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Washington, Thursday, September 19, 1957

TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 10729

SPECIAL ASSISTANT TO THE PRESIDENT FOR PERSONNEL MANAGEMENT

By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION 1. There shall be in the White House Office an official who shall be appointed by the President, shall have the title "Special Assistant to the President for Personnel Management," and shall receive compensation at such rate as the President, consonant with law, may prescribe.

SEC. 2. The Special Assistant to the President for Personnel Management shall:

(a) Assist the President in the execution of his duties with respect to personnel management, and advise and assist the President concerning personnel-management actions to be taken by or under the direction of the President, exclusive of actions with respect to Presidential appointments.

(b) Assist the President in the formulation and execution of his civilian personnel-management program, the establishment of policies and standards for the executive departments and agencies relating to the said program, and the evaluation of departmental and agency personnel-management programs and operations under such policies and standards.

(c) Assist the President in keeping informed with respect to activities of and developments in the executive departments and agencies which affect, or tend to determine, the personnel-management policies of the executive departments and agencies.

(d) Undertake on behalf of the President, and in collaboration with the Bureau of the Budget, a program designed to raise the level of effectiveness of personnel management in the executive departments and agencies, to improve steadily all personnel-management systems, and to bring about the proper coordination in personnel management among the executive departments and agencies.

SEC. 3. (a) Subject to the provisions of subsection (b) of this section, the United States Civil Service Commission or the Chairman thereof, as the case may be, shall, in performing the following, consult with the Special Assistant to the President for Personnel Management: (1) Any function vested by law in the President and by him delegated or otherwise assigned to the United States Civil Service Commission or to the Chairman thereof, and (2) any function vested by law in the said Commission or in the said Chairman which (i) is required by law to be performed with or subject to the approval, ratification, or other action of the President, and (ii) has been authorized by the President to be performed without his approval, ratification, or other action.

(b) The Special Assistant to the President for Personnel Management may, from time to time and partly or wholly, (1) exclude any specific matter or matters from the operation of the provisions of subsection (a) of this section, and (2) terminate any exclusion effected under this subsection (b).

(c) All rules, regulations, policies, determinations, instructions, requirements, or other actions of the United States Civil Service Commission or of the Chairman thereof, as the case may be, relating to any of the functions described in section 3 (a) of this order and in effect on the date of this order shall remain in effect until, and except as, hereafter revoked, amended, modified, or superseded by proper authority.

SEC. 4. The Special Assistant to the President for Personnel Management shall perform his functions under this order with the assistance of such personnel of the White House Office as may be provided for that purpose, and, as may be appropriate, with the assistance of

(Continued on p. 7449)

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THE PRESIDENT

EXECUTIVE AGENCIES

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.

designated personnel of executive departments and agencies.

SEC. 5. As used herein, the term "function" embraces duty, power, responsibility, authority, and discretion, and the term "performing" may be construed to mean exercising.

SEC. 6. Executive Order No. 10452 of May 1, 1953, entitled "Providing for the Performance by the Chairman of the Civil Service Commission of Certain Functions Relating to Personnel Management", is hereby revoked.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
September 16, 1957.

[F. R. Doc. 57-7719; Filed, Sept. 17, 1957; 12:45 p. m.]

RULES AND REGULATIONS

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

DEPARTMENT OF AGRICULTURE

Effective upon publication in the FEDERAL REGISTER, paragraph (f) (3) of § 6.111 is amended as set out below.

§ 6.111 *Department of Agriculture.*

* * *

(f) *Farmers Home Administration.*

* * *

(3) Temporary positions whose principal duties involve the making and servicing of emergency and special livestock loans pursuant to Public Law 38, 81st Congress, as amended, and Public Law 727, 83d Congress, as amended. Appointment under this provision shall not exceed one year unless extended with the prior approval of the Commission for additional periods of not to exceed one year each.

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

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

[F. R. Doc. 57-7685; Filed, Sept. 18, 1957; 8:51 a. m.]

TITLE 7—AGRICULTURE

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

PART 938—POTATOES GROWN IN THE RED RIVER VALLEY OF NORTH DAKOTA AND MINNESOTA

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AUTHORITY: §§ 938.0 to 938.86 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 938.0 *Findings and determinations*—(a) *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900) a public hearing was held at Grand Forks, North Dakota, May 20–22, 1957, upon a proposed marketing agreement and a proposed marketing order regulating the handling of Irish potatoes grown in certain designated counties of North Dakota and Minnesota. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) This part, and all the terms and conditions hereof, will tend to effectuate the declared policy of the act with respect to Irish potatoes grown in the production area defined herein as comprising the Counties of Pembina, Walsh, Cavalier, Towner, Grand Forks, Nelson, Steele, Traill, Cass, Richland, and Ramsey of North Dakota, and Kittson, Marshall, Red Lake, Pennington, Polk, Norman, Mahnomen, Wilken, Otter Tail, Becker, and Clay of Minnesota (i) by establishing and maintaining such orderly marketing conditions therefor as will tend to establish, as prices to the producers thereof, parity prices, (ii) and by protecting the interest of the consumer by approaching the level of prices which it is declared to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and by authorizing no action which has for its purpose the maintenance of prices to producers of such potatoes above the parity level, and (iii) by authorizing the establishment and maintenance of such minimum standards of quality and maturity, and such grading and inspection requirements as may be incidental thereto, as will tend to effectuate such orderly marketing of such potatoes as will be in the public interest;

(2) This part regulates the handling of Irish potatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a proposed marketing agreement upon which a hearing has been held;

(3) This part is limited in application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act; and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) This part prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in the production and marketing of Irish potatoes grown in the production area; and

(5) All handling of Irish potatoes as defined in this part is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is hereby found on the basis hereinafter indicated that good cause exists for making the provisions of this part effective not later than the date of publication in the FEDERAL REGISTER. It would be contrary to the public interest to delay the effective date until 30 days after publication (60 Stat. 237; 5 U. S. C. 1001 et seq.). As soon as practical after such effective time the Red River Valley Potato Committee, the administrative agency provided for in the part should be organized so it may function as soon as possible. Subsequently, and prior to issuance of regulations it will be necessary for the committee and the Secretary to initiate and accomplish various actions of both organizational and regulatory natures, including the formulation and promulgation of rules and regulations for administration of the program. The shipment of potatoes from the production area has already begun for the 1957 crop year and will continue through next spring. Hence, for the program to be of maximum benefit to producers during the 1957–58 marketing season for Red River Valley potatoes, the part should be made effective as early in the season as practicable so as to permit timely organization of the committee, establishment of rules and regulations, and to facilitate other necessary preparations for regulatory activity under the program. Thus, it will be possible for regulations designed to effectuate the declared policies of the act to be formulated and issued so that producers may benefit from this program on as much as possible of their 1957 crop of potatoes. The provisions of the part are well known to handlers of potatoes grown in the production area by reason of the following facts: (1) The public hearing at which evidence was received from the industry and upon which this part is based, was held at Grand Forks, North Dakota, on May 20–22, 1957; (2) the recommended decision and the final decision were issued on July 26, 1957 (22 F. R. 6002), and August 15, 1957 (22 F. R. 6686), respectively; (3) copies of the regulatory provisions of the part were made available, prior to or during the course of the referendum which was held during the period August 29 through September 5, 1957, to determine whether producers of potatoes in the production area favored issuance of this part, to all known parties who may be subject thereto; and (4) all known handlers in the production area were mailed a copy of the marketing agreement, the regulatory provisions of which are the same as those contained in this part. Compliance with the regulatory provisions of this part will not require advance preparation on the part of persons subject thereto which cannot be completed prior to the effective date of regulations pursuant thereto.

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping potatoes covered by this part) of more than 50 percent of the volume of potatoes covered by this part have signed a marketing agreement regulating the handling of potatoes grown in the production area, and

(2) The issuance of this part is approved or favored (i) by at least two-thirds of the producers who participated in the referendum held during the period August 29 through September 5, 1957, and who, during the designated representative period (July 1, 1956, through June 30, 1957), were engaged within the specified production area in the production of potatoes for market, and (ii) by producers of at least two-thirds of the volume of production of such potatoes represented in the aforesaid referendum.

Order relative to handling. It is, therefore, ordered that on and after the effective time hereof the handling of Irish potatoes grown in the production area as defined herein shall be in conformity to and in compliance with the terms and conditions of this part; and such terms and conditions are as follows:

DEFINITIONS

§ 938.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 938.2 *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 (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047).

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

§ 938.4 *Production area.* "Production area" means all territory included within the boundaries of the Counties of Pembina, Walsh, Cavalier, Towner, Grand Forks, Nelson, Steele, Traill, Cass, Richland, and Ramsey of the State of North Dakota, and of Kittson, Marshall, Red Lake, Pennington, Polk, Norman, Mahnomen, Wilken, Otter Tail, Becker, and Clay of the State of Minnesota.

§ 938.5 *Potatoes.* "Potatoes" means all varieties of Irish potatoes grown within the production area.

§ 938.6 *Handle or ship.* "Handle" or "ship" means to sell or transport potatoes, or cause the sale or transportation of potatoes, in the current of the commerce between the production area and any point outside therof.

§ 938.7 *Handler.* "Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes.

§ 938.8 *Producer.* "Producer" means any person engaged in the production of potatoes for market.

§ 938.9 *Grading.* "Grading" is synonymous with "prepare for market" which means the sorting or separating of potatoes into grades and sizes for market purposes.

§ 938.10 *Grade and size.* "Grade" means any of the officially established grades of potatoes, and "size" means any of the officially established sizes of potatoes, as defined and set forth in:

(a) The United States Standards for Potatoes issued by the United States Department of Agriculture (§§ 51.1540 to 51.1559, inclusive of this title), or amendments thereto, or modifications thereof, or variations based thereon;

(b) United States Consumer Standards for Potatoes as issued by the United States Department of Agriculture (§§ 51.1575 to 51.1587, inclusive of this title), or amendments thereto, or modifications thereof, or variations based thereon; and

(c) State standards for potatoes issued by the State in which the potatoes are shipped, or amendments thereto, or modifications thereof, or variations based thereon.

§ 938.11 *Maturity.* "Maturity" means the stage of development or condition of the outer skin (epidermis) of the potato determined according to skinning classifications defined by the United States Standards for Potatoes (§§ 51.1540 to 51.1559, inclusive of this title).

§ 938.12 *Varieties.* "Varieties" means all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 938.13 *Seed potatoes.* "Seed potatoes" or "seed" means all potatoes officially certified and tagged, marked, or otherwise appropriately identified under the supervision of the official seed potato certifying agency of the State in which the potatoes were grown.

§ 938.14 *Table stock potatoes.* "Table stock potatoes" or "table stock" means all potatoes not included within the definition of "seed potatoes."

§ 938.15 *Washed potatoes.* "Washed potatoes" means potatoes cleaned by water that meet standards of cleanness established by the Secretary pursuant to committee recommendations. The United States Standards for Potatoes (§§ 51.1540 to 51.1559, inclusive of this title) shall be the basis for standards of cleanness and determinations and certification of cleanness shall be by the Federal, or the Federal-State, Inspection Service.

§ 938.16 *Pack.* "Pack" means a quantity of potatoes in any type of container and which falls within specific weight limits or within specific grade limits, or both, recommended by the committee and approved by the Secretary.

§ 938.17 *Container.* "Container" means a sack, bag, crate, box, basket, barrel, or bulk load or any other receptacle used in the packaging, transportation, or sale of potatoes.

§ 938.18 *Committee.* "Committee" means the Red River Valley Potato Committee, established pursuant to § 938.25.

§ 938.19 *District.* "District" means each of the geographical divisions of the production area established pursuant to § 938.32.

§ 938.20 *Fiscal period.* "Fiscal period" means the period beginning and ending on the dates approved by the Secretary pursuant to recommendations by the committee.

§ 938.21 *Export.* "Export" means shipment of potatoes beyond the boundaries of continental United States.

COMMITTEE

§ 938.25 *Establishment and membership.* (a) The Red River Valley Potato Committee consisting of fourteen members, all of whom shall be producers, is hereby established.

(b) Each person selected as a committee member or alternate shall be a producer or an officer or employee of a producer in the district for which selected and each such person shall be a resident of the production area.

(c) For each member of the committee there shall be an alternate who shall have the same qualifications as the member. An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member his alternate shall act for him until a successor for such member is selected and has qualified.

§ 938.26 *Selection.* (a) Committee members and alternates shall be selected by the Secretary on the basis of districts as established pursuant to § 938.32. One member and one alternate member shall be selected from each district.

(b) Any person selected by the Secretary as a committee member or as an alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 938.27 *Term of office.* (a) The term of office of committee members and alternates shall be two years beginning July 1 and ending June 30, except that of the initial fourteen members selected, six shall serve for a term ending on the second June 30 following their selection and eight shall serve for a term ending on the first June 30 following their selection. Each of the initial fourteen alternate members shall be selected to serve for the same term of office as the respective member from each district. No member shall serve for more than three consecutive terms.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during the current term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 938.28 *Procedure.* (a) Ten members of the committee shall be necessary to constitute a quorum and ten concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meeting by telephone, telegraph, or other means of communication. Any vote cast at such meeting shall be confirmed promptly in writing. If any assembled meeting is held, all votes shall be cast in person.

§ 938.29 *Powers.* The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this subpart.

§ 938.30 *Duties.* The committee shall have the following duties.

(a) Meet and organize as soon as practical after the beginning of each term of office, select a chairman and such other officers as may be necessary, select subcommittees and adopt such rules and procedures for the conduct of its business as it may deem advisable.

(b) Act as intermediary between the Secretary and any producer or handler.

(c) Appoint such employees, agents, and representatives as it may deem necessary and determine the salaries and define the duties of each.

(d) Keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee, and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative.

(e) Furnish the Secretary promptly with copies of the minutes of each committee meeting, and the annual report of the committee's operations for the preceding fiscal period, and such other reports or information as may be requested by the Secretary.

(f) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy.

(g) Subject to § 938.75 (b), consult, cooperate, and exchange information with other marketing agreement committees and other agencies or individuals in connection with proper committee activities and objectives.

(h) Take any proper action necessary to carry out the provisions of this subpart.

(i) To establish and pay the expenses of advisory committees for the purpose of consulting with Federal, State, or other appropriate agencies with respect to marketing research and development projects pursuant to § 938.47.

(j) To receive and consider complaints and petitions from growers with respect to marketing problems arising in connection with operations of this part and to initiate consideration by the committee within five days following receipt of appropriate presentations to the committee. A request or petition for consideration by 50 percent of the producers of a variety in a producing section, as determined by the committee, or 30 producers, whichever is smaller, shall be deemed adequate for invoking this duty.

§ 938.31 *Members' expenses.* Committee members and their respective alternates when acting on committee business may be reimbursed for expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this part.

§ 938.32 *Districts.* (a) For the purpose of selecting committee members and alternates, the following districts of the production area are hereby initially established:

North Dakota District No. 1—Pembina County.

North Dakota District No. 2—Walsh County, that portion east of Highway 18.

North Dakota District No. 3—Towner and Cavalier Counties.

North Dakota District No. 4—Grand Forks and Nelson Counties.

North Dakota District No. 5—Traill and Steele Counties.

North Dakota District No. 6—Cass and Richland Counties.

North Dakota District No. 7—Ramsey and Walsh (that portion west of Highway 18) Counties.

Minnesota District No. 1—Kittson County.

Minnesota District No. 2—Marshall County.

Minnesota District No. 3—Pennington and Red Lake Counties.

Minnesota District No. 4—Polk County.

Minnesota District No. 5—Mahnomen and Norman Counties.

Minnesota District No. 6—Otter Tail and Wilken Counties.

Minnesota District No. 7—Clay and Becker Counties.

(b) The Secretary, upon the recommendation of the committee, may reestablish districts within the production area. In recommending any such changes in districts, the committee shall give consideration to (1) the relative importance of new areas of production, (2) changes in the relative positions of existing districts with respect to production, (3) the geographic location of areas of production as they would affect the efficiency of administering this part and (4) other relevant factors: *Provided,* That there shall be no change in the total number of districts. No change in districting may become effective within less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting may be made within less than six months prior to such date.

§ 938.33 *Nominations.* The Secretary may select the members of the Red River Valley Potato Committee and their respective alternates from nominations which may be made in the following manner, or from other eligible persons:

(a) Nominations for members and alternates of the committee may be submitted by producers, or groups thereof, on an elective basis or otherwise.

(b) In order to provide nominations for committee members and alternates:

(1) The committee shall hold or cause to be held prior to May 1 of each year, after the effective date of this subpart, a meeting or meetings of producers in each district in which the term of office of a committee member and alternate will commence the following July 1;

(2) In arranging for such meetings, the committee may, if it deems desirable,

utilize the services and facilities of existing organizations and agencies;

(3) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate member on the committee which is vacant, or which is to become vacant the following June 30;

(4) Nominations for committee members and alternate members shall be supplied to the Secretary, in such manner and form as he may prescribe, not later than May 31 of each year;

(5) Only producers who reside within the production area may participate in designating nominees for committee members and their alternates.

(6) Regardless of the number of districts in which a person handles or produces potatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives, in designating nominees for committee members and alternates. In the event a person is engaged in producing potatoes in more than one district, such person shall elect the district within which he may participate as aforesaid in designating nominees. An eligible voter's privilege of casting only one vote, as aforesaid, shall be construed to permit a voter to cast one vote for each position to be filled in the respective district in which he elects to vote.

(c) If nominations are not made within the time and in the manner specified by the Secretary pursuant to paragraph (b) of this section, the Secretary may, without regard to nominations, select the committee members and alternates on the basis of the representation provided for in this part.

§ 938.34 *Vacancies.* To fill any vacancy occasioned by the failure of any person selected as a committee member or as an alternate to qualify or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected by the Secretary from nominations made in the manner specified in § 938.33, or from previously unselected nominees on the current nominee list from the district involved or from other eligible persons. If the names of nominees to fill any vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in this part.

EXPENSES AND ASSESSMENTS

§ 938.40 *Budget.* At the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare a budget of estimated income and expenditures necessary for the administration of this part. The committee may recommend to the Secretary a rate or rates of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 938.41 *Expenses.* The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by it during each fiscal period for its maintenance and functioning and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part. The funds to cover such expenses shall be acquired by the levying of assessments upon handlers as provided in this part.

§ 938.42 *Assessments.* (a) Handlers shall share expenses on the basis of each fiscal period. Each handler who first handles potatoes shall pay assessments to the committee upon demand, which assessment shall be in payment of such handler's pro rata share of the committee's expenses. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of potatoes handled by him as the first handler thereof during a fiscal period and the total quantity of potatoes handled by all handlers as first handlers thereof during such fiscal period.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information. Such rates may be applied equitably to each pack or unit.

(c) At any time during or subsequent to a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all potatoes which were handled by the first handler thereof during such fiscal period.

(d) The committee, with the approval of the Secretary, may provide for collection of assessments through the Potato Control Boards of the Red River Valley areas of Minnesota and North Dakota.

§ 938.43 *Fiscal reports.* The books of the committee shall be audited by a competent accountant at the end of each fiscal period and at such other time as the committee may deem necessary or as the Secretary may request. Copies of each audit report shall be furnished the Secretary and a copy shall be made available at the principal office of the committee for inspection by producers and handlers.

§ 938.44 *Refunds.* At the end of each fiscal period, monies arising from the excess of assessments over expenses shall be accounted for as follows:

(a) Each handler entitled to a proportionate refund of the excess assessments at the end of a fiscal period shall be credited with such refund against the operation of the following fiscal period unless he demands payment thereof, in which event such proportionate refund shall be paid to him; or

(b) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of such committee that some of the funds remaining at the end of a fiscal period which are in excess of the expenses necessary for operation during such period may be carried over into following periods as a reserve for possible liquidation. Upon approval by the Secretary, such reserve may be used upon termination of this part to liquidate the affairs of the committee: *Provided,* That upon termination of this part any monies in the reserve for liquidation which are not required to defray the necessary expenses of liquidation shall to the extent practicable be returned upon a pro rata basis to all persons from whom such funds were collected.

RESEARCH AND DEVELOPMENT

§ 938.47 *Research and development.* The committee, with the approval of the Secretary, may provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of potatoes and may make available committee information and data to any person, or to any employee of an agency or its agent, authorized by the committee as its agent with the approval of the Secretary, to conduct such projects.

REGULATION

§ 938.50 *Marketing policy.* Each season prior to or at the same time as initial recommendations are made pursuant to § 938.51, the committee shall submit to the Secretary a report setting forth the marketing policy it deems desirable for the industry to follow in shipping potatoes from the production area during the ensuing season. Additional reports shall be submitted from time to time if it is deemed advisable by the committee to adopt a new marketing policy because of changes in the demand and supply situation with respect to potatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the committee shall give due consideration to the following:

(a) Market prices for potatoes, including prices by grade, size, and quality in different packs, or in different containers;

(b) Supply of potatoes by grade, size, quality, and maturity in the production area and in other potato producing areas;

(c) The trend and level of consumer income;

(d) Establishing and maintaining orderly marketing conditions for potatoes;

(e) Orderly marketing of potatoes as will be in the public interest; and

(f) Other relevant factors.

§ 938.51 *Recommendations for regulations.* The committee, upon complying with the requirements of § 938.50, may recommend regulations to the Secretary whenever it finds that such regulations as provided for in this subpart will tend

to effectuate the declared policies of the act.

§ 938.52 *Issuance of regulations.* (a) The Secretary shall limit the shipment of potatoes whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulations would tend to effectuate the declared policy of the act. Such limitation may:

(1) Regulate in any or all portions of the production area, the handling of particular grades, sizes, qualities, or maturities of any or all varieties of table stock or of seed potatoes, or any combination of the foregoing during any period;

(2) Regulate the handling of particular grades, sizes, qualities, or maturities of potatoes differently, for different varieties, for washed and unwashed table stock for seed, for different sizes and types of containers, for different portions of the production area, for different packs, or for any combination of the foregoing, during any period.

(3) Provide a method through rules and regulations issued pursuant to this part for fixing the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of potatoes, or both.

(4) Establish in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) No regulation applicable to seed shall modify or impair the official seed certification specification and requirements established by the official seed certification agency of the State in which the potatoes were grown.

(c) The Secretary may amend or modify any regulation issued under this subpart whenever he finds from the recommendations of the committee or other available information that such regulation as amended or modified would tend to effectuate the declared policy of the act. In like manner, the Secretary may also terminate or suspend any regulation whenever he finds that such regulation obstructs or no longer tends to effectuate the declared policy of the act.

(d) The Secretary shall notify the committee of each regulation issued pursuant to this section and the committee shall give reasonable notice thereof to handlers.

§ 938.53 *Minimum quantities.* The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, minimum quantities below which shipments of potatoes will be free from requirements in effect pursuant to § 938.42 or § 938.60, or both.

§ 938.54 *Handling for special purposes.* Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary, whenever he finds that it will tend to effectuate the declared policy of the act, shall modify, suspend, or terminate requirements in effect pursuant to §§ 938.42 to 938.60, inclusive, in order to facilitate handling of the following special shipments of potatoes:

(a) Shipments of potatoes for export;

(b) Shipments of potatoes for distribution by relief agencies, or for charitable institutions;

(c) Shipments of potatoes for manufacture or conversion into specified products;

(d) Shipments of potatoes for livestock feed;

(e) Other shipments which the Secretary may specify.

§ 938.55 *Safeguards.* (a) The committee, with the approval of the Secretary, may prescribed adequate safeguards to prevent potatoes handled pursuant to § 938.54, or seed handled pursuant to § 938.52, from entering channels of trade for other than the specific authorizations therefor, and the rules governing the issuance and the contents of Certificates of Privilege, if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall file applications with the committee to handle potatoes pursuant to § 938.54.

(2) Handlers shall obtain inspection required by § 938.60, or pay the assessment levied pursuant to § 938.42, or both, in connection with shipments made under § 938.54.

(3) Handlers shall obtain Certificates of Privilege from the committee for handling of potatoes affected or to be affected under the provisions of § 938.54.

(b) The committee may rescind or deny Certificate of Privilege to any handler if proof is obtained that potatoes handled by him for the purposes stated in § 938.54 were handled contrary to the provisions of this part. The right to be informed promptly of the basis for rescinding or denying a Certificate of Privilege shall be preserved to the holder thereof or applicant therefor. In addition, the right of appeal to the committee and in turn to the Secretary from any action rescinding or denying such certificate shall be preserved to the holder thereof, or applicant therefor.

(c) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(d) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of potatoes covered by such applications, the number of such applications denied and certificates granted, the quantity of potatoes handled under duly issued certificates, and such other information as may be requested.

INSPECTION

§ 938.60 *Inspection and certification.* (a) During any period in which the handling of potatoes is regulated pursuant to § 938.52 or § 938.54, or both, no handler shall handle potatoes unless such potatoes are inspected by an authorized representative of the Federal or Federal-State Inspection Service and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to § 938.53 or § 938.54, or both.

(b) Regarding, resorting, or repacking any lot of potatoes shall invalidate any prior inspection certificates insofar as the requirements of this section are concerned. No handler shall handle potatoes after they have been regraded, resorted, repacked, or in any way further prepared for market, unless such potatoes are inspected by an authorized representative of the Federal, or Federal-State, Inspection Service. Such inspection requirements on regraded, resorted, or repacked potatoes may be modified, suspended, or terminated upon recommendation by the committee, and approval by the Secretary.

(c) Upon recommendation of the committee, and approval of the Secretary, all potatoes so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the containers by the handler under the direction and supervision of the Federal, or Federal-State, inspector or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When potatoes are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of potatoes by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, which certificate shall be surrendered to such authority as may be designated.

EXEMPTIONS

§ 938.65 *Policy.* (a) Any producer whose potatoes have been adversely affected by acts beyond his control or by acts beyond reasonable expectation and who, by reason of any regulation issued pursuant to § 936.52, is or will be prevented from shipping or having shipped during the then current marketing season, or a specific portion thereof, as large a proportion of his potato crop as the average proportion shipped or to be shipped during comparable portions of the season by all producers in his immediate area of production may apply to the committee for exemptions from such regulations for the purpose of obtaining equitable treatment under such regulations.

(b) Any handler who has storage holdings of ungraded potatoes acquired during or immediately following the digging season that have been adversely affected by acts beyond the handler's control or by acts beyond reasonable expectation and who, by reason of any regulation issued pursuant to § 938.52, is prevented from shipping during the then current marketing season as large a proportion of his storage holdings of ungraded potatoes as the average proportion of ungraded storage holdings shipped by all handlers in said handler's immediate

shipping area, may apply to the committee for exemptions from such regulations for the purpose of obtaining equitable treatment under such regulations.

§ 938.66 *Rules and procedures.* The committee may adopt, with approval of the Secretary, the rules and procedures for handling exemptions. Such rules and procedures shall provide for processing applications for exemptions, for issuing certificates of exemption, for committee determinations with respect to areas and averages (as required by § 938.65), and for such other procedures as may be necessary to carry out the provisions in this section and § 938.65.

§ 938.67 *Granting exemptions.* The committee shall issue certificates of exemption to any qualified applicant who furnished adequate evidence to such committee:

(a) That the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation:

(b) That by reason of regulations issued pursuant to § 938.52, in case of an applicant who is a producer, he will be prevented from shipping or having shipped as large a proportion of his production as the average proportion of production shipped by all producers in said applicant's immediate area of production during the season, or a specific portion thereof;

(c) That by reason of regulations issued pursuant to § 938.52, in case of an applicant who is a handler who has acquired during or immediately following the digging season, he will be prevented from shipping as large a proportion of such storage holdings as the average proportion of similar storage holdings shipped by all handlers in said applicant's immediate shipping area during the season;

(d) Each certificate shall permit the person identified therein to ship or have shipped the potatoes described thereon, and evidence of such certificates shall be made available to subsequent handlers thereof.

