Mason, and Wayne Counties in West Virginia. Proponents stated that the inclusion of these counties would clarify the marketing area limits and that no additional distributors operate in such counties at this time. The record indicates further that because of their location in relation to the presently defined districts of the marketing area, it may be expected that competition among regulated handlers in such counties will increase and that such counties should be separated into districts for pricing purposes. It is con-

cluded, therefore, that these counties should be included under the order.

The various districts of the marketing area should be modified to accommodate the new counties added. Two proposals were offered relative to Greenup County, Kentucky: (a) One proposal was that this county should be included in the Huntington district, (b) the second proposal was that the southeastern part of the county should be in the Huntington district and that the northwestern part of the county should be included in the Scioto district. Proponents stated that the county should be divided since Ashland handlers' sales are confined primarily to the southeastern half of the county and Portsmouth handlers' sales are confined primarily to the northwestern half of the county. Since the main purpose of regulation is to set minimum producer prices to handlers and there are no fluid milk plants currently located in Greenup County, such evidence does not support division of the county between two districts. Such a division would not change the competitive conditions now existing between Ashland and Portsmouth handlers and might in the future raise complicating administrative problems. It is concluded that Greenup County, in its entirety should remain in the Huntington district.

The districts of the Tri-State marketing area should be designated as follows: (a) Huntington district: Boyd and Greenup Counties in Kentucky; Lawrence County in Ohio; and Cabell and Wayne Counties in West Virginia; (b) Gallipolis-Scioto district: Gallia, Meigs, Scioto, and Jackson Counties in Ohio; the townships of Beaver, Camp Creek, Jackson, Marion, Newton, Pee Pee, Scioto, Seal, and Union in Pike County, Ohio; and Mason County, West Virginia; (c) Athens district: Athens County, Ohio; the townships of Belpre, Marietta, and Muskingum, in Washington County, Ohio; and Lubeck, Parkersburg, Tygart, and Wiliams Magisterial districts in Wood County, West Virginia.

This division is based upon the general conditions of milk supply and demand existing in the Tri-State area. As explained in a later part of this decision the prices in the districts are established so as to encourage production of an adequate supply of milk for the market and to encourage the optimum utilization of available producer milk supplies. The Scioto district has been jointed with the Gallipolis district because of the extremely short supply of milk in Scioto and the need to encourage an increased supply.

(3) The handler definition should be modified by deleting paragraph (b) of § 972.16 which provides that cooperative associations may be considered handlers under the order during the flush season of milk production for the purpose of diverting producer milk from a fluid milk plant to a non-fluid milk plant.

A producer group proposed that the handler definition in the order should be revised so that a cooperative association may (a) become a handler on a year-round basis in order to divert producer milk from a fluid milk plant to a non-fluid milk plant, and (b) service handlers with milk by purchasing milk from sources other than its producer members.

Testimony in the hearing record shows that the proposal would serve no useful purpose under the present order which provides for individual-handler pools. Under the prevailing pooling plan cooperative associations may perform the services of diversion of producer milk in the flush season or arrange to procure milk when needed from other sources than their members in the short season without these special provisions in the order. Such paragraph did serve, of course, a useful purpose in the order under the marketwide pool which previously existed by retaining diverted producer milk in the pool. The elimination of this paragraph also will relieve a cooperative association disposing of producer milk for manufacturing from having to pay the administrative assessment as a handler. Under the circumstances no assessment should be applied since the milk so handled would not be regulated.

(4) The provisions of the order relative to the classification of milk should be revised.

Producer groups proposed raising to Class I milk from Class II milk all skim milk and butterfat disposed of in fluid form as cream, any mixture of cream and milk containing 6 percent or more of butterfat, and buttermilk. It was also proposed to include milk and butterfat used for eggnog in Class I, and to redesignate the present Class III milk as Class II milk.

Two handlers proposed redefining Class III milk and adding a new classification (Class IV) for skim milk and butterfat used to produce all products presently included in Class III milk, except that used to produce ice cream, ice cream mix, and cottage cheese.

In view of the above proposals and analysis of the hearing record, it is concluded that three classes of milk should be maintained. However, the definition of Class I milk should be changed to include skim milk and butterfat used to produce the products presently classified in Class II milk plus eggnog, and a new definition of Class II milk be established to include skim milk and butterfat used to produce ice cream, ice cream mix, frozen desserts, and cottage cheese (presently included in Class III milk).

Testimony introduced into the record indicates that health regulations in the marketing area require that Grade A milk be used to produce the products added to Class I milk, i. e., buttermilk, cream, mixes of milk (or skim milk) and cream, and eggnog. Buttermilk, cream, and such mixes of milk and cream are sold by handlers on a year-round basis. These products on a year-round basis, and eggnog in the short production season, compete for the supply of inspected milk with other items requiring milk of similar quality which previously have been included in Class I. The costs of producing the milk used in the additional products included in such class must be considered similar to those for the milk already so classified. In view of the above consideration, these products should be included in Class I to return to the producers a price commensurate with their use value and to bear their proportionate share of the costs of inducing an adequate supply of milk of the quality required by the market.

Some opposition was expressed to the reclassification of buttermilk, cream, and eggnog as Class I on the basis of the resulting increased cost to handlers, but it may be noted that for the major items concerned (cream and buttermilk) the added cost to handlers as compared with the cost if retained as Class II milk under present order provisions is only 30 cents per hundredweight. This amounts to less than $0.001 per half-pint of 40 percent cream and less than $0.0067 per quart of butermilk.

A new Class II comprising milk used to produce ice cream, ice cream mix, frozen desserts, and cottage cheese (presently in the Class III category) is justified for a number of reasons. There is a year around market and outlet for producer milk within the marketing area for these products. Health departments in two important markets (Huntington and Parkersburg, West Virginia) require that Grade A milk be used in cottage cheese when sold in these markets. In the case of ice cream and ice cream mix, producer (inspected) milk issued in their manufacture during most of the year. Testimony given at the hearing indicates that a high quality milk is generally desired and used for these products in the various districts whether or not the health regulations of the particular community actually require it. In their proposals regarding the pricing of milk several handlers indicated that milk used for ice cream, ice cream mix, and cottage cheese should have a higher price classification than milk in the present Class III used for other manufactured products.

Class III milk should include skim milk and butterfat used to produce butter, cheese (other than cottage cheese), nonfat dry milk solids, condensed milk, evaporated milk, and such other products not included in Class I milk or Class II milk. Milk used to produce such products should be in a separate class as it represents an outlet for excess milk which, as stated above, must meet price competition from products produced from ungraded milk on a nationwide basis.

The pricing of milk in the various classes, including the proposed pricing of certain milk for manufacturing to be designated "Class IV milk," is considered in another part of this decision.

(5) The Class I and Class II price provisions should be revised.

Several proposals relating to the pricing of Class I and Class II milk were submitted. A producers' organization proposed that:

(a) The Class I price differential be put on a uniform basis for the entire marketing area and be raised to $1.75 for the months of March through August and $2.25 for all other months.

(b) For any sale made outside of the district in which his plant is located, a handler should pay for milk on the basis of the price prevailing in the district in which the sale is made.

(c) The method of computing the current utilization percentage in the sup-

ply-demand adjustment formula be changed to use data for the second and third preceding months as "movers" rather than the first and second preceding months.

(d) The standard utilization percentages (supply-demand) be recalculated to prevent negative supply-demand adjustments during the fall and winter months.

(e) The Class II butterfat differential be reduced.

Another producers' organization proposed that:

(a) The Class I price be adjusted to reduce price differences between the various districts, to raise the entire price level, and to adjust prices seasonally.

(b) The standard utilization percentages (supply-demand) be reviewed and that a provision be adopted which would prevent Class I differentials for October and November from being lower than for September.

A handlers' group proposed that the Class I price differential be put on a uniform basis for the entire marketing area at the level now prevailing for the Huntington district.

Proponents for higher Class I and Class II prices contended that the prices currently being paid to producers are considerably below the cost of production. Evidence was introduced indicating such costs as computed by a university agricultural economist and by a county agent. It was further contended that production costs are considerably higher in the Tri-State area than in other Ohio marketing areas and that the current producer price level does not take this factor into consideration. Proponents stated also that there is considerable industrial development in the area and that higher producer prices are needed to bring forth the additional amount of milk necessary to provide an adequate supply.

Opponents of a higher price contended that unemployment is greater now than a year ago and that much of the increased industrial activity referred to by proponents has been in the field of construction. Since these construction projects are in some cases nearing completion and are discharging rather than hiring employees, such projects will employ smaller work forces in the future.

The further contention was made that while the market is still short of milk during some fall months, the supply situation has improved considerably at the present price level and that higher prices are not necessary to insure an adequate supply; further, that the surplus situation during the flush season has deteriorated to the point where "distress" milk is a problem and any pricing program that would increase the supply of milk during the flush production season would aggravate this problem. The basic problem of the Tri-State area was described as not the amount of the annual supply of milk but rather the highly seasonal nature of milk production.

There was no significant change from 1953 to 1954 in the relationship of Class I and Class II usage to producer receipts for the marketing area. The market as a whole still is short of an adequate supply of milk in the low production season. The supply situation developing indicates that the Huntington district supply is coming more into balance with Class I sales while the Athens district is shorter in supply than was the case several months ago. On an annual basis, the combined Class I and Class II utilization during 1954 for the entire marketing area was about 86 percent of producer receipts; by individual months this percentage varied from a low of 70 in May to a high of 109 in November. As compared with many fluid milk markets such a seasonal variation in production appears to be unusually wide. A shift of only 8 percent seasonally in the supply of producer milk from the spring and summer months to fall delivery would overcome the current fall deficit in supply.

The surplus handling problem has increased to some extent and should not be disregarded. Although for the calendar years of 1953 and 1954 the utilization of producer milk declined from 88 percent to 86 percent, both consumption and production increased substantially, and the volume of surplus increased correspondingly. In the months of May, June, July, and August 1953 about 19.7 million pounds of producer milk were used for Class III purposes; for the same months of 1954 Class III usage increased to about 23.6 million pounds.

It is concluded, in view of these data, that a general increase in price is not justified at this time. However, it appears that an adjustment in producer returns should be made on a seasonal basis. The market has a substantial flush season surplus and a definite shortage in the late fall and early winter months. Adjustments should be made to discourage flush season milk production and to provide additional encouragement to fall and winter milk production. This may be accomplished by effecting a slight price reduction in the spring and a small increase in the fall, and by adjusting the standard utilization supply-demand percentages.

Although no general increase in Class I prices is warranted, various adjustments in order provisions are estimated to provide increases in producer returns, to occur primarily in the months of short production, as follows: (a) From the reclassification of milk used for certain products (discussed earlier), a market-wide increase of from 5 cents to 6 cents; (b) from adjusting the standard utilization supply-demand percentages, (discussed below), a market-wide increase of from 1 cent to 2 cents; (c) from price differential revisions—for the present Huntington and Gallipolis districts (a reduction of 5 cents in the flush production months and an increase of 10 cents in the short production months) and increase of 2 cents; for the Scioto district (as the result of merging the Scioto district with the Huntington district) and increase of 10 cents; or the Athens district an increase of 5 cents.

Proponents for the elimination of Class I price differences between districts contended that existing price levels for the various districts encourage handlers from the Athens district to distribute bottled milk in the Huntington district. It is contended that this results in the replacement, in the higher-valued uses, of milk from those producers who normally supply the Huntington market. Both producers and handlers in the Huntington district contended that this constitutes unfair competition.

It should be observed, however, that the respective levels of price for the different districts were established specifically for the purpose of improving the distribution of available producer supplies to meet the Class I demands of the entire marketing area. The Huntington district has been, and continues to be, substantially short of producer milk. During seven months of the year 1954, combined Class I and Class II usage by Huntington district handlers was greater than local receipts of producer milk by such handlers. This shortage would be even more pronounced if Class I and Class II milk distributed in the Huntington district by handlers from other districts were included. There is indication in the record that in order for this market to be supplied adequately under present conditions, substantial amounts of milk must come from sources other than local producers to supplement the amounts they furnish. Therefore, the primary question does not seem to be whether any other milk will enter the Huntington district but whether this supplemental supply will come from other producers under the order or from outside, and more distant, sources. It would seem to be economically unsound to establish a price relationship between segments of the marketing area which would require supplemental supplies to be obtained from distant points, with the accompanying additional handling and transportation costs, when nearer-by milk of the required quality is available and otherwise would have to be disposed of in manufacturing outlets.