§ 938.68 *Investigation.* The committee shall be permitted at any time to make a thorough investigation of any applicant's claim pertaining to exemptions.

§ 938.69 *Appeal.* If any applicant for exemption certificates is dissatisfied with the determination by the committee with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken within 7 days after the determination by the committee from which the appeal is taken. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the application within 14 days after receipt of such application. The committee shall notify the appellant of the final determination and shall furnish the Secretary with a copy of the appeal and a statement of considerations involved in making the final determination.

REPORTS

§ 938.75 *Reports.* Upon the request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee in such manner and at such time as it may prescribe, reports and other information as may be necessary for the committee to perform its duties under this part. In this connection: (a) Such reports may include, but are not necessarily limited to, the following:

(1) The quantities of potatoes received and disposed of by types of outlets during specific periods;

(2) Sales records including dates, car or truck numbers, and inspection certificate numbers;

(3) Record of shipments handled under exemption certificates including number of such certificates;

(4) Record of all potatoes handled pursuant to § 938.53 and § 938.54 including Certificates of Privilege and inspection certificate numbers, if any.

(b) All such reports shall be held under appropriate protective classification in custody by the committee, or duly authorized individuals or agencies thereof, so that the competitive position of any handler in relation to other handlers will not be disclosed. Compilation of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the potatoes received and disposed of by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

COMPLIANCE

§ 938.76 *Compliance.* No handler shall handle potatoes except in conformance with the provisions of this subpart and the rules and regulations issued thereunder.

MISCELLANEOUS PROVISIONS

§ 938.77 *Amendments.* Amendments to this subpart may be proposed from time to time, by the committee or by the Secretary.

§ 938.78 *Right of the Secretary.* Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States. The members of the committee (including successors and alternates), and any agent or employee, shall be subject to removal by the Secretary at any time. Each and every act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 938.79 *Effective time.* The provisions of this subpart shall become effective at such time as the Secretary may declare above his signature attached to this subpart, and shall continue in force until terminated in one of the ways specified in this subpart.

§ 938.80 *Termination.* (a) The Secretary may at any time terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of potatoes: *Provided,* That such majority has, during such period, produced for market more than fifty percent of the volume of such potatoes produced for market; but such termination shall be effective only if announced at least 30 days prior to the end of the then current fiscal period.

(d) The provisions of this subpart shall in any event terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 938.81 *Proceedings when terminated, suspended, or inactive.* (a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall continue as joint trustees for the purpose of settling the affairs of the committee by liquidating all funds and property then in possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary and shall proceed pursuant to directions of the Secretary's liquidation order.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

(d) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods when regulations are not in effect and, if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

§ 938.82 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not: (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may there-

after arise in connection with any provision of this subpart or of any regulation issued under this subpart;

(b) Release or extinguish any violation of this subpart or of any regulation issued under this subpart; or

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

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

§ 938.84 *Personal liability.* (a) No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any handler or any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents, and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member or alternate of the committee he shall account for all receipts, disbursements, funds, and property (including but not being limited to books and other records) pertaining to such committee's activities for which he is responsible and deliver all such property and funds in his hands to such successor, agency, or person as may be designated by the Secretary, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the designated successor, agency, or person the right to all such property and funds and all claims vested in such member or alternate.

§ 938.85 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any persons by virtue of this subpart shall cease upon the termination of this subpart except with respect to acts done under and during the existence of this subpart.

§ 938.86 *Separability.* If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

Issued at Washington, D. C., this 13th day of September, 1957, to become effective upon publication in the FEDERAL REGISTER.

[SEAL] DON PAARLBERG,
Assistant Secretary.

[F. R. Doc. 57-7658; Filed, Sept. 18, 1957; 8:46 a. m.]

PART 950—PEACHES GROWN IN UTAH

DETERMINATION RELATIVE TO EXPENSES AND FIXING OF RATE OF ASSESSMENT FOR 1957–58 FISCAL YEAR

Pursuant to the marketing agreement and Order No. 50 (7 CFR Part 950) regulating the handling of peaches grown in the State of Utah, 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 proposals submitted by the Administrative Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 950.206 *Expenses and rate of assessment for the 1957–58 fiscal year*—(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Administrative Committee, established pursuant to the provisions of the marketing agreement and order, to enable such committee to perform its functions, in accordance with the provisions thereof, during the fiscal year beginning May 1, 1957, and ending April 30, 1958, both dates inclusive, will amount to $3,500.00.

(b) *Rate of assessment.* The rate of assessment, which each handler who first ships peaches shall pay as his pro rata share of the aforesaid expenses in accordance with the applicable provisions of said marketing agreement and order, is hereby fixed at one and three-quarter cents ($0.0175) per bushel basket of peaches, or an equivalent quantity of peaches in other containers or in bulk, shipped by such handler during said fiscal year.

(c) *Definitions.* As used herein, the terms "handler," "ship," "shipped," "shipments," "peaches," and "fiscal year" shall have the same meaning as when used in said marketing agreement and order.

It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this determination until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that (1) said Administrative Committee at a meeting held on August 23, 1957, proposed an itemized budget of expenses and a rate of assessment based upon information then available as to production of peaches during the 1957 season and anticipated expenses; (2) necessary supplemental information supporting the proposed budget and rate of assessment was not made available to the Department until September 9, 1957; (3) shipments of peaches from Utah have, since 12:01 a. m., M. s. t., September 1, 1957, been subject to the regulatory provisions of Peach Order 1 (§ 950.306; 22 F. R. 7031); (4) the rate of assessment is, in accordance with the marketing agreement and order, applicable to all fresh peaches shipped during the 1957–58 fiscal year; (5) a large volume of the Utah peach crop is handled by itinerant truckers who do not have permanent addresses in the production area and who operate in the area during only part of the season; and (6) in order to enable the said Administrative Committee to perform its duties and functions under said marketing agreement and order, it is essential that the rate of assessment be fixed immediately so as to permit the prompt collection, especially from the itinerant handlers, of each handler's assessment.

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

Dated: September 16, 1957.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator, Marketing Services.

[F. R. Doc. 57-7702; Filed, Sept. 18, 1957; 8:55 a. m.]

PART 1005—MILK IN THE NORTH CENTRAL IOWA MARKETING AREA

ORDER REGULATING HANDLING

Sec.

PAYMENTS

EFFECTIVE TIME, SUSPENSION OR TERMINATION

MISCELLANEOUS PROVISIONS

AUTHORITY: §§ 1005.0 to 1005.101 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 1005.0 *Findings and determinations*—(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the North Central Iowa marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

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

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

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

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to butterfat and skim milk contained in (a) producer milk, (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 1005.46, and (c) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant not subject to the classification and pricing provisions of another order issued pursuant to the act.

(b) *Additional findings.* In view of the fact that this part will constitute the original imposition of a regulatory program of this nature for the market, the provisions other than those relating to prices and payments to producers, should be put into effect prior to the effective date of the entire part to afford handlers an opportunity to make any necessary changes in their acounting procedure or other adjustments as required to conform with all provisions of the part. Reasonable time will have been afforded interested parties to prepare to comply with the aforesaid provisions. The provisions of said part are known to handlers. The decision of the Acting Secretary of Agriculture containing all the provisions of this part was issued on July 30, 1957. In view of the foregoing, it is hereby found and determined that good cause exists for making §§ 1005.1 through 1005.18, 1005.20 through 1005.22, 1005.30 through 1005.33, 1005.40 through 1005.46, 1005.60 and 1005.61, 1005.85 and 1005.86, 1005.90 through 1005.93, and 1005.100 and 1005.101, effective on October 1, 1957, and the entire part (§ 1005.1 through 1005.101) effective November 1, 1957. It would be contrary to the public interest to delay such effective dates of this part for 30 days after its publication in the FEDERAL REGISTER. (See section 4 (c), Administrative Procedure Act, 5 U. S. C. 1001 et seq.)

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

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

(2) The issuance of this part is the only practical means pursuant to the declared policy of the act of advancing the interest of producers of milk which is produced for sale in the marketing area; and

(3) The issuance of this part is approved or favored by at least three-fourths of the producers who participated in a referendum thereon and who, during the determined representative period (May 1957), were engaged in the production of milk for sale in the said marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the North Central Iowa marketing area shall be in conformity to, and in compliance with, the following terms and conditions.

DEFINITIONS

§ 1005.1 *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.).

§ 1005.2 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

§ 1005.3 *Department.* "Department" means the United States Department of Agriculture or any other Federal agency authorized to perform the price reporting functions of the United States Department of Agriculture.

§ 1005.4 *Person.* "Person" means any individual, partnership, corporation, association, or other business unit.

§ 1005.5 *Cooperative association.* "Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

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

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1005.6 *North Central Iowa marketing area.* "North Central Iowa marketing area" (hereinafter called the "marketing area") means all territory within the boundaries of Black Hawk County and the cities of Charles City, Clarion, Clear Lake, Eagle Grove, Fort Dodge, Hampton, Humboldt, Marshalltown, Mason City, New Hampton, Osage, Waverly and Webster City, all in the State of Iowa, including territory within such boundaries which is occupied by government (Municipal, State, or Federal) reservations, installations, institutions, or other establishments.

§ 1005.7 *Producer.* "Producer" means any person, except a producer-handler, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority which milk is (a) received at a pool plant, or (b) diverted from a pool plant to a nonpool plant for the account of the operator of the pool plant (1) any day during the months of April through June, and (2) on not more than one-half the days on which milk was delivered from a farm during any of the months of July through March.

§ 1005.8 *Distributing plant.* "Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (ex-

cept other plants) located in the marketing area.

§ 1005.9 *Supply plant.* "Supply plant" means a plant from which milk, skim milk or cream which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 1005.10 (a).

§ 1005.10 *Pool plant.* "Pool plant" means:

(a) A distributing plant from which a volume of Class I milk equal to more than an average of 1,000 pounds per day or not less than 15 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except other plants) in the marketing area.

(b) A supply plant for the month in which shipments of milk, skim milk or cream are made to distributing plants which are pool plants on not less than 10 days in any of the months of September, October, and November and on not less than 5 days in other months: *Provided,* That a supply plant which was not a pool plant for each of the immediately preceding months of September, October and November shall not be a pool plant for any month during which none of the milk, skim milk or cream from such plant was allocated to Class I milk pursuant to § 1005.46 at a distributing plant which is a pool plant.

§ 1005.11 *Nonpool plant.* "Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 1005.12 *Handler.* "Handler" means any person in his capacity as the operator of one or more distributing or supply plants.

§ 1005.13 *Producer-handler.* "Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers.

§ 1005.14 *Producer milk.* "Producer milk" means only that skim milk or butterfat contained in milk (a) received at a pool plant directly from producers, or (b) diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 1005.7.

§ 1005.15 *Fluid milk product.* "Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), cream or any mixture in fluid form of skim milk and cream (except aerated cream products, yogurt, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers).

§ 1005.16 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of fluid milk products except (1) fluid milk products received from pool plants, (2) producer milk, or (3) inventory at the beginning of the month; and

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

§ 1005.17 *Base zone.* "Base zone" means all the territory south of a line formed by the indefinite extension of the southern boundaries of Hancock, Cerro Gordo, and Floyd Counties, all in the State of Iowa.

§ 1005.18 *Chicago butter price.* "Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

MARKET ADMINISTRATOR

§ 1005.20 *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.

§ 1005.21 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1005.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

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

(b) Employ and fix the compensation of such persons as may be necessary to 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 § 1005.85, (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 § 1005.84, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

(f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1005.30 and 1005.31, or payments pursuant to §§ 1005.80 through 1005.85;

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

(h) Verify all reports and payments of each handler by audit, if necessary, of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, or by such investigation as the market administrator deems necessary;

(i) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(j) Publicly announce and notify each handler on or before:

(1) The 5th day of each month, the minimum price for Class I milk pursuant to § 1005.50 (a) and the Class I butterfat differential pursuant to § 1005.51 (a), both for the current month; and the minimum price for Class II milk pursuant to § 1005.50 (b) and the Class II butterfat differential pursuant to § 1005.51 (b), both for the preceding month; and

(2) The 10th day after the end of each month the uniform prices pursuant to § 1005.71 and the producer butterfat differentials pursuant to § 1005.81.

REPORTS, RECORDS AND FACILITIES

§ 1005.30 *Reports of receipts and utilization.* On or before the 7th day after the end of each month, each handler, except a producer-handler, shall report for such month to the market administrator in the detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in receipts of producer milk;

(b) The quantities of skim milk and butterfat contained in fluid milk products received from other pool plants;

(c) The quantities of skim milk and butterfat contained in other source milk;

(d) The quantities of skim milk and butterfat contained in producer milk diverted to nonpool plants pursuant to § 1005.7;

(e) Inventories of fluid milk products on hand at the beginning and end of the month; and

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

§ 1005.31 *Other reports.* (a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month for each of his pool plants, his producer payroll for such month which shall show for each producer: (i) His name and address, (ii) the total pounds of milk received from such producer, (iii) the number of days on which milk was received from such producer, if less than a full calendar month, (iv) the average butterfat content of such milk, and (v) the net amount of such handler's payment together with the price paid and the amount and nature of any deductions;

(2) On or before the first day other source milk is received in the form of any fluid milk product at his pool plant(s), his intention to receive such product and on or before the last day such product is received, his intention to discontinue receipt of such milk;

(3) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted; and

(4) Such other information with respect to the utilization of butterfat and skim milk as the market administrator may prescribe.

§ 1005.32 *Records and facilities.* Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk, skim milk, cream and other milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations including the amount and nature of any deductions and the disbursement of money so deducted.

§ 1005.33 *Retention of records.* All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided,* That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such 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

§ 1005.40 *Skim milk and butterfat to be classified.* The skim milk and butterfat which are required to be reported pursuant to § 1005.30 shall be classified each month by the market administrator, pursuant to the provisions of §§ 1005.41 through 1005.46.

§ 1005.41 *Classes of Utilization.* Subject to the conditions set forth in § 1005.44 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including concentrated and reconstituted skim milk) and butterfat (1) disposed of in the form of a fluid milk product and (2) not accounted for as Class II milk;

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product other than a fluid milk product; (2) contained in inventory of fluid milk products on hand at the end of the month; and (3) in shrinkage allocated to receipts of producer milk (except milk diverted to a nonpool plant pursuant to § 1005.7) and other source milk (received in the form of a fluid milk product in bulk) but not in excess of 2 percent of such receipts of skim milk and butterfat, respectively.

§ 1005.42 *Shrinkage.* The market administrator shall allocate shrinkage over a handler's receipts as follows:

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

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat contained in producer milk and in other source milk.

§ 1005.43 *Responsibility of handlers and reclassification of milk.* (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise;

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

§ 1005.44 *Transfers.* Skim milk or butterfat disposed of each month from a pool plant shall be classified:

(a) As Class I milk, if transferred in the form of a fluid milk product to the pool plant of another handler, except a producer-handler, unless utilization as Class II milk is claimed by both handlers in their reports submitted for the month to the market administrator pursuant to § 1005.30: *Provided,* That the skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the plant of the transferee-handler after the subtraction of other source milk pursuant to § 1005.46 and any additional amounts of such skim milk or butterfat shall be classified as Class I milk: *And provided further,* That if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk of both handlers;

(b) As Class I milk, if transferred to a producer-handler in the form of a fluid milk product;

(c) As Class I milk, if transferred or diverted in the form of a fluid milk product to a nonpool plant located more than 150 miles, by the shortest highway distance as determined by the market administrator, from the nearest of the city halls of Waterloo, Mason City, Fort Dodge and Marshalltown, Iowa; and

(d) As Class I milk, if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant located not more than 150 miles, by the shortest highway distance as determined by the market administrator, from the nearest of the city halls of Waterloo, Mason City, Fort Dodge, and Marshalltown, Iowa, unless:

(1) The transferring or diverting handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 1005.30 for the month within which such transactions occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat in the fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from such nonpool plant do not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers who the market administrator determines constitute the regular source of supply for such plant: *Provided,* That any skim milk or butterfat in fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from the nonpool plant which is in excess of receipts from such dairy farmers shall be assigned to the fluid milk products so transferred or diverted and classified as Class I milk: *And provided further,* That if the total skim milk and butterfat in fluid milk products which were transferred by all handlers to such nonpool plant during the month are less than the skim milk and butterfat available for assignment to Class I milk pursuant to the preceding proviso hereof, the assignment to Class I milk shall be prorated over the claimed Class II classification reported by each such handler on transfers to the nonpool plant.

§ 1005.45 *Computation of the skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handler: *Provided,* That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to

the nonfat milk solids contained in such product, plus all of the water reasonably associated with such solids in the form of whole milk.

§ 1005.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 1005.45 the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler each month as follows:

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

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk assigned to producer milk pursuant to § 1005.41 (b) (3);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk;

(3) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from the pool plants of other handlers according to the classification of such products as determined pursuant to § 1005.44 (a);

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

(5) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph and if the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II. Any amount of excess so subtracted shall be called "overage".

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

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

MINIMUM PRICES

§ 1005.50 *Class prices.* Subject to the provisions of §§ 1005.51 and 1005.52 the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk price.* The Class I milk price shall be the price for Class I milk established under Federal Order No. 41, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area, plus 15 cents: *Provided,* That for milk received from producers at a pool plant north of the base zone the price otherwise applicable pursuant to this paragraph shall be reduced 5 cents.

(b) *Class II milk price.* The Class II milk price shall be the average of the basic or field prices reported to have been paid or to be paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department:

Present Operator and Plant Location

Amboy Milk Products Co., Amboy, Illinois.
Borden Company, Dixon, Illinois.
Borden Company, Sterling, Illinois.
Carnation Company, Morrison, Illinois.
Carnation Company, Oregon, Illinois.
Carnation Company, Waverly, Iowa.
United Milk Products Company, Argo Fay, Illinois.

§ 1005.51 *Butterfat differentials to handlers.* For milk containing more or less than 3.5 percent butterfat, the class prices for the month calculated pursuant to § 1005.50 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.120.

(b) *Class II prices.* Multiply the Chicago butter price for the current month by 0.110 for the months of April, May, and June, and by 0.115 for all other months.

§ 1005.52 *Location differentials to handlers.* For that milk which is received from producers at a pool plant located 50 miles or more from the city halls of each of the cities of Waterloo, Mason City, Fort Dodge and Marshalltown, Iowa, by the shortest hard surfaced highway distance as determined by the market administrator, and which is classified as Class I milk, the price specified in § 1005.50 (a) shall be reduced by 10 cents for the first 65 miles or less and by 1.5 cents for each additional 10 miles or fraction thereof that such plant is from the nearest of the city halls of Waterloo, Mason City, Fort Dodge and Marshalltown: *Provided,* That for the purpose of calculating the location differential adjustment applicable pursuant to this section fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II milk in the transferee plant after making the calculation prescribed in § 1005.46 (a) (2) and the comparable steps in (b) for such plant, such assignment to transferor plants to be made in sequence according to the location differential applicable to each plant, beginning with the plant having the largest differential.

§ 1005.53 *Use of equivalent prices.* If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 1005.60 *Producer-handler.* Sections 1005.40 through 1005.46, 1005.50 through 1005.52, 1005.70, 1005.71, 1005.80 through 1005.85, and 1005.90 through 1005.93 shall not apply to a producer-handler.

§ 1005.61 *Plants subject to other Federal orders.* The provisions of this part shall not apply to a distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant is qualified as a pool plant pursuant to § 1005.10 and a greater volume of fluid milk products is disposed of from such plant to retail or wholesale outlets and to pool plants in the North Central Iowa marketing area than in the marketing area regulated pursuant to such other order: *Provided,* That the operator of a distributing plant or a supply plant which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 1005.30) and allow verification of such reports by the market administrator.

DETERMINATION OF UNIFORM PRICE

§ 1005.70 *Net obligation of handlers.* The net obligation of each handler for producer milk received at his pool plant(s) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of such milk in each class by the applicable class price;

(b) Add together the resulting amounts;

(c) Add the amounts computed by multiplying the pounds of overage deducted from each class by the applicable class price;

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months; and

(e) Add the amount obtained in multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified in Class II during the preceding month, or the hundredweight of milk subtracted from Class I pursuant to § 1005.46 (a) (4) and (b), whichever is less.

§ 1005.71 *Computation of uniform prices for handlers.* For each month the market administrator shall compute a uniform price for the producer milk received by each handler as follows:

(a) Add to the amount computed pursuant to § 1005.70 the total of the location differential deductions to be made pursuant to § 1005.82;

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk received by such handler is less or more respectively, than 3.5 percent, an amount computed by multiplying such difference by the butterfat differential to producers, and multiplying the result by the total hundredweight of producer milk;

(c) Add if a deduction was made, or subtract if an addition was made, in computing the uniform price for such handler to the nearest cent for the preceding month the amount of such adjustment; and

(d) Divide the resulting amount by the total hundredweight of producer milk received by such handler. The quotient, adjusted to the nearest cent, shall be the uniform price for such handler for producer milk of 3.5 percent butterfat content in the base zone and within 50 miles of the city halls of Waterloo, Mason City, Fort Dodge or Marshalltown, Iowa.

PAYMENTS

§ 1005.80 *Time and method of payment for producer milk.* Each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 14th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform prices per hundredweight pursuant to § 1005.71 subject to the butterfat differential computed pursuant to § 1005.81 plus or minus adjustments for errors made in previous payments to such producer; and less (1) location differential deductions pursuant to § 1005.82, (2) marketing service deductions pursuant to § 1005.84 and (3) proper deductions authorized by such producer: *Provided*, That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payment for such milk the handler shall, if requested by the cooperative association, pay such cooperative association on or before the 12th day after the end of each month an amount equal to the sum of the individual payments otherwise payable to such producers in accordance with this paragraph;

(b) In making the payments to producers pursuant to paragraph (a) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the producer, which shall show for each month:

(1) The month and identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to the order;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

§ 1005.81 *Butterfat differentials to producers.* The uniform prices to be paid each producer shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the pounds of butterfat in the producer milk of such handler allocated to Class I and Class II milk pursuant to § 1005.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth of a cent.

§ 1005.82 *Location differentials to producers.* (a) The uniform prices for milk received from producers at a pool plant located 50 miles or more from the city halls of each of the cities of Waterloo, Mason City, Fort Dodge, and Marshalltown, Iowa, by the shortest hard-surfaced highway distance as determined by the market administrator, shall be reduced 10 cents for the first 65 miles or less and 1.5 cents for each additional 10 miles or fraction thereof that such plant is from the nearest of the city halls of Waterloo, Mason City, Fort Dodge and Marshalltown.

(b) The uniform prices for milk received from producers at a pool plant north of the base zone shall be reduced 5 cents.

§ 1005.83 *Adjustment of accounts.* Whenever verification by the market administrator of payment by a handler discloses errors resulting in money due a producer, a cooperative association, or the market administrator from such handler, or due such handler from the market administrator, the market administrator shall notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments, as set forth in the provisions under which such error occurred.

§ 1005.84 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1005.80, shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from such producer (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

§ 1005.85 *Expense of administration.* As his pro rata share of the expense of administration of the order, each handler shall pay to 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, with respect to butterfat and skim milk contained in (a) producer milk, (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 1005.46, and (c) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant not subject to the classification and pricing provisions of another order issued pursuant to the act.

§ 1005.86 *Termination of obligations.* The provisions of this section shall apply to any obligation under this part for the payment of money.

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

(1) The amount of the obligation;

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

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

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

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is

claimed, unless such handler within the applicable period of time, files pursuant to section 8c (15) (A) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1005.90 *Effective time.* The provisions of this part, or any amendments to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1005.91 *Suspension or termination.* The Secretary shall suspend or terminate any or all of the provisions of this part, whenever he finds that it obstructs or does not tend to effectuate the declared policy of the act. This part shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 1005.92 *Continuing power and duty of the market administrator.* (a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment or which requires further acts by any handler, by 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, persons, or agency as the Secretary may designate.

(b) The market administrator or such other person as the Secretary may designate shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary execute such assignment 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 thereto.

§ 1005.93 *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1005.100 *Separability of provisions.* If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

§ 1005.101 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

Sections 1005.1 through 1005.18, 1005.20 through 1005.22, 1005.30 through 1005.33, 1005.40 through 1005.46, 1005.60 and 1005.61, 1005.85 and 1005.86, 1005.90 through 1005.93, and 1005.100 and 1005.101, shall be effective on and after the 1st day of October, 1957 and the entire part (§§ 1005.1 through 1005.101) shall be effective on and after the 1st day of November 1957.

Issued at Washington, D. C., this 13th day of September 1957.

[SEAL] DON PAARLBERG,
Assistant Secretary.

[F. R. Doc. 57-7682; Filed, Sept. 18, 1957; 8:51 a. m.]

TITLE 12—BANKS AND BANKING

Chapter II—Federal Reserve System

Subchapter A—Board of Governors of the Federal Reserve System

[Reg. Y]

PART 222—BANK HOLDING COMPANIES

ACQUIRING STOCK BY DIVIDENDS, STOCK SPLITS OR EXERCISE OF RIGHTS

§ 222.103 *Bank holding company acquiring stock by dividends, stock splits or exercise of rights.* (a) The Board of Governors has been asked whether a bank holding company may receive bank stock dividends or participate in bank stock splits without the Board's prior approval, and whether such a company may exercise, without the Board's prior approval, rights to subscribe to new stock issued by banks in which the holding company already owns stock.

(b) Neither a stock dividend nor a stock split results in any change in a stockholder's proportional interest in the issuing company or any increase in the assets of that company. Such a transaction would have no effect upon the extent of a holding company's control of the bank involved; and none of the five factors required by the Bank Holding Company Act to be considered by the Board in approving a stock acquisition would seem to have any application. In view of the objectives and purposes of the act, the word "acquire" would not seem reasonably to include transactions of this kind.

(c) On the other hand, the exercise by a bank holding company of the right to subscribe to an issue of additional stock of a bank could result in an increase in the holding company's proportional interest in the bank. The holding company would voluntarily pay additional funds for the extra shares and would "acquire" the additional stock even under a narrow meaning of that term. Moreover, the exercise of such rights would cause the assets of the issuing company to be increased and in a sense, therefore, the "size or extent" of the bank holding company system would be expanded.

(d) In the circumstances, it is the Board's opinion that receipt of bank stock by means of a stock dividend or stock split, assuming no change in the class of stock, does not require the Board's prior approval under the act, but that purchase of bank stock by a bank holding company through the exercise of rights does require the Board's prior approval, unless one of the exceptions set forth in section 3 (a) is applicable.

(Sec. 5, 70 Stat. 137; 12 U. S. C. 1844)

Board of Governors of the Federal Reserve System.

[SEAL] MERRITT SHERMAN,
Assistant Secretary.

[F. R. Doc. 57-7673; Filed, Sept. 18, 1957; 8:49 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

[Civil Air Regs., Amdt. 4b-7]

PART 4b—AIRPLANE AIRWORTHINESS; TRANSPORT CATEGORIES

INSTRUMENT INSTALLATIONS

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 12th day of September 1957.

In 1953 the Civil Aeronautics Board promulgated § 4b.611 (b) of Part 4b of the Civil Air Regulations and established a standard arrangement for the location on the instrument panel of required basic flight instruments. This amendment to § 4b.611 (b) prescribes a new standard for the arrangement of basic flight instruments.

Studies made by representatives of the Government and industry indicated that the standard prescribed in § 4b.611 (b) no longer reflects the optimum instrument arrangement, and does not provide the flexibility needed to include new instruments, or to integrate related instruments, which have been or may be developed in the future. Accordingly, a proposal to replace the existing standard for flight instrument arrangement with a new one commonly referred to as the "Basic T" was published for comment in accordance with public rule making procedures and circulated as Civil Air Regulations Draft Release No. 57-5 on April 3, 1957.