The elimination of, or a sizeable reduction in, the district differentials does not appear to be warranted at this time. Such an action certainly would not eliminate the Huntington area shortage. To the contrary it might be expected to discourage the movement of milk from the Athens district to the Huntington area, thus tending to aggravate the seasonal shortage there. Neither would such an action substantially improve returns to Huntington area producers. On the other hand, decreased Class I and Class II usage at Athens plants would decrease returns to Athens district producers. It is concluded that, in the interest of orderly marketing of producer milk, the following Class I price differentials should be adopted:

	April, May, June, and July	February, March, and August	Other months
Huntington District Plants	1.05	1.35	1.90
Gallipolis and Scioto District Plants	.95	1.25	1.80
Athens District Plants	.80	1.10	1.65

While the above schedule would result in a 5-cent reduction in the differentials between the Huntington and Athens districts, it is not felt that this will be

sufficient to cause a reduction in the amount of milk moving from the Athens district into the Huntington market.

The standard utilization factors in the supply-demand formula should be revised also.

Two producers' organizations proposed that the supply-demand adjustment affecting Class I prices be put on a "forward" pricing basis by employing supply and usage data for the second and third months preceding the pricing month in the "mover" instead of data for the first and second preceding months. Adoption of this proposal would permit announcement of prices in advance of the actual month of delivery, producers would know in advance the price to be received, and handlers would know in advance the price to be paid. It would also be possible to adopt emergency measures to meet any unusual marketing condition should the necessity arise in the future. It is concluded that such results are desirable and therefore that the second and third preceding months should be used to compute the "current utilization percentage" in the supply-demand formula.

Production trends have varied seasonally in the Tri-State area during the past several years. While there is still an unusually wide variation between the flush and short season productions, such variation has shown some tendency to decrease in recent years. This has resulted in negative supply-demand adjustments in the short supply months of the early fall and positive adjustments during flush supply months. Such adjustments, of course, result in price changes that are contrary to the plan of seasonal pricing.

During 1954, the supply-demand factors resulted in adjustments of from a minus 28 cents to a plus 28 cents—a range of 56 cents per hundredweight within one year. In two successive months this range amounted to 38 cents per hundredweight. Since a somewhat erratic supply condition appears characteristic of this market, it is concluded that the standard utilization percentages should be computed on a basis that will tend to temper the extent of supply-demand adjustments from month to month. This is particularly needed with the use of data for the second and third preceding months in computing the current utilization percentage. The desired tempering effect can be accomplished by establishing a range of five percentage points for each month in which there would be no Class I price adjustments. On each side of this range prices should be adjusted 3 cents per hundredweight for each percentage point. The total adjustment so computed should not exceed 38 cents per hundredweight as is currently provided in the order. A further review in hearing would be appropriate if the adjustment for any month were to exceed this amount.

A revision of the supply-demand adjustor is necessitated also by classification changes made in this decision which eliminate the definition of Class II milk, as it was, and combine such class of milk with Class I milk. The adjustor now in the order is based upon the relationship of supply to the present Class I items only.

The current utilization percentage should continue to be computed on the basis of the ratio of Class I usage (as established herein) to the receipts of producer milk at "fluid milk plants", as redefined herein. Establishment of standard utilization percentages is founded largely upon the seasonal supply-demand relationships of previous years. Since continuity of data is essential, the inclusion of producer receipts at supply plants (newly defined) is impracticable at this time. Also, widely varying amounts of producer milk, originating at plants which are not local distributing plants, enter the market during different seasons of the year and from year to year. Under present conditions inclusion of supply and sales data for supply plants in the computation of utilization percentages for the purpose of supply-demand adjustments would give a distorted view of the local supply-demand situation and the efforts of regular producers to supply the needs of the market.

The proposal to provide that the supply-demand adjustment for October and November should not be permitted to fall below the adjustment for September should not be adopted. Proponents stated that this amendment would prevent supply-demand adjustments which tend to reduce prices and discourage production during the months of shortest seasonal supply. The revisions that have been made to the supply-demand adjustor have given consideration to the factors outlined by proponents and, to the extent practicable, contraseasonal price adjustments have been eliminated. Moreover, the fact that the supply-demand adjustor may result in unusual pluses or minuses in a given month or season does not mean that normal supply-demand relationships have changed; such occurrences may result from unusual conditions such as a very late spring or heavy rainfall during the late summer. Because unusual conditions cannot be forecast, and simply because they are unusual, the standard utilization percentages cannot and should not be set to cover all possible circumstances.

Provision should be made in the order for location differentials in establishing producer prices at fluid milk plants and supply plants located outside of the marketing area. It is necessary to establish also a method of pricing milk received at such plants as well as at those located within the various districts of the marketing area.

The farm value of milk for use in a market is affected, of course, by the cost of delivery to the place of utilization. Milk delivered directly to a plant located within the marketing area is worth more, by at least the cost of transportation, than is other milk to be utilized in the market but delivered to a plant located at a considerable distance from the market. Thus, a location differential is necessary to reflect the location disadvantage of those producers who deliver to an outlying supply plant or fluid milk plant as compared with nearby producers who pay the full cost of delivery to the market. Although rates of location adjustment are not specified as such in the present order, the pricing provisions recognize differences in milk values in different parts of the marketing area and milkshed. The incorporation of a provision for location adjustment credits to handlers and location adjustment to individual producers will define the present price provisions and provide a clear method of price treatment for those plants outside the marketing area which, by former definition, automatically were covered by the order as "Athens district" plants even though their supplies might actually have been utilized wholly in another district. It is concluded that the inclusion of such provisions will serve to provide greater equity in the pricing of milk delivered to plants at varying locations in relation to the principal communities of the marketing area and will serve to clarify the application of the order.

The location differentials established by this decision reasonably reflect, on the basis of available information in the record, the actual transportation costs existing on milk shipped into the Tri-State area. The rate of two and one-half (2½) cents for each ten-mile zone up to one hundred miles is in line with rates for hauling in tanks within the milkshed. The rate of one and one-half (1½) cents for each ten-mile zone in excess of 100 miles recognizes the relatively lower costs per hundredweight involved in long distance hauling.

It is concluded further that Class II milk should be priced at a level of 25 cents per hundredweight above that for surplus milk.

It is recognized that cottage cheese in some parts of the marketing area, and ice cream in all parts of the marketing area, manufactured from producer milk have to compete with similar products made from nearby ungraded milk. Handlers under the order probably could not compete effectively if they had to pay Class I prices to producers for milk used to produce these products. On the other hand, for the reasons indicated in connection with the above discussion of milk classification, this milk should be priced somewhat higher than the products included in the revised Class III milk, which represents primarily those outlets for seasonal reserve supplies of milk which are in nationwide competition with manufactured milk products produced from ungraded milk. Class II milk should be priced above the price level of manufacturing milk by at least the amount of the transportation cost involved in bringing the necessary skim milk and butterfat into the market in fluid form from outside sources if whole milk from producers is desired for these purposes at the location of the city plants. The price level adopted (including the revised butterfat differential) is in close relationship to the cost to handlers for similar ingredients used therein if obtained from alternative sources.

(6) The proposal to price milk according to the district where ultimately sold on wholesale or retail routes when

distributed from a fluid milk plant in another district should not be adopted.

The proposed plan for pricing interdistrict sales of Class I milk would cause producers delivering their milk to plants in a higher-priced district from which milk is moved to a lower-priced district for sale, to pay for the movement to the latter district where milk is available from local producers at a lower cost. If the wholesale or retail movement were from a lower-priced district to a higher-priced district, producers in the former district would gain unduly since they would not bear the cost of transporting the milk in consumer containers between the districts. To adopt such a proposal would be contrary to the policy established by providing for district differentials and would discourage the movement of milk to areas with the most pronounced supply deficits. Therefore, it is concluded that Class I and Class II prices should continue to be priced at the level established for the location of the plant at which the milk is received from producers.

(7) The proposal to change the definition of "fluid milk plant" by amending paragraph (b) of § 972.7 to permit a handler under the order who needs to supplement his regular supply of producer milk during any of the months of October through February to secure such milk from outside the order without the supplier of such milk becoming subject to the order should be denied.

Handlers supporting the proposal alleged difficulties in obtaining supplemental milk supplies. However, the record does not provide evidence that adequate sources of supply have not been available under the present provisions of the order. Testimony indicated also that on an annual basis local producer supplies have improved during the past year. One producer group testified at the hearing in opposition to this proposal to the effect that if any considerable amount of milk were permitted to come into the market completely unpriced such milk could well destroy the basis for a classified plan of pricing as provided for in the market order.

The proposed amendment, if accepted, could result in a situation in which a significant portion of the market supply of milk would not be subject in any way to the pricing and payment provisions of the order. This could result in (a) handicapping the effectiveness of the pricing and payment provisions of the order as a means of encouraging adequate supplies of pure and wholesome milk, and (b) a portion of the market supply being procured on a "flat price" basis without regard to use of milk as distinguished from the classified price plan prevailing under the order. Such results would tend to obstruct effectuation of the purposes of the Agricultural Marketing Agreement Act of 1937, as amended, and create a constant threat to the entire classified price plan. For these reasons, it is concluded that the proposal should not be adopted.

(8) The provisions governing interplant transactions in milk should be modified.

A producers' association proposed that the interhandler transfer provisions be modified to permit Class I utilization to be allocated to a supply plant during the months of February through September, inclusive, without the physical transfer of milk to a fluid milk plant if the supply plant is a regular source of supply for the market. The allocation in such months would be based upon the amount of Class I milk allocated to the supply plant during the preceding October–January period. A second proposal to amend these provisions, submitted by another producer group, would provide for the allocation of Class I milk between handlers in different districts of the marketing area without the physical movement of milk. Under the latter proposal the quantity allocated to the transferor-plant likewise would be based upon shipments during the low production months which were classified as Class I milk after allocation of the handler's Class I utilization to his own producers to the full extent of their supply.

The first proposal was submitted by an association operating a supply plant. It was contended by the proponent association that it is experiencing difficulty in maintaining a qualified supply for the Tri-State market in competition with other available outlets for members' milk since the plant receives a share in the Class I sales of its handler clients in the Tri-State area only a portion of the year (usually the months of October through January) when the bulk of actual interplant transfers take place.

Such plant has been a regular supplier of milk to the Tri-State market over a period of years. Prior to May, 1954, such milk entered the market as a supplementary supply (other source milk) but since that time has qualified as producer milk under the terms of § 972.7 (b) of the order. The plant of this association is about 60 miles from Athens, Ohio, and represents a near-by source accessible to all parts of the marketing area.

Under the present terms of the order producers at this plant, while maintaining a qualified supply for the market, share only a small portion of the year in the Class I sales of those handlers in the market to whom rather substantial quantities of milk are furnished in the low production season. Since local producers delivering directly from farms to the latter handlers share Class I utilization with producers at such supply plant only in the fall and winter months, and because of the relatively short supply of local producer milk at several of the fluid milk plants, such producers enjoy a relatively high utilization of their milk in all months of the year while producers at the supply plant dispose of their milk to lower-valued manufacturing uses during several months of the year.

It is apparent that the present provision for the classification of interhandler transfers from supply plants to fluid milk plants makes it difficult for any supply plant, not operated by a handler who also operates a fluid milk plant, to share in the Class I and Class II sales of the market on a basis which makes the market attractive to the producer at the supply plant. On the other hand, the record indicates that in the event the supply plant offering the proposed change were to withdraw its milk entirely from the market it could be replaced only with supplemental milk originating from more distance sources and at additional cost to handlers, or with additional milk produced by local producers. While the milk at such supply plant is available to the market currently, it does not appear that any substantial quantity of additional milk from local producers would be available as a replacement supply at the proposed price levels.

In order to provide an adequate milk supply without undue cost to the consumer and to encourage the optimum utilization of supply within the present milkshed, a means should be provided by which supply plants in the milkshed may negotiate for a share in the Class I sales of the market on a year around basis which wil encourage their continued interest in the maintenance of a regular and dependable supply. Thus, the market may be supplied at a cost which, except in some unusual circumstance, undoubtedly would be lower than that associated with the procurement of milk from more distant sources. Such incentive may be given by revising the inter-plant transfer provisions in a manner which will permit handlers to allocate milk to supply plants in several months of the year in amounts which will provide such supply plants with a reasonable share of the Class I sales of the handler annually even though milk is not actually moved to the fluid milk plant of the handler in all months. A reasonable share of Class I sales may be established by permitting, with some limitation, the allocation to the supply plant in other months a quantity equivalent to that delivered by the supply plant in the months of lowest milk production (October through January). Such a provision would enable handlers with fluid milk plants to bargain with operators of supply plants under reasonably favorable conditions and would provide a basis for the sharing of the seasonal excesses at individual fluid milk plants by all, rather than a portion of, the producers furnishing the bulk of supplies to such plants in the months when milk supplies are shortest.

Local producers have been, and should continue to be, considered the primary source of milk for the market. A study of the statistical data submitted in the record indicates that, for the marketing districts where the milk supplies have been the shortest, the maximum utilization of producer milk for Class I uses in any month has been about 90 percent. Therefore, to insure that milk from supply plants will not be used to displace an undue amount of local producer milk in Class I usage, a provision should be adopted which will limit the allocation in the short production months of October through January of Class I milk to supply plants to an amount which will result in not more than 10 percent of local producer milk being classified as Class II and Class III milk. Also, an adjustment to the volume to be allocated to the supply plant in the months of February through September should be provided in recognition of the fact that Class I sales may be less in such months

as compared with the preceding October–January period.

The flexibility of a provision which provides for permissive rather than mandatory allocation of a certain proportion of Class I sales to each supply plant each month of the year will relieve the order of the burden of establishing payments on transactions between handlers. Handlers and producers should be left free to determine their outlets or supply sources, as the case may be. Such a provision should be more adaptable to changing conditions within the market.

Although proposed also, permission to allow allocation of Class I sales on such basis should not be extended to interhandler transfers between fluid milk plants. Evidence submitted in the record does not indicate that other fluid milk plants generally should be considered as regular sources of supply for handlers who may be temporarily short of milk. At times milk is transferred between fluid milk plants but such transfers usually represent "spot" sales. While this proposal was directed primarily at interdistrict transfers of milk, it would be difficult to justify such allocation on an interdistrict basis only. At the same time such transfers take place, there might well be many intradistrict transfers on a "spot" basis also. If the concept were accepted that interdistrict transfers would justify such allocation procedure, then it would be logical also to adopt such allocation procedure for intradistrict transfers since the governing factor should not be the distance the milk may happen to move. The adoption of such allocation procedure might well result in considerable confusion. Producers delivering milk to handler "A" might have claims for Class I allocation against the sales of handlers "B," "C," and "D," and, at the same time, because of counter "spot" sales movements, producers delivering milk to the latter handlers might have claims for Class I allocation against the sales of handler "A." In addition, any such allocation procedure would tend to remove the incentive for producers to deliver milk to the handler who has the highest utilization, one of the basic objectives of the "individual-handler" type of pooling plan. If it is believed that producers should share, on a year around basis, in the Class I sales at those plants from which the producers' milk is ultimately disposed, this might be accomplished most expeditiously by a market-wide pool.

(9) The price formula for milk used for manufactured milk products other than ice cream, ice cream mix, and cottage cheese should be revised.

A handler proposed a formula price by which the price of producer milk for manufacturing (exclusive of that used for ice cream, ice cream mix, and cottage cheese) would be reduced by 25 cents during the months of May, June, and July. Another handler proposed a new Class IV milk which would include all products currently in Class III milk, except ice cream, ice cream mix, and cottage cheese, and a new price formula for such class.

The proponent for a reduced price for Class III milk during the months of May, June, and July contended that a substantial portion of reserve milk supplies are used to produce manufactured milk products (primarily evaporated milk) which must be sold in competition with similar products made from ungraded milk. Proponent further contended that his company would not be able to utilize excess supplies from the Tri-State market if priced at a higher level than other available supplies of ungraded milk. The proposed price, 25 cents less than the current order price, would be the same as that made effective temporarily on an emergency basis last year and would be closely in line with the local condensery price average.

The proponents for a new reserve milk class (Class IV) stated that during certain seasons of the year when producer milk receipts are in excess of the amounts that can be used for fluid milk, fluid cream, ice cream, ice cream mix, cottage cheese, and related products, the excess milk frequently must be shipped to manufacturing plants located at some distance from the fluid milk plants serving the Tri-State area. Proponents contended that such excess milk should be priced at competitive levels after allowing transportation costs.

Both such proposals exclude those products which constitute the revised Class II milk and there appears to be general recognition of the fact that milk used for these products should be classified in a higher-priced class than milk used for other manufactured dairy products.

Record data indicate that during the flush season of 1954 the volume of milk going to Class III milk was, seasonally, the largest in the history of the market. Production during recent months has continued at approximately the same level, and although Class I and Class II milk sales have increased, it may be expected that the volume of milk to be disposed of as distress milk seasonally will be about as large as in 1954. Because of the unusually wide variation in the seasonal production pattern in the Tri-State area, large surpluses in the spring and early summer months must be recognized as a characteristic of the market at this time, even though price policy in the market is aimed at encouraging a more even milk supply.

It is therefore, concluded, in the interest of orderly marketing, that the pricing structure for milk which must be disposed of in the form of manufactured dairy products included in Class III milk should be established so as to enable such milk to move into such products when seasonal excesses of supply exist. In order to provide an opportunity for handlers to dispose of Class III milk on a basis that is reasonably competitive with milk from ungraded sources delivered to manufacturing plants not regulated by the order, it is provided in this decision that the monthly average of prices paid for milk by four near-by manufacturing plants will be the Class III price for the months of April, May, June, and July each year. This revised formula should provide price relief to substantially the same extent as that made effective, on a temporary basis, in 1954.

It is concluded further that if the local condensery price applies during the flush months of April, May, June, and July, a somewhat higher price (25 cents over local condenseries) should apply during the remainder of the year. This price arrangement will permit the orderly marketing of excess milk during the flush season and also will encourage handlers to direct milk into higher-valued classifications during the remainder of the year when such milk is needed for fluid, ice cream, and cottage cheese uses, as is amply indicated by the continuing purchase by handlers of supplemental supplies of milk from outside sources during several months of the year.

Proponents of a new manufactured products classification (Class IV) requested the inclusion of allowances for transporting excess skim milk and butterfat to manufacturing plants. It was testified that such milk frequently must be shipped to destinations at some distance from the plant where originally received and that the handler should be permitted to recover the transportation cost. In our view, however, adoption of this proposal would not encourage optimum utilization of milk for the market as a whole; also, uneconomic movements of milk might be encouraged with the result that the producers of such milk would pay not only the cost of transporting milk from farm to market, but also the cost of transporting out of the market that portion which is temporarly in excess of needs. It may be noted in this connection that the order permits the handler to divert milk to unregulated plants during April, May, June, and July without receiving it at his fluid milk plant. Thus, the hauling cost involved should not be substantially greater than that accounted for by the customary hauling charge deducted from the producers' check. It is concluded in view of the above that the proposed Class IV price formula incorporating transportation allowances should not be adopted.

Because of the butterfat variation in the several products made by handlers, the butterfat differential is often as important to the ultimate cost to the handler for the product as the level of the class price established on the basis of a butterfat content of 3.5 percent. Therefore, it is concluded that the butterfat differential for Class III milk should be revised so as to be in alignment with the above changes in class pricing.

(10) Certain changes of an administrative nature should be made.

In view of several revisions to substantive provisions of the order which indicate the desirability of the redrafting of the order in its entirety, certain changes of an administrative nature have been made for the purpose of simplicity, clarity, and delineation. These include substitution of the term "month" for "delivery period" wherever used in the order, the redefinition of "fluid milk plant," the inclusion of a definition of "supply plant," and the redefinition of

"district" plants. These changes, which are self-explanatory when considered in relation to the findings and conclusions of this decision, are corollary to changes in provisions directly concerned with the proper classification and pricing of milk.

(11) Emergency action on amendments is not required.

Although the notice of hearing provided for consideration of any or all of the proposed order changes on an emergency basis, i. e., a final decision on amendments without the prior issuance of a recommended decision and an opportunity given to interested parties to file written exceptions thereto, it is concluded from the evidence presented that none of the issues presented requires such action. Thus, this decision contains findings and conclusions with respect to all issues considered at the hearing.

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

(b) The 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 amended, and as hereby proposed to be further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

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

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

DEFINITIONS

§ 972.1 *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.).

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

§ 972.3 *Department of Agriculture.* "Department of Agriculture" means the United States Department of Agriculture or such other Federal agency authorized to perform the price reporting functions specified in § 972.40.

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

§ 972.5 *Tri-State marketing area.* (a) "Tri-State marketing area" (hereinafter called the "marketing area") means all that territory in the states of Ohio, West Virginia, and Kentucky lying within the districts described below in this section. As used in this section the term "territory" shall include all municipal corporations, Federal military reservations, facilities, and installations, and state institutions lying wholly or partially within the defined districts:

(b) "Huntington district" of the marketing area means the territory lying within the boundaries of the counties of Boyd and Greenup, in Kentucky; Lawrence County, in Ohio; and the counties of Cabell and Wayne, in West Virginia.

(c) "Gallipolis-Scioto district" of the marketing area means the territory lying within the counties of Gallia, Meigs, Scioto, and Jackson, in Ohio; the townships of Beaver, Camp Creek, Jackson, Marion, Newton, Pee Pee, Scioto, Seal, and Union, in Pike County, Ohio; and Mason County, West Virginia.

(d) "Athens district" of the marketing area means the territory lying within Athens County, Ohio; the townships of Belpre, Marietta, and Muskingum, in Washington County, Ohio; and Lubeck, Parkersburg, Tygart, and Williams Magisterial Districts in Wood County, West Virginia.

§ 972.6 *Route.* "Route" means a delivery route (including a plant store) on which milk, skim milk, buttermilk, flavored milk, or flavored milk drink is distributed for consumption in fluid form to wholesale or retail shops other than to any milk plant(s).

§ 972.7 *Fluid milk plant.* "Fluid milk plant" means any milk plant, except a plant at which the milk of dairy farmers is priced by another milk marketing agreement or order issued, pursuant to the act, from which a route is operated wholly or partially within the marketing area during the month: *Provided,* That a "fluid milk plant" pursuant to this section shall not mean such portions of a building or facilities used for receiving or processing such milk, or milk product, as is required by the appropriate health authority to be kept physically separate from the receiving or processing of Class I milk for the community(s) served.

§ 972.8 *Supply plant.* "Supply plant" means any milk plant, except a fluid milk plant pursuant to § 972.7 or a plant at which the milk of dairy farmers is priced by another milk marketing agreement or order issued pursuant to the act, from which a total of 25,000 pounds or more of milk, or an amount of skim milk and butterfat from which 25,000 pounds or more of Class I milk is derived, is delivered during the month in fluid form from such plant to any plant(s) which is a fluid milk plant pursuant to § 972.7: *Provided,* That any plant which qualified as a supply plant for at least three of the months of October through January, inclusive, may retain such status during the months of February through September, inclusive, next following for the purposes of § 972.34 (c) without meeting the minimum delivery requirements described above in this section during the latter months: *And provided further,* That a "supply plant" pursuant to this section shall not mean such portions of a building or facilities used for receiving or processing such milk, or milk product, as is required by the appropriate health authority to be kept physically separate from the receiving or processing of Class I milk for the community(s) served.

§ 972.9 *Huntington district plant.* "Huntington district plant" means a fluid milk plant (a) located within the Huntington district, or (b) located outside the marketing area from which more than 50 percent of the Class I milk disposed of from such plant on routes within the marketing area during the month is disposed of within the Huntington district.

§ 972.10 *Gallipolis-Scioto district plant.* "Gallipolis-Scioto district plant" means a fluid milk plant (a) located within the Gallipolis-Scioto district, or (b) located outside the marketing area from which more than 50 percent of the Class I milk disposed of from such plant on routes within the marketing area during the month is disposed of within the Gallipolis-Scioto district.