In this draft release it was proposed to establish a "Basic T" arrangement consisting of a group of 6 instruments giving the following information: (1) Speed, (2) attitude, (3) altitude, (4) flight path deviation, (5) direction, and (6) climb. However, after consideration of the comment received in response to

the proposal and after further analysis of the problem, the Board has concluded that there are only 4, rather than 6, basic flight instruments that require a standard location on the instrument panel. The 4 instruments are those which present basic information as to air speed, attitude, altitude, and direction.

While it was originally proposed to establish standard positions for those instruments giving information as to flight path deviation and climb, it is believed such a proposal would make the standard so inflexible as to interfere with the possible integration of such instruments with the 4 basic instruments, and the use of newly developed instruments. Accordingly, this amendment prescribes standard positions on the instrument panel for only the 4 instruments which present basic information as to air speed, attitude, altitude, and direction.

The concept of the "Basic T" involves more than location of specifically named instruments. The theory is that it will constitute a system by which various items of related flight information will be cataloged and placed in certain standard locations in all instrument panels, regardless of type or make of instruments used. In this manner the "Basic T" takes advantage of the new types of integrated instruments which display more than one item of flight information. It is apparent, however, that if the proposed standard is to be a standard in fact, one basic indication must be specified for each instrument position. This eliminates, for example, the possibility of air speed being replaced by angle of attack under the theory that air speed is no longer required except for navigational purposes. It appears to be generally agreed that the basic indication of position 1 is air speed. In this location may be added related flight information such as Mach number and angle of attack. It also appears to be generally agreed that the basic indications for positions 2 and 3 are pitch and bank, and (barometric) altitude. Command signals for adjusting pitch or turning right or left may be added to the attitude instrument (pitch and bank) and similarly, terrain clearance information and rate of climb may be included in position 3 with the altimeter.

Some difference of opinion was registered by interested parties with respect to position 4, previously position 5 in Draft Release 57–5. This instrument has been labeled "direction," and is intended primarily for navigational information. Certain groups have contended that the basic indication for this location should be heading. Their reason is that heading is paramount in maintaining a course, or making good a desired track, and that a gyroscopically stabilized indication of heading logically belongs immediately below the attitude instrument where it can be read simultaneously with the attitude instrument for three-dimensional control of the airplane. Others, on the other hand, contend that there should be a choice left to the operator to place a display for heading, flight path deviation, or both in this location. The reasoning is that certain carriers desire to use an integrated instrument in this position which shows pictorially the airplane's position in reference to a desired track, but not a quantitative indication of heading.

In considering the above issue the Board takes cognizance of the fact that most air transports of today do not have installed a flight path director or steering computer. In these airplanes heading must be read continually to give significance to the signals received from radio navigation aids. Accordingly, heading is the basic indication to be required in position 4. However, with increased use of electronic computers and installation of instrument systems which include command signals to make good required flight tracks, there will be less dependence upon heading, and it is possible, therefore, that in the future the basic indication required by the pilot to maintain a given track will not be heading. Consequently, the rule establishes that the number 4 position shall be that instrument which most effectively indicates direction of flight with the understanding that the basic indication of this instrument shall be heading but that if future developments prove it feasible the basic indication of this instrument may be changed so long as it is demonstrated that it is the instrument which most effectively indicates direction of flight. It is believed that this solution is consonant with present and known future aircraft flight instrument systems and will at the same time provide sufficient flexibility to permit use of newer direction instruments if these prove more operationally feasible.

With respect to the specific location of the basic flight instruments, we believe that the attitude (bank and pitch) indicator is the keystone of any instrument arrangement, and should, therefore, be located in the central position on the panel, with the other basic instruments disposed around it. The indicator providing directional information is constantly monitored along with the attitude indicator, in order to provide continuous three-dimensional control of the flight path. Since directional information is associated with the longitudinal axis of the airplane, this instrument should be most naturally positioned centrally beneath the attitude indicator. Control of air speed and altitude are directly related to attitude, so their location laterally adjacent to the attitude indicator is a natural one.

Interested persons have been afforded an opportunity to participate in the making of this amendment (22 F. R. 2538), and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 4b of the Civil Air Regulations (14 CFR Part 4b, as amended) effective October 17, 1957.

1. By amending § 4b.611 (b) to read as follows:

§ 4b.611 *Arrangement and visibility of instrument installations.* * * *

(b) Flight instruments required by § 4b.603 shall be grouped on the instrument panel and centered as nearly as practicable about the vertical plane of the pilot's forward vision. The four basic instruments specified in subparagraphs (1) through (4) of this paragraph shall be located on the flight instrument panel as follows:

(1) The top center position on the panel shall contain that instrument which, of all instruments on the panel, most effectively indicates attitude.

(2) The position adjacent to and directly to the left of the top center position shall contain that instrument which, of all instruments on the panel, most effectively indicates air speed.

(3) The position adjacent to and directly to the right of the top center position shall contain that instrument which, of all instruments on the panel, most effectively indicates altitude.

(4) The position adjacent to and directly below the top center position shall contain that instrument which, of all instruments on the panel, most effectively indicates direction of flight.

2. By deleting Figure 4b–23.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 601, 603, 52 Stat. 1007, 1009, as amended; 49 U. S. C. 551, 553)

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 57–7699; Filed, Sept. 18, 1957; 8:54 a. m.]

[Reg. No. SR–389A]

PART 4b—AIRPLANE AIRWORTHINESS; TRANSPORT CATEGORIES

PART 40—SCHEDULED INTERSTATE AIR CARRIER CERTIFICATION AND OPERATION RULES

PART 41—CERTIFICATION AND OPERATION RULES FOR SCHEDULED AIR CARRIER OPERATIONS OUTSIDE THE CONTINENTAL LIMITS OF THE UNITED STATES

PART 42—IRREGULAR AIR CARRIER AND OFF-ROUTE RULES

PART 43—GENERAL OPERATION RULES

PART 45—COMMERCIAL OPERATOR CERTIFICATION AND OPERATION RULES

SPECIAL CIVIL AIR REGULATION; EMERGENCY EXITS FOR AIRPLANES CARRYING PASSENGERS FOR HIRE

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 13th day of September 1957.

Special Civil Air Regulation SR–389, effective October 27, 1952, pertains to certain requirements for emergency exits for airplanes carrying passengers for hire. This regulation is being modified by adding the Viscount 700 series airplane to the table of airplanes contained in SR–389 without in any way changing the effect of any of the other provisions of SR–389.

Special Civil Air Regulation SR–389 is hereby superseded; however, it is being incorporated in its entirety in this regulation, including the reasons for its adoption, so that all pertinent information may be available in one document. The preamble to SR–389 is as follows:

Special Civil Air Regulation SR–387 effective October 27, 1952, contained inadvertent errors in the table with respect to the number of exits authorized by the Civil Aeronautics Administration for passenger use. These errors are being corrected in this Spe-

cial Civil Air Regulation. Accordingly, the CV-240, CV-340, and M-202 which were listed in SR-387 with seven approved exits are listed herein with six exits, and the M-404 which was listed in SR-387 with eight approved exits is listed herein with seven exits.

Civil Air Regulations Amendment 4b-4, effective December 20, 1951, prescribes emergency exit provisions for new type transport category airplanes. The amendment was not made applicable to airplane types currently in operation. Nevertheless the Board considers that more stringent rules should apply to all large airplanes carrying pasengers for hire. A study of current type airplanes indicates that in some instances the exit facilities have become marginal for the number of occupants carried and that further increases in occupancy must be more strictly related to the number of exits available. The study further reveals that even in some of the airplane types which are not considered marginal in this respect further increases in occupancy should not be permitted without the installation of additional exits.

The regulation herein adopted requires on all large airplanes (above 12,500 pounds maximum certificated take-off weight) compliance with either § 4b.362 (a), (b), and (c) of Part 4b of the Civil Air Regulations as amended by Amendment 4b-4, effective December 20, 1951, or with the listed values of maximum number of occupants, except that the listed values can be adjusted for the number of exits installed in the ratio of not more than eight additional occupants for each additional exit. The type, size, and location of such additional exits are being made dependent upon the presently installed exit facilities on the individual airplane types. The listed values of maximum number of occupants and the corresponding number of exits reflect in most instances the arrangement presently approved. In a few cases, upward adjustments from the presently approved arrangement have been made where the number of exits so warrants.

The Viscount 700 series airplane, which is manufactured and was originally type certificated in the United Kingdom, was issued a U. S. type certificate by the Civil Aeronautics Administration in 1955 pursuant to the provisions of Part 10 of the Civil Air Regulations. The regulations in this part authorize the Administrator to issue type and airworthiness certificates for aircraft of foreign manufacture, under conditions of reciprocal agreement with such foreign country, when the foreign country certifies that its aircraft has complied with the airworthiness requirements of the Civil Air Regulations or has complied with the applicable airworthiness requirements of the government of the country in which it was manufactured, together with such other requirements as may be prescribed by the Administrator to provide a level of safety equivalent to the requirements prescribed in the Civil Air Regulations. The Viscount 700 series was certificated by the Administrator under the latter of these provisions without compliance with the provisions of SR-389.

The emergency exits for the Viscount 700 series airplane do not comply with the requirements of SR-389; however, the Administrator has advised the Board that the means for the emergency evacuation of passengers in the Viscount 700 series are at least as adequate as some of the other types of airplanes currently used in air carrier service under the exception provisions of SR-389. Although the Viscount does not comply with SR-389, the Board believes that it would be inappropriate to require modification of the Viscount to comply literally with the provisions of that regulation, since the airplane has an acceptable level of safety in respect of its emergency exits and the costs required to make the modifications would not be commensurate with the resulting increase in safety.

Since this regulation is necessary to clarify the applicability of emergency exit requirements to Viscount 700 series airplanes presently in operation, and imposes no additional burden on any person, the Board finds that notice and public procedure hereon are unnecessary, and that good cause exists for making this regulation effective without prior notice.

In consideration of the foregoing, the Civil Aeronautics Board hereby makes and promulgates the following Special Civil Air Regulation, effective September 13, 1957.

Contrary provisions of the Civil Air Regulations notwithstanding, no large airplane (above 12,500 pounds maximum certificated take-off weight) while carrying passengers for hire shall be operated with occupants in excess of the number permitted by applying the provisions of § 4b.362 (a), (b), and (c) of Part 4b of the Civil Air Regulations as amended by Amendment 4b-4, effective December 20, 1951, except that airplane types listed in the following table may be operated with the listed maximum number of occupants (including all crew members) and the listed corresponding number of exits (including emergency exits and doors) heretofore approved by the Administrator for emergency egress of passengers. Additional occupants above the values listed in the table may be carried if additional exits are provided, except that in no case shall more than eight additional occupants be carried for any one additional exit. The type, size, and location of such additional exits shall be approved by the Administrator. For airplanes which have a ratio of maximum number of occupants to number of exits (as listed in the following table) greater than 14:1 and for airplanes which do not have installed at least one full-size door-type exit in the side of the fuselage in the rearward portion of the cabin, the first additional exit approved by the Administrator for increased occupancy shall be a floor-level exit not less than 24 inches wide by 48 inches high located in the side of the fuselage in the rearward portion of the cabin. In no case shall an occupancy greater than 115 be allowed unless there are two full-size door-type exits in the rearward portion of the cabin, one on each side of the fuselage.

Airplane type	Maximum number of occupants including all crew members	Corresponding number of exits authorized for passenger use
B-307	61	4
B-377	96	9
C-46	67	4
CV-240	53	6
CV-340	53	6
DC-3	35	4
DC-3 (Super)	39	5
DC-4	86	5
DC-6	87	7
DC-6B [1]	112	11
L-18	17	3
L-049, L-649, L-749	87	7
L-1049	96	9
M-202	53	6
M-404	53	7
Viscount 700 series	49	7

[1] The DC-6A, if converted to a passenger transport configuration, will be governed by the maximum number applicable to the DC-6B.

This regulation supersedes Special Civil Air Regulation SR-389 and shall remain effective until superseded or rescinded by the Board.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 601, 603, 604, 52 Stat. 1007, 1009, 1010; 49 U. S. C. 551, 553, 554)

Effective: September 13, 1957.

Adopted: September 13, 1957.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN, *Secretary.*

[F. R. Doc. 57-7698; Filed, Sept. 18, 1957; 8:53 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

Subchapter B—Food and Food Products

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

TOLERANCE FOR RESIDUES OF SODIUM *o*-PHENYLPHENATE

A petition was filed with the Food and Drug Administration requesting the establishment of a tolerance for residues of sodium *o*-phenylphenate, calculated as *o*-phenylphenol, in or on peaches, from postharvest application. Tolerances have previously been established to provide for residues from the postharvest application of sodium *o*-phenylphenate to apples, certain citrus fruits, pears, and pineapple.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purpose for which a tolerance is being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerance established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408 (d) (2), 68 Stat. 512; 21 U. S. C. 346a (d) (2)) and delegated to the Commissioner of Food and Drugs by the Secretary (21 CFR 120.7 (g)), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR Part 120; 22 F. R. 4076) are amended by changing § 120.129 to read as follows:

§ 120.129 *Tolerances for residues of sodium o-phenylphenate.* Tolerances are established as follows for residues from postharvest application of sodium *o*-phenylphenate, calculated as *o*-phenylphenol;

(a) 20 parts per million in or on peaches.

(b) 10 parts per million in or on citrus citron, grapefruit, kumquat, lemons, limes, oranges, pineapple, tangelos, tangerines.

(c) 5 parts per million in or on apples, pears.

Any person who will be adversely affected by the foregoing order may, at any time prior to the thirtieth day from the

effective date thereof, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D. C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by this order, specify with particularity the provisions of the order deemed objectionable and reasonable grounds for the objections, and request a public hearing upon the objections. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 371. Interprets or applies sec. 408, 68 Stat. 511; 21 U. S. C. 346a)

Dated: September 13, 1957.

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

[F. R. Doc. 57-7686; Filed, Sept. 18, 1957; 8:51 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 12075; FCC 57-995]

[Rules Amdt. 3-90]

PART 3—RADIO BROADCAST SERVICES

TELEVISION BROADCAST STATIONS, ALEXANDRIA-ST. CLOUD, MINN.; TABLE OF ASSIGNMENTS

1. The Commission has before it for consideration its Notice of Proposed Rule Making issued on July 2, 1957, (FCC 57-704) proposing to substitute Channel 36 for Channel 7 at St. Cloud, Minnesota and to substitute Channel 7 for Channel 36 in Alexandria, Minnesota, in response to a petition filed by Central Minnesota Television Company.

2. Comments and reply comments were filed by Central Minnesota Television Company, KNUJ, Inc. and St. Cloud Television Company.

3. In support of the proposal, Central Minnesota Television Company asserts that no applications for Channel 7 at St. Cloud had been filed with the Commission[1] and that the close proximity of St. Cloud to Minneapolis and St. Paul makes the prospect of an application for the use of Channel 7 highly unlikely. Petitioner submits that the assignment of Channel 7 at Alexandria would provide that community with its first local outlet and that a suitable transmitter site is available which would meet the minimum mileage separation requirements of the Commission's Rules. It contends that a Channel 7 station at Alexandria would provide Grade B service to an area of 7,850 square miles with a population of 237,444; that less than 1 percent of the people within this area now receive Grade B service, whereas the Grade B service area of a station operating on Channel 7 at St. Cloud would include only 160,000 people who are not now receiving Grade B service; and that the number of people who will receive a first useable service is more important than the number of persons residing within the community to which the channel would be allocated. Central Minnesota maintains that the use of Channel 36, which is presently allocated to Alexandria, is not feasible since the only existing or proposed television stations which provide a signal to any part of the service area of an Alexandria station are in the VHF band and 49.7 percent of the households within the contemplated Grade B service area now have television receivers which presumably cannot receive UHF signals.

4. In opposition to the proposal St. Cloud Television argues that St. Cloud is the third largest city in Minnesota, with a population of 34,000; that the population of Alexandria is only 6,319; that St. Cloud is of considerably greater economic and cultural importance than Alexandria; and that in view of the disparity between Alexandria and St. Cloud in size and importance, there is no justification for depriving St. Cloud of its only opportunity for a local television service in order to assign Channel 7 to Alexandria, particularly in view of the other possible means for bringing local service to Alexandria. It maintains that its proposed operation on Channel 7 at St. Cloud will provide Grade A service to an area of 2,872 square miles with a population of 117,863 people and Grade B service to an area of 7,220 square miles containing a population of 236,472 persons; that all of the persons within the Grade A contour will receive their first Grade A or better service and 171,070 people in an area of 5,570 square miles will receive their first Grade B or better service. St. Cloud contends that the possibility of obtaining a local television service for St. Cloud depends upon the retention of Channel 7; that there is a wide circulation of VHF receivers within the St. Cloud area, with approximately 72 percent of the households in Sterns County having television receivers, and that in view of the complete lack of UHF receivers and the existence of multiple VHF signals in the area, a UHF station in St. Cloud could not succeed. On the other hand, St. Cloud Television argues that local service can be provided to Alexandria without making any changes in the Table of Assignments; that Alexandria is more than 100 miles from any television station and therefore ideally located for UHF and that the circulation of VHF receivers in the Alexandria area is low.

5. We have carefully reviewed the comments submitted in this proceeding and have concluded that the public interest would be better served by shifting Channel 7 from St. Cloud to Alexandria. A station on Channel 7 in either community would provide a first local outlet. While concededly the City of St. Cloud is larger in population than the community of Alexandria, Alexandria is more than 100 miles from the closest operating television station and Channel 7 in this community would provide a first television service to a significantly greater area and population. Channel 7 at St. Cloud would provide a first service to about 170,000 persons in an area of 5,500 square miles. Channel 7 in Alexandria, on the other hand, would mean a first Grade B service to a "white area" of about 7,500 square miles containing over 235,000 persons. Despite the fact that St. Cloud is the larger community, we believe that the assignment of Channel 7 should be made to Alexandria, where it would provide a first television service to almost 65,000 more persons than would the use of this frequency in St. Cloud. In our judgment shifting Channel 7 to Alexandria would comport with the first allocation principle underlying the Table of Assignments—to provide at least one television service to all parts of the country—and would better serve the public interest by making more effective use of available facilities.

6. In view of the foregoing: *It is ordered,* That effective October 18, 1957, § 3.606 *Table of assignments,* is amended insofar as the communities named are concerned, as follows:

City	*Channel No.*
Alexandria, Minn	7, 36
St. Cloud, Minn	33

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, 1083; 47 U. S. C. 301, 303, 307)

Adopted: September 11, 1957.

Released: September 16, 1957.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F. R. Doc. 57-7691; Filed, Sept. 18, 1957; 8:52 a. m.]

[Docket No. 12053; FCC 57-998]

[Rules Amdts. 7-22, 8-30]

PART 7—STATIONS ON LAND IN THE MARITIME SERVICES

PART 8—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

AVAILABILITY OF CERTAIN FREQUENCIES IN TAMPA, FLA. AREA

In the matter of amendments of Parts 7 and 8 of the Commission's rules to make the frequency pair 2466 kc (coast)—2009 kc (ship) available on a 24-hour basis in the Tampa, Florida area and to make effective certain limitations on the use of the frequency pair 2550 kc (coast)—2158 kc (ship) in the same area; Docket No. 12053, Rules Amdts. 7-22, 8-30.

At a session of the Federal Communications Commission held at its offices in Washington, D. C. on the 11th day of September 1957;

The Commission having under consideration the above-captioned matter;

It appearing that in accordance with the requirements of section 4 (a) of the

[1] However, an application for Channel 7 was filed on August 1, 1957, by St. Cloud Television Company.

[2] Commissioner Hyde dissenting.

Administrative Procedure Act, Notice of Proposed Rule Making in this matter, which made provision for the submission of written comments by interested parties, was duly published in the FEDERAL REGISTER on June 13, 1957 (22 F. R. 4166) and the period for filing comments has now expired; and

It further appearing that no comments or objections to the proposal were received in the subject docket before the comment period closed; and

It further appearing that inasmuch as a transition period is desirable, the effective date of the rule amendments, which would make the frequency pair 2466 kc–2009 kc available at Tampa on a 24-hour basis and which would limit the use of the frequency pair 2550 kc–2158 kc in the same area, has been set accordingly, and

It further appearing that the public interest, convenience and necessity will be served by the amendments herein ordered, the authority for which is contained in section 303 (f) and (r) of the Communications Act of 1934, as amended;

It is ordered, That effective December 15, 1957, Parts 7 and 8 of the Commission's rules are amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U. S. C. 303.)

Released: September 16, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

A. Part 7 is amended as follows:

In § 7.306 (b), that portion of the frequency table dealing with Tampa, Florida, is amended to read as follows:

Tampa, Fla.	2466	Available beginning Dec. 15, 1957, on a 24-hour basis.	2009	Available beginning Dec. 15, 1957, on a 24-hour basis.
	2550	Unlimited hours of use from Dec. 15 to Apr. 1, annually, and beginning Apr. 1, 1958, day only from Apr. 1 to Dec. 15, annually, on condition that harmful interference shall not be caused to the service of any coast station in the Great Lakes area, which in the discretion of the Commission, has priority on the frequency or frequencies used for the service to which interference is caused.	2158	Unlimited hours of use from Dec. 15 to Apr. 1, annually, and beginning Apr. 1, 1958, day only from Apr. 1 to Dec. 15, annually, on condition that harmful interference shall not be caused to the service of any ship station in the Great Lakes area, which in the discretion of the Commission, has priority on the frequency or frequencies used for the service to which interference is caused.

B. Part 8 is amended as follows:

In § 8.354 (a) (1), that portion of the frequency table dealing with Tampa, Florida, is amended to read as follows:

Tampa, Fla.	2009	Available beginning Dec. 15, 1957, on a 24-hour basis.	2466	Available beginning Dec. 15, 1957, on a 24-hour basis.
	2158	Unlimited hours of use from Dec. 15 to Apr. 1, annually, and beginning Apr. 1, 1958, day only from Apr. 1 to Dec. 15, annually, on condition that harmful interference shall not be caused to the service of any ship station in the Great Lakes area, which in the discretion of the Commission, has priority on the frequency or frequencies used for the service to which interference is caused.	2550	Unlimited hours of use from Dec. 15 to Apr. 1, annually, and beginning Apr. 1, 1958, day only from Apr. 1 to Dec. 15, annually, on condition that harmful interference shall not be caused to the service of any coast station in the Great Lakes area, which in the discretion of the Commission, has priority on the frequency or frequencies used for the service to which interference is caused.

[F. R. Doc. 57–7692; Filed, Sept. 18, 1957; 8:52 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 301]

PROCEDURE AND ADMINISTRATION

ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth below in tentative form are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. These proposed regulations relate to the administrative provisions under chapter 68 of Subtitle F of the Internal Revenue Code of 1954. 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 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 section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).

[SEAL] RUSSELL C. HARRINGTON,
Commissioner of Internal Revenue.

The following regulations relating to additions to the tax, additional amounts, and assessable penalties are prescribed under chapter 68 of the Internal Revenue Code of 1954:

ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

ADDITIONS TO THE TAX AND ADDITIONAL AMOUNTS

Sec.
301.6651 Statutory provisions; failure to file tax return.
301.6651–1 Failure to file tax return.
301.6652 Statutory provisions; failure to file certain information returns.
301.6652–1 Failure to file certain information returns.
301.6653 Statutory provisions; failure to pay tax.
301.6653–1 Failure to pay tax.
301.6654 Statutory provisions; failure by individual to pay estimated income tax.
301.6654–1 Failure by individual to pay estimated income tax.
301.6655 Statutory provisions; failure by corporation to pay estimated income tax.
301.6655–1 Failure by corporation to pay estimated income tax.
301.6656 Statutory provisions; failure to make deposit of taxes.
301.6656–1 Failure to make deposit of taxes.
301.6657 Statutory provisions; bad checks.
301.6657–1 Bad checks.
301.6658 Statutory provisions; addition to tax in case of jeopardy.
301.6658–1 Addition to tax in case of jeopardy.
301.6659 Statutory provisions; applicable rules.
301.6659–1 Applicable rules.

ASSESSABLE PENALTIES

301.6671 Statutory provisions; rules for application of assessable penalties.
301.6671–1 Rules for application of assessable penalties.
301.6672 Statutory provisions; failure to collect and pay over tax, or attempt to evade or defeat tax.
301.6672–1 Failure to collect and pay over tax, or attempt to evade or defeat tax.
301.6673 Statutory provisions; damages assessable for instituting proceedings before the Tax Court merely for delay.
301.6673–1 Damages assessable for instituting proceedings before the Tax Court merely for delay.
301.6674 Statutory provisions; fraudulent statement or failure to furnish statement to employee.
301.6674–1 Fraudulent statement or failure to furnish statement to employee.
301.6675 Statutory provisions; excessive claims with respect to the use of certain gasoline.
301.6675–1 Excessive claims with respect to the use of certain gasoline.

GENERAL RULES

EFFECTIVE DATE AND RELATED PROVISIONS

301.7851 Statutory provisions; applicability of revenue laws.

ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

ADDITIONS TO THE TAX AND ADDITIONAL AMOUNTS

§ 301.6651 *Statutory provisions; failure to file tax return.*

SEC. 6651. *Failure to file tax return*—(a) *Addition to the tax.* In the case of failure to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), of subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating

to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machineguns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

(b) *Penalty imposed on net amount due.* For purposes of subsection (a), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(c) *Exception for declarations of estimated tax.* This section shall not apply to any failure to file a declaration of estimated tax required by section 6015 or section 6016.

§ 301.6651–1 *Failure to file tax return*—(a) *Addition to the tax*—(1) *In general.* In case of failure to file a return required under authority of—

(i) Subchapter A of chapter 61, relating to returns and records (other than sections 6015 and 6016, relating to declarations of estimated tax, and part III thereof, relating to information returns);

(ii) Subchapter A of chapter 51, relating to distilled spirits, wines, and beer;

(iii) Subchapter A of chapter 52, relating to tobacco, cigars, cigarettes, and cigarette paper and tubes; or

(iv) Subchapter A of chapter 53, relating to machine guns and certain other firearms;

and the regulations thereunder, on or before the date prescribed for filing (determined with regard to any extension of time for such filing), there shall be added to the tax required to be shown on the return the amount specified below unless the failure to file the return within the prescribed time is shown to the satisfaction of the district director to be due to reasonable cause and not to willful neglect. (See subparagraph (3) of this paragraph.) The amount to be added to the tax is 5 percent thereof if the failure is for not more than one month, with an additional 5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate.

(2) *Month defined.* (i) If the date prescribed for filing the return is the last day of a calendar month, each succeeding calendar month or fraction thereof during which the failure to file continues shall constitute a month for purposes of section 6651.

(ii) If the date prescribed for filing the return is a date other than the last day of a calendar month, the period which terminates with the date numerically corresponding thereto in the succeeding calendar month and each such successive period shall constitute a month for purposes of section 6651. If, in the month of February, there is no date corresponding to the date prescribed for filing the return, the period from such date in January through the last day of February shall constitute a month for purposes of section 6651. Thus, if a return is due on January 30, the first month shall end on February 28 (or 29 if a leap year), and the succeeding months shall end on March 30, April 30, etc.

(iii) The fact that the date in any succeeding calendar month which corresponds to that prescribed for filing the return falls on a Saturday, Sunday, or a legal holiday is immaterial in determining the number of months for which the addition to the tax under section 6651 applies.

(3) *Showing of reasonable cause.* A taxpayer who wishes to avoid the addition to the tax for failure to file a tax return must make an affirmative showing of all facts alleged as a reasonable cause for his failure to file such return on time in the form of a written statement containing a declaration that it is made under penalties of perjury. Such statement should be filed with the district director with whom the return is required to be filed. If the district director determines that the delinquency was due to a reasonable cause, and not to willful neglect, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause.