§ 972.11 *Athens district plant.* "Athens district plant" means a fluid milk plant (a) located within the Athens district, or (b) located outside the marketing area from which more than 50 percent of the Class I milk disposed of from such plant on routes within the marketing area during the month is disposed of within the Athens district.

§ 972.12 *Non-fluid milk plant.* "Non-fluid milk plant" means any plant utilized for the processing and distributing, or manufacturing, of milk or milk products which is not a fluid milk plant or supply plant.

§ 972.13 *Producer.* "Producer" means a person other than a producer-handler who produces milk received:

(a) At a fluid milk plant or supply plant; or

(b) At a non-fluid milk plant by diversion by a handler for his account within April, May, June, or July from a fluid milk plant or supply plant: *Provided,* That such person producing milk holds a dairy farm inspection permit or equivalent certification if required by the appropriate health authority of the community(s) for which his milk is produced: *And provided further,* That milk so diverted shall be deemed to have been received by the handler at the plant from which diverted.

§ 972.14 *Producer milk.* "Producer milk" means milk produced by one or more producers under the conditions set forth in § 972.13.

§ 972.15 *Handler.* "Handler" means:
(a) A person, including a cooperative association, who operates a fluid milk plant or supply plant.

§ 972.16 *Producer-handler.* "Producer-handler" means any person who:
(a) Produces milk but receives no milk from other dairy farmers; and
(b) Operates a route extending into the marketing area.

§ 972.17 *Other source milk.* "Other source milk" means all skim milk (including reconstituted skim milk) and butterfat not received from a producer, or from a fluid milk plant or supply plant, but:
(a) Contained in milk, skim milk, or cream; or
(b) Used to produce any milk product.

§ 972.18 *Cooperative association.* "Cooperative association" or "association of producers" means any cooperative marketing association of producers, duly organized as such under the laws of any State, which includes members who are producers as defined in § 972.13 and which the Secretary determines, after application by the association:
(a) To be qualified under the standards set forth in the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";
(b) To have its entire organization and all of its activities under the control of its members; and
(c) To be currently engaged in making collective sales of or marketing milk or its products for its members.

§ 972.19 *Plant.* "Plant" means the land, buildings, surroundings, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment which is maintained and operated primarily for the receiving, handling, and processing of milk or milk products.

MARKET ADMINISTRATOR

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

§ 972.21 *Powers.* The market administrator shall have the following powers with respect to this subpart:
(a) To administer its terms and provisions;
(b) To make rules and regulations to effectuate its terms and provisions;
(c) To receive, investigate, and report to the Secretary complaints of violations; and
(d) To recommend amendments to the Secretary.

§ 972.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this subpart, including, but not limited to the following:
(a) Within 30 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 such 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 its terms and provisions;
(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee, who handles funds entrusted, to the market administrator;
(d) Pay, out of the funds provided by § 972.71:
(1) The cost of his bond and of the bonds of his employees;
(2) His own compensation; and
(3) All other expenses, except those incurred under § 972.75 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 subpart, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;
(f) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate the name of any person who within 15 days after the day upon which he is required to perform such acts, has not made:
(1) Reports pursuant to § 972.25 or § 972.26; or
(2) Payments pursuant to §§ 972.65 through 972.81;
(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;
(h) Upon request, supply on or before the 25th day after the end of each month to each association of producers with respect to producers whose membership in such association has been verified by the market administrator, a record of the pounds of milk received by each handler from member producers and the class utilization of such milk. For the purpose of this report such member milk shall be prorated to each class in the proportions that the total receipts of milk from producers by such handler were classified in each class;
(i) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends; and
(j) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each month as follows:
(1) On or before the 5th day after the end of such month, the class prices and butterfat differentials computed pursuant to §§ 972.41 through 972.44; and
(2) On or before the 12th day after the end of such month, the uniform prices computed pursuant to § 972.61 and the butterfat differential computed pursuant to § 972.70.

REPORTS, RECORDS, AND FACILITIES

§ 972.25 *Monthly reports of receipts and utilization.* On or before the 5th day after the end of each month each handler, except a producer-handler shall report the following to the market administrator with respect to each fluid milk plant and supply plant in the detail and on forms prescribed by the market administrator.
(a) The quantities of skim milk and the quantities of butterfat contained in (or used in the production of, as the case may be) producer milk, other source milk, and milk and milk products received from any other fluid milk plant(s) and supply plant(s), and their respective sources;
(b) The utilization of such receipts; and
(c) Such other information with respect to such receipts and utilization as the market administrator may prescribe.

§ 972.26 *Other reports.* Handlers shall submit other reports as follows:
(a) The intention to receive other source milk shall be reported by the receiving handler on or before the first day other source milk is received and the intention to discontinue such receipts shall be reported on or before the last day such milk is received.
(b) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may request.
(c) On or before the 20th day after the end of each month each handler shall submit to the market administrator such handler's producer payroll for the month, which shall show:
(1) The total pounds of milk received from each producer and association of producers and the total pounds of butterfat contained in such milk.
(2) The amount of payment to each producer and association of producers, and
(3) The nature and the amount of any deductions and charges involved in the payments referred to in subparagraph (2) of this paragraph.

§ 972.27 *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 and such facilities as, in the opinion of the market administrator, are necessary to

verify or to establish the correct data with respect to:

(a) The utilization, in whatever form, of all skim milk and butterfat received;

(b) The weights, samples, and tests for butterfat and for other content of all skim milk and butterfat handled;

(c) Payments to producers and associations of producers, and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and each milk product on hand at the beginning and at the end of each month.

§ 972.28 *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, except that all such books and records pertaining to transactions before August 1, 1946, shall be retained until October 1, 1949: *Provided,* That if within such three-year period or before October 1, 1949, whichever is applicable, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 972.30 *Skim milk and butterfat to be classified.* Skim milk and butterfat contained in milk, skim milk and cream, or used to produce milk products, received from all sources within the month by a handler at his fluid milk plant(s) and supply plant(s) shall be classified by the market administrator pursuant to §§ 972.31 through 972.34.

§ 972.31 *Classes of utilization.* Subject to the conditions set forth in §§ 972.32 through 972.34, the skim milk and butterfat described in § 972.30 shall be classified by the market administrator on the basis of the following classes:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat: (1) Disposed of (except as provided in paragraph (c) (2) and (3) of this section) in fluid form as milk, skim milk, buttermilk, flavored milk, and milk drink, (2) disposed of in the form of fluid sweet or cultured sour cream, any mixture of cream and milk (or skim milk) in fluid or whipped (aerated) form containing not less than 6 percent of butterfat not specified in Class II milk or Class III milk, and eggnog; (3) used to produce concentrated milk (excluding those products commonly known as evaporated milk and condensed milk) for fluid consumption; and (4) not specifically accounted for above in this paragraph or as Class II milk or Class III milk.

(b) Class II milk shall be all skim milk and butterfat used to produce ice cream, ice cream mix, frozen desserts, and cottage cheese.

(c) Class III milk shall be all skim milk and butterfat (1) used to produce butter, frozen cream, spray process and roller process nonfat dry milk solids, all cheese (other than cottage cheese), evaporated and condensed milk (or skim milk) either in bulk or in hermetically sealed cans, and any other milk product not otherwise specified in this subparagraph; (2) skim milk and buttermilk specifically accounted for as dumped or disposed of for animal feed; (3) disposed of as bulk skim milk to any manufacturer of candy, soup, or bakery products who does not dispose of milk in fluid form; (4) in actual plant shrinkage of producer milk computed pursuant to § 972.32 (d) but not in excess of 2 percent thereof; and (5) in actual plant shrinkage of other source milk computed pursuant to § 972.32 (d).

§ 972.32 *Shrinkage.* The market administrator shall determine the shrinkage of skim milk and butterfat, respectively, in producer milk and in other source milk in the following manner.

(a) Compute the total shrinkage of skim milk and butterfat, respectively, by:

(1) Combining the shrinkage thereof for all fluid milk plants and supply plants operated by the handler, and

(2) Combining in a separate sum the shrinkage thereof for all non-fluid milk plants operated by him to which any skim milk or butterfat has been transferred from any of his fluid milk plants and supply plants;

(b) Prorate the shrinkage of skim milk and butterfat, respectively, computed pursuant to paragraph (a) (2) of this section in such non-fluid milk plants between:

(1) Skim milk or butterfat, respectively, transferred from any of his fluid milk plants and supply plants, and

(2) Skim milk or butterfat, respectively, received from all other sources;

(c) Add to the shrinkage of skim milk and butterfat, respectively, computed pursuant to paragraph (a) (1) of this section, the shrinkage of skim milk or butterfat, respectively, transferred from the handler's fluid milk plant and supply plant to his non-fluid milk plant, computed pursuant to paragraph (b) of this section; and

(d) Prorate the total shrinkage of skim milk and butterfat, respectively, computed pursuant to paragraph (c) of this section between producer milk and other source milk at his fluid milk plant and supply plant after deducting from the total receipts therein, the receipts from fluid milk plants and supply plants other than his own.

§ 972.33 *Responsibility of handlers and reclassification of milk.* All skim milk and butterfat shall be Class I milk, unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise. Any skim milk or butterfat classified (except that transferred to a producer-handler) in one class shall be reclassified if used or reused by such handler or by another handler in another class.

§ 972.34 *Interplant movements.* (a) Skim milk and butterfat transferred from a fluid milk plant shall be classified as Class I milk if so transferred (or diverted, in the case of movements to non-fluid milk plants under subparagraph (3) of this paragraph) as any item listed in § 972.31 (a):

(1) To another fluid milk plant or supply plant of a handler (except a producer-handler), unless utilization in another class is mutually indicated in writing to the market administrator by both handlers on or before the 5th day after the end of the month within which such transfer was made: *Provided,* That skim milk or butterfat assigned to a particular class in accordance with such mutual agreement shall be limited to the amount thereof remaining in such class in the transferee-plant after the subtraction of other source milk pursuant to § 972.36 (a) (2) and the classification of any transfers pursuant to paragraph (b) of this section, and any excess of such transferred skim milk or butterfat, respectively, shall be assigned in series beginning with the next lowest-priced available class;

(2) To a producer-handler; and

(3) To a non-fluid milk plant; unless

(i) Other utilization is mutually indicated in writing to the market administrator by both the buyer and seller on or before the 5th day after the end of the month within which such transfer was made:

(ii) The buyer maintains books and records showing utilization of all skim milk and butterfat at his plant which are made available if requested by the market administrator for audit; and

(iii) Such buyer's plant had actually used not less than an equivalent amount of skim milk or butterfat in the use indicated in such statement: *Provided,* That if such buyer's plant had not actually used an equivalent amount of skim milk or butterfat in such indicated use, the remaining balance shall be classified in the next lowest-priced available class of utilization as if the classes of utilization set forth in § 972.31 were applicable at such buyer's plant.

(b) Except as provided in paragraph (c) of this section, skim milk and butterfat transferred in the form of any item listed in § 972.31 (a) from a supply plant to a fluid milk plant or to another supply plant shall be classified as mutually indicated in writing to the market administrator by both handlers on or before the 5th day after the end of the month within which such transfer was made: *Provided,* That the sum of the amounts assigned as Class I milk for any month during the period October through January, inclusive, to all supply plants supplying a fluid milk plant shall not result in the classification as Class II milk and Class III milk of more than 10 percent of the quantity of milk received directly from producers at such fluid milk plant during the month.

(c) During each of the months of February through September, inclusive (beginning in 1956), a handler operating a fluid milk plant may allocate Class I milk to a supply plant(s) which transferred milk to such fluid milk plant for

at least three of the months of October through January immediately preceding even though such milk is not transferred physically to such fluid milk plant during the current month: *Provided*, That the pounds to be subtracted from Class I milk and so allocated to any supply plant for the current month in the period February through September, inclusive, when added to any quantities actually transferred from such supply plant to such fluid milk plant during the current month which are assigned to Class I milk pursuant to paragraph (b) of this section, shall not exceed the lesser of the following amounts:

(1) The monthly average number of pounds allocated as Class I milk from such fluid milk plant to such supply plant during the preceding period October through January, inclusive; or

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

(d) Skim milk and butterfat transferred or diverted as any item listed in § 972.31 (a) from a supply plant to a non-fluid milk plant shall be classified on the same terms as movements from fluid milk plants to non-fluid milk plants pursuant to paragraph (a) (3) of this section.

§ 972.35 *Computation of skim milk and butterfat in each class.* For each month the market administrator shall correct for mathematical and for other obvious errors the monthly report submitted by each handler and compute the total pounds of skim milk and butterfat, respectively, in Class I milk, Class II milk, and Class III milk for such handler.

§ 972.36 *Allocation of skim milk and butterfat classified.* The classification of skim milk and butterfat in producer milk shall be determined as follows:

(a) The pounds of skim milk remaining in each class after making the following computations shall be the pounds in such class allocated to producer milk;

(1) Subtract from the total pounds of skim milk in Class III milk the pounds of skim milk in plant shrinkage pursuant to § 972.31 (c) (4);

(2) Subtract from the pounds of skim milk remaining in each class after making the deduction pursuant to subparagraph (1) of this paragraph, in series beginning with the lowest-priced available class, the pounds of skim milk in other source milk;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received, or with respect to which title was taken pursuant to § 972.34 (c), from other fluid milk plants and supply plants (receipts from fluid milk plants to be deducted first) assigned to such classes pursuant to § 972.34;

(4) Add to the remaining pounds of skim milk in Class III milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(5) If the total remaining pounds of skim milk in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the remaining pounds of skim milk in each class in series beginning with the lowest-priced available class.

(b) Allocate classified butterfat to producer milk according to the method prescribed in paragraph (a) of this section for skim milk.

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

MINIMUM PRICES

§ 972.40 *Basic formula price to be used in determining class prices.* The basic formula price per hundredweight of milk to be used in determining the class prices provided by §§ 972.41 through 972.43 shall be the highest of the prices per hundredweight for milk of 3.5 percent butterfat content determined by the market administrator pursuant to paragraphs (a), (b), and (c) of this section computed to the nearest tenth of a cent.

(a) The average of the basic (or field) prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the months at the following plants or places for which prices have been reported to the market administrator or to the Department of Agriculture.

Present Operator and Location

Borden Co., Mt. Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., Hudson, 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 as follows:

(1) Multiply by six the average wholesale price per pound of 92-score butter at Chicago as reported by the Department of Agriculture for the month;

(2) Add an amount equal to 2.4 times the average weekly prevailing price per pound of "Twins" during the month on the Wisconsin Cheese Exchange at Plymouth, Wisconsin: *Provided*, That if the price of "Twins" is not quoted on the Wisconsin Cheese Exchange the weekly prevailing price per pound of "Cheddars" shall be used; and

(3) Divide by seven, add 30 percent thereof, and then multiply by 3.5.

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

(1) From the average wholesale price per pound of 92-score butter at Chicago, as reported by the Department of Agriculture for the month, subtract three cents, add 20 percent thereof, and then multiply by 3.5; and

(2) From the average of the carlot prices per pound of nonfat dry milk solids for human consumption, spray and roller process, f. o. b. manufacturing plants, as published for the Chicago area for the month by the Department of Agriculture, including in such average the quotations published for any fractional part of the previous month which were not published and available for the price determination of such nonfat dry milk solids for the previous month, deduct 5.5 cents, multiply by 8.5, and then multiply by 0.965.

§ 972.41 *Class I milk prices.* Subject to the provisions of §§ 972.44 through 972.48, the minimum price per hundredweight on a 3.5 percent butterfat content basis to be paid by each handler for producer milk classified as Class I milk for the month, shall be the basic formula price determined pursuant to § 972.40 adjusted as follows:

(a) Add the following amounts for the months indicated:

	April, May, June, and July	February, March, and August	September, October, November, December, and January
Huntington district plants	$1.05	$1.35	$1.90
Gallipolis-Scioto district plants	.95	1.25	1.80
Athens district plants	.80	1.10	1.65

(b) Add or subtract a "supply-demand adjustment" of not more than 38 cents computed as follows:

(1) Divide the total gross volume of Class I milk (adjusted to eliminate duplications due to transfers between fluid milk plants) at all fluid milk plants for the second and third preceding months by the total receipts of milk from producers at such plants during the same months, multiply the result by 100, and round to the nearest whole number. The result shall be known as the "Class I utilization percentage."

(2) For each full percentage point that the Class I utilization percentage is above the applicable maximum base percentage listed below increase the Class I price by 3 cents; and for each full percentage point that the Class I utilization percentage is below the applicable minimum base percentage listed below decrease the Class I price by 3 cents:

Month for which price is being computed	Base utilization percentages	
	Minimum	Maximum
January	103	107
February	103	107
March	97	101
April	95	99
May	93	97
June	87	91
July	77	81
August	68	72
September	64	68
October	68	72
November	83	87
December	94	98

§ 972.42 *Class II milk prices.* Subject to the provisions of §§ 972.44 through 972.47, the minimum price per hundredweight on a 3.5 percent butterfat content basis to be paid by each

handler for producer milk classified as Class II milk for each month shall be the average of prices per hundredweight computed for such month pursuant to the formula set forth in § 972.43 (a), plus 25 cents.

§ 972.43 *Class III milk prices.* Subject to §§ 972.44 through 972.47, the minimum price per hundredweight on a 3.5 percent butterfat content basis to be paid by each handler for producer milk classified as Class III milk for the month shall be computed as follows:

(a) For each of the months of April, May, June, and July the price for Class III milk shall be the simple average, as computed by the market administrator, of the basic (or field) prices per hundredweight ascertained to have been paid or to be paid for ungraded (manufacturing-type) milk of 3.5 percent butterfat content received from farmers during such month at the following plants:

Company:	*Location of plant*
M & R Dietetic Laboratories, Inc.	Columbus, Ohio.
Pickerington Creamery	Pickerington, Ohio.
Carnation Company	Coshocton, Ohio.
Nestles' Milk Company	Marysville, Ohio.

(b) For each month, except April, May, June, and July, the price for Class III milk shall be the average of prices for such month computed pursuant to the formula set forth in paragraph (a) of this section, plus 25 cents.

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

(a) *Class I milk.* Add 0.5 cent to the butterfat differential for Class II milk computed pursuant to paragraph (b) of this section.

(b) *Class II milk.* Multiply by 1.2 the average wholesale price per hundred pounds of butter for the month as described in § 972.40 (c) (1), subtract therefrom the amount per hundredweight computed for the month pursuant to § 972.40 (c) (2), and divide such result by 1,000.

(c) *Class III milk.* Subtract $3.00 from the average price per hundred pounds of butter for the month as described in § 972.40 (c) (1), multiply by 1.2, subtract therefrom the amount per hundredweight computed for the month pursuant to § 972.40 (c) (2), and divide such result by 1,000.

§ 972.45 *Emergency price provisions.* Whenever the provisions of this subpart require the market administrator to use a specific price (or prices) for milk or any milk product for the purpose of determining class prices or for any other purpose, the market administrator shall add to the specified price the amount of any subsidy or other similar payment being made by any Federal agency in connection with the milk, or product, associated with the price specified: *Provided,* That if for any reason the price specified is not reported or published as indicated, the market administrator shall use the applicable maximum uniform price established by regulations of any Federal agency plus the amount of any subsidy or other similar payment: *Provided further,* That if the specified price is not reported or published and there is no applicable maximum uniform price or if the specified price is not reported or published and the Secretary determines that the market price is below the applicable maximum uniform price the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with the prices specified.

§ 972.46 *Prices for Class I, Class II, and Class III milk disposed of outside the marketing area.* The prices for Class I, Class II, and Class III milk disposed of outside the marketing area by a handler shall be those applicable, respectively, pursuant to §§ 972.41 through 972.43, to Class I, Class II, and Class III milk disposed of by such handler inside the marketing area.

§ 972.47 *Prices of milk transferred by one handler to another handler.* The price of milk transferred by a handler to another handler in any class shall be that applicable to such class of milk at the selling handler's fluid milk plant or supply plant, pursuant to §§ 972.41 through 972.43: *Provided,* That any hauling charge with respect thereto chargeable to producers or to associations of producers shall not exceed that customarily applied to deliveries of such producers from their farms to the selling handler's fluid milk plant or supply plant.

§ 972.48 *Location adjustment credits to handlers.* Producer milk received at a fluid milk plant or supply plant located outside the marketing area and classified as Class I milk shall be priced the same as Class I milk (§ 972.41) for the district of the marketing area in which the nearest of the following listed places is located:

City Hall, Huntington, W. Va.
City Hall, Portsmouth, Ohio.
City Hall, Athens, Ohio.
City Hall, Marietta, Ohio.

less a location adjustment computed as follows: 2.5 cents per hundredweight for each 10 miles, or fraction thereof, up to 100 miles, and 1.5 cents per hundredweight for each 10 miles, or fraction thereof, in excess of 100 miles, by shortest hard-surfaced highway distance as determined by the market administrator, from such fluid milk plant or supply plant to such nearest listed place.

APPLICATION OF PROVISIONS

§ 972.50 *Producer-handlers.* Sections 972.30 through 972.48 and §§ 972.60 through 972.75 shall not apply to a producer-handler. Any handler who desires to qualify as a producer-handler shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence of his qualifications satisfactory to the market administrator, and he shall furnish similar evidence of subsequent changes in his operations that affect his qualifications. Verification by the market administrator shall be made within 5 days after the date of receipt of such evidence, and shall be effective retroactively to the date on which the applicant became so eligible, but not earlier than the first day of the month during which verification of such eligibility is made.

§ 972.51 *Exempt milk.* Milk received at a plant of a handler the handling of which the Secretary determines to be subject to the pricing and payment provisions of any other Federal milk marketing agreement or order issued pursuant to the act for any fluid milk marketing area shall not be subject to the pricing and payment provisions of this subpart.

§ 972.52 *Milk caused to be delivered by an association of producers.* Milk referred to in this subpart as received from producers by a handler shall include producer milk caused to be delivered to such handler by an association of producers which is not a handler and which is authorized to collect payment for such milk.

§ 972.53 *Diverted milk.* Producer milk diverted by an operator of a fluid milk plant or supply plant from such a plant to a non-fluid milk plant shall be deemed to have been received by the plant from which such milk was diverted.

DETERMINATION OF UNIFORM PRICES

§ 972.60 *Computation of value of milk.* The value of producer milk received during each month by each handler shall be a sum of money computed by the market administrator by (a) multiplying the pounds of such milk in each class for the month by the applicable class price and (b) adding together the resulting amounts: *Provided,* That if a handler, after subtracting other source milk and receipts from other handlers, has disposed of skim milk or butterfat in excess of the skim milk or butterfat which, on the basis of his reports, has been credited to producers as having been received from them, there shall be added an amount computed by multiplying the pounds in each class determined pursuant to § 972.36 (a) (5) and (b) by the applicable class price: *And provided further,* That with respect to each hundredweight of Class I milk subject to payment pursuant to the proviso of § 972.65 (c), there shall be added an amount computed by multiplying such hundredweight of milk by the rate of location adjustment, if any, applicable to Class I milk at the supply plant.

§ 972.61 *Computation of uniform prices.* For each month the market administrator shall compute for each handler a "uniform price" per hundredweight to be paid to producers and associations of producers for milk of 3.5 percent butterfat content received at his fluid milk plant and supply plant as follows:

(a) From the value of milk computed for such handler pursuant to § 972.60, subtract, if the weighted average butterfat test of producer milk represented by the value included under paragraph (a) of this section is greater than 3.5 percent, or add, if such butterfat test is less than 3.5 percent, an amount computed by: Multiplying the amount by which its weighted average butterfat test varies from 3.5 percent by the butterfat differential computed pursuant to § 972.70, and multiplying the resulting figure by the total hundredweight of such milk;

(b) Add or subtract, as the case may be, any amounts necessary to correct errors in classification for previous months as disclosed by audit of the market administrator.