(b) *Penalty imposed on net amount due.* The amount of tax required to be shown on the return shall be reduced for purposes of section 6651 (a) by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return. For example, under section 6072 (a), income tax returns of individuals on a calendar year basis must be filed on or before the 15th day of April following the close of the calendar year. Assume an individual filed his income tax return, Form 1040, for the calendar year 1954 on May 20, 1955, and such delinquency is not due to reasonable cause. The tax shown on the return is $1,000, of which $300 has been paid by withholding from wages and $400 has been paid as estimated tax. In addition to interest from April 15, 1955, there will be assessed an additional amount of $30, which is 10 percent (5 percent for the month from April 16 through May 15, and 5 percent for the fractional part of the month from May 16 through May 20) of the net amount of $300 due ($1,000 less $700 paid on or before April 15).

(c) *No addition to tax if fraud penalty assessed.* No addition to the tax under section 6651 shall be assessed with respect to an underpayment of tax if a 50 percent addition to the tax for fraud is assessed with respect to the same underpayment under section 6653 (b). See section 6653 (d).

§ 301.6652 *Statutory provisions; failure to file certain information returns.*

SEC. 6652. *Failure to file certain information returns*—(a) *Additional amount.* In case of each failure to file a statement of a payment to another person, required under authority of section 6041 (relating to information at source), section 6042 (relating to payments of corporate dividends), section 6044 (relating to patronage dividends), section 6045 (relating to returns of brokers), or section 6051 (d) (relating to information returns with respect to income tax withheld), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid by the person failing to file the statement, upon notice and demand by the Secretary or his delegate and in the same manner as tax, $1 for each such statement not filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $1,000.

(b) *Alcohol and tobacco taxes.* For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see generally, subtitle E.

§ 301.6652–1 *Failure to file certain information returns*—(a) *Additional amount*—(1) *In general.* In case of each failure to file a statement, with respect to a payment to another person, required under authority of—

(i) Section 6041, relating to information at source.

(ii) Section 6042, relating to payments of corporate dividends,

(iii) Section 6044, relating to patronage dividends,

(iv) Section 6045, relating to returns of brokers, or

(v) Section 6051 (d), relating to information returns with respect to income tax withheld or the employee tax under the Federal Insurance Contributions Act,

and the regulations under such sections, within the time prescribed for filing such statement, there shall be paid by the person who failed to file such statement $1 for each such statement not filed. However, the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $1,000. The additional amount imposed for such failures shall be paid in the same manner as tax upon notice and demand by the district director.

(2) *Showing of reasonable cause.* The penalty imposed by section 6652 shall not apply if it is established that such failure to file was due to a reasonable cause and not to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it is made under the penalties of perjury, setting forth all the facts alleged as a reasonable cause.

(b) *Alcohol and tobacco taxes.* For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E.

§ 301.6653 *Statutory provisions; failure to pay tax.*

SEC. 6653. *Failure to pay tax*—(a) *Negligence or intentional disregard of rules and regulations with respect to income or gift taxes.* If any part of any underpayment (as defined in subsection (c) (1)) of any tax imposed by subtitle A or by chapter 12 of subtitle B (relating to income taxes and gift taxes) is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to 5 percent of the underpayment.

(b) *Fraud.* If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment. In the case of income taxes and gift taxes, this amount shall be in lieu of any amount determined under subsection (a).

(c) *Definition of underpayment.* For purposes of this section, the term "underpayment" means—

(1) *Income, estate, and gift taxes.* In the case of a tax to which section 6211 (relating to income, estate, and gift taxes) is applicable, a deficiency as defined in that section (except that, for this purpose, the tax shown on a return referred to in section 6211 (a) (1) (A) shall be taken into account only if such return was filed before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing), and

(2) *Other taxes.* In the case of any other tax, the amount by which such tax imposed by this title exceeds the excess of—

(A) The sum of—

(i) The amount shown as the tax by the taxpayer upon his return (determined without regard to any credit for an overpayment for any prior period, and without regard to any adjustment under authority of sections 6205 (a) and 6413 (a)), if a return was made by the taxpayer within the time prescribed for filing such return (determined with regard to any extension of time for such filing) and an amount was shown as the tax by the taxpayer thereon, plus

(ii) Any amount, not shown on the return, paid in respect of such tax, over—

(B) The amount of rebates made.

For purposes of subparagraph (B), the term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in subparagraph (A) over the rebates previously made.

(d) *No delinquency penalty if fraud assessed.* If any penalty is assessed under subsection (b) (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under section 6651 (relating to failure to file such return) shall be assessed with respect to the same underpayment.

(e) *Failure to pay stamp tax.* Any person (as defined in section 6671 (b)) who willfully fails to pay any tax imposed by this title which is payable by stamp, coupons, tickets, books, or other devices or methods prescribed by this title or by regulations under authority of this title, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

§ 301.6653–1 *Failure to pay tax—(a) Negligence or intentional disregard of rules and regulations with respect to income or gift taxes.* If any part of any underpayment, as defined in section 6653 (c) (1) and paragraph (c) (1) of this section, of any income tax imposed by subtitle A or gift tax imposed by chapter 12 of subtitle B, is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to 5 percent of the underpayment.

(b) *Fraud.* (1) If any part of any underpayment of tax, as defined in section 6653 (c) and paragraph (c) of this section, required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment.

(2) If a 50 percent addition to the tax for fraud is assessed under section 6653 (b) with respect to an underpayment—

(i) The addition to the tax under section 6651, relating to failure to file a tax return, will not be assessed with respect to the same underpayment, and

(ii) In the case of the income taxes imposed by subtitle A and the gift tax imposed by chapter 12 of subtitle B, the 5 percent addition to the tax under section 6653 (a), relating to negligence and intentional disregard of rules and regulations, will not be assessed with respect to the same underpayment.

(c) *Definition of underpayment—(1) Income, estate, and gift taxes.* In the case of income, estate, and gift taxes, an underpayment for purposes of section 6653 and this section is—

(i) The total amount of all deficiencies as defined in section 6211, if a return was filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return, or

(ii) The amount of the tax imposed by subtitle A or B, as the case may be, if a return was not filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return.

(2) *Other taxes.* In the case of any tax other than income, estate, and gift taxes, an underpayment for purposes of section 6653 and this section is the amount by which the tax imposed exceeds—

(i) In the case of any tax with respect to which the taxpayer is required to file a return, the sum of (*a*) the amount shown as tax by the taxpayer upon his return filed in respect of such tax, but only if the return is filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return, plus (*b*) any amount not shown on a return filed by the taxpayer which is paid in respect of such tax prior to the date prescribed for filing the return. The "amount shown as tax by the taxpayer upon his return" for the purposes of this subparagraph shall be determined without regard to any credit for an overpayment for any prior tax return period, and without regard to any adjustment made under section 6205 (a), or section 6413 (a), relating to special rules applicable to certain employment taxes.

(ii) In the case of any tax payable by stamp, the amount paid (on or before the date prescribed for payment) in respect of such tax.

The amounts specified in subdivisions (i) and (ii) of this subparagraph shall be reduced, for purposes of determining the amount of the underpayment, by the amount of any rebates made. For purposes of this subparagraph, the term "rebates" means so much of an abatement, credit, refund, or other repayment as was made on the ground that the tax imposed was less than the excess of the amount specified in subdivision (i) or (ii) of this subparagraph, whichever is applicable, of this subparagraph over any rebates previously made.

(d) *No delinquency penalty if fraud assessed.* See paragraph (b) (2) of this section.

(e) *Failure to pay stamp tax.* Any person (as defined in section 6671 (b)) who willfully fails to pay any tax payable by stamp, coupons, tickets, books or other devices or methods prescribed by the Code or regulations promulgated thereunder, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

§ 301.6654 *Statutory provisions; failure by individual to pay estimated income tax.*

SEC. 6654. *Failure by individual to pay estimated income tax*—(a) *Addition to the tax.* In the case of any underpayment of estimated tax by an individual, except as provided in subsection (d), there shall be added to the tax under chapter 1 for the taxable year an amount determined at the rate of 6 percent per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b) *Amount of underpayment.* For purposes of subsection (a), the amount of the underpayment shall be the excess of—

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to 70 percent (66⅔ percent in the case of individuals referred to in section 6073 (b), relating to income from farming) of the tax shown on the return for the taxable year or, if no return was filed, 70 percent (66⅔ percent in the case of individuals referred to in section 6073 (b), relating to income from farming) of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last date prescribed for such payment.

(c) *Period of underpayment.* The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier—

(1) The 15th day of the fourth month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection (b) (1) for such installment date.

(d) *Exception.* Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser—

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least—

(A) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of 12 months, or

(B) An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions under section 151 for the taxable year, but otherwise on the basis of the facts shown on his return

for, and the law applicable to, the preceding taxable year, or

(C) An amount equal to 70 percent (66⅔ percent in the case of individuals referred to in section 6073 (b), relating to income from farming) of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the taxable income shall be placed on an annualized basis by—

(i) Multiplying by 12 (or, in the case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income (computed without deduction of personal exemptions) for the months in the taxable year ending before the month in which the installment is required to be paid,

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and

(iii) Deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment); or

(2) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) *Application of section in case of tax withheld on wages.* For purposes of applying this section—

(1) The estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under section 31 (relating to tax withheld at source on wages), and

(2) The amount of the credit allowed under section 31 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment date (determined under section 6153) for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(f) *Tax computed after application of credits against tax.* For purposes of subsections (b) and (d), the term "tax" means the tax imposed by chapter 1 reduced by the credits against tax allowed by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages).

(g) *Short taxable year.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(h) *Applicability.* This section shall apply only with respect to taxable years beginning after December 31, 1954; and section 294 (d) of the Internal Revenue Code of 1939 shall continue in force with respect to taxable years beginning before January 1, 1955.

§ 301.6654–1 *Failure by individual to pay estimated income tax.* For regulations under section 6654, see §§ 1.6654–1 to 1.6654–4, inclusive, of this chapter.

§ 301.6655 *Statutory provisions; failure by corporation to pay estimated income tax.*

SEC. 6655. *Failure by corporation to pay estimated income tax*—(a) *Addition to the tax.* In case of any underpayment of estimated tax by a corporation, except as provided in subsection (d), there shall be added to the tax under chapter 1 for the taxable year an amount determined at the rate of 6 percent per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b) *Amount of underpayment.* For purposes of subsection (a), the amount of the underpayment shall be the excess of—

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to 70 percent of the tax shown on the return for the taxable year or, if no return was filed, 70 percent of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) *Period of underpayment.* The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier—

(1) The 15th day of the third month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on the 15th day of the 12th month shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection (b) (1) for the 15th day of the 12th month.

(d) *Exception.* Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser—

(1) The tax shown on the return of the corporation for the preceding taxable year reduced by $100,000, if a return showing a liability for tax was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of 12 months.

(2) An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

(3) (A) An amount equal to 70 percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(i) For the first 6 months or for the first 8 months of the taxable year, in the case of the installment required to be paid in the ninth month, and

(ii) For the first 9 months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the twelfth month.

(B) For purposes of this paragraph, the taxable income shall be placed on an annualized basis by—

(i) Multiplying by 12 the taxable income referred to in subparagraph (A), and

(ii) Dividing the resulting amount by the number of months in the taxable year (6 or 8, or 9 or 11, as the case may be) referred to in subparagraph (A).

(e) *Definition of tax.* For purposes of subsections (b), (d) (2), and (d) (3), the term "tax" means the excess of—

(1) The tax imposed by section 11 or 1201 (a), or subchapter L of chapter 1, whichever is applicable, over

(2) The sum of—

(A) $100,000, and

(B) The credits against tax provided in part IV of subchapter A of chapter 1.

(f) *Short taxable year.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

§ 301.6655–1 *Failure by corporation to pay estimated income tax.* For regulations under section 6655, see §§ 1.6655–1 to 1.6655–3, inclusive, of this chapter.

§ 301.6656 *Statutory provisions; failure to make deposit of taxes.*

SEC. 6656. *Failure to make deposit of taxes*—(a) *Penalty.* In case of failure by any person required by this title or by regulation of the Secretary or his delegate under this title to deposit on the date prescribed therefor any amount of tax imposed by this title in such government depositary as is authorized under section 6302 (c) to receive such deposit, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty of 1 percent of the amount of the underpayment if the failure is for not more than 1 month, with an additional 1 percent for each additional month or fraction thereof during which such failure continues, not exceeding 6 percent in the aggregate. For purposes of this subsection, the term "underpayment" means the excess of the amount of the tax required to be so deposited over the amount, if any, thereof deposited on or before the date prescribed therefor.

(b) *Penalty not imposed after due date for return.* For purposes of subsection (a), the failure shall be deemed not to continue beyond the last date (determined without regard to any extension of time) prescribed for payment of the tax required to be deposited or beyond the date the tax is paid, whichever is earlier.

§ 301.6656–1 *Failure to make deposit of taxes*—(a) *Penalty.* (1) In case of failure by any person required by the Code or regulations prescribed thereunder to deposit any tax in a government depositary, as is authorized under section 6302 (c), within the time prescribed therefor, a penalty shall be imposed on such person unless such failure is shown to the satisfaction of the district director to be due to reasonable cause and not to willful neglect. The penalty shall be one percent of the amount of the underpayment if the failure is for not more than one month, with an additional one percent for each additional month or fraction thereof during which failure continues, not to exceed 6 percent in the aggregate. For purposes of this section, the term "underpayment" means the amount of tax required to be deposited less the amount, if any, which was deposited on or before the date prescribed therefor, and the term "month" shall have the same meaning assigned to such term in § 301.6651–1 (a) (2).

(2) A taxpayer who wishes to avoid the penalty for failure to deposit must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that it is made under the penalties of perjury, which should be filed with the district director for the district in which the return with respect to the tax is required to be filed. If the district director determines that the delinquency was due to a reasonable cause, and not to willful neglect, the penalty will not be imposed.

(b) *Penalty not imposed after due date for return.* For the purpose of computing the amount of the penalty imposed by section 6656, the period of failure to make deposit is deemed not to continue beyond the last date (determined without regard to any extension of time) prescribed for payment of the tax required to be deposited, or beyond the date the tax is paid, whichever date is earlier. For example, during the months of January, February, and March 1955, the aggregate amount of the employee tax withheld under section 3102 of chapter 21 (the Federal Insurance Contributions Act), the employer tax for each such month under section 3111 of such chapter, and the income tax withheld at source on wages under section 3402 (exclusive of the employee tax withheld under section 3102 and the employer tax under section 3111 with respect to wages of household employees), amount to $1,000 for each month. Under the Employment Tax Regulations (Part 31 of this chapter), the employer is required to deposit the $1,000 for January on or before February 15, 1955, and the $1,000 for February on or before March 15, 1955, but is not required to deposit the $1,000 for March 1955, prior to the date the return is due. The employer filed his quarterly return on April 30, 1955, the date prescribed for filing such return, accompanied by a remittance of $3,000. Assuming that the employer failed, without reasonable cause, to make timely deposits the penalty under section 6656 for failure to make the January deposit is $30, and the penalty for failure to make the February deposit is $20, computed as follows:

Amount required to be deposited on or before Feb. 15, 1955	$1,000	
Less: Amount deposited	0	
Underpayment	1,000	
(1 percent penalty for each month or fraction thereof, Feb. 15, 1955 to Apr. 30, 1955, 3 months)	3%	
Penalty for failure to make January deposit		$30
Amount required to be deposited on or before Mar. 15, 1955	1,000	
Less: Amount deposited	0	
Underpayment	1,000	
(1 percent penalty for each month or fraction thereof, Mar. 15, 1955 to Apr. 30, 1955, 2 months)	2%	
Penalty for failure to make February deposit		20
Total penalty		50

§ 301.6657 *Statutory provisions; bad checks.*

SEC. 6657. *Bad checks.* If any check or money order in payment of any amount receivable under this title is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such check, upon notice and demand by the Secretary or his delegate, in the same manner as tax, an amount equal to 1 percent of the amount of such check, except that if the amount of such check is less than $500, the penalty under this section shall be $5 or the amount of such check, whichever is the lesser. This section shall not apply if the person tendered such check in good faith and with reasonable cause to believe that it would be duly paid.

§ 301.6657–1 *Bad checks*—(a) *In general.* Except as provided in paragraph (b) of this section, if a check or money order is tendered in the payment of any amount receivable under the Code, and such check or money order is not paid upon presentment, a penalty of one percent of the amount of the check or money order, in addition to any other penalties provided by law, shall be paid by the person who tendered such check or money order. If, however, the amount of the check or money order is less than $500, the penalty shall be $5 or the amount of the check or money order, whichever amount is the lesser. Such penalty shall be paid in the same manner as tax upon notice and demand by the district director.

(b) *Reasonable cause.* If payment is refused upon presentment of any check or money order and the person who tendered such check or money order establishes to the satisfaction of the district director that it was tendered in good faith with reasonable cause to believe that it would be duly paid, the penalty set forth in paragraph (a) of this section shall not apply.

§ 301.6658 *Statutory provisions; addition to tax in case of jeopardy.*

SEC. 6658. *Addition to tax in case of jeopardy.* If a taxpayer violates or attempts to violate section 6851 (relating to termination of taxable year) there shall, in addition to all other penalties, be added as part of the tax 25 percent of the total amount of the tax or deficiency in the tax.

§ 301.6658–1 *Addition to tax in case of jeopardy.* Upon a finding by the district director that any taxpayer violated, or attempted to violate, section 6851 (relating to termination of taxable year) there shall, in addition to all other penalties, be added as part of the tax 25 percent of the total amount of the tax or deficiency in the tax.

§ 301.6659 *Statutory provisions; applicable rules.*

SEC. 6659. *Applicable rules*—(a) *Additions treated as tax.* Except as otherwise provided in this title—

(1) The additions to the tax, additional amounts, and penalties provided by this chapter shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes;

(2) Any reference in this title to "tax" imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided by this chapter.

(b) *Additions to tax for failure to file return or pay tax.* Any addition under section 6651 or section 6653 to a tax imposed by another subtitle of this title shall be considered a part of such tax for the purpose of applying the provisions of this title relating to the assessment and collection of such tax (including the provisions of subchapter B of chapter 63, relating to deficiency procedures for income, estate, and gift taxes).

§ 301.6659–1 *Applicable rules*—(a) *Additions treated as tax.* Except as otherwise provided in the Code, any reference in the Code to "tax" shall be deemed also to be a reference to any addition to the tax, additional amount, or penalty imposed by chapter 68 with respect to such tax. Such additions to the tax, additional amounts, and penalties shall become payable upon notice and demand therefor and shall be assessed, collected, and paid in the same manner as taxes.

(b) *Additions to tax for failure to file return or pay tax.* Any addition under section 6651 or section 6653 to a tax shall be considered a part of such tax for the purpose of the assessment and collection of such tax. For applicability of deficiency procedures to additions to the tax, see paragraph (c) of this section.

(c) *Deficiency procedures*—(1) *Addition to the tax for failure to file tax return.* Subchapter B of chapter 63 (deficiency procedures) applies to the additions to the income, estate, and gift taxes imposed by section 6651 for failure to file a tax return to the same extent that it applies to such taxes. Accordingly, if there is a deficiency (as defined in section 6211) in the tax (apart from the addition to the tax) where a return has not been timely filed, deficiency procedures apply to the addition to the tax under section 6651. If there is no deficiency in the tax where a return has not been timely filed, the addition to the tax under section 6651 may be assessed and collected without deficiency procedures. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A filed his income tax return for the calendar year 1955 on May 15, 1956, not having been granted an extension of time for such filing. His failure to file on time was not due to reasonable cause. The return showed a liability of $1,000 and it was determined that A is liable under section 6651 for an addition to such tax of $50 (5 percent a month for 1 month). The provisions of subchapter B of chapter 63 (deficiency procedures) do not apply to the assessment and collection of the addition to the tax since such provisions are not applicable to the tax with respect to which such addition was asserted, there being no statutory deficiency for purposes of section 6211.

Example (2). Assume the same facts as in example (1) and assume further that a deficiency of $500 in tax and a further $25 addition to the tax under section 6651 is asserted against A for the calendar year 1955. Thus, the total addition to the tax under section 6651 is $75. Since the provisions of subchapter B of chapter 63 are applicable to the $500 deficiency, they likewise apply to the $25 addition to the tax asserted with respect to such deficiency (but not to the $50 addition to the tax under example (1)).

(2) *Additions to the tax for negligence or fraud.* Subchapter B of chapter 63 (deficiency procedures) applies to all additions to the income, estate, and gift taxes imposed by section 6653 (a) and (b) for negligence and fraud.

(3) *Additions to tax for failure to pay estimated income taxes*—(i) *Return filed by taxpayer.* The addition to the tax for underpayment of estimated income tax imposed by section 6654 (relating to failure by individuals to pay estimated income tax) or section 6655 (relating to failure by corporations to pay estimated income tax) is determined by reference to the tax shown on the return if a return is filed. Therefore, such addition

may be assessed and collected without regard to the provisions of subchapter B of chapter 63 (deficiency procedures) if a return is filed since such provisions are not applicable to the assessment of the tax shown on the return. Further, since the additions to the tax imposed by section 6654 or 6655 are determined solely by reference to the amount of tax shown on the return if a return is filed, the assertion of a deficiency with respect to any tax not shown on such return will not make the provisions of subchapter B of chapter 63 (deficiency procedures) apply to the assessment and collection of any additions to the tax under section 6654 or 6655.

(ii) *No return filed by taxpayer.* If the taxpayer has not filed a return and his entire income tax liability is asserted as a deficiency to which the provisions of subchapter B of chapter 63 apply, such provisions likewise will apply to any addition to such tax imposed by section 6654 or 6655.

ASSESSABLE PENALTIES

§ 301.6671 *Statutory provisions; rules for application of assessable penalties.*

SEC. 6671. *Rules for application of assessable penalties*—(a) *Penalty assessed as tax.* The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary or his delegate, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.

(b) *Person defined.* The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 301.6671–1 *Rules for application of assessable penalties*—(a) *Penalty assessed as tax.* The penalties and liabilities provided by subchapter B of chapter 68 (sections 6671 to 6675, inclusive) shall be paid upon notice and demand by the district director and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in the Code to "tax" imposed thereunder shall also be deemed to refer to the penalties and liabilities provided by subchapter B of chapter 68.

(b) *Person defined.* For purposes of subchapter B of chapter 68, the term "person" includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 301.6672 *Statutory provisions; failure to collect and pay over tax, or attempt to evade or defeat tax.*

SEC. 6672. *Failure to collect and pay over tax, or attempt to evade or defeat tax.* Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 for any offense to which this section is applicable.

§ 301.6672–1 *Failure to collect and pay over tax, or attempt to evade or defeat tax.* Any person required to collect, truthfully account for, and pay over any tax imposed by the Code who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. The penalty imposed by section 6672 applies only to the collection, accounting for, or payment over of taxes imposed on a person other than the person who is required to collect, account for, and pay over such taxes. No penalty under section 6653, relating to failure to pay tax, shall be imposed for any offense to which this section is applicable.

§ 301.6673 *Statutory provisions; damages assessable for instituting proceedings before the Tax Court merely for delay.*

SEC. 6673. *Damages assessable for instituting proceedings before the Tax Court merely for delay.* Whenever it appears to the Tax Court that proceedings before it have been instituted by the taxpayer merely for delay, damages in an amount not in excess of $500 shall be awarded to the United States by the Tax Court in its decision. Damages so awarded shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Secretary or his delegate and shall be collected as a part of the tax.

§ 301.6673–1 *Damages assessable for instituting proceedings before the Tax Court merely for delay.* Any damages awarded to the United States by the Tax Court under section 6673 against a taxpayer for instituting proceedings before the Tax Court merely for delay shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the district director and shall be collected as a part of the tax.

§ 301.6674 *Statutory provisions; fraudulent statement or failure to furnish statement to employee.*

SEC. 6674. *Fraudulent statement or failure to furnish statement to employee.* In addition to the criminal penalty provided by section 7204, any person required under the provisions of section 6051 to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111.

§ 301.6674–1 *Fraudulent statement or failure to furnish statement to employee.* For regulations under section 6674, see the employment tax regulations (Part 31 of this chapter).

§ 301.6675 *Statutory provisions; excessive claims with respect to the use of certain gasoline.*

SEC. 6675. *Excessive claims with respect to the use of certain gasoline*—(a) *Civil penalty.* In addition to any criminal penalty provided by law, if a claim is made under section 6420 (relating to gasoline used on farms) or 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems) for an excessive amount, unless it is shown that the claim for such excessive amount is due to reasonable cause, the person making such claim shall be liable to a penalty in an amount equal to whichever of the following is the greater:

(1) Two times the excessive amount; or

(2) $10.

(b) *Excessive amount defined.* For purposes of this section, the term "excessive amount" means in the case of any person the amount by which—

(1) The amount claimed under section 6420 or 6421, as the case may be, for any period, exceeds

(2) The amount allowable under such section for such period.

(c) *Assessment and collection of penalty.* For assessment and collection of penalty provided by subsection (a), see section 6206.

[Sec. 6675 as added by sec. 3, Act of April 2, 1956, 70 Stat. 90, and as amended by sec. 208 (d) (2), Highway Revenue Act of 1956, 70 Stat. 396]

§ 301.6675–1 *Excessive claims with respect to the use of certain gasoline.* For regulations under section 6675, see the manufacturers' and retailers' excise tax regulations (Part 40 of this chapter).

GENERAL RULES

EFFECTIVE DATE AND RELATED PROVISIONS

§ 301.7851 *Statutory provisions; applicability of revenue laws.*

SEC. 7851. *Applicability of revenue laws*—(a) *General rules.* Except as otherwise provided in any section of this title—

* * * * *

(6) *Subtitle F.*

(A) *General rule.* The provisions of subtitle F [including chapter 68, relating to additions to the tax, additional amounts, and assessable penalties] shall take effect on the day after the date of enactment of this title and shall be applicable with respect to any tax imposed by this title. * * *

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[F. R. Doc. 57–7687; Filed, Sept. 18, 1957; 8:51 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 937]

[Docket No. AO–289]

HANDLING OF MILK IN BATTLE CREEK-KALAMAZOO, MICHIGAN, MARKETING AREA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR, Part 900), a public hearing was held at Kalamazoo, Michigan, on November 26–29, 1956, pursuant to notice thereof issued on November 5, 1956 (21 F. R. 8663), upon a proposed marketing agreement and order regulating the handling of milk in the Battle Creek-Kalamazoo, Michigan, marketing area.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on August 7, 1957 (22 F. R. 6415), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision, containing notice of opportunity to file written exceptions thereto.

The material issues of record relate to:

1. Whether the handling of milk produced for sale in the proposed marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether marketing conditions justify the issuance of a milk marketing agreement or order; and

3. If an order is issued what its provisions should be with respect to:

(a) The scope of regulation;

(b) The classification and allocation of milk;

(c) The determination and level of class prices;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

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

1. *Character of commerce.* The handling of milk produced for the Battle Creek-Kalamazoo, Michigan, marketing area, as defined herein, is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and its products.

While the proposed marketing area lies wholly within the State of Michigan, included within the area are two Federal government installations, namely Fort Custer and Percy Jones Hospital. Contracts for milk and its products to serve these installations are issued on a competitive bid basis with milk dealers from all portions of the area receiving such contracts from time to time.

Farm milk supplies for the proposed marketing area are inextricably interwoven with farm supplies for six Federally regulated markets and with those of several manufacturing plants doing business in the current of intertsate commerce.