(c) Adjust the resulting amount by the sum of money used in adjusting the uniform price pursuant to paragraph (f) of this section, for the previous month, to the nearest cent;

(d) Add an amount representing the total value of location adjustments on producer milk pursuant to § 972.72;

(e) Divide the result by the total hundredweight of producer milk represented by the value computed pursuant to § 972.60; and

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

§ 972.62 *Notification to handlers.* On or before the 12th day after the end of each month, the market administrator shall notify each handler of:

(a) The amount and value of his milk in each class and the totals thereof;

(b) His uniform price; and

(c) The amounts to be paid by such handler pursuant to §§ 972.65 and 972.70 for such month.

PAYMENTS

§ 972.65 *Time and method of final payment.* Each handler shall make payment, subject to the provisions of §§ 972.66, 972.70, 972.72, and 972.75, for all producer milk received during each month, as follows:

(a) Except as set forth in paragraph (b) of this section, to each producer, on or before the 18th day after such month at not less than such handler's uniform price for milk of 3.5 percent butterfat.

(b) To a cooperative association for milk received from producers from whom such association has received written authorization to collect payment on or before the 16th day after such month, of a total amount equal to not less than the sum of the individual amounts otherwise payable to other producers under paragraph (a) of this section.

(c) On or before the 16th day after such month each handler shall pay to each cooperative association which operates a fluid milk plant or supply plant for skim milk and butterfat received as milk or a milk product from such cooperative association during such month, an amount of money computed by multiplying the total pounds of such skim milk and butterfat in each class by the respective class price pursuant to §§ 972.41, 972.42, and 972.43, adjusted by the appropriate butterfat and location differentials pursuant to § 972.44 and § 972.48: *Provided,* That payment to a cooperative association for milk classified as Class I milk (but not moved) as an interhandler transfer pursuant to § 972.34 (c) during the February–September period shall be made to such cooperative association on the basis of the difference between the appropriate class price and the Class III price, adjusted as provided above for butterfat test and for the location of the supply plant; and

(d) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c (5) (F) of the act from making payment for milk to its member producers in accordance with such provision of the act.

§ 972.66 *Partial payments.* Handlers shall make partial payments to producers as follows:

(a) On or before the last day of each month, each handler shall make payment except as set forth in paragraph (b) of this section, to each producer at not less than such handler's uniform price of the preceding month for the milk of such producer which was received by such handler during the first 15 days of the current month; and

(b) On or before the day immediately preceding the last day of each month, each handler shall make payment to an association of producers for milk of producers from whom such association has received written authorization to collect payment at not less than such handler's uniform price of the preceding month for all such milk which was received by such handler during the first 15 days of the current month.

§ 972.70 *Butterfat differential.* If, during the month, any handler has received from any producer or from an association of producers, milk having a weighted average butterfat test other than 3.5 percent, such handler, in making the payments prescribed in § 972.65, shall add to, or subtract from the applicable uniform price per hundredweight, for each one-tenth of 1 percent of such butterfat test in milk above or below, as the case may be, 3.5 percent, an amount computed by the market administrator as follows: Multiply by 1.2 the average wholesale price per pound of 92-score butter at Chicago, as reported by the Department of Agriculture for the month, divide the result by 10, and round to the nearest tenth of a cent.

§ 972.71 *Expense of administration.* As his prorata share of the expense incurred pursuant to § 972.22 (d) each handler shall pay the market administrator, on or before the 15th day after the end of each month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, to be announced by the market administrator on or before the 12th day after the end of such month with respect to all receipts within the month of producer milk (including such handler's own production) and other source milk at his fluid milk plant or supply plant classified as Class I milk pursuant to § 972.31: *Provided,* That an association of producers shall pay such prorata share of expense of administration on producer milk with respect to which it is a handler.

§ 972.72 *Location adjustments to producers.* In making payment to producers pursuant to § 972.65 for milk received at a fluid milk plant or supply plant located outside the marketing area, the uniform price per hundredweight of producer milk shall be reduced at the same rate per hundredweight as is applicable to Class I milk at such plant pursuant to § 972.48.

§ 972.75 *Marketing services.* (a) (1) Except as set forth in paragraph (b) of this section, each handler in making payments to producers (other than with respect to milk of such handler's own production) pursuant to § 972.65 (a) shall make a deduction of 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight as the Secretary may prescribe, with respect to the following:

(i) All milk received from producers at a plant not operated by a cooperative association;

(ii) All milk received at a plant operated by a cooperative association from producers who are not members of such association; and

(iii) All milk received at a plant operated by a cooperative association(s) from producers who are members thereof but for whom any of the services set forth below in this paragraph is not being performed by such association(s), as determined by the market administrator.

(2) Such deduction shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for the verification of weights, sampling, and testing of milk received from producers and in providing for market information to producers; such services to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of each producer (1) who is a member of, or who has given written authorization for the rendering of marketing services and the taking of deduction therefor to, a cooperative association, (2) whose milk is received at a plant not operated by such association, and (3) for whom the market administrator determines that such association is performing the services described in paragraph (a) of this section, each handler shall deduct in lieu of the deduction specified under paragraph (a) of this section, from payments made pursuant to § 972.65 (a) the amount per hundredweight of milk authorized by such producer and shall pay over, on or before the 15th day after the end of the month, such deduction to the association entitled to receive it under this paragraph.

ADJUSTMENT OF ACCOUNTS

§ 972.80 *Errors in payments.* Whenever audit by the market administrator of a handler's reports, books, records, or accounts discloses adjustments to be made, for any reason which result in moneys due:

(a) The market administrator from such handler,

(b) Such handler from the market administrator, or

(c) Any producer or association of producers from such handler, the market administrator shall promptly notify such handler of any such amount due, and explain the basis for such adjustment; and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

§ 972.81 *Overdue accounts.* Any unpaid obligation of a handler or of the market administrator pursuant to §§ 972.65 through 972.80 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

MISCELLANEOUS PROVISIONS

§ 972.85 *Effective time.* The provisions of this subpart or any amendment of this subpart shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 972.86.

§ 972.86 *Suspension or termination.* The Secretary may suspend or terminate this subpart or any provision of this subpart whenever he finds that this subpart or any provision of this subpart, obstructs, or does not tend to effectuate the declared policy of the act. This subpart shall terminate, in any event, whenever the provisions of the act authorizing it cease to be in effect.

§ 972.87 *Continuing power and duty of the market administrator.* If, upon the suspension or termination of any or all provisions of this subpart, there are any obligations arising under this subpart the final accrual or ascertainment of which requires further acts by any handler, the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided,* That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, or agency as the Secretary may designate. The market administrator, or such other person as the Secretary may designate, shall:

(a) Continue in such capacity until discharged by the Secretary,

(b) From time to time account for all receipts and disbursements, and, when so directed by the Secretary, deliver all funds or property on hand, together with the books and records of the market administrator, to such person as the Secretary may direct, and

(c) If so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant to this subpart.

§ 972.88 *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions of this subpart, 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 pursuant to the provisions of this subpart, over and above the amounts 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.

§ 972.89 *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 subpart.

§ 972.90 *Separability of provisions.* If any provision of this subpart, or the application thereof to any person or circumstances, is held invalid, the remainder of this subpart and the application of such provision to other persons or circumstances, shall not be affected thereby.

§ 972.91 *Termination of obligation.* The provisions of this section shall apply to any obligation under this subpart for the payment of money irrespective of when such obligation arose, except an obligation involved in an action instituted before August 1, 1949, under section 8c (15) (A) of the act or before a court.

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

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this subpart shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or 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.

Issued at Washington, D. C., this 7th day of July 1955.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 55-5591; Filed, July 11, 1955; 8:52 a. m.]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 40, 41, 42]

[Draft Release 55-17]

INSTALLATION OF PROPELLER REVERSE INDICATORS ON AIRPLANES EQUIPPED WITH REVERSIBLE PITCH PROPELLERS

NOTICE OF PROPOSED RULE MAKING

Pursuant to authority delegated by the Civil Aeronautics Board to the Bureau of Safety Regulation, notice is hereby given that the Bureau will propose to the Board that Parts 40, 41, and 42 of the Civil Air Regulations be amended as hereinafter set forth.

Interested persons may participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Communications should be submitted in duplicate to the Civil Aeronautics Board, attention Bureau of Safety Regulation, Washington 25, D. C. In order to insure their consideration before taking further action on the proposed rules, communications must be received by August 10, 1955. Copies of such communications will be available after August 12, 1955, for examination by interested persons at the Docket Section of the Board, Room 5412, Department of Commerce Building, Washington, D. C.

Currently effective §§ 40.172 (1), 41.25 (s), and 42.21 (a) (15) of Parts 40, 41, and 42 of the Civil Air Regulations, respectively, require that after September

1, 1955, a means shall be provided for each reversible propeller on airplanes equipped with reversible propellers which will indicate to the pilots when the propeller is in reverse pitch.

Subsequent to the adoption of these requirements by amendments effective October 1, 1954, the Bureau was informed by the Air Transport Association of America and the Civil Aeronautics Administration (CAA), that certain air carriers had advised that they would be unable to accomplish the installation of propeller reverse pitch indicators by September 1, 1955, due to delays in the delivery of necessary parts from manufacturers. On the basis of this information, the Bureau requested that the CAA conduct a survey to determine the extent to which the air carriers affected by this regulation were progressing with the necessary installations.

The survey has now been completed. The data obtained indicate that the large majority of airplanes involved either are now in compliance with this rule or will be by September 1, 1955. However, seven air carriers using five different types of airplanes will be unable to complete the required installations by September 1, 1955. It appears that all of these air carriers have made a conscientious effort to complete the installations but will be unable to do so due to the slow delivery of the necessary parts. The survey also indicates that full compliance may be expected not later than April 1, 1956.

In view of the foregoing, the Bureau is of the opinion that the compliance date for accomplishing the installation of propeller reverse pitch indicators should be extended to April 1, 1956.

Accordingly, it is proposed to amend §§ 40.172 (l), 41.25 (s) and 42.21 (a) (15) of Parts 40, 41, and 42 of the Civil Air Regulations, respectively, by deleting the date "September 1, 1955" and inserting in lieu thereof the date "April 1, 1956".

This amendment is proposed under authority of Title VI of the Civil Aeronautics Act of 1938, as amended. The proposal may be changed in the light of comments received in response to this notice of proposed rule making.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 601–610, 52 Stat. 1007–1012, as amended; 49 U. S. C. 551–560)

Dated at Washington, D. C., July 1, 1955.

By the Bureau of Safety Regulation.

[SEAL] JOHN M. CHAMBERLAIN,
Director.

[F. R. Doc. 55–5582; Filed, July 11, 1955; 8:51 a. m.]

NOTICES

DEPARTMENT OF STATE

[Public Notice 141]

[Delegation of Authority 73–A]

UNITED STATES COMMISSIONER, INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

DELEGATION OF AUTHORITY TO DESIGNATE APPRAISERS TO FIX MINIMUM PRICES AT WHICH CERTAIN LANDS MAY BE SOLD

Pursuant to the authority vested in the Secretary of State by section 4 of the act of Congress approved May 26, 1949 (63 Stat. 111), and in accordance with the act approved August 27, 1935 (49 Stat. 906) as amended (53 Stat. 841, 65 Stat. 707), and under the further authority of the act approved August 19, 1935, as amended (49 Stat. 660, 1370), and the Treaty between the United States of America and Mexico, concluded February 3, 1944, for the Utilization of the Waters of the Colorado and Tijuana Rivers and of the Rio Grande, and the Protocol signed November 14, 1944, in connection therewith (59 Stat. 1219), and executive orders, and the American-Mexican Treaty Act of 1950, approved September 13, 1950 (64 Stat. 846), the United States Commissioner, International Boundary and Water Commission, United States and Mexico, or in the absence of such Commissioner, the officer of the United States Section of the Commission who shall be designated by the Department of State as the officer in charge thereof, is hereby authorized to designate, on behalf of the Secretary of State in every case in which the Secretary of State is authorized to designate, appraisers who shall fix the minimum prices at which any lands heretofore or hereafter acquired under any act, executive order, or treaty, in connection with projects, in whole or in part, constructed or administered by the Secretary of State through the said Commissioner may be sold when such lands are no longer needed.

Dated: July 1, 1955.

[SEAL] JOHN FOSTER DULLES,
Secretary of State.

[F. R. Doc. 55–5556; Filed, July 11, 1955; 8:46 a. m.]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[445.2]

ASPHALT SHEETS AND EBON PUTTY (ASPHALT MASTIC)

TARIFF CLASSIFICATION

JULY 5, 1955.

The Bureau, by its letter to the collector of customs, New York, New York, dated July 5, 1955, ruled that asphalt sheets composed of a mixture of asphalt and earthy or mineral substances are dutiable at the rate of 15 percent ad valorem under paragraph 214, Tariff Act of 1930, as modified, rather than being free of duty as asphaltum, bitumen, and limestone-rock asphalt under paragraph 1710; and that Ebon putty (asphalt mastic), consisting of petrol pitch in combination with, and in chief value of, animal and mineral waxes, is classifiable as a manufacture in chief value of wax under paragraph 1536, as modified, with duty at the rate of 10 percent ad valorem, rather than being free of duty under paragraph 1710.

As this ruling will result in the assessment of duty at a higher rate than has been heretofore assessed under an established and uniform practice, it will be applied only to such or similar merchandise entered, or withdrawn from warehouse, for consumption after 90 days from the date of publication of an abstract of this decision in a forthcoming issue of the weekly Treasury Decisions.

[SEAL] RALPH KELLY,
Commissioner of Customs.

[F. R. Doc. 55–5574; Filed, July 11, 1955; 8:49 a. m.]

Fiscal Service, Bureau of the Public Debt

[1955 Dept. Circ. 962]

3 PERCENT TREASURY BONDS OF 1995; ADDITIONAL ISSUE

OFFERING OF BONDS

JULY 11, 1955.

I. *Offering of bonds.* 1. The Secretary of the Treasury, pursuant to the authority of the second Liberty Bond Act, as amended, invites subscriptions, at par and accrued interest, from the people of the United States for bonds of the United States, designated 3 percent Treasury Bonds of 1995. The amount of the offering is $750,000,000, or thereabouts. The Secretary of the Treasury reserves the right to allot limited amounts of these bonds to Government Investment Accounts. The books will be open only on July 11, 1955, for the receipt of subscriptions.

2. Deferred payment for bonds allotted hereunder may be made as provided in section IV hereof by any of the following subscribers, who for this purpose are defined as savings-type investors:

Pension and Retirement Funds—public and private.
Endowment Funds.
Insurance Companies.
Mutual Savings Banks.
Fraternal Benefit Associations and Labor Unions' insurance funds.
Savings and Loan Associations.

Credit Unions.

Other Savings Organizations (not including commercial banks).

II. *Description of bonds.* 1. The bonds now offered will be an addition to and will form a part of the series of 3 percent Treasury Bonds of 1995 issued pursuant to Department Circular No. 956, dated February 1, 1955, will be freely interchangeable therewith, are identical in all respects therewith, and are described in the following quotation from Department Circular No. 956:

1. The bonds will be dated February 15, 1955, and will bear interest from that date at the rate of 3 percent per annum, payable semiannually on August 15, 1955, and thereafter on February 15 and August 15 in each year until the principal amount becomes payable. They will mature February 15, 1995, and will not be subject to call for redemption prior to maturity.

2. The income derived from the bonds is subject to all taxes imposed under the Internal Revenue Code of 1954. The bonds are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The bonds will be acceptable to secure deposits of public moneys.

4. Bearer bonds with interest coupons attached, and bonds registered as to principal and interest, will be issued in denominations of $500, $1,000, $5,000, $10,000, $100,000 and $1,000,000. Provision will be made for the interchange of bonds of different denominations and of coupon and registered bonds, and for the transfer of registered bonds, under rules and regulations prescribed by the Secretary of the Treasury.

5. Any bonds issued hereunder which upon the death of the owner constitute part of his estate, will be redeemed at the option of the duly constituted representatives of the deceased owner's estate, at par and accrued interest to date of payment,[1] *provided:*

(a) that the bonds were actually owned by the decedent at the time of his death; and

(b) that the Secretary of the Treasury be authorized to apply the entire proceeds of redemption to the payment of Federal estate taxes.

Registered bonds submitted for redemption hereunder must be duly assigned to "The Secretary of the Treasury for redemption, the proceeds to be paid to the District Director of Internal Revenue at _____ for credit on Federal estate taxes due from estate of _____." Owing to the periodic closing of the transfer books and the impossibility of stopping payment of interest to the registered owner during the closed period, registered bonds received after the closing of the books for payment during such closed period will be paid only at par with a deduction of interest from the date of payment to the next interest payment date;[2] bonds received during the closed period for payment at a date after the books reopen will be paid at par plus accrued interest from the reopening of the books to the date of payment. In either case checks for the full six months' interest due on the last day of the closed period will be forwarded to the owner in due course. All bonds submitted must be accompanied by Form PD 1782,[3] properly completed, signed and sworn to, and by proof of the representatives' authority in the form of a court certificate or a certified copy of the representatives' letters of appointment issued by the court. The certificate, or the certification to the letters, must be under the seal of the court, and except in the case of a corporate representative, must contain a statement that the appointment is in full force and be dated within six months prior to the submission of the bonds, unless the certificate or letters show that the appointment was made within one year immediately prior to such submission. Upon payment of the bonds appropriate memorandum receipt will be forwarded to the representatives, which will be followed in due course by formal receipt from the District Director of Internal Revenue.

6. The bonds will be subject to the general regulations of the Treasury Department, now or hereafter prescribed, governing United States bonds.

III. *Subscription and allotment.* 1. Subscriptions will be received at the Federal Reserve Banks and Branches and at the Office of the Treasurer of the United States, Washington. Commercial banks, which for this purpose are defined as banks accepting demand deposits, may submit subscriptions for account of customers, but only the Federal Reserve Banks and the Treasury Department are authorized to act as official agencies. Others than commercial banks will not be permitted to enter subscriptions except for their own account. Subscriptions from commercial banks for their own account will be received without deposit, but will be restricted in each case to an amount not exceeding 25 percent of the combined capital, surplus and undivided profits, or 10 percent of the combined amount of time certificates of deposit (but only those issued in the names of individuals, and of corporations, associations, and other organizations not operated for profit), and of savings deposits, of the subscribing bank. Subscriptions from all others must be accompanied by payment of 10 percent of the amount of bonds applied for, not subject to withdrawal until after allotment. Following allotment, any portion of the 10 percent payment in excess of 10 percent of the amount of bonds allotted may be released upon the request of the subscribers. Where partial payment for bonds allotted is to be deferred beyond July 20, 1955, as provided in section IV hereof, delivery of 5 percent of the total par amount of bonds allotted, adjusted to the next higher $500, will be withheld from all subscribers until payment for the total amount allotted has been completed. In every case where payment is not so completed the 5 percent so withheld shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States.

2. The Secretary of the Treasury reserves the right to reject or reduce any subscription, to allot less than the amount of bonds applied for, and to make different percentage allotments to various classes of subscribers; and any action he may take in these respects shall be final. The basis of the allotment will be publicly announced, and allotment notices will be sent out promptly upon allotment.

IV. *Payment.* 1. Payment at par and accrued interest from February 15, 1955, to July 20, 1955 ($12.8453 per $1,000) for bonds allotted hereunder must be made or completed on or before July 20, 1955; *Provided, however,* That where a subscriber eligible to defer payment under section I hereof elects to defer payment for part of the bonds allotted, not less than 25 percent of the bonds allotted must have been paid for by July 20, 1955, not less than 60 percent must have been paid for by September 1, 1955, and full payment must be completed by October 3, 1955. All payments made subsequent to July 20, 1955, must be accompanied by additional accrued interest from that date, at the rate of $0.083 per $1,000 per day. Any qualified depositary will be permitted to make payment by credit for bonds allotted to it for itself and its customers up to any amount for which it shall be qualified in excess of existing deposits, when so notified by the Federal Reserve Bank of its District.

V. *General provisions.* 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive subscriptions, to make allotments on the basis and up to the amounts indicated by the Secretary of the Treasury to the Federal Reserve Banks of the respective Districts, to issue allotment notices, to receive payment for bonds allotted, to make delivery of bonds on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive bonds.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

[SEAL] G. M. HUMPHREY,
Secretary of the Treasury.

[F. R. Doc. 55-5580; Filed, July 11, 1955; 8:51 a. m.]

[1955 Dept. Circ. 961]

1⅞ PERCENT TREASURY CERTIFICATES OF INDEBTEDNESS OF SERIES A-1956; TAX ANTICIPATION SERIES

OFFERING OF CERTIFICATES

JULY 8, 1955.

I. *Offering of certificates.* 1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites subscriptions, at par and accrued interest, from the people of the United States for Tax Anticipation Certificates of Indebtedness of the United States, designated 1⅞ percent Treasury Certificates of Indebtedness of Series A-1956. The amount of the offering is $2,000,000,000, or thereabouts. The books will be open only on July 8 for the receipt of subscriptions.

II. *Description of certificates.* 1. The certificates will be dated July 18, 1955, and will bear interest from that date at

[1] An exact half-year's interest is computed for each full half-year period irrespective of the actual number of days in the half year. For a fractional part of any half year, computation is on the basis of the actual number of days in such half year.

[2] The transfer books are closed from January 16 to February 15, and from July 16 to August 15 (both dates inclusive) in each year.

[3] Copies of Form PD 1782 may be obtained from any Federal Reserve Bank or from the Treasury Department, Washington, D. C.

the rate of 1⅞ percent per annum, payable with the principal at maturity on March 22, 1956. They will not be subject to call for redemption prior to maturity.

2. The income derived from the certificates is subject to all taxes imposed under the Internal Revenue Code of 1954. The certificates are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The certificates will be acceptable to secure deposits of public moneys. They will be accepted at par plus accrued interest to maturity in payment of income and profits taxes due on March 15, 1956.

4. Bearer certificates will be issued in denominations of $1,000, $5,000, $10,000, $100,000 and $1,000,000. The certificates will not be issued in registered form.

5. The certificates will be subject to the general regulations of the Treasury Department, now or hereafter prescribed, governing United States certificates.

III. *Subscription and allotment.* 1. Subscriptions will be received at the Federal Reserve Banks and Branches and at the Office of the Treasurer of the United States, Washington. Commercial banks, which for this purpose are defined as banks accepting demand deposits, may submit subscriptions for account of customers, but only the Federal Reserve Banks and the Treasury Department are authorized to act as official agencies. Others than commercial banks will not be permitted to enter subscriptions except for their own account. Subscriptions from commercial banks for their own account will be received without deposit, but will be restricted in each case to an amount not exceeding one-half of the combined capital, surplus and undivided profits, of the subscribing bank. Subscriptions from all others must be accompanied by payment of 5 percent of the amount of certificates applied for, not subject to withdrawal until after allotment. Following allotment, any portion of the 5 percent payment in excess of 5 percent of the amount of certificates allotted may be released upon the request of the subscribers.

2. The Secretary of the Treasury reserves the right to reject or reduce any subscription, and to allot less than the amount of certificates applied for; and any action he may take in these respects shall be final. Allotment notices will be sent out promptly upon allotment.

IV. *Payment.* 1. Payment at par and accrued interest, if any, for certificates allotted hereunder must be made or completed on or before July 18, 1955, or on later allotment. In every case where payment is not so completed, the payment with application up to 5 percent of the amount of certificates allotted shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. Any qualified depositary will be permitted to make payment by credit for certificates allotted to it for itself and its customers up to any amount for which it shall be qualified in excess of existing deposits, when so notified by the Federal Reserve Bank of its District.

V. *General provisions.* 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive subscriptions, to make allotments on the basis and up to the amounts indicated by the Secretary of the Treasury to the Federal Reserve Banks of the respective Districts, to issue allotment notices, to receive payment for certificates allotted, to make delivery of certificates on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive certificates.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

[SEAL] G. M. HUMPHREY,
Secretary of the Treasury.

[F. R. Doc. 55-5581; Filed, June 11, 1955; 8:51 a. m.]