At two supply plants under the Chicago Federal order manufacturing facilities are operated which also receive surplus supplies from the Battle Creek-Kalamazoo market. At least one of these two Chicago plants receives surplus milk from this area on a regular month to month basis and on occasion, as it did in the fall of 1956, supplies fluid milk to dealers in the marketing area. This Chicago supply plant has as its primary customer a handler at Hammond, Indiana. Producers supplying the marketing area and these two Chicago plants are intermingled over a wide area.

The farms from which milk is received at two supply plants for the Federally regulated Detroit market are in the area from which handlers for Battle Creek-Kalamazoo compete for their supply. One of these two Detroit plants is located within the proposed marketing area. The other Detroit supply plant distributes milk and its products on routes within the area.

A supply plant for the Federally regulated Cleveland, Ohio, market, located at Coldwater, Michigan, competes for a supply of fluid milk with dealers in the area proposed to be regulated. This plant does not contain facilities for the manufacture of dairy products. Milk that cannot be used in fluid form in the Cleveland market is transported to Fort Wayne, Indiana, for manufacturing into dairy products.

Producers located in the State of Michigan whose farms are intermingled with those of producers supplying the Battle Creek-Kalamazoo area supply handlers serving the Federally regulated markets of Toledo, Ohio, Fort Wayne and South Bend, Indiana. There is frequent interchange of producers between these other Federally regulated markets and the Battle Creek-Kalamazoo market.

A milk dealer that would be regulated by the proposed marketing agreement and order receives both inspected and uninspected supplies of milk. This handler is also a major handler of excesses in supply for the Kalamazoo portion of the proposed area. The excess of fluid milk is received in the manufacturing part of the plant and a substantial portion of the total manufactured milk is disposed of as either ice cream mix in the State of Indiana or as powdered milk in the states of Ohio, Indiana and Illinois.

Manufacturing milk plants located at Sturgis and Wayland, Michigan, and Angola, Indiana, also compete for milk supplies in the Battle Creek-Kalamazoo milkshed. Procurement for the Wayland and Angola plants is partly through receiving plants at Hastings, Charlotte and Homer, Michigan. Dairy products manufactured at these plants are widely distributed in interstate commerce. In addition milk for manufacturing use moves directly in interstate commerce from the Charlotte and Homer receiving plants to the Angola manufacturing plant. The procurement of milk for all these plants is in competition with procurement of milk for the proposed marketing area. As with the supply for the Federally regulated markets there are producers shifting between the manufacturing plants and the Battle Creek-Kalamazoo fluid milk market.

Milk received in a plant located in Toledo, Ohio, is sold on routes in the proposed marketing area in competition with handlers that would be regulated by this proposed marketing agreement and order. A handler under the Federally regulated Upstate Michigan order also sells milk in the marketing area. A Lansing, Michigan, milk dealer with sales and supplies interwoven with the Detroit market distributes milk in the proposed area through vendors.

Thus the handling of milk in the Battle Creek-Kalamazoo marketing area affects, and is affected by, the prices paid producers in other Federally regulated markets and by the manufacturing milk plants. Price relationships which interrupt or interfere with the distribution of milk in this region to the fluid and manufacturing markets in accordance with the relative value of milk for such outlets tend to burden, obstruct and affect interstate commerce in milk and its products.

2. *Need for regulation.* The marketing and pricing conditions in the Battle Creek-Kalamazoo marketing area require the issuance of a milk marketing agreement and order to establish and maintain orderly marketing conditions. Such an order will tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended.

Two cooperatives represent a majority of dairy farmers producing milk for handlers in the proposed marketing area. Neither cooperative operates any form of milk plant, but attempts to negotiate prices handlers shall pay for milk produced by their members. The cooperative association representing producers located generally in the eastern half of the marketing area currently is able to negotiate prices on a classified basis with all handlers located in or near Battle Creek, Michigan. This was not true, however, prior to February 1956, nor do such prices apply to all milk sold in Battle Creek and its environs. The association, as a result of competition from milk supplies purchased on a flat price basis, provided a reduced price for milk handlers sell to particular sales outlets in order to maintain the Class I milk volume for their producers. In so doing inequities, with respect to both costs to handlers and returns to producers, develop which make for unstable marketing conditions. This same cooperative in bargaining for prices to be paid by handlers located in southeastern Calhoun County has been unable to maintain its "quoted" prices and has in an attempt to maintain Class I sales outlets for its members provided special Class I prices as much as one dollar per hundredweight lower than the stated price for fluid milk when sold in half-gallon containers. In spite of such price arrangements, milk produced by local farmers and available for Class I use has been replaced by milk from other markets in the State and from Toledo, Ohio. The cooperative association supplies its handlers their total needs. The result of all these practices has been that local producers have been forced to move large quantities of milk to a Chicago supply plant which also maintains manufacturing facilities. From time to time this Chicago plant supplies bulk milk to handlers in the marketing area.

Another cooperative association representing producers generally located in the western half of the marketing area currently handles approximately 70 percent of the milk distributed or manufactured by handlers located in or near Kalamazoo, Michigan. From 1950–54 the association handled 80 percent and from 1940–50, 90 percent of the supply for this portion of the marketing area. Three handlers selling milk in the marketing area pay producers on a flat price basis in contrast to the use classification and base-excess plan used by the cooperative association. A fourth handler, also a cooperative, supplying a supermarket chain is located some distance

from the marketing area. The producers of this association are not paid on a base-excess plan, but generally follow pricing plans established by the Federally regulated South Bend, Indiana, market.

Dealers purchasing their milk supplies on flat pricing plans have generally restricted their purchases to their needs for fluid milk and have depended upon outside supplementary sources for needed reserve supplies. Such dealers obtain their milk supplies for fluid use at less than the Class I price negotiated by the association with other dealers, but pay their producers prices equal to or more than the returns to association members who carry a disproportionate share of the cost of maintaining the reserve supplies for the market. The diminishing percentage of the market supplied by the association is partly a result of this situation.

The larger bargaining cooperative in the Kalamazoo part of the marketing area has, as a result of the above mentioned pricing plans, given one handler in particular, and others on occasion a lower Class I price for specific sales outlets. This association supplies the daily needs of each of its cooperating handlers, transporting any excess over these needs to a handler in the marketing area that also has facilities for the manufacture of milk into ice cream mix, powdered milk and butter.

There is incomplete information on receipts and utilization in the marketing area. This is due in part to the following factors:

(a) Lack of a thorough and complete auditing program in the market;

(b) Unknown amounts of milk and its products being sold in the area from sources other than local producers;

(c) Local producers associations do not sell milk to all handlers in the area; and

(d) The apparent unwillingness of handlers in the proposed marketing area to offer direct testimony regarding amounts and movement of milk or general market conditions.

A producer shipping to a handler not receiving any milk from the cooperative association testified that prices paid by this handler were determined on the basis of the retail price regardless of prices established by the cooperative association.

At the time of the hearing the stated Class I milk price was $5.04 in the western part of the marketing area and $5.25 in the eastern portion. In both instances, however, the record testimony noted differences from these prices.

Variations in pricing plans and in net prices paid producers reflect different raw material costs to the various dealers in the marketing area. Unequal costs among milk dealers tend to stimulate price reductions by competitors. Such practices are contrary to the interests of producers and over a period of time may jeopardize an adequate supply of pure and wholesome milk.

As already indicated widely varying prices received by producers tend to shift producers (a) among handlers in the area or (b) in and out of the market to other fluid or manufacturing outlets. Such shifts may become frequent enough to jeopardize a dependable supply of milk for the market.

The marketing agreement and order as recommended herein will implement the policy declared in the Agricultural Marketing Agreement Act of 1937, as amended, of establishing and maintaining orderly marketing conditions by providing:

(1) A determination of prices to producers under a regular and dependable method at levels consistent with the policy established by the act;

(2) An impartial audit of handlers' records of receipts and utilization to further insure uniform prices for milk purchased;

(3) The establishment of uniform prices to handlers based on the utilization made of the milk;

(4) Uniform returns to producers supplying the market and an equitable sharing by all producers of the lower returns for sale of reserve milk;

(5) Uniform rules for all producers for the operation of a seasonal production incentive plan which will encourage all producers to adjust production to a more even pattern;

(6) A system of impartial checking of all producer milk in respect to weight and butterfat content; and

(7) Market-wide information in respect to all receipts, utilization and intermarket movements of milk.

3. *Order provisions*—(a) *The scope of regulation:*

(1) *Marketing area.* The Battle Creek-Kalamazoo, Michigan, marketing area should include all the territory within the boundaries of: Kalamazoo and Calhoun Counties; Otsego and Gun Plain townships in Allegan County; Union township in Branch County and Bellevue township in Eaton County; all in the State of Michigan.

Proponent producers proposed the marketing area should include, in addition to the above stated territory, Assyria, Baltimore, and Johnstown townships in Barry County; Kalamo township in Eaton County; Sherwood township in Branch County and Lockport township in St. Joseph County, all in the State of Michigan. A handler proposed that Watervliet township in Berrien County, Michigan, be included in the marketing area. A cooperative association with a plant presently regulated under the Chicago order proposed that all of St. Joseph County, Michigan, be included in the marketing area.

The problems complained of by the two cooperatives representing a majority of the producers center primarily around the handling of milk in plants which are either located in or serve Calhoun and Kalamazoo Counties, Michigan. These two counties represent the concentration of population in the entire region under consideration. The principal metropolitan areas located in these two counties are Battle Creek and Kalamazoo. It appears orderly marketing in this region may be best achieved by regulating the counties in their entirety rather than to specify particular communities for regulation. The townships of Gun Plain and Otsego in Allegan County are directly north of and contiguous to Kalamazoo County. The cities of Plainwell and Otsego are located in these two townships and are considered a part of the Kalamazoo metropolitan area. Milk distributors located in these two townships have sales in Kalamazoo County. Kalamazoo distributors have sales in these two townships in competition with local distributors.

Health regulations are substantially similar throughout the area. The health regulations of the State of Michigan provide a uniform minimum standard which may be somewhat modified by more rigid requirements by local health authorities. State of Michigan health authorities work in conjunction with health authorities of Calhoun and Kalamazoo Counties with respect to inspection of dairy farms and plants serving this marketing area. The degree of similarity of minimum health standards, including the acceptance of supplemental or emergency supplies, throughout the area justifies the uniform application of prices to all inspected milk marketed within these two counties.

In the recommended decision, all seven townships proposed in Barry, Branch and Eaton Counties were omitted on the basis that sales in these townships were limited due to the predominantly rural character. The record has been reviewed in the light of exceptions received. In Union township, Branch County and Bellevue township, Eaton County, a local processing plant was operated until a few years ago, since which a Battle Creek handler has purchased these businesses and combined their distribution with that of his Battle Creek plant. This handler and others to be regulated now distribute a substantial volume of milk in these townships, each of which adjoins Calhoun County. These townships have thus become an integral part of the marketing area. Their inclusion will not bring any additional handlers under regulations. It is concluded that they should be included in the defined area. Inclusion of the five remaining townships proposed in Barry, Branch and Eaton Counties does not appear to be justified on the basis of this record.

The record testimony does not show that the inclusion of Watervliet township in Berrien County and Lockport township in St. Joseph County or St. Joseph County in its entirety would serve any good purpose. Proponents failed to support the inclusion of Lockport township or Watervliet township in Berrien County. The proponent for the inclusion of St. Joseph County operates a pool plant in the Chicago marketing area and only distributes packaged milk purchased from a handler distributing within the proposed marketing area. Handlers located within the marketing area as proposed have only limited sales, if any, in St. Joseph County which are of minor competitive importance.

The issuance of an order for the marketing area as proposed will bring under regulation all the milk in the sales area represented by milk dealers located within the proposed Battle Creek-Kalamazoo marketing area. The area so

proposed has been defined on the basis of extensive interrelationship of supply and distribution. The area is a continuous, homogeneous one within which milk distributors should be charged the same price for milk used in a given class and producers be paid a uniform price.

(2) *Milk to be regulated.* The milk to be regulated by the proposed marketing agreement and order should be that which is regularly delivered to plants from which milk is regularly distributed on routes in the marketing area, or which are regular sources of supply for such plants. To be eligible for such distribution milk must be produced, processed, and distributed in conformity with applicable health regulations. Provision should be made to designate clearly what milk will be subject to the pricing and pooling provisions of the recommended marketing agreement and order. For this reason, definitions of handler, plant (various types), producer, producer milk, and other source milk should be provided.

A handler should be defined as any person who operates: (1) a pool plant as hereinafter defined, (2) a plant from which Class I milk is processed, packaged and distributed on routes within the marketing area, and (3) any cooperative with respect to the milk of any producer which such cooperative association causes to be diverted from a pool plant by delivery directly from producer's farms to a nonpool plant for the account of such cooperative association. The handler receives the milk of producers and thus must be held responsible for reporting its receipts and utilization. The handler is the one responsible for the payment for producer milk at not less than specified minimum prices. In case a person operates more than one plant at which milk is to be priced, he should be a handler with respect to the combined operations of such plants. If a handler also operates an unregulated plant(s), this definition is not intended to include such person in his capacity as an operator of such type of plant(s). Producer-handlers and other operators of distributing plants should be handlers in order that such persons shall report to the market administrator to determine their status at any given time.

The definition of a pool plant should be such as to determine which producers, as hereinafter defined, are to be included in the determination of a market-wide uniform price to producers. Some plants have received milk from local dairy farmers and distributed most of such milk as fluid milk products in the proposed marketing area over a period of several years. There are other plants that fall into one of two categories, (a) distributing plants with a primary interest in other fluid markets but distributing milk within the area or (b) plants at which milk is received directly from dairy farmers and delivered in bulk to distributing plants, which are generally known as supply plants. There are two distributing plants not regulated by any Federal milk order located outside the marketing area that currently sell fluid milk products within the proposed marketing area, but have their primary market elsewhere. Milk distributors in this market do occasionally receive bulk supplies of milk during the short season of production and thus the opportunity to qualify supply plants is provided. Specific requirements for pool plants are therefore needed to define the supply which is generally regarded as an integral part of this fluid market. This can be accomplished by first defining a distributing plant and a supply plant.

A distributing plant should be defined as a plant at which fluid milk products, conforming to the sanitation requirements of any duly constituted health authority having jurisdiction in the marketing area, are processed and packaged and from which fluid milk products are disposed of on route(s) in the marketing area. This definition is not intended to include that portion of a plant building which is physically segregated and separately operated in which no fluid milk products are processed or packaged, and from which no fluid milk products are moved to any plant from which routes are operated.

A supply plant should be defined as a plant at which milk produced in conformity with health regulations for the marketing area is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

A pool plant should meet certain performance standards in order to determine its status as a regular and substantial supplier of fluid milk in the marketing area. In order to qualify as a pool plant a distributing plant should (1) dispose of 25 percent or more of receipts from dairy farmers and supply plants as fluid milk products on routes in the marketing area and (2) have a total disposition of fluid milk products on routes of 50 percent or more of receipts of fluid milk products from dairy farmers and supply plants. In order to qualify as a pool plant a supply plant should move 50 percent or more of receipts from dairy farmers to a distributing plant, as herein defined. If a supply plant qualifies on this basis during each of the months of August through January, it should be able to retain pool plant status February through July.

The supply area for the Battle Creek-Kalamazoo marketing area overlaps the supply area of other fluid markets and manufacturing milk production areas. Therefore, the previously stated pool plant requirements are necessary to insure (1) that the producers sharing in the uniform price of the market pool be those delivering to plants from which a substantial portion of the milk received at such a plant is disposed of as fluid milk products in the marketing area and (2) that the receipts of those plants which primarily serve markets outside the marketing area be excluded from sharing in the pool. Those plants that make sales of fluid milk products in the marketing area that represent less than 25 percent of total receipts from dairy farmers or which dispose of a majority of receipts from dairy farmers as manufactured dairy products cannot be regarded as a part of the Battle Creek-Kalamazoo fluid milk market.

The proponent cooperative associations proposed that 20 percent of receipts from dairy farmers be disposed of as Class I in the marketing area as a requirement for pooling milk received at a distributing plant. Proponents supported the provision on the basis that such sales in the marketing area needed regulation to insure that all handlers selling in the market area be subject to the same minimum prices, but such handlers should be permitted to pay their dairy farmers on an individual basis. A cooperative association operating a distributing plant that would be regulated by such a provision testified that the 20 percent requirement should be increased to 25 percent. The sales of this association in the proposed marketing area in relation to receipts from dairy farmer members are approximately 20 percent. Thus a requirement of 20 percent would create an unstable marketing situation—pooling such a plant one month and not the next. A requirement that 25 percent or more of receipts from dairy farmers and supply plants be route disposition of Class I milk in the marketing area will more effectively assure that a plant participating in the market-wide pool will have such a substantial proportion of its sales in the marketing area as to warrant the conclusion that the Battle Creek-Kalamazoo market is a primary market for such plant. On the other hand, handlers whose principal distribution of fluid milk products is outside the marketing area will not be required to equalize producer payments on such sales so long as their distribution in the area is less than 25 percent of receipts from dairy farmers and supply plants.

Distributing plants normally have a high proportion of their receipts from dairy farmers used as Class I milk, usually more than 50 percent. A requirement that a distributing plant to have its receipts pooled must have 50 percent or more of its receipts from dairy farmers and supply plants disposed of on routes either in or out of the marketing area, will serve to distinguish those plants that may qualify as pool plants through route distribution from those which must qualify as supply plants. Route is defined in the order to include deliveries of fluid milk products in packaged form to other milk plants so that the plant at which the milk is processed and packaged will receive credit toward pool plant qualification for any interplant movements in such form, and subsequent provisions of the order make the processing and packaging plant accountable for such milk whether or not it qualifies as a pool plant.

The Battle Creek-Kalamazoo market has so far been supplied from dairy farmers delivering directly to distributing plants. The fact that occasional bulk supplies of milk are received by handlers in the proposed marketing area plus the available supply from nearby milk plants suggests some provision should be made to define supply plants and establish requirements in the event such a plant(s) should enter the market. In view of the requirements herein adopted for distributing plants, it is appropriate that the shipping requirements for supply plants should be 50 percent or more of receipts from dairy farmers to such distributing

plants in the event such supply plant should enter the market. If a supply plant meets the required standards during the short supply season (August-January) compliance as a pool plant would then be retained during the balance of the year (February–July). These standards will require such supply plants that qualify to have a primary interest in supplying the Battle Creek-Kalamazoo market, and an opportunity to share in market-wide pooling at all times if it establishes its association with the market during the season of normally low supplies.

Producers proposed that handlers with plants located outside the marketing area but selling small quantities on routes within the marketing area should be exempt from the pricing and payment provisions, such handlers to be subject to reporting and auditing provisions. It was proposed the exemption should be based on a limitation of about 600 pounds per day sold on routes operated wholly or partially in the marketing area. Sales within the area, rather than on routes of which varying proportions may be in the area, provide an entirely feasible basis of determination for the Battle Creek-Kalamazoo area, since the area boundaries are principally rural points. In view of the provisions herein provided for partial regulation of nonpool handlers whose sales may exceed the exemption limit, and the use of sales only within the marketing area, it is concluded that a smaller exemption limit should be provided. Handlers whose sales do not exceed an average of 150 points (one point being defined as one-half pint of cream or one quart of any other fluid milk product) of Class I sales per day disposed of during the month in the marketing area, should be exempt from pricing and payment requirements of the order.

It was proposed that a handler whose plant failed to qualify as a distributing plant but which had sales of fluid milk products on routes in the marketing area in excess of an average of 150 points per day should be required to make payment to the equalization fund if the value of his milk at class prices of the order exceeded his payments to dairy farmers who would be considered producers had such plant been a pool plant. These nonpool handlers must report receipts and utilization of dairy products handled to determine their pool status and obligations. Payments made to dairy farmers are likewise available. If through choice or competitive conditions payments to dairy farmers equal or are greater than amounts that the order would provide at class prices on the entire utilization of such plants, no additional payments are necessary to insure that the cost of milk to the nonpool handler is no less than the minimum prices that pool handlers are required to pay. Under the conditions prevailing in the Battle Creek-Kalamazoo area the nonpool handler would have no competitive advantage, and producers regularly supplying the market needs for inspected milk would be protected from competition of cheaper milk. It was proposed that any deficit by which payment to farmers were less than the value of milk at class prices be assigned to procurement of milk for Class I purposes, and be prorated to sales in the Battle Creek-Kalamazoo marketing area. Such an assignment, however, would not in all cases prevent such handlers from having a competitive advantage over pool handlers. It is concluded that payment of the full deficit is required to insure that the nonpool handler has no procurement advantage as compared with fully regulated handlers, and to protect the integrity of the classified price plan of the order, unless this amount exceeds an amount computed by multiplying the volume of Class I milk sold in the marketing area by the difference between the Class I and Class II prices. It may safely be assumed that milk acceptable for fluid distribution in the marketing area cannot be procured for less than the Class II (manufacturing milk) price, and that payment of this amount will likewise prevent competitive advantage accruing to the nonpool handler.

Such provision will prevent competitive advantage while recognizing payments that nonpool handlers choose to make to their dairy farmers. It therefore, should be adopted. Similar provisions are included in several other Federal milk orders and have proven satisfactory as a means of effectuating the regulation. The nonpool handler should also pay his pro rata share of the costs of administration of the order. Complete verification of receipts, utilization and payments is required if the handler is to be given credit for payments as related to the classified use value of his milk. Accordingly administrative expense should be determined on the same basis as for fully regulated plants. Should the handler elect, when filing his report, to make payment to the pool at the difference between the Class I and Class II prices with respect to sales in the marketing area, expenses of administration will be assessed only with respect to such sales, since need for verification will then be confined to that volume.

Certain limitations on the applicability of these provisions should be made in case the nonpool plant does not receive milk from dairy farmers in a volume substantially equal to the Class I disposition of such plant. Unless receipts from dairy farmers (or from other plants of the same handler for which receipts, utilization, and payments may be included in the computation) are substantially as much as Class I utilization at the nonpool plant, effective comparison between class volumes and payments cannot be made, and the handler should be required to pay on the alternative basis of the difference between class prices.

In order not to require the alternative basis in temporary periods of short supply a tolerance of 5 percent deficit in supply from dairy farmers is permitted. Furthermore, milk supplies received from other plants operated by the same handler may be substituted for receipts from dairy farmers for purposes of the requirement, if receipts, utilization and payments to dairy farmers at such plants are made available for inclusion in the computations. The operator of one plant which will probably be subject to these provisions operates another plant, for which at the time of the hearing a new building was under construction. The record is somewhat indefinite as to the extent to which operations of these two plants may in the future be combined. Under these circumstances it is desirable that order provisions be such as to provide for the possibility of such combination.

Producer-handler should be defined as a dairy farmer who operates a distributing plant but received no milk from other dairy farmers or nonpool plants. Reports to the market administrator at such time and in such manner as may be requested should provide ample means through examination of accounts, records and facilities to determine the status of producer-handlers. A producer-handler under these provisions enjoys the full advantage of his fluid milk sales. It appears unnecessary to require a producer-handler to pay any particular price for milk produced on his own farm provided that any sales on the part of pool plants to such a handler are at Class I and any receipts from a producer-handler at a pool plant are considered other source milk, as hereinafter defined. Such provisions permit the producer-handler to participate in the trade of the marketing area to the full extent of his ability to obtain Class I sales for his own production without sharing in the balance of Class I sales of the market with other producers.

Producer should be defined as a person, other than a producer-handler, who produces milk in conformity with the sanitation requirements issued by the duly constituted health authority having jurisdiction in the marketing area, for milk to be consumed as a fluid milk product and whose milk is received at a pool plant. Producer milk diverted from a pool plant by a handler, including a cooperative association, to a nonpool plant for its account should be deemed to have been received at a pool plant. Such provisions will permit milk regularly associated with the market to be diverted to manufacturing plants during periods of seasonal flush production and over weekends and holidays when supply and demand relationships may require some reserve to be manufactured in plants not regulated by the order. This provision will facilitate interplant movements of milk for the purpose of short time adjustments of supply and demand without depriving dairy farmers producing the regular supply for the market of their status as producers.

Other source milk should be defined as all skim milk and butterfat contained in milk products received by a handler at his plant(s), except producer milk and fluid milk products received from pool plants. This definition would include milk products, other than fluid milk products, from any source (including those produced at the plant) which are reprocessed and converted to another product in the plant during the month. Supplemental supplies from nonpool plants are occasionally needed and the amounts needed vary from season to season and between handlers. The record testimony did not indicate that such supplies have significantly displaced pro-

ducer milk for use in fluid outlets. Therefore, under these circumstances the allocation of producer milk to the highest class of utilization appears to be an effective means of minimizing any displacement of producer milk and also insures uniform accounting among all handlers for such supplies.

(b) *The classification and allocation of milk.* Milk should be classified in two classes reflecting the principal differences in the quality and the value of milk required for different uses. Class I should include all skim milk and butterfat disposed of for consumption as a fluid milk product. Fluid milk product means milk, skim milk, buttermilk, flavored milk and drinks, cream and mixtures of milk, skim milk and cream. Plant loss of producer skim milk and butterfat in excess of 2 percent and skim milk and butterfat not accounted for as Class II should also be classified as Class I. Because skim milk and butterfat are not used in most products in the same proportions as received from producers, these components should be classified separately. Class prices, however, will apply per hundredweight of milk, and will be adjusted for the butterfat content of the milk actually used in each class through butterfat differentials.

Representatives of the health authorities having jurisdiction in the proposed marketing area testified that fluid milk products, as defined herein, sold for consumption in the area must be produced and handled in compliance with sanitation standards that are substantially uniform throughout the proposed marketing area. The proponent cooperative association requested that eggnog be a Class I product. The health regulations, however, require only the same health standards for eggnog as is required for ice cream mix. It is concluded that eggnog should be a Class II product. A handler on the other hand, proposed that sweet and sour cream be a Class II product. Skim milk and butterfat used to produce sweet and sour cream must meet the same health requirements as milk for fluid consumption, hence it is appropriate that cream be classified and priced in the same class as fluid milk.

The products which should be included in Class I are those distributed to consumers in fluid form and required by the health authorities having jurisdiction in the marketing area to be obtained from milk or milk products from approved inspected sources. The extra cost of getting quality milk produced and delivered to the market in the condition and quantities required makes it necessary to provide a price for milk used as Class I somewhat higher than uninspected milk used for manufacturing purposes. It is appropirate that all of the products required to be from approved inspected sources be included in a single class so that all milk required to make such products may contribute uniformly to the cost of supplying the market needs for inspected milk.

Reserve milk not needed seasonally, or at other times such as week-ends, for Class I use must be disposed of for use in manufactured products. These products are not required to be made from inspected milk, must be sold in competition with products made from uninspected sources produced over a large area and generally are less perishable than fluid milk products. Milk so used should be classified as Class II milk and priced in accordance with its value in such outlets.

Class II should therefore include skim milk and butterfat used to produce any product other than a fluid milk product, including but not limited to such products as ice cream, ice cream mix, frozen cream, aerated cream, dried milk products, whole and nonfat, condensed or evaporated products, butter, cottage and hard cheese. Class II should also include plant loss of other source milk, all skim milk dumped or accounted for as disposed of for livestock feed, and inventories of fluid milk products on hand at the end of any month. Cream which is frozen and placed in storage should be Class II since such cream is intended primarily for use in ice cream or ice cream mix. Any frozen cream or other Class II products which may be used later in a fluid milk product would be considered as other source milk at the time of such use and assigned to the lowest priced utilization in the plant.

Handlers have inventories of milk and milk products at the beginning and end of each month which must enter into the accounting for current receipts and utilization. The record testimony indicates that an appropriate classification of the inventory of fluid milk products is as Class II. This manner of classifying inventory with correlated steps in the allocation procedure provides a means of charging each handler for his Class I sales each month at the current Class I price. Fluid milk products whether in bulk or packaged form should be inventoried and classified as Class II. Manufactured milk products are not included in inventory accounting because the skim milk and butterfat used for such products are accounted for in the month when such products are manufactured.