Office of the Secretary

[Treasury Department Order 167-17]

[CGFR 55-13]

COMMANDANT, COAST GUARD

DELEGATION OF FUNCTIONS

By virtue of the authority vested in me by Reorganization Plan No. 26 of 1950, and by 14 U. S. C. 92, 631, and 633, there are transferred to the Commandant, U. S. Coast Guard, the following functions of the Secretary of the Treasury:

1. All functions under 14 U. S. C. 92 (b), 144, 145 (a) (2), 145 (a) (3), 184, 186, 221, 228 (c), 230, 231, 238, 240-242, 301 (c), 310-312, 351, 352, 357 (c), 361, 365, 367, 431 (b), 431 (c), 432 (g), 473, 480, 501, 508 (a), 638, 826, and 891; Title IV and sections 511 and 513 of the Career Compensation Act of 1949 (37 U. S. C. 271-285, 311, and 313); Title V of the Veterans' Readjustment Assistance Act of 1952 (38 U. S. C. 1011-1016); the act of June 6, 1953 (39 U. S. C. 141-145); and the Dependents' Assistance Act of 1950 (50 U. S. C. 2201-2216).

2. The functions under 14 U. S. C. 226 (a), 301 (b), and 302 (a) of prescribing examinations to establish fitness for appointment; and the functions under 14 U. S. C. 633 of promulgating regulations and orders deemed appropriate to carry out functions delegated to the Commandant by the Secretary.

Dated: June 29, 1955.

[SEAL] H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

[F. R. Doc. 55-5579; Filed, July 11, 1955; 8:50 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

NEBRASKA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF PUBLIC LANDS

The Department of the Army has filed an application, serial number Wyo 029936 (Nebr.), for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including mining and mineral leasing laws.

The applicant desires the land for the operation and maintenance of the Gavins Point Dam and Reservoir Project, Nebraska.

For a period of thirty days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, State Supervisor, P. O. Box 929, Cheyenne, Wyoming.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

SIXTH P. M. NEBRASKA

T. 33 N., R. 4 W.,
Sec. 2, Lot 1;
Sec. 3, Lots 5, 6, 7, 8;
Sec. 10, SW¼SE¼, E½NE¼, Lots 1, 2, 3, 4;
Sec. 11, Lot 4.
T. 33 N., R. 5 W.,
Sec. 21, Lot 1.
Sec. 28, Lot 1.

The area described aggregates 626.60 acres.

R. R. BEST,
State Supervisor.

JULY 5, 1955.

[F. R. Doc. 55-5554; Filed, July 11, 1955; 8:45 a. m.]

DEPARTMENT OF AGRICULTURE

Commodity Stabilization Service and Commodity Credit Corporation

[Amdt. 1]

AGREEMENT WITH AMERICAN SHEEP PRODUCERS COUNCIL, INC.

NOTICE OF REFERENDUM AMONG PRODUCERS AND PROCEDURE FOR CONDUCT OF SUCH REFERENDUM

The Notice of Referendum among Producers on Agreement with American Sheep Producers Council, Inc., pursuant to section 708 of the National Wool Act of 1954 and Procedure for Conduct of Such Referendum, published in 20 F. R. 4452, is amended by the addition of section 11 at the end thereof, to read as follows:

11. *Voting in community property states.* In states having community property laws, husband and wife owning sheep as community property may vote their respective interests in the sheep.

If the wife does not vote her interest, the husband may vote as if he had the entire ownership in all the sheep.

(Sec. 708, 68 Stat. 912; 7 U. S. C. 1787)

Done at Washington, D. C., this 7th day of July 1955.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 55-5595; Filed, July 11, 1955; 8:53 a. m.]

Forest Service

SUITABILITY FOR NATIONAL FOREST PURPOSES OF CERTAIN LANDS

JUNE 30, 1955.

Pursuant to the requirement of Executive Order 10445, dated April 10, 1953 (18 F. R. 2069), except as to lands within the States of Arizona, California, Colorado, Idaho, Montana, New Mexico, Oregon, Washington, and Wyoming, all lands within the exterior boundaries of national forests which have been acquired through exchange since June 30, 1954, or that are in the process of being acquired through exchange by the Forest Service on behalf of the United States under authority of Title III of the Bankhead-Jones Farm Tenant Act, as amended (7 U. S. C. 1010-1013), are hereby determined to be suitable for national forest purposes.

[SEAL] RICHARD E. MCARDLE,
Chief, Forest Service.

[F. R. Doc. 55-5559; Filed, July 11, 1955; 8:46 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

PACIFIC WESTBOUND CONFERENCE ET AL.

NOTICE OF AGREEMENTS FILED FOR APPROVAL

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, as amended; 39 Stat. 733, 46 U. S. C. 814.

(1) Agreement No. 57-56, between the member lines of the Pacific Westbound Conference, modifies Rule 5 of the Appendix to the basic conference agreement (No. 57) by extending the time within which a member line may pay its share of conference expenses before becoming delinquent.

(2) Agreement No. 8038, between Thos. & Jno. Brocklebank, Ltd., and Bull Insular Line, Inc., covers the transportation of gunny sacks, hessian cloth and jute under through bills of lading from India and Pakistan to Puerto Rico, with transshipment at New York, Baltimore or Philadelphia. Agreement No. 8038 was filed to supersede and cancel approved transshipment Agreement No. 8015.

Interested parties may inspect these agreements and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to either of the agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

By order of the Federal Maritime Board.

Dated: July 6, 1955.

[SEAL] A. J. WILLIAMS,
Secretary.

[F. R. Doc. 55-5563; Filed, July 11, 1955; 8:47 a. m.]

CIVIL SERVICE COMMISSION

CERTAIN POSITIONS OF PROFESSIONAL ENGINEERS AND PHYSICAL SCIENTISTS IN CONTINENTAL UNITED STATES, INCLUDING ALASKA AND FOREIGN COUNTRIES AND CERTAIN ASTRONOMER POSITIONS IN THE CONTINENTAL UNITED STATES

NOTICE OF INCREASE IN MINIMUM RATES OF PAY

Under the provisions of section 803 of the Classification Act of 1949, as amended (63 Stat. 1105; 5 U. S. C. 1133), pursuant to 5 CFR 25.103, 25.105, the Commission has increased the minimum rate of pay for positions at GS-5 and GS-7 in the series indicated below. The new rate for GS-5 has been set at $4,345 (the sixth step of the grade) and for GS-7 at $4,930 (the fourth step of the grade). These increases will be effective on the first day of the first pay period which begins after July 2. The new increased rates apply throughout the continental United States, including Alaska, and in foreign countries, for all these positions, except astronomers. For astronomers, the new increased rates apply to continental United States only.

All professional Engineering positions in the GS-800 series:

Architect	GS-1040
Physicist	GS-1310
Electronic Scientist	GS-1312
Chemist	GS-1320
Metallurgist	GS-1321
Mathematician	GS-1520
Patent Examiner	GS-1224
Astronomer	GS-1330

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

[F. R. Doc. 55-5558; Filed, July 11, 1955; 8:46 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 6947]

ALASKA AIRLINES REDUCTION TEMPORARY MAIL RATES

NOTICE OF PREHEARING CONFERENCE

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on July 13, 1955, at 10:00 a. m., e. d. s. t., in Room 5855, Commerce Building, Fourteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Richard A. Walsh.

Dated at Washington, D. C., July 7, 1955.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 55-5619; Filed, July 11, 1955; 8:55 a. m.]

INTERSTATE COMMERCE COMMISSION

[Rev. S. O. 562, Taylor's I. C. C. Order 53-A]

COLORADO AND SOUTHERN RAILWAY CO.

REROUTING OR DIVERSION OF TRAFFIC

Upon further consideration of Taylor's I. C. C. Order No. 53 and good cause appearing therefor: *It is ordered*, That:

(a) Taylor's I. C. C. Order No. 53, be, and it is hereby vacated and set aside.

(b) Effective date: This order shall become effective at 8:00 a. m., July 5, 1955.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., July 5, 1955.

INTERSTATE COMMERCE COMMISSION,
CHARLES W. TAYLOR,
Agent.

[F. R. Doc. 55-5583; Filed, July 11, 1955; 8:51 a. m.]

[Rev. S. O. 562, Taylor's I. C. C. Order 54]

PITTSBURGH AND WEST VIRGINIA RAILWAY CO.

REROUTING OR DIVERSION OF TRAFFIC

In the opinion of Charles W. Taylor, Agent, The Pittsburgh & West Virginia Railway Company, because of work stoppage, is unable to transport traffic routed over and to points on its lines: *It is ordered*, That:

(a) Rerouting traffic. The Pittsburgh & West Virginia Railway Company, and its connections, is hereby authorized to divert or reroute such traffic over any available route to expedite the movement, regardless of routing shown on the waybill. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) Concurrence of receiving roads to be obtained. The railroads desiring to divert or reroute traffic under this order shall confer with the proper transportation officer of the railroad or railroads to which such traffic is to be diverted or rerouted, and shall receive the concurrence of such other railroads before the rerouting or diversion is ordered.

(c) Notification to shippers. The carriers rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipments on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) Effective date: This order shall become effective at 9:00 a. m., July 6, 1955.

(g) Expiration date: This order shall expire at 11:59 p. m., July 21, 1955, unless otherwise modified, changed, suspended or annulled.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., July 6, 1955.

INTERSTATE COMMERCE COMMISSION,
CHARLES W. TAYLOR,
Agent.

[F. R. Doc. 55-5584; Filed, July 11, 1955; 8:51 a. m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 53]

NEBRASKA

DECLARATION OF DISASTER AREA

Whereas, it has been reported that beginning on or about June 27, 1955, because of the disastrous effects of tornado and flood, damage resulted to residences and business property located in certain areas in the State of Nebraska; and

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected; and

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act of 1953;

Now, therefore, as Administrator of the Small Business Administration, I hereby declare that:

1. Applications for disaster loans under the provisions of section 207 (b) of the Small Business Act of 1953 may be received and considered by the offices below indicated from persons or firms whose property situated in Scotts Bluff County (including any areas adjacent to Scotts Bluff County) suffered damage or other destruction as a result of the catastrophe above referred to:

Small Business Administration Regional Office, Federal Office Building, Room 1402, 911 Walnut Street, Kansas City 6, Mo.
Small Business Administration Branch Office, Federal Office Building, Room 705, Fifteenth and Dodge Streets, Omaha, Nebr.

2. Special field offices to receive such applications will not be established at this time.

3. Applications for disaster loans under the authority of this Order will not be accepted subsequent to January 31, 1956.

Dated: July 6, 1955.

WENDELL B. BARNES,
Administrator.

[F. R. Doc. 55-5564; Filed, July 11, 1955; 8:47 a. m.]

[Declaration of Disaster Area 54]

WYOMING

DECLARATION OF DISASTER AREA

Whereas, it has been reported that beginning on or about June 27, 1955, because of the disastrous effects of flood, damage resulted to residences and property located in certain areas in the State of Wyoming; and

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected; and

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act of 1953;

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of Section 207 (b) of the Small Business Act of 1953 may be received and considered by the Office below indicated from persons or firms whose property situated in the following counties (including any areas adjacent to the counties below named) suffered damage or other destruction as a result of the catastrophe above referred to:

Counties of: Goshen, Platte; Small Business Administration Regional Office, New Customhouse, Room 235, 19th and Stout Streets, Denver 2, Colo.

2. Special field offices to receive such applications will not be established at this time.

3. Applications for disaster loans under the authority of this Order will not be accepted subsequent to January 31, 1956.

Dated: July 6, 1955.

WENDELL B. BARNES,
Administrator.

[F. R. Doc. 55-5565; Filed, July 11, 1955; 8:47 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

HELEN MARIE VON BORSTEL

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Helen Marie Von Borstel, Brecon, S. Wales, Great Britain, Claim No. 45906, Vesting Order No. 8423; $550.84 in the Treasury of the United States.

Executed at Washington, D. C., on June 30, 1955.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General, Director, Office of Alien Property.

[F. R. Doc. 55-5566; Filed, July 11, 1955; 8:48 a. m.]

EVANGELOS THEMISTOCLEUS TSAMOURTZIS

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Evangelos Themistocleus Tsamourtzis, Athens, Greece, Claim No. 62853; property described in Vesting Order No. 668 (8 F. R. 4995, April 17, 1943), relating to United States Letters Patent No. 2,081,516.

Executed at Washington, D. C., on June 30, 1955.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General, Director, Office of Alien Property.

[F. R. Doc. 55-5567; Filed, July 11, 1955; 8:48 a. m.]