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

Inventories of products designated as Class I on hand at a pool plant at the beginning of any month during which such a plant becomes qualified for the first time should likewise be subtracted from the Class II utilization of such plant. This will preserve the priority of assignment of current producer receipts to current Class I use for each month.

Unaccounted for milk in excess of a reasonable allowance for plant loss should be Class I so as to require full accounting by handlers for their receipts. Two percent is considered a reasonable maximum allowance for this purpose. No limit need be put on shrinkage of other source milk since such milk is deducted from the lowest use class under the allocation procedures. Since it is not feasible to segregate shrinkage of producer milk from that of other source milk in the same plant, total shrinkage is prorated on the basis of the volume of receipts. Allowance for loss on producer milk diverted to another pool plant should be at the pool plant where actually received. Each handler must be held responsible for full accounting of all his receipts of skim milk or butterfat in any form. The handler who first receives the milk from producers should be responsible for establishing the classification of and the payment for producer milk. Except for such limited quantities of shrinkage that may be classified in Class II, all skim milk and butterfat which is received and for which the handler cannot establish utilization should be classified as Class I milk. This provision is necessary to remove any advantage to handlers who fail to keep complete and accurate records and to assure that producers receive full value for their milk on the basis of its use.

Provision should be made for classification of fluid milk products transferred in bulk between pool plants and from plants to nonpool plants. Transfers between pool plants should be permitted in any class agreed upon by the handlers operating such plants so long as the prior claim of producer milk for Class I sales is maintained. Transfers between pool plants at an agreed upon class will not affect the total value of producer milk under a market-wide pool so long as this prior claim is maintained.

Transfers to other nonpool plants may be at Class II if the nonpool plant does not engage in the fluid milk business, or has receipts from inspected farmers equal to any Class I sales. If Class I sales exceed such receipts, the milk transferred should be Class I to the extent of the excess. In any event, in order to substantiate a Class II classification the nonpool plant must have and make available records adequate to verify any Class II utilization claimed.

There was no evidence indicating that the Battle Creek-Kalamazoo market carries milk supplies for other markets and therefore producers have no claims of priority to Class I sales in other markets resulting from transfers from pool plants to nonpool plants in such markets. The highest-valued uses should be assigned first to producers regularly supplying the other market. The provisions herein outlined are provided purposely to assure such assignment.

When handlers receive butterfat and skim milk from sources other than from producers, it is necessary to provide a method for allocating such receipts to the classes of utilization in such a manner as to determine the classification of producer milk. Inasmuch as producer milk is the regular available supply for fluid consumption in the marketing area, producer milk should be assigned the

Class I utilization in preference to other source milk. This is necessary to insure the effectiveness of the classified pricing program of the proposed order. The system of assigning utilization of milk to receipts from different sources which will carry out this objective is set forth in detail in the proposed market agreement and order.

In general this procedure requires that skim milk and butterfat, respectively, remaining in each class be assigned to producer milk by making the following deductions from the gross utilization of each handler starting with Class II milk, except as otherwise noted:

(1) Class II shrinkage of producer milk;

(2) Other source milk;

(3) Beginning inventory;

(4) Receipts from other handlers (according to classication);

(5) Add shrinkage deducted in (1); and

(6) Overage.

Since uniform prices paid producers by each handler are to be calculated monthly, the assignment of utilization described above should be carried out with respect to all milk received during each month.

(c) *Class prices.* The price of milk for fluid use in the Battle Creek-Kalamazoo marketing area should be closely related to the prices of milk used in the production of manufactured dairy products. The area from which the Battle Creek-Kalamazoo market draws its milk supplies produces substantial quantities of milk for manufacturing purposes. The attractiveness of the fluid market to shippers supplying nearby manufacturing plants determines to a considerable extent the adequacy of the supply for fluid purposes. Experience in this market has shown that when the returns from the fluid milk market drop too near the level of returns for manufacturing milk the market becomes short of milk and that returns for fluid milk too far above manufacturing milk levels bring excessive supplies to the fluid market. Class I prices in the nearby Federal order markets of Detroit, Cleveland, Chicago, South Bend, Fort Wayne, Toledo, Muskegon and Upstate Michigan, with which Battle Creek-Kalamazoo competes in varying degrees for supplies and sales, are all based on manufacturing values. Use of a basic formula price to which a Class I differential is added will reflect manufacturing milk values.

(1) *Basic formula price.* The basic formula price used to determine the Class I price should be the highest of the average price paid by midwestern condenseries, a formula price based on market values of butter and nonfat dry milk, or the average paying price of nearby Michigan manufacturing plants. The first two of these prices measure the value of milk used in each of three major manufactured dairy products marketed nationally. Like factors are included in the pricing formulas effective in the surrounding Federal order markets. The prices paid at the Michigan plants will reflect local values when these exceed the national averages.

It was proposed that the Michigan plants be those used to determine the Class II price. In view of the desirability of maintaining alignment of the Class I price with that of the Detroit order the Michigan plant price used for basic formula purposes should be that presently used in the Detroit order.

(2) *Class I price.* The class I price differential to be added to the basic formula price should be at a level which will reflect the additional costs of providing an adequate but not excessive yearround supply of milk meeting the inspection requirements of the area. For the initial 18 months of operation of the order this differential should be established at an annual level of $1.26, varied seasonally to be $1.06 for the months of February through July and $1.46 for other months.

Producer associations proposed that the Class I price differentials vary by months from $1.20 to $1.65; under this proposal seven separate differentials, applicable for one or two months each, would be used. The annual average of the proposed differentials approximates $1.41. This pattern of differentials was used by the Kalamazoo cooperative association for several years prior to 1956 to determine the prices to be charged dealers supplied by the association. The prices negotiated between the other proponent cooperatives and Battle Creek handlers have had less seasonal variation and have generally averaged approximately 15 cents less than the prices negotiated at Kalamazoo. At Battle Creek, however, more products have been priced as Class I milk and the Class I price has applied more uniformly to sales of fluid milk. Consequently average returns to members of the Battle Creek association have approximated those of members of the Kalamazoo cooperative. Effective April 1956 a Kalamazoo Class I price of $5.04 was negotiated and such price remained in effect at the time of the hearing. At Battle Creek a $4.90 price was effective from mid-April through September 1956. For October and November, 1956, a $5.25 Class I price was in effect at Battle Creek. Negotiation of these prices paralleled closely the course of events in the Detroit market, where a $5.00 Class I price was negotiated for April through August 1956 and $5.35 price was negotiated effective September 1, 1956. The $5.04 price was almost $2.00 more than the basic formula price in midsummer and $1.73 more than the November basic formula. The Battle Creek $4.90 price ranged from $1.80 to $1.85 more than the basic formula and the $5.25 price was approximately $1.94 more than the basic formula price at the time of the hearing.

Proponents of the order recognized that the 1956 negotiated prices were of a temporary nature and were not aligned with the Detroit order price but with negotiated prices in effect in the Detroit market. They defended the somewhat lower level of price represented by the annual average $1.41 Class I price differential as representing the actual level of negotiated prices in effect for a substantial part of the marketing area for several years during which Detroit minimum order prices were effective.

In view of the volumes of milk priced under other Federal orders which are produced in or near the Battle Creek-Kalamazoo milkshed and the extent to which there is competition with these markets for sales as well as procurement, proper alignment of prices with the other order prices prevailing at the nearest plants subject to these orders is particularly important. The nearest Detroit plants are at Homer, in Calhoun County, Otsego in Allegan County both of which are located in the marketing area, and at Litchfield, just outside the marketing area in Hillsdale County. The Homer and Otsego plants are strictly supply plants for Detroit which compete only in procurement of milk. The Litchfield plant, however, also sells packaged milk in the marketing area in the vicinity of Battle Creek. The Detroit Class I differential is on the annual average, $1.43. A location adjustment of 17 cents applies at Homer and Litchfield, with a 20 cent adjustment at Otsego. Thus Detroit Class I price differentials average $1.26 at Homer and Litchfield and $1.23 at Otsego. The Cleveland Class I price differential applicable at Coldwater, 35 miles from Battle Creek averages $1.225. The Chicago Class I differential averages $0.90, from which location adjustment of 8 and 14 cents respectively are deducted at plants located at Constantine and Hopkins, Michigan. The South Bend, Indiana, market Class I differential is $1.10. The Muskegon order Class I differential is $1.17. An Upstate Michigan plant approximately midway between Battle Creek-Kalamazoo and the Upstate Michigan marketing area pays a Class I differential of $1.16. Under a recent amendment to the Toledo, Ohio, order effective April 1, 1957, of which official notice is hereby taken, the Toledo Class I differential at a supply plant at Angola, Indiana, now averages $1.22.

Prices of the Detroit market have a greater influence on marketing conditions in Battle Creek-Kalamazoo than do those of the other markets. Not only is the volume of nearby milk priced under the Detroit order greater than that priced under any other order, but there is more direct sales competition in the marketing area. In addition Detroit prices exert considerable influence on nearby unregulated markets, especially Lansing and Grand Rapids, with which Battle Creek-Kalamazoo handlers compete for milk supplies and sales.

Under the classification system herein provided, it is to be expected that more milk will be priced at Class I than is now the case, particularly in Kalamazoo. Thus producer prices can be maintained with a somewhat lower Class I price. In view of the influence of the Detroit market it does not appear that the Class I differential, at least for the initial period of the order, should exceed that for Detroit at the Litchfield plant from which milk is distributed on routes in the marketing area. It is therefore concluded that the annual level of the differential should be $1.26 for the first

18 months of operation of the order. Within this period the pricing provision should be reviewed in the light of experience under order operations.

The $1.26 should be varied seasonally to conform to the Detroit pattern of differentials. This currently is 20 cents below the annual average level during the months of February through July, and 20 cents above in other months. Therefore the Battle Creek-Kalamazoo differential should be $1.06 for February through July and $1.46 for other months. Should the Detroit seasonal pattern be changed, prompt consideration should be given to revision of the seasonal pattern in this market.

The Detroit and other order prices are adjusted on the basis of supply-demand relationships. Supply-sales data in the hearing record, while covering the period beginning with 1940, do not include all receipts and sales nor is classification based on the system herein provided. Accordingly such data do not provide an adequate basis for providing a similar provision for Battle Creek-Kalamazoo at this time. While consideration could be given to providing precise price alignment by use of the amount of adjustment each month under the Detroit order, such precise alignment does not appear necessary for the initial 18 month period in the light of the experience shown in the record.

(3) *Class II price.* The Class II price should reflect the value of milk for general manufacturing uses in the Battle Creek-Kalamazoo milkshed. The average of the prices paid at three Michigan dairy manufacturing plants provides an appropriate indication of the value of milk for such uses in the area. The three plants selected are in the general area of the Battle Creek-Kalamazoo milkshed, and are not operated or controlled by persons who will be handlers under the order. Two of these plants are included in the list of 12 midwest plants used in determining the basic formula price for the proposed order and for numerous other Federal orders.

(4) *Handler butterfat differential.* Butterfat and skim milk will be accounted for separately for classification purposes since they are not used in most products in the same proportions as received from producers. The basic test for which class prices are determined is 3.5 percent butterfat content, the usual fat test at which prices are quoted in the area, and on which the market has operated for many years. It will then be necessary to adjust Class I and Class II prices of milk to handlers in accordance with the average test of milk used in each class. Butterfat differentials which reflect differences in value due to differences in butterfat content are used for this purpose.

Producers proposed that a single butterfat differential apply to both Class I and Class II milk. They proposed that this differential be 0.113 times the Chicago price of 92 score butter. A differential of this amount applies to both Class I and Class II milk under the Detroit order. Fluid cream, however, need not be from inspected sources for the Detroit market and is priced as Class II milk. In Battle Creek-Kalamazoo fluid cream must be from inspected milk and is therefore priced as Class I milk. A differential of 0.113 times the Chicago butter price represents a butterfat value no higher than the value of uninspected cream used for butter manufacture. Butterfat in cream from inspected sources sold as fluid cream or cream mixtures has a higher value, which will be approximately reflected by a butterfat differential 0.125 times the Chicago butter price. Such a differential should be used to adjust the hundredweight price of Class I milk for each one-tenth percent variation for 3.5 percent butterfat content. The Class II butterfat differential should be the 0.113 times Chicago butter price proposed. That differential reflects an appropriate value of butterfat for Class II uses.

(5) *Location differentials.* Location adjustments should apply to all Class I milk distributed by handlers whose plants are located more than 60 miles from the nearer of the City Halls at Battle Creek or at Kalamazoo, Michigan. The rate of adjustment should be 10 cents per hundredweight for plants located more than 60 but not more than 80 miles distant, plus 1 cent per 20 miles for distances in excess of 80 miles. Distances would be measured by the shortest highway distance as determined by the market administrator.

At the time of the hearing the only milk distributed from a plant more than 60 miles distant was from a plant regulated under the Toledo, Ohio, order which is not subject to pricing under this order. However, if a distant plant should become subject to the order by selling milk in the area or supplying plants that sell milk in the area, it should have location credit. This credit should approximate the transportation costs involved in economic movement of milk to the area, since the order is designed to place handlers at an equal cost basis at the marketing area. The adjustment rates provided parallel fairly closely those in nearby markets and should meet the current needs of the market.

Since milk moved between pool plants may be classified by agreement between the handlers involved location credit on such milk should be limited to that required for Class I use by the transferee plant. The amount by which 105 percent of Class I use exceeds receipts of producer milk of such plant is an appropriate indication of such need. In addition, where there are receipts from more than one plant, location adjustment should be first assigned to the nearest plants so that producers are not charged for unnecessary movements of milk.

Location adjustment to producers should be at the same rates as to handlers, but should apply to all base milk (or milk paid for at uniform prices) delivered by producers to any plant at which location adjustments apply.

(d) *Payments to producers*—(1) *Type of pool.* The market-wide type of pool should be included as a means of distributing to producers the returns from the sale of their milk.

The proponent cooperatives proposed that distribution of returns from the sale of producer milk be on a market-wide basis. This method has been used satisfactorily by segments within the proposed marketing area for a long period of time. A proposal to distribute producer returns on an individual handler pool basis was not supported at the hearing.

Marketing conditions require payment of a uniform price to all producers representing the value of all market utilization to compensate all producers fairly for their contribution to the market supply. Some milk distributors buy as closely as possible to their Class I needs and carry little or no surplus in the high production months. The cooperative supply their cooperating handlers with as much milk as needed and handle the surplus production of their members by diversion to manufacturing outlets located both in and outside of the proposed marketing area. Through the present pooling arrangements operated by the cooperatives producers supplying these plants all member producers contribute equally to making available a year-round supply of milk for the market but do not share in all the Class I sales of the market. A majority of plants do not have manufacturing facilities and generally purchase supplies from dairy farmers close to their needs. Under an individual handler pool it could not be expected that reserve supplies for the market would be uniformly distributed among handlers. The burden of carrying the necessary reserve supplies of milk would continue to be shouldered by only a part of the producers who share in the year-round Class I sales in the area.

A market-wide pool will facilitate the movement of milk supplies by the cooperative associations between handlers to meet their individual needs or to those nonpool processing plants that can make the most efficient use of such milk. Such a pool will aid the market in retaining qualified and experienced producers on a year-round basis which will tend to make available enough milk to fill the Class I requirements during the normally short production season. A market-wide pool will permit any handler to bid on such business as that offered by military installations and other public institutions and to obtain the supplies for such sales without upsetting the market whenever the business might shift from one handler to another. These factors, taken in conjunction with the variations in amount of reserve supplies among plants, all support the adoption of a market-wide pool.

(2) *Producer payment plan.* A base and excess plan of distributing returns for milk among producers should be adopted for this market.

The majority of the producers are now receiving payment for milk on a base-excess plan. Each of the two cooperative associations has used this system of distributing payments among its members for many years. Data presented by the proponents cover the period from 1940 to the time of the hearing. This evidence, although it does not represent the total figures for the market, indicates that receipts vary widely relative to Class I sales between the summer and winter months. The two associations have operated separate base and excess plans with sub-

stantially the same rules. Due to lack of complete market information in regard to receipts from all producers and utilization data from all handlers, the effect of these plans on the relationship of supply to total inspected needs of the market cannot be accurately and specifically determined. It is evident, however, that these base-excess plans as operated in the past have encouraged more even production.

Fundamentally the base-excess plan proposed by the cooperative associations and included herein is the same as that now being used. Each producer will receive the manufacturing milk price for milk delivered each month in excess of a daily average amount, known as the producer's base. The base period is August through December. The producer's base for the 12 months beginning with the following February is determined by the daily average shipments during the preceding base period. The monthly base price is determined by dividing the total market base deliveries into the remaining returns for all producer milk after subtracting the value of excess milk and the value of milk from producers with no base. The base of each producer delivering milk 122 days or more in the base period is the amount determined by dividing the total pounds of milk received from such producer at all pool plants during the base period by the number of days for which milk was delivered. Producers with a previously established base may deliver less than the established base by as much as 10 percent without reducing such base. This limit in the reduction of established bases is a result of long experience in this and nearby markets which has shown such a limitation alleviates many cases of inequity and dissatisfaction resulting from reduced bases due to accident, disease, weather and other like conditions more or less beyond the control of the producer. Producers delivering milk less than 122 days during the August 1–December 31 base forming period may, by written request, have a base computed by dividing the total pounds of milk delivered to pool plants during such period by 122.

Provision is made for payments to producers without established bases and those who elect to relinquish their bases. The proponent cooperative associations proposed that a new producer (or one electing to relinquish a base) should establish a base by his deliveries in the first three full calendar months of his deliveries. A percentage of such deliveries seasonally varied from 40 percent for April, May and June to 70 percent August through November then would have become the producer's base for payment until a regularly established base was effective.

Provisions for new producers to enter the market should be consistent with the primary purpose of the base plan to discourage seasonal fluctuation in the flow of milk to the market. Since new producers have no prior fall deliveries from which the seasonality of their deliveries may be gauged it is necessary that their payments be determined somewhat arbitrarily as contrasted with producers with established bases who are paid on the basis of their individual performance. If the provisions assume that new producers have average seasonality of deliveries, their returns will be more favorable than those for old producers with wider than average seasonal variation in production. Such producers may then elect to relinquish their bases in order to receive payment under the new producer provisions, and the effectiveness of the base plan will be diminished. It is therefore desirable that the provisions for new producers be such as to encourage them to enter the market when their supplies will not increase seasonal variation and likewise will be such as not to invite substantial number of old producers to relinquish their bases. This can be accomplished by making payment to new producers (or those that relinquish a base) at an adjusted uniform price. The uniform price is adjusted by subtracting a stated percentage of the difference between the market average uniform price and the excess milk price. Stating the adjustment in this manner makes it equally applicable at all price levels. The adjustment percentage varies from 5 percent during the base forming period to 50 percent during the flush production months. This provision will be simpler than the plan proposed by the cooperative associations, yet accomplish the same general objectives.

Certain rules regulating the transfer of established bases were proposed and are adopted herein with the clarifying modifications made at the time of the hearing. These rules permit the transfer of a base to a member(s) of a producers' immediate family in the case of death, retirement or entry into military service. When a jointly held base is terminated division is limited to the joint holders. A base is forfeited in case a producer fails to deliver milk to a pool plant for 45 consecutive days except that a producer may maintain a base for 12 months in case complete loss of the dairy barn results from fire or windstorm. Transfers within these rules should be made only on written request filed with the market administrator. The above rules permit reasonable transfer of bases to alleviate hardship cases and correspond rather closely to present practices in the market.

Provision is also made for computing bases on deliveries during the preceding base forming period whenever any plant first achieves pool plant status. Such provision will permit the producers supplying such a plant to enter the market without any pooling handicap.

All milk delivered by producers from the effective date of the order, as proposed, until bases are established should be at the market average uniform price. Such a provision will assist in the orderly administration of the proposed order and provide an opportunity to some dairy farmers, not accustomed to a base-excess plan, to make any necessary adjustments. Cooperative associations will have the opportunity to continue paying their members in such manner as they desire.

Handlers should make payments to each producer for his milk at the required prices. If a producer has given a cooperative association written authorization by contract or in any other form, to collect payments for him, and the association makes a written request for the payments due such producer, payment should be made by the handler to the cooperative. A provision authorizing handlers to make payment directly to such qualified cooperative for milk received from producer-members is necessary to enable the association to carry out its essential functions authorized by the enabling act. A cooperative association, if it is to carry out these essential functions, must have full authority in the collective bargaining and selling of member milk. It is provided that handlers should make payments to producers, or to cooperative associations, at not less than applicable price(s) on or before the 15th day after the end of each month. In making payments for producer milk to a cooperative association the handler will pay an amount equal to the sum of the individual payments otherwise payable to member producers, and should at the same time furnish the cooperative association with a statement showing the name of each producer for whom payment is being made to the cooperative association, the volume and average butterfat content of milk delivered by each such producer, and the amounts of and reasons for any deductions which the handler withheld from the amount payable to each producer. This statement is necessary in order that the cooperative association can make proper distribution of the money to the producer-members for whom it makes collections.

(3) *Producer butterfat differential.* The butterfat differential used in making payments to producers should be calculated at the average of the returns actually received from the sale of butterfat in producer milk. The rate to be used for this purpose would be the average of the Class I and Class II differentials weighted by the proportion of butterfat in producer milk classified in each class. Thus, producer returns for butterfat will reflect the actual sale value of their butterfat at the class differentials provided in the order. The producer butterfat differential in no way affects the handlers' costs of milk but merely prorates returns among producers according to the varying butterfat tests of their milk.

(4) *Producer-settlement fund.* Since the amount which the order requires a particular handler to pay for his milk may be more or less than the amount he is required to pay to producers or cooperative associations, some method of balancing these amounts is necessary. A producer-settlement fund should be established for this purpose. All handlers who are required to pay more for their milk on the basis of their utilization than they are required to pay to producers or cooperative associations should pay the difference into the producer-settlement fund; and all handlers who are required to pay more to producers or cooperative associations than they are required to pay for their milk on the basis of utilization should receive the difference from the producer-settle-

ment fund. Amounts paid into and out of the producer-settlement fund for this purpose will be equal except for minor differences that may result from rounding of uniform prices. In order to permit this rounding of prices, to allow for unavoidable delays in receiving payments from handlers, and to permit payments to be made to any handler which audit by the market administrator reveals is due such handler from the producer-settlement fund, a reserve should be held in the producer-settlement fund at all times. The amount of the reserve contemplated in the proposed order should be sufficient for these purposes. This reserve would be adjusted each month.

If at any time the balance in the producer-settlement fund is insufficient to cover payments due to all handlers from the producer-settlement fund, payments to such handlers should be reduced uniformly per hundredweight of milk. The handlers may then reduce payments to producers by an equivalent amount per hundredweight. Amounts remaining due such handlers from the producer-settlement fund should be paid as soon as the balance in the fund is sufficient, and handlers should then complete payments to producer.

(e) *Other administrative provisions.* The remaining provisions are of a general administrative nature, are incidental to the other provisions of the proposed order, and are necessary for proper and efficient administration. They provide for the selection of a market administrator, define his powers and duties, provide for an administrative assessment, prescribe the information to be reported by handlers and set forth the rules to be followed in making the computations required. They also prescribe the length of time that records must be retained and provide a plan for the liquidation in the event of suspension or termination. They are similar to like provisions of other milk orders, and except as set forth below require no comment.

As his share of the expenses of administering this proposed order each handler should pay not in excess of 4 cents per hundredweight with respect to all producer milk received, all other source milk received at a pool plant which was classified as Class I milk, and as discussed elsewhere with respect to a nonpool plant. The market administrator must verify receipts and utilization of all such milk; therefore all such milk should be subject to the expenses of administration. Experience in other markets indicates that 4 cents per hundredweight with respect to all such milk should yield sufficient money to cover expenses of administration. If payment of expenses of administration at the rate of 4 cents per hundredweight yields more money than is needed, provision is made for the Secretary to prescribe a lesser rate of payment from time to time.

Provision should be made for the dissemination of market information to producers, for the verification of weights and for the sampling and testing of milk received from producers for whom such services are not being rendered by a qualified cooperative association. The order should provide that 5 cents per hundredweight, or such lesser amount as the Secretary may determine, be deducted from payments to such producers for use of the market administrator in financing such services. For producers for whom a cooperative association is rendering such services, the handler should pay to the cooperative association such deductions as the producer has authorized the cooperative to collect. Such payments to be in lieu of those to the market administrator.

Reports are required from handlers on receipts and utilization so that the market administrator may make the computations necessary to the market-wide pooling operation and the uniform price to producers. Handlers are also required to submit payroll reports which would show the details of milk receipts from each producer, the value of the milk received from the producer, deductions therefrom, and net amount paid to the producer.

There are limitations on the period of time handlers shall retain books and records which are required to be made available to the market administrator, and on the period of time in which obligations under the order shall terminate. The provision made in this regard is identical in principle with the general amendment made to all orders in operation on July 30, 1947, effective February 22, 1949, and the Secretary's decision of January 26, 1949, (14 F. R. 444) covering the retention of records and limitation of claims is equally applicable in this situation and is adopted as a part of the decision.

Dates must be prescribed for announcing prices, filing reports and making payments. The following time schedule should allow all interested persons adequate time to perfom each function. (These time limits apply to the indicated day of the month following the month for which computations are being made.)

Day of the month and function: 5th working day—Announcement of class prices by market administrator.

5th working day—Submission of monthly report of receipts and utilization by handlers.

11th—Announcement of uniform prices by market administrator.

12th—Notification by market administrator to handlers of the value of their producer milk and amounts due to or payable from producer-settlement fund.

13th—Payment by handlers of amounts due to producer-settlement fund and for expenses of administration.

15th—Payments by handlers to producers and cooperative association and by market administrator out of producer-settlement fund.

It was proposed that a handler selling Class I milk in another Federally regulated market be charged the higher of the Battle Creek-Kalamazoo price or the Class I price in the other Federally regulated market for the Class I milk sold in the other area provided such a provision was effective in the other Federal order. None of the six nearby Federal milk orders have such a provision. Further, the alignment of prices with the two Federal order markets, from which handlers are distributing milk in the Battle Creek-Kalamazoo marketing area, is such that this provision is unnecessary. It is concluded a handler who operates a plant at which minimum prices to dairy farmers are established under another Federal order issued pursuant to the act and also sells Class I milk in the Battle Creek-Kalamazoo marketing area should be exempt from the provisions of this regulation, except for reporting the volume of Class I sales in the marketing area.

It is impracticable to regulate a handler under two separate orders with respect to the same milk. The determination under which order a handler should be regulated should be based on where the greater volume of Class I milk is sold.

General findings. (a) The proposed marketing agreement and order 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 of and demand for milk in the marketing area and the minimum prices specified in the proposed marketing agreement and the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The proposed order 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;

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

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, four cents per hundredweight or such amount not to exceed four cents per hundredweight as the Secretary may prescribe, with respect to (a) all receipts of producer milk including such handler's own production, (b) all other source milk at a pool plant in excess of that priced under other Federal orders which is classified as Class I milk, and (c) the applicable amount specified in § 937.62 (a) (2) or (b) (2).

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

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

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

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with this decision.

Referendum Order; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted among producers to determine whether the issuance of the attached order regulating the handling of milk in the Battle Creek-Kalamazoo, Michigan, marketing area, is approved or favored by the producers, as defined under the terms of the proposed order, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of July 1957, is hereby determined to be the representative period for the conduct of such referendum.

H. E. Crone is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177), such referendum to be completed on or before the 20th day from the date this decision is issued.

Issued at Washington, D. C., this 13th day of September 1957.

[SEAL] DON PAARLBERG,
Assistant Secretary.

Order [1] Regulating the Handling of Milk in the Battle Creek-Kalamazoo, Michigan, Marketing Area

Sec.

AUTHORITY: §§ 937.0 to 937.111 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

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

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

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

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

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

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, four cents per hundredweight or such amount not to exceed four cents per hundredweight as the Secretary may prescribe, with respect to (a) all receipts of producer milk including such handler's own production, (b) all other source milk at a pool plant in excess of that priced under other Federal orders which is classified as Class I milk, and (c) the applicable amount specified in § 937.62 (a) (2) or (b) (2).

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Battle Creek-Kalamazoo, Michigan, marketing area shall be in con-

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

formity to, and in compliance with, the following terms and conditions:

DEFINITIONS

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

§ 937.2 *Secretary.* Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the United States, authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ 937.3 *Department of Agriculture.* Department of Agriculture means the United States Department of Agriculture or any other Federal agency authorized to perform the price reporting functions specified herein.

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

§ 937.5 *Cooperative association.* Cooperative association means any cooperative marketing association of producers, duly organized as such under the laws of any State, which the Secretary determines:

(a) Is qualified under the standards set forth in the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act;

(b) Has full authority in the sale of milk of its members; and

(c) Is engaged in making collective sales or marketing milk or its products for its members.

§ 937.6 *Battle Creek-Kalamazoo, Michigan, marketing area.* Battle Creek-Kalamazoo, Michigan, marketing area hereinafter referred to as the marketing area, means all territory, including incorporated municipalities, within Calhoun and Kalamazoo Counties, Gun Plain and Otsego Townships in Allegan County, Union Township in Branch County and Bellevue Township in Eaton County, all in the State of Michigan.

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

§ 937.8 *Distributing plant.* Distributing plant means any plant at which fluid milk products conforming to the sanitation requirements of any duly constituted health authority having jurisdiction in the marketing area are processed and packaged and from which fluid milk products are disposed of on route(s) in the marketing area. Distributing plant shall not include a physically segregated and separately operated portion of the building and facilities in which no fluid milk products are processed and packaged, and from which no fluid milk products are moved to any plant from which routes are operated.

§ 937.9 *Supply plant.* Supply plant means a milk plant at which milk produced in conformity with the sanitation requirements for milk to be consumed as a fluid milk product of any duly constituted health authority having jurisdiction in the marketing area is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

§ 937.10 *Pool plant.* Pool plant means:

(a) A distributing plant, other than that of a producer-handler or one described in §§ 937.61 or 937.63 (a) from which during the month:

(1) Disposition in the marketing area of fluid milk products on routes is 25 percent or more of receipts from dairy farmers and supply plants; and

(2) Total disposition of fluid milk products on routes is 50 percent or more of receipts of fluid milk products from dairy farmers and supply plants; or

(b) A supply plant from which during the month 50 percent or more of receipts from dairy farmers is moved to a plant described in paragraph (a) of this section. Any supply plant that was a pool plant during each of the months of August through January immediately preceding shall continue to be a pool plant for each of the following months of February through July unless written request to the contrary is filed with the market administrator on or before the first day of such month.

§ 937.11 *Producer.* Producer means a person, other than a producer-handler, who produces milk in conformity with the sanitation requirements for milk to be consumed as a fluid milk product of a duly constituted health authority having jurisdiction in the marketing area, which milk is received directly from the farm at a pool plant or is diverted from such plant to a nonpool plant for the account of the handler operating it or of a cooperative association. Milk so diverted shall be deemed to have been received at a pool plant by the handler or cooperative association that caused it to be diverted. Producer shall not include any person with respect to milk which is received at a plant subject to the pricing provisions of another Federal marketing order, and exempted hereunder pursuant to § 937.63.

§ 937.12 *Handler.* Handler means:

(a) The operator of a pool plant(s) in his capacity as such;

(b) The operator of any nonpool distributing plant; or

(c) A cooperative association with respect to milk of producers diverted for the account of such association from a pool plant to a nonpool plant.

§ 937.13 *Producer-handler.* Producer-handler means a dairy farmer who operates a distributing plant at which no milk or fluid milk products are received during the month except his own production or from pool plants.

§ 937.14 *Producer-milk.* Producer-milk means milk received at a pool plant directly from producers, or diverted to a nonpool plant pursuant to § 937.11.

§ 937.15 *Fluid milk product.* Fluid milk product means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream, or any mixture in fluid form of milk, skim milk and cream (except sterilized products packaged in hermetically sealed containers, eggnog, ice cream mix, aerated cream and cream frozen and stored).

§ 937.16 *Other source milk.* Other source milk means all skim milk and butterfat contained in:

(a) Receipts during the month of fluid milk products except (1) fluid milk products received from pool plants, or (2) producer milk; and

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

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

§ 937.18 *Base milk.* Base milk means milk delivered by a producer each month which is not in excess of the base determined pursuant to § 937.80 multiplied by the number of days production for which milk is delivered during the month.

§ 937.19 *Excess milk.* Excess milk means milk delivered by a producer each month in excess of such producer's base milk.

MARKET ADMINISTRATOR

§ 937.20 *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.

§ 937.21 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

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

(a) Within 30 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties 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 § 937.94:

(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 § 937.95, 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 in this part, and upon request by the Secretary, surrender the same to such other persons as the Secretary may designate;

(f) Publicly disclose to handlers and producers, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any handler who, after the date on which he is required to perform such acts, has not made reports pursuant to §§ 937.30 through 937.33 or payments pursuant to §§ 937.90 through 937.96;

(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) Verify all reports and payments of each handler by examination of such handler's records and the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends; and by such other means as are necessary;

(i) Prepare and make available for the benefit of producers, consumers, and handlers, general statistics and information concerning the operation of this order which do not reveal confidential information;

(j) Calculate a base for each producer pursuant to § 937.80 and advise the producer and the handler receiving the milk of such base;

(k) Publicly announce the prices determined for each month as follows:

(1) On or before the 5th working day of each month, the minimum class prices for the preceding month computed pursuant to §§ 937.51 and 937.52, and the handler and producer butterfat differentials computed pursuant to §§ 937.53 and 937.75; and

(2) On or before the 11th day of each month the applicable uniform price(s), the price for base milk and the price for excess milk for the preceding month, computed pursuant to §§ 937.72, 937.73, and 937.74.

REPORTS, RECORDS AND FACILITIES

§ 937.30 *Reports of receipts and utilization.* On or before the 5th working day of each month each handler who operates a pool plant(s), each handler (other than a producer-handler or the operator of a plant exempt pursuant to § 937.61 or 937.63) who operates a nonpool distributing plant and any cooperative association with respect to milk for which it is a handler pursuant to § 937.12 (c) shall report for the preceding month to the market administrator in the detail and on forms prescribed by the market administrator as follows:

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

(1) Producer milk, showing separately the aggregate quantities of base milk, excess milk, and milk to be paid for at the applicable uniform price, in lieu thereof, the operator of a nonpool distributing plant shall report aggregate receipts from dairy farmers qualified to become producers if such plant were a pool plant;

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

(3) Other source milk; and

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

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including separate statements with respect to:

(1) Disposition of fluid milk products on routes within the marketing area from plants described in §§ 937.62 and 937.63, and from other plants for which the market administrator requires such information as a basis for determination of status or obligations; and

(2) Inventories of fluid milk products on hand at the end of the month; and

(c) Such other information with respect to sources and utilization of skim milk and butterfat as the market administrator may prescribe.

§ 937.31 *Payroll reports.* (a) On or before the 20th day of each month each handler operating a pool plant(s) and each cooperative association which is a handler pursuant to § 937.12 (c) shall report his producer payroll for the preceding month which shall show for each producer:

(1) The pounds of base milk and of excess milk (or the total pounds paid for at the applicable uniform price);

(2) The average butterfat content thereof; and

(3) The date and net of amount of payment to such producer, or to a cooperative association for such producer's milk, with the prices, deductions and charges involved and the nature of each.

(b) Each handler (other than a producer-handler or one described in § 937.61 or § 937.63) operating a nonpool distributing plant shall report his payments to dairy farmers qualified to be producers if such plant were a pool plant, showing for each such dairy farmer:

(1) The pounds of milk;

(2) The average butterfat content thereof; and

(3) The date and net amount of payment to such dairy farmer with a statement of the prices, deductions and charges used in computing such payment and the nature of each.

§ 937.32 *Producer-handler reports.* Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator shall prescribe.

§ 937.33 *Exempt handler reports.* Each handler exempt pursuant to § 937.61 shall report to the market administrator his disposition of fluid milk products on routes within the marketing area at such time and in such manner as the market administrator shall prescribe.

§ 937.34 *Records and facilities.* Each handler shall maintain and make available to the market administrator during the usual hours of business, such accounts and records of all of his operations and such facilities as are necessary to verify reports or to ascertain the correct information with respect to:

(a) The receipts and utilization or disposition of all skim milk and butterfat received including all milk products received and disposed of in the same form;

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

(c) Inventories of all dairy products on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations.

§ 937.35 *Retention of records.* All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided,* That, if within such three-year period, the market administrator notifies a handler in writing that the retention of such books and records 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 until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 937.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat required to be reported pursuant to § 937.30 shall be classified (separately as skim milk and butterfat), pursuant to § 937.41 through § 937.45.

§ 937.41 *Classes of utilization.* Subject to the conditions set forth in § 937.42 through § 937.44 the classes of utilization shall be as follows:

(a) Class I utilization shall be all skim milk (including reconstituted skim milk) and butterfat:

(1) Disposed of in the form of fluid milk products, except those classified pursuant to paragraph (b) (3) of this section; and

(2) Not accounted for as Class II utilization;

(b) Class II utilization shall be all skim milk and butterfat:

(1) Used to produce any product other than a fluid milk product;

(2) In cream frozen and stored;

(3) In skim milk authorized by the market administrator to be dumped or accounted for as disposed of for livestock feed;

(4) In shrinkage of skim milk and butterfat allocated to milk received from producers, but not to exceed 2 percent of such receipts;

(5) In shrinkage of other source milk; and

(6) In inventories of fluid milk products on hand at the end of the month.

§ 937.42 *Shrinkage.* (a) If a handler operates more than one pool plant, shrinkage shall be computed with respect to the combined receipts and disposition of all such plants.

(b) If a handler has receipts of other source milk, shrinkage shall be allocated pro rata between the receipts of skim milk and butterfat in producer milk and in other source milk.

(c) Receipts of producer milk to which the limits of § 937.41 (b) (4) apply shall exclude diversions to other plants (pool or nonpool) but shall include producer milk received at the plant by diversion from another pool plant.

§ 937.43 *Responsibility of handlers.* All skim milk and butterfat shall be classified as Class I utilization 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.

§ 937.44 *Transfers.* Skim milk and butterfat transferred or diverted as fluid milk products in bulk form from a pool plant to:

(a) The pool plant of another handler shall be classified at the utilization indicated by the operators of both plants in their reports submitted pursuant to § 937.30, otherwise as Class I utilization, subject in either event to the following conditions:

(1) The receiving plant has utilization in such class of an equivalent amount of skim milk and butterfat, respectively; and

(2) Such skim milk and butterfat shall be classified so as to allocate to producer milk the greatest possible total Class I utilization in the two plants;

(b) To a nonpool plant operated by a producer-handler, or a handler exempt pursuant to § 937.61, shall be Class I utilization; and

(c) To a nonpool plant (except as specified in paragraph (b) of this section) shall be Class I utilization unless the following conditions apply:

(1) The transferring handler claims Class II utilization on his report for the month;

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

(3) Class I utilization in the nonpool plant does not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers who the market administrator determines are the regular source of supply of inspected milk for such plant. If Class I utilization exceeds such receipts, the skim milk and butterfat transferred shall be Class I to the extent of such excess.

§ 937.45 *Computation of skim milk and butterfat in each class.* For each month the market administrator shall correct for mathematical and obvious errors the monthly report submitted by each handler pursuant to § 937.30 and compute the total pounds of skim milk and butterfat respectively, in Class I and Class II utilization at all pool plants of such handler.

§ 937.46 *Allocation of butterfat classified.* The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to producer milk:

(a) Subtract from the total pounds of butterfat in Class II utilization, the pounds of butterfat shrinkage pursuant to § 937.41 (b) (4);

(b) Subtract from the total pounds of butterfat remaining in each class, in series beginning with Class II, the pounds of butterfat in other source milk; except as specified in paragraph (d) of this section;

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

(d) Subtract from the pounds of butterfat remaining in Class I the pounds of buttterfat in other source milk received in consumer packages from a nonpool distributing plant described in § 937.62;

(e) Subtract from the pounds of butterfat remaining in each class, the pounds of butterfat received from other handlers in such class pursuant to § 937.41 and § 937.44 (a);

(f) Add to the remaining pounds of butterfat in Class II utilization the pounds subtracted pursuant to paragraph (a) of this section; and

(g) If the remaining pounds of butterfat in both classes exceed the pounds of butterfat in milk received from producers, subtract such excess from the remaining pounds of butterfat in each class in series, beginning with Class II.

§ 937.47 *Allocation of skim milk classified.* Allocate the pounds of skim milk in each class to producer milk in a manner similar to that prescribed for butterfat in § 937.46.

§ 937.48 *Computation of total producer milk in each class.* The amounts computed pursuant to §§ 937.46 and 937.47 will be combined into one total for each class and the weighted average butterfat content of producer milk in each class determined.

MINIMUM PRICES

§ 937.50 *Basic formula price.* The basic formula price to be used in determining the price per hundredweight of Class I utilization shall be the highest of the prices computed pursuant to paragraphs (a), (b) and (c) of this section:

(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 month at the following plants or places for which prices have been reported to the Department of Agriculture.

Present Operator and Location

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

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

(1) From the Chicago butter price subtract 3 cents, add 20 percent thereof and multiply by 3.5.

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

(c) The average of the 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 month at the following plants for which prices have been reported to the market administrator:

Carnation Co., Sheridan, Mich.
Carnation Co., Sparta, Mich.
Fairmont Foods Co., Bad Axe, Mich.
Lansing Dairy Co., Grand Ledge, Mich.
Kraft Cheese Co., Clare, Mich.
Kraft Cheese Co., Pinconning, Mich.
Nestle Co., Ubly, Mich.

§ 937.51 *Class I milk price.* (a) The minimum price per hundredweight to be paid by each handler f. o. b. a pool plant in the marketing area, for milk of 3.5 percent butterfat content received from producers or from cooperative associations during the month, which is classified as Class I utilization shall, for the 18-month period following the date this section is first effective, be the basic formula price plus $1.06 for the months of February through July, and plus $1.46 for all other months.

§ 937.52 *Class II milk price.* The minimum price per hundredweight to be paid by each handler f. o. b. a pool plant, for milk of 3.5 percent butterfat content received from producers or from a cooperative association, during the month, which is classified as Class II utilization shall be the average of the 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 month at the following plants for which prices have been reported to the market administrator:

Carnation Milk Co., Sparta, Mich.
Pet Milk Co., Wayland, Mich.
Michigan Cheese Co., Reed City, Mich.

§ 937.53 *Handler butterfat differentials.* If the average butterfat content of the milk of any handler allocated to any class is more or less than 3.5 percent there shall be added to the price of milk for such class as computed pursuant to § 937.51 or 937.52, for each one-tenth of one percent that the average butterfat content of such milk is above 3.5 percent, or subtracted for each one-tenth of one percent that such average butterfat con-

tent is below 3.5 percent, an amount equal to the Chicago butter price, multiplied by the applicable factor as follows:

(a) Class I milk—multiply by 0.125

(b) Class II milk—multiply by 0.113

§ 937.54 *Location adjustment to handlers.* For milk received from producers at a pool plant located more than 60 miles by shortest highway distance, as determined by the market administrator, from the City Hall in either Battle Creek or Kalamazoo, Michigan, whichever is nearer, and which is classified as Class I utilization, the prices computed pursuant to § 937.51 shall be reduced 10 cents if such distance is more than 60 but not more than 80 miles, and by an additional 1 cent for each 20 miles or fraction thereof that such distance exceeds 80 miles.

For the purpose of calculating such adjustment, transfers to a pool plant at which no location adjustment is applicable or at which the location adjustment is less than at the transferor plant, shall be assigned to Class I utilization in a volume not in excess of that by which 105 precent of Class I disposition at the transferee plant exceeds the receipts from producers at such plant. Such assignment to transferor plants shall be made first to plants at which no adjustment is applicable and then in the sequence at which the lowest location adjustment would apply.

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

APPLICATION OF PROVISIONS

§ 937.60 *Producer-handler exemption.* A producer-handler shall be exempt from all provisions of this part except §§ 937.32, 937.34 and 937.35.

§ 937.61 *Exempt handler.* A handler who operates a nonpool distributing plant located outside the marketing area from which an average of less than 150 points (one point being defined as one-half pint of cream or one quart of any other fluid milk product) of Class I milk per day is disposed of during the month in the marketing area on route(s), shall be exempt from all provisions of this part except §§ 937.33 through 937.35.

§ 937.62 *Obligations of handler operating a nonpool distributing plant.* In lieu of payments required pursuant to §§ 937.90 through 937.94, each handler, other than a producer-handler or one exempt pursuant to §§ 937.61 or 937.63, who operates during the month a nonpool distributing plant, shall pay to the market administrator as follows:

(a) If such handler so elects at the time of reporting pursuant to § 937.30, or if the receipts of fluid milk products from dairy farmers and from other plants operated by such handler are less than 95 percent of Class I utilization at such plant, his obligations shall be as follows:

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

(2) On or before the 13th day after the end of the month, as his pro rata share of expense of administration, the rate specified in § 937.94 with respect to Class I milk disposed of on routes in the marketing area.

(b) Except as the handler's obligation may be computed pursuant to paragraph (a) of this section, his obligation shall be computed as follows:

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

(i) Compute an amount equal to the value of milk which would be computed pursuant to § 937.70 for milk received from dairy farmers at such plant for such month if such plant had been a pool plant; and

(ii) Deduct the gross payments made by the handler to dairy farmers for milk received at such plant for such month. Gross payments to be included in this computation shall be limited to cash payments made to the dairy farmer or his assignee on or before the date of the report required pursuant to § 937.31 (b), plus the value of any supplies or services furnished by the handler on prior written authorization or as evidenced by a delivery ticket signed by the dairy farmer; and

(2) On or before the 13th day after the end of the month, as his pro rata share of the expense of administration, an amount equal to that which would have been computed pursuant to § 937.94 had such plant been a pool plant.

(3) In any case in which receipts from dairy farmers at the nonpool distributing plant are less than 95 percent of Class I utilization, but combined receipts from dairy farmers and from other plants operated by the handler equal or exceed 95 percent of Class I utilization at such plant, there shall be combined for the purposes of the computations pursuant to subparagraphs (1) and (2) of this paragraph the receipts, utilization, and payments to dairy farmers at such nonpool distributing plant and at other plants operated by the handler from which fluid milk products were moved during the month to such nonpool distributing plant.

§ 937.63 *Plants subject to other Federal orders.* The handler operating a plant specified in paragraphs (a) or (b) of this section shall be exempt from all provisions of this order except §§ 937.30 (b) (1), 937.34 and 937.35.

(a) Any distributing plant which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless a greater volume of Class I milk is disposed of during the month on routes in the Battle Creek-Kalamazoo marketing area than in the marketing area defined in such other order;

(b) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant qualified as a pool plant during each of the preceding months of August through January.

DETERMINATION OF PRICES TO PRODUCERS

§ 937.70 *Computation of value of producer milk.* The value of producer milk received during the month by each handler at pool plants shall be computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 937.48, by the applicable respective class prices (adjusted pursuant to §§ 937.53 and 937.54);

(b) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 937.46 (g) and the corresponding step of § 937.47 by the applicable class price;

(c) Add the amount obtained through multiplying by the difference between the Class II price for the preceding month and the Class I price for the current month the lesser of:

(1) The hundredweight of milk subtracted from Class I pursuant to § 937.46 (c) and the corresponding step of § 937.47; or

(2) The hundredweight of producer milk classified as Class II milk (except as shrinkage) for the preceding month.

§ 937.71 *Computation of the 3.5 percent value of all producer milk.* For each month, the market administrator shall compute the 3.5 percent value of all producer milk at the marketing area, as follows:

(a) Combine into one total the individual values of milk of all handlers computed pursuant to § 937.70;

(b) Add, if the weighted average butterfat test of all producer milk represented in paragraph (a) of this section is less than 3.5 percent, or subtract if the weighted average butterfat test of such milk is more than 3.5 percent, an amount computed by multiplying the total pounds of butterfat represented by the difference of such average butterfat test from 3.5 percent by the butterfat differential provided in § 937.75 multiplied by 10;

(c) Add the total of the values of the applicable producer location adjustments pursuant to § 937.76; and

(d) Add not less than one-half of the unobligated balance in the producer-equalization fund.

§ 937.72 *Uniform price(s).* For each month the uniform price(s) per hundredweight for milk containing 3.5 percent butterfat received from producers at pool plants (before location adjustments) shall be computed as follows:

(a) Divide the amount computed pursuant to § 937.71 by the hundredweight of milk received from all producers;

(b) Subtract not less than 6 cents nor more than 7 cents; the result is the "market average uniform price".

(c) For purposes of payments to producers described in § 937.80 (d) and (e) an "adjusted uniform price" shall be computed by subtracting from the "market average uniform price" the applicable

percentage specified below of the difference between such "market average uniform price" and the excess milk price and rounding to the nearest cent:

	Percent
January, February, and March	30
April, May, and June	50
July	15
All other months	5

§ 937.73 *Excess milk price.* For each month the price for excess milk containing 3.5 percent butterfat shall be computed as follows:

(a) Multiply the hundredweight of excess milk not in excess of the total quantity of Class II milk represented by the values included in § 937.71 (a) by the price for 3.5 percent Class II utilization pursuant to § 937.52;

(b) Multiply the hundredweight of any excess milk not included in the computation described in paragraph (a) of this section by the price for 3.5 percent Class I utilization pursuant to § 937.51; and

(c) Combine into one total the values computed pursuant to paragraphs (a) and (b) of this section, divide by the hundredweight of excess milk and round to the nearest cent.

§ 937.74 *Base milk price.* For each month the price for base milk containing 3.5 percent butterfat received from producers at pool plants (before location adjustments) shall be computed as follows:

(a) Multiply the total pounds of excess milk by the excess milk price for the month;

(b) Multiply the total amount of milk to be paid for at the adjusted uniform price by the adjusted uniform price pursuant to § 937.72 (c);

(c) Subtract the total values arrived at in paragraphs (a) and (b) of this section from the total 3.5 percent value of all producer milk arrived at in § 937.71;

(d) Divide the resultant value by the total hundredweight of base milk; and

(e) Subtract not less than 6 cents nor more than 7 cents.

§ 937.75 *Producer butterfat differential.* In making payments pursuant to § 937.90, the applicable uniform price, base price and excess price shall be increased or decreased for each one-tenth of one percent of butterfat content in the milk received from each producer or a cooperative association above or below 3.5 percent, as the case may be, by a butterfat differential equal to the average of the butterfat differentials pursuant to § 935.53 weighted by the pounds of butterfat in producer milk in each class, rounded to the nearest tenth cent.

§ 937.76 *Location adjustment to producers.* In making payments to producers and cooperative associations, a handler may deduct, with respect to base milk and milk to be paid for at a uniform price received from the producers at a pool plant located more than 60 miles by shortest highway distance, as determined by the market administrator, from the City Hall in Battle Creek or Kalamazoo, Michigan, whichever is nearer, the amount per hundredweight applicable to the plant as set forth in § 937.54.

§ 937.77 *Notification.* On or before the 12th day after the end of each month the market administrator shall notify each handler of:

(a) The amounts and values of his milk in each class and the total of such amounts and values;

(b) The amount due such handler from the producer-equalization fund or the amount to be paid by such handler to the producer-equalization fund, as the case may be; and

(c) The totals of the minimum amounts to be paid by such handler pursuant to §§ 937.90, 937.92, 937.94 and 937.95.

BASE RULES

§ 937.80 *Determination of base.* (a) Subject to the exceptions provided in paragraphs (b) and (e) of this section a producer who delivered milk of at least 122 days production during the period August 1 through December 31, inclusive, shall have a base computed by the market administrator, to be applicable for the 12-month period beginning the following February 1, equal to the total pounds of milk received from such producer at all pool plants during such months divided by the number of days for which milk was delivered;

(b) A producer who had a base before August 1, and whose average of daily deliveries computed pursuant to paragraph (a) of this section is less than such base, shall have a base computed by subtracting from his previous base any amount by which 90 percent of his previous base exceeds such average of daily deliveries;

(c) A producer delivering milk of less than 122 days production during the August 1–December 31 period may by written request filed with the market administrator prior to January 15, have a base computed by dividing by 122 the total pounds of milk delivered to pool plants during such period;

(d) A producer who has no base shall be paid until February 1 following the August–December period within which he establishes a base pursuant to paragraph (a) of this section at the applicable adjusted uniform price determined pursuant to § 937.72 (c);

(e) A producer with a base, by notifying the market administrator that he relinquishes such base, may be paid pursuant to paragraph (d) of this section, beginning with the first day of the month following that in which such notification is received by the market administrator;

(f) When a plant first becomes a pool plant pursuant to § 937.10 bases for producers delivering to such plant may be established on deliveries of milk for the preceding August–December period certified by submission of delivery receipts or other evidence satisfactory to the market administrator; and

(g) From the effective date of this part through January 31, 1958, all milk delivered by producers shall be paid for at the market average uniform price pursuant to § 937.72 (b). Deliveries of milk from August 1, 1957, to the effective date of this part certified by submission of delivery receipts or other evidence satisfactory to the market administrator will be used in computation of bases effective for the 12-month period beginning February 1, 1958.

§ 937.81 *Application of bases.* (a) A base shall apply to deliveries of milk by the producer for whose account milk was delivered during the base period and upon death may be transferred to a member or members of the deceased producer's immediate family;

(b) Bases may be transferred under the following conditions upon written notice by the holder of the base to the market administrator on or before the last day of the month that such base is to be transferred:

(1) Upon retirement or entry into military service of a producer, the entire base may be transferred to a member or members of the immediate family.

(2) Bases may be held jointly and if such joint holding is terminated the base may be divided among the joint holders as specified in writing to the market administrator.

(c) A producer who does not deliver milk to a handler for 45 consecutive days shall forfeit his base except that a producer who suffers the complete loss of his barn as a result of fire or windstorm may retain his base without loss for twelve months.

PAYMENT FOR MILK

§ 937.90 *Time and method of payment.* (a) Except as provided in paragraph (b) of this section, on or before the 15th day after the end of each month each handler who received milk from producers shall pay for milk received during such month to each producer: not less than the applicable uniform price as provided in § 937.80 (d), (e) or (g), or the base price for base milk and the excess price for excess milk, adjusted by the butterfat and location differentials pursuant to § 937.75 and § 937.76, less (1) applicable deductions for marketing services pursuant to § 937.95 (a), and (2) proper deductions authorized in writing by such producer.

If by such date such handler has not received full payment for such month pursuant to § 937.93 he shall not be deemed to be in violation of this section if he reduces uniformly to all producers and cooperative associations his payments per hundredweight by a total amount not in excess of the reduction in payments due from the market administrator; however, the handler shall make such balance of payment uniformly to those producers to whom it is due on or before the date for making payments pursuant to this section next following that on which such balance of payment is received from the market administrator.

(b) (1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall (i) pay to the cooperative association on or before the 15th day of each month, in lieu of payments pursuant to paragraph (a) of this section

an amount equal to the gross sum due for all milk received from certified members, less amounts owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer, and (ii) submit to the cooperative association on or before the 10th day of each month written information which shows for each such member-producer (*a*) the total pounds of base, excess and all milk received from him during the preceding month, (b) the average butterfat content of such milk, (c) the number of days for which milk was received, and (*d*) the amounts withheld by the handler in payment for supplies sold. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association.

(2) A copy of each such request, promise to reimburse, and a certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler shall be made by written notice to the market administrator, and shall be subject to his determination.

§ 937.91 *Producer-equalization fund.* The market administrator shall establish and maintain a separate fund, known as the producer-equalization fund into which he shall deposit all payments received pursuant to §§ 937.62 and 937.92 (including any adjustments thereto pursuant to § 937.96) and out of which he shall make all payments pursuant to § 937.93 (including any adjustments thereto pursuant to § 937.96).

§ 937.92 *Payments to the producer-equalization fund.* (a) On or before the 13th day after the end of each month, each handler whose value of milk is required to be computed pursuant to § 937.70 shall pay to the market administrator any amount by which such value for such month is greater than the minimum amount required to be paid by him pursuant to § 937.90.

(b) On or before the 25th day after the end of each month each handler who is required to make payment pursuant to § 937.62 shall pay such amount to the market administrator.

§ 937.93 *Payments out of the producer-equalization fund.* On or before the 14th day after the end of each month, the market administrator shall pay to each handler any amount by which the value of milk for such handler for the month pursuant to § 937.70 is less than the total minimum amount required to be paid by him pursuant to § 937.90, less any unpaid obligations of such handler to the market administrator pursuant to § 937.92: *Provided,* That if the balance in the producer-equalization fund is insufficient to make all payments to all such handlers pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 937.94 *Expense of administration.* As his pro rata share of the expense of administration hereof, each handler shall pay to the market administrator on or before the 13th day after the end of the month for such month 4 cents per hundredweight, or such amount not exceeding 4 cents per hundredweight, as the Secretary may prescribe with respect to (a) all receipts of producer milk including such handler's own production, (b) all other source milk at a pool plant in excess of that priced under other Federal orders which is classified as Class I milk, and (c) the applicable amount specified in § 937.62 (a) (2) or (b) (2).

§ 937.95 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments pursuant to § 937.90 for milk received from each producer, at a plant not operated by a cooperative association of which such producer is a member, shall deduct five cents per hundredweight or such amount not exceeding five cents per hundredweight as the Secretary may prescribe, with respect to all such milk received during the month, and on or before the 13th day after the end of each month, shall pay such deductions to the market administrator. Such monies shall be used by the market administrator to verify weights, samples, and tests of milk received from producers and to provide producers with market information, such services to be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members, and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to § 937.90 as may be authorized by such producers, and pay such deductions on or before the 13th day after the end of the month to the cooperative association rendering such services.

ADJUSTMENT OF ACCOUNTS

§ 937.96 *Adjustment of accounts.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made for any reason, which result in monies due:

(a) To the market administrator from such handler;

(b) To such handler from the market administrator; or

(c) To any producer or cooperative association from such handler, the market administrator shall notify such handler promptly of any such amount due; and payment thereof shall be made on or before the next date, following the 5th day after such notice, for making payment set forth in the provision under which such error occurred.

§ 937.97 *Overdue accounts.* Any unpaid obligations of a handler or of the market administrator pursuant to §§ 937.92 through 937.96 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.

§ 937.98 *Termination of obligation.* (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) or (c) of this section, terminate two years after the last day of the month during which the market administartor receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

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

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producers or associations, 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 representative all books or records required by this subpart to be made available, the market administrator, may within a 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 perod with respect to such obligation shall not begin to run until the first day of the month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his representative.

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during

which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed unless such handler, within the applicable period of time, files pursuant to section 8 (c) (15) (a) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

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

§ 937.101 *Suspension or termination.* The Secretary shall, whenever he finds that any or all provisions of this part, or any amendment thereto, obstruct or do not tend to effectuate the declared policy of the act, terminate or suspend the operation of any or all provisions of this part or any amendment thereto.

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

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

MISCELLANEOUS PROVISIONS

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

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

[F. R. Doc. 57-7681; Filed, Sept. 18, 1957; 8:51 a. m.]

Agricultural Research Service

[9 CFR Part 17]

LABELING

PROPOSED AMENDMENTS OF MEAT INSPECTION REGULATIONS

Notice is hereby given in accordance with section 4 (a) of the Administrative Procedure Act (5 U. S. C. 1003 (a)) that pursuant to the authority conferred by the Meat Inspection Act, as amended and extended (21 U. S. C. 71-96) and section 306 (b) of the Tariff Act of 1930 (19 U. S. C. 1306 (b)), it is proposed to amend § 17.8 of the Meat Inspection Regulations (9 CFR 17.8 as amended) as follows:

1. Paragraph 17.8 (c) would be amended by adding a new subparagraph to read:

(57) When moist heat is used in preparing barbecued meat, a prominent statement indicating that fact shall be shown as part of the name of product, as for example, "Steam Cooked Barbecued Beef". Barbecued meats prepared with dry heat may be labeled to indicate the method of cooking, as for example, "Pit Cooked", "Grill Cooked" or "Oven Cooked", as the case may be. Barbecued meats shall be prepared so that the weight of the cooked meat shall not exceed 70 percent by weight of the fresh uncooked meat. When a sauce is added to the barbecued meat, the product shall be labeled in accordance with the provisions contained in subparagraph (48) of this paragraph.

A request has been received to use the term "Bar-B-Q Beef" in connection with labeling material for beef that has been cooked by moist heat rather than by dry heat. In addition to cooking by moist heat, the process involves dipping the product into a highly seasoned sauce after which it is smoked, sliced, chilled and packaged.

The petitioner contends that the modern concept of the terms "Bar-B-Q", "Barbecue" and "Barbecued" refers to the application of highly seasoned sauce to the meat rather than to the method of cooking. Information furnished by the petitioner, as well as that gleaned from well known cook books and home economists, indicates that two types of barbecued meats are recognized. One type is prepared with dry heat which includes cooking the meat in a pit in close contact with burning wood or the hot coals resulting from the burning wood; cooking it on a grill in close contact with hot coals; or cooking it in an oven or similar device in close contact with radiant heat. The other type is prepared with moist heat and includes cooking the product with a highly seasoned sauce in a skillet, pan or other receptacle. The moist cooked product may also be subjected to a smoking process.

The purpose of the proposed amendment is to establish a minimum meat content of product labeled "Barbecued" and to prescribe labeling requirements as to the type of cooking and ingredients used in preparing the barbecued product.

Any person who wishes to submit written data, views or arguments concerning the proposed amendments may do so by filing them with the Director, Meat Inspector Division, Agricultural Research Service, U. S. Department of Agriculture, Washington 25, D. C. within 30 days after the date of publication of this notice in the FEDERAL REGISTER.

Done at Washington, D. C. this 13th day of September 1957.

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

[F. R. Doc. 57-7683; Filed, Sept. 18, 1957; 8:51 a. m.]

NOTICES

DEPARTMENT OF THE TREASURY

Office of the Secretary

[1957 Dept. Circ. 994]

4 PERCENT TREASURY CERTIFICATES OF INDEBTEDNESS OF SERIES C-1958

OFFERING OF CERTIFICATES

SEPTEMBER 16, 1957.

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 certificates of indebtedness of the United States, designated 4 percent Treasury Certificates of Indebtedness of Series C-1958. The amount of the offering under this circular is $750,000,000, or thereabouts. In addition to the amount offered for public subscription, the Secretary of the Treasury reserves the right to allot up to $100,000,000 of these certificates to Government Investment Accounts. The books will be open only on September 16, 1957, for the receipt of subscriptions for this issue.

II. *Description of certificates.* 1. The certificates now offered will be an addition to and will form a part of the 4 percent Treasury Certificates of Indebtedness of Series C-1958 issued pursuant to Department Circular No. 991, dated July 22, 1957, will be freely interchangeable therewith, are identical in all respects therewith, and are described in the following quotation from Department Circular No. 991:

1. The certificates will be dated August 1, 1957, and will bear interest from that date at the rate of 4 percent per annum, payable semiannually on February 1 and August 1,

1958. They will mature August 1, 1958. 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 hearafter 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 not be acceptable in payment of taxes.

4. Bearer certificates with interest coupons attached will be issued in denominations of $1,000, $5,000, $10,000, $100,000, $1,000,000, $100,000,000 and $500,000,000. 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 50 percent of the combined capital, surplus and undivided profits, of the subscribing bank. Subscriptions from all others must be accompanied by payment of 2 percent of the amount of certificates applied for, not subject to withdrawal until after allotment. Following allotment, any portion of the 2 percent payment in excess of 2 percent of the amount of certificates allotted may be released upon the request of the subscribers.

2. Commercial banks in submitting subscriptions will be required to certify that they have no beneficial interest in any of the subscriptions they enter for the account of their customers, and that their customers have no beneficial interest in the banks' subscriptions for their own account.

3. 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 from August 1, 1957, to September 26, 1957 ($6.08696 per $1,000) for certificates allotted hereunder must be made or completed on or before September 26, 1957, or on later allotment. In every case where payment is not so completed, the payment with application up to 2 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] ROBERT B. ANDERSON,
Secretary of the Treasury.

[F. R. Doc. 57-7688; Filed, Sept. 18, 1957; 8:51 a. m.]

[1957 Dept. Circ. 995]

4 PERCENT TREASURY NOTES OF SERIES B-1962

OFFERING OF NOTES

SEPTEMBER 16, 1957.

I. *Offering of notes.* 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 notes of the United States, designated 4 percent Treasury Notes of Series B-1962. The amount of the offering under this circular is $1,750,000,000, or thereabouts. In addition to the amount offered for public subscription, the Secretary of the Treasury reserves the right to allot up to $100,000,000 of these notes to Government Investment Accounts. The books will be open only on September 16 for the receipt of subscriptions for this issue.

II. *Description of notes.* 1. The notes will be dated September 26, 1957, and will bear interest from that date at the rate of 4 percent per annum, payable on a semiannual basis on February 15, and August 15, 1958, and thereafter on February 15 and August 15 in each year until the principal amount becomes payable. They will mature August 15, 1962, and will not be subject to call for redemption prior to maturity. However, they will be redeemable at the option of the holders on February 15, 1960, at par and accrued interest, if notice in writing of intention to redeem on that date is given to the Office of the Treasurer of the United States or to any Federal Reserve Bank or Branch on or before November 16, 1959, and the notes are temporarily surrendered to the office to which notice is given for the purpose of having an appropriate stamp placed on them to indicate that they will be redeemed on February 15, 1960, and for detaching coupons dated subsequent to that date.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The notes 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 notes will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer notes with interest coupons attached will be issued in denominations of $1,000, $5,000, $10,000, $100,000, $1,000,000, $100,000,000 and $500,000,000. The notes will not be issued in registered form.

5. The notes will be subject to the general regulations of the Treasury Department, now or hereafter prescribed, governing United States notes.

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 50 percent of the combined capital, surplus and undivided profits, of the subscribing bank. Subscriptions from all others must be accompanied by payment of 2 percent of the amount of notes applied for, not subject to withdrawal until after allotment. Following allotment, any portion of the 2 percent payment in excess of 2 percent of the amount of notes allotted may be released upon the request of the subscribers.

2. Commercial banks in submitting subscriptions will be required to certify that they have no benefical interest in any of the subscriptions they enter for the account of their customers, and that their customers have no beneficial interest in the banks' subscriptions for their own account.

3. The Secretary of the Treasury reserves the right to reject or reduce any subscription, and to allot less than the amount of notes 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 notes allotted hereunder must be made or completed on or before September 26, 1957, or on later allotment. In every case where payment is not so completed, the payment with application up to 2 percent of the amount of notes 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 notes alloted 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 notes allotted, to make delivery of notes on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive notes.

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] ROBERT B. ANDERSON,
Secretary of the Treasury.

[F. R. Doc. 57-7689; Filed, Sept. 18, 1957; 8:52 a. m.]

[1957 Dept. Circ. 996]

4 PERCENT TREASURY BONDS OF 1969

OFFERING OF BONDS

SEPTEMBER 16, 1957.

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 4 percent Treasury Bonds of 1969. The amount of the offering under this circular is $500,000,000, or thereabouts. In addition to the amount offered for public subscription, the Secretary of the Treasury reserves the right to allot up to $100,000,000 of these bonds to Government Investment Accounts. The books will be open only on September 16, 1957, for the receipt of subscriptions for this issue.

II. *Description of bonds.* 1. The bonds will be dated October 1, 1957, and will bear interest from that date at the rate of 4 percent per annum, payable semiannually on April 1 and October 1 in each year until the principal amount becomes payable. They will mature October 1, 1969, 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 50 percent of the combined capital, surplus and undivided profits, of the subscribing bank. Subscriptions from all others must be accompanied by payment of 2 percent of the amount of bonds applied for, not subject to withdrawal until after allotment. Following allotment, any portion of the 2 percent payment in excess of 2 percent of the amount of bonds 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 bonds 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 bonds allotted hereunder must be made or completed on or before October 1, 1957, or on later allotment; provided, however, that payment for not more than 50 percent of the bonds allotted may be deferred until not later than October 21, 1957. All payments made subsequent to October 1, 1957, must be accompanied by accrued interest from that date at the rate of $0.11 per $1,000 per day. In every case where payment is not so completed, the payment with application up to 2 percent of the amount of bonds 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 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 their 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.

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[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 March 2 to April 1, and from September 2 to October 1 (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.

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] ROBERT B. ANDERSON,
Secretary of the Treasury.

[F. R. Doc. 57-7690; Filed, Sept. 18, 1957; 8:52 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Classification Order 32]

NEVADA

SMALL TRACT CLASSIFICATION; AMENDED

Effective on date of this publication, paragraph 9 of Classification Order No. 32 dated May 18, 1949 is amended to include the following paragraph:

9. All tracts on which leases terminate will be leased for a period of three years at a rental of $37.50 for the entire lease period in advance of the issuance of the lease. All leases issued on these tracts will contain an option to purchase at the appraised value of $250.00 per tract providing improvements are constructed during the period of their leases. These improvements must conform with health, sanitation and construction requirements of applicable ordinances and must, in addition, meet the following standards: The home must be suitable for year-round use on a permanent foundation and with a minimum of 500 square feet of floor space.

A. L. SIMPSON,
Acting State Supervisor.

SEPTEMBER 12, 1957.

[F. R. Doc. 57-7660; Filed, Sept. 18, 1957; 8:46 a. m.]

[Classification Order 39]

NEVADA

SMALL TRACT CLASSIFICATION; AMENDED

Effective on date of this publication, paragraph 9 of Classification Order No. 39 dated June 15, 1949 is amended to include the following paragraph:

9. All tracts on which leases terminate will be leased for a period of three years at a rental of $37.50 for the entire lease period in advance of the issuance of the lease. All leases issued on these tracts will contain an option to purchase at the appraised value of $250.00 per tract providing improvements are constructed during the period of their leases. These improvements must conform with health, sanitation and construction requirements of applicable ordinances and must, in addition, meet the following standards: The home must be suitable for year-round use on a permanent foundation and with a minimum of 500 square feet of floor space.

A. L. SIMPSON,
Acting State Supervisor.

SEPTEMBER 12, 1957.

[F. R. Doc. 57-7661; Filed, Sept. 18, 1957; 8:46 a. m.]

[Classification Order 69]

NEVADA

SMALL TRACT CLASSIFICATION; AMENDED

Effective on date of this publication, paragraph 9 of Classification Order No. 69 dated March 9, 1951 is amended to include the following paragraph:

9. All tracts on which leases terminate will be leased for a period of three years at a rental of $37.50 for the entire lease period in advance of the issuance of the lease. All leases issued on these tracts will contain an option to purchase at the appraised value of $250.00 per tract providing improvements are constructed during the period of their leases. These improvements must conform with health, sanitation and construction requirements of applicable ordinances and must, in addition, meet the following standards: The home must be suitable for year-round use on a permanent foundation and with a minimum of 500 square feet of floor space.

A. L. SIMPSON,
Acting State Supervisor.

SEPTEMBER 12, 1957.

[F. R. Doc. 57-7662; Filed, Sept. 18, 1957; 8:46 a. m.]

[Classification Order 88]

NEVADA

SMALL TRACT CLASSIFICATION; AMENDED

Effective on date of this publication, paragraph 8 of Classification Order No. 88 dated July 25, 1952 is amended to include the following paragraph:

8. All tracts on which leases terminate will be leased for a period of three years at a rental of $30.00 for the entire lease period in advance of the issuance of the lease. All leases issued on these tracts will contain an option to purchase at the appraised value of $100.00 per tract providing improvements are constructed during the period of their leases. These improvements must conform with health, sanitation and construction requirements of applicable ordinances and must, in addition, meet the following standards: The home must be suitable for year-round use on a permanent foundation and with a minimum of 500 square feet of floor space.

A. L. SIMPSON,
Acting State Supervisor.

SEPTEMBER 12, 1957.

[F. R. Doc. 57-7663; Filed, Sept. 18, 1957; 8:46 a. m.]

[Classification Order 90]

NEVADA

SMALL TRACT CLASSIFICATION; AMENDED

Effective on date of this publication Small Tract Classification Order No. 90, dated May 7, 1953, is hereby revoked to the following described land, which is to be reclassified under the Recreation and Public Purposes Act for the benefit of the Nevada State Forester Fire Warden.

MOUNT DIABLO MERIDIAN

T. 18 N., R. 19 E.,
Sec. 25, W½SW¼SW¼SW¼;
Sec. 36, N½NW¼NW¼NW¼.

Effective on date of this publication, paragraph 8 of Classification Order No. 90 is amended to include the following paragraph:

8. All tracts on which leases terminate will be leased for a period of three years at a rental of $37.50 for the entire lease period in advance of the issuance of the lease. All leases issued on these tracts will contain an option to purchase at the appraised value of $250.00 per tract providing improvements are constructed during the period of their leases. These improvements must conform with health, sanitation and construction requirements of applicable ordinances and must, in addition, meet the following standards: The home must be suitable for year-round use on a permanent foundation and with a minimum of 500 square feet of floor space.

A. L. SIMPSON,
Acting State Supervisor.

SEPTEMBER 12, 1957.

[F. R. Doc. 57-7664; Filed, Sept. 18, 1957; 8:47 a. m.]

CALIFORNIA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

SEPTEMBER 12, 1957.

The Forest Service, United States Department of Agriculture, has filed an application, Sacramento Serial No. 048-741, for the withdrawal of the lands described below, from all forms of appropriation and location, including the general mining laws, subject to valid existing rights, except that they shall be subject to leasing under the mineral leasing laws for their oil and gas deposits, providing that no part of the surface of the lands shall be used in connection with prospecting, mining, and removal of the oil and gas.

The applicant desires the land for the purpose of maintaining public service areas, including campgrounds, picnic areas and other developments within the Sierra National Forest.

For a period of 30 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, California Fruit Building, 8th Floor, 4th and J Streets, Sacramento 14, California.

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 copy will be sent to each interested party of record.

The lands involved in the application are:

MOUNT DIABLO MERIDIAN, CALIFORNIA

NELDER GROVE RECREATION AREA

T. 6 S., R. 22 E.,
Sec. 4, W½SW¼;
Sec. 5, W½, SE¼;
Sec. 6, E½, E½E½W½;
Sec. 8, N½.

HUNTINGTON LAKE RECREATION AREA

T. 8 S., R. 25 E.,
Sec. 1, S½SW¼, SE¼;
Sec. 10, S½S½;
Sec. 11, S½N½, S½;
Sec. 12, All;
Sec. 13, All;
Sec. 14, NW¼NE¼, S½NE¼, NE¼NW¼, W½NW¼, SE¼NE¼NW¼SW¼, N½NE¼NW¼SW¼, NW¼NW¼SW¼, SW¼SE¼NW¼SW¼, E½SE¼NW¼SW¼, SW¼SW¼, E½SW¼, SE¼;
Sec. 15, NE¼NE¼, W½NE¼, N½SE¼NE¼, N½S½SE¼NE¼, NW¼, W½NE¼NW¼SW¼, W½NW¼SW¼, S½SW¼, N½NE¼SE¼, SW¼NE¼SE¼, N½SE¼NE¼SE¼, SW¼SE¼NE¼SE¼, SW¼SE¼, SE¼NE¼SE¼SE¼, NW¼SE¼SE¼, N½SW¼SE¼SE¼, SW¼SW¼SE¼SE¼, E½SE¼SE¼SE¼;
Sec. 16, N½SW¼, N½SE¼, N½NW¼SW¼SE¼, SW¼NW¼SW¼SE¼, SE¼SW¼SW¼SE¼, S½SE¼SW¼SE¼, E½SE¼SE¼, E½NW¼SE¼SE¼, NE¼SW¼SE¼SE¼, S½SW¼SE¼SE¼;
Sec. 21, E½NE¼;
Sec. 22, NE¼, W½W½NE¼NW¼, NW¼NW¼, S½NW¼.
T. 8 S., R. 26 E.,
Sec. 5, S½;
Sec. 6, SW¼, W½SE¼, NE¼SE¼;
Sec. 7, All;
Sec. 8, All;
Sec. 17, All;
Sec. 18, All;
Sec. 19, N½;
Sec. 20, N½.

Within the above-described area 9,200 acres of public land in the Sierra National Forest.

R. R. BEST,
State Supervisor.

[F. R. Doc. 57-7665; Filed, Sept. 18, 1957; 8:47 a. m.]

CALIFORNIA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

SEPTEMBER 12, 1957.

The United States Department of Agriculture, has filed an application, Serial No. Sacramento 047313 for the withdrawal of the lands described below from location and entry under the general mining laws, subject to existing valid claims.

The applicant desires the land for administrative sites, public service sites, recreation areas, or for other public purposes as set forth specifically with regard to each area or description.

For a period of 30 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, California Fruit Building, Room 801, 4th and J Streets, Sacramento 14, California.

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 copy will be sent to each interested party of record.

The lands involved in the application are:

MOUNT DIABLO MERIDIAN, CALIFORNIA

ADMINISTRATIVE SITES

Dumont:
T. 8 N., R. 21 E.,
Sec. 27, SE¼.
Henan Lake:
T. 9 N., R. 21 E.,
Sec. 4, NE¼SE¼.
Wheeler Creek:
T. 6 N., R. 23 E.,
Sec. 22, SE¼SE¼;
Sec. 23, SW¼SW¼, N½SW¼.

FOREST CAMP

Hope Valley:
T. 10 N., R. 19 E.,
Sec. 7, NE¼NE¼, S½NE¼.
Crystal Springs:
T. 10 N., R. 19 E.,
Sec. 1, Lot 15, Lot 16, W½ of Lot 14;
Sec. 2, Lot 3, Lot 14.
T. 11 N., R. 19 E.,
Sec. 33, SE¼SE¼.
Kit Carson:
T. 11 N., R. 19 E.,
Sec. 31, SW¼NW¼ (Lot 2), SE¼NW¼, SW¼NE¼.
Snowshoe Springs:
T. 11 N., R. 19 E.,
Sec. 31, NE¼NE¼, E½NW¼NE¼;
Sec. 32, NW¼NW¼.
Chris Flat:
T. 6 N., R. 23 E.,
Sec. 4, W½ of Lot 1, Lot 2, SW¼NE¼, W½SE¼NE¼.
Mountain Glen (Sonora Bridge):
T. 6 N., R. 23 E.,
Sec. 17, SW¼, SW¼NW¼;
Sec. 18, SE¼NE¼.
Honeymoon Flat:
T. 4 N., R. 24 E.,
Sec. 15, S½SW¼;
Sec. 22, NE¼NW¼.
Robinson Creek:
T. 4 N., R. 24 E.,
Sec. 22, SW¼SW¼;
Sec. 27, W½NW¼.
Huntoon:
T. 5 N., R. 24 E.,
Sec. 14, SW¼SW¼;
Sec. 15, S½SE¼.

RECREATION AREAS

Shay Creek:
T. 10 N., R. 19 E.,
Sec. 24, SE¼NE¼, E½SE¼, SW¼SE¼.
Buckeye Hot Springs:
T. 4 N., R. 24 E.,
Sec. 4, Lot 1, SE¼NE¼.
Virginia Lakes:
T. 2 N., R. 25 E.,
Sec. 6, S½SW¼SE¼;
Sec. 7, W½NE¼, N½NW¼SE¼, S½SE¼NW¼, N½NE¼SW¼, SW¼NW¼, NW¼SW¼, N½SW¼SW¼.

The areas described total 2,160.68 acres in Toiyabe National Forest.

R. R. BEST,
State Supervisor.

[F. R. Doc. 57-7666; Filed, Sept. 18, 1957; 8:47 a. m.]

[Nevada 045108]

NEVADA

AIR NAVIGATION SITE WITHDRAWAL

SEPTEMBER 10, 1957.

By virtue of the authority contained in section 4 of the act of May 24, 1928 (45 Stat. 728; 49 U. S. C. 214) and pursuant to authority delegated by Order Number 541 of the Director, Bureau of Land Management, approved April 24, 1954, it is ordered as follows:

Subject to valid existing rights and the provisions of existing withdrawals, the following described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including mining and mineral leasing laws and reserved under jurisdiction of the Civil Aeronautics Administration, Department of Commerce, in the maintenance of air navigation facilities:

MOUNT DIABLO MERIDIAN, NEVADA

T. 13 S., R. 47 E.,
Sec. 17, SE¼NW¼SW¼, S½NE¼SW¼, SW¼NW¼SE¼, W½SW¼SE¼, SE¼SW¼, E½SW¼SW¼;
Sec. 20, NE¼NW¼NW¼, N½NE¼NW¼, NW¼NW¼NE¼.

The area described contains 160 acres.

This withdrawal shall take precedence over but, not otherwise affect the department order of November 3, 1936 establishing Nevada Grazing Districts Numbers 1 and 5, so far as such orders affect any of the above described lands.

JAMES E. KEOGH, Jr.,
Manager, Land Office.

[F. R. Doc. 57-7667; Filed, Sept. 18, 1957; 8:47 a. m.]

DEPARTMENT OF AGRICULTURE

Commodity Stabilization Service

SUGARCANE PRICES IN PUERTO RICO AND WAGES AND PRICES IN THE VIRGIN ISLANDS AND DESIGNATION OF PRESIDING OFFICERS

NOTICE OF HEARING

Pursuant to the authority contained in subsections (c) (1) and (c) (2) of section 301 of the Sugar Act of 1948, as amended (61 Stat. 929; 7 U. S. C. Sup. 1131), and in accordance with the rules of practice and procedure applicable to wage and price proceedings (7 CFR 802.1 et seq), notice is hereby given that public hearings will be held as follows:

At Santurce, Puerto Rico, in the Conference Room of the Agricultural Stabilization and Conservation Office, Segarra Building, on October 10, 1957, at 9:30 a. m.;

At Christiansted, St. Croix, Virgin Islands, in the District Court Room at the Government House, on October 15, 1957, at 9:30 a. m.

The purpose of these hearings is to receive evidence likely to be of assistance to the Secretary of Agriculture in determining (1) pursuant to the provisions of section 301 (c) (1) of said act, fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in the Virgin Islands during the calendar year 1958 on farms with respect to which applications for payments under the said act are made, and (2) pursuant to the provisions of section 301 (c) (2) of said act, fair and reasonable prices for the 1957-58 Puerto Rican crop of sugarcane and the 1958 crop of Virgin Islands sugarcane to be paid, under either purchase or toll agreements, by producers who process

sugarcane grown by other producers and who apply for payments under the said act.

In order to obtain the best possible information, the Department requests that all interested parties appear at the hearing to express their views and to present appropriate data with respect to wages and prices. While testimony on all pertinent points is desired, it is especially reqested that witnesses be prepared to offer information and recommendations on the following matters with respect to prices in Puerto Rico:

1. The provisions of the 1956–57 crop determination relating to trash and other extraneous material delivered with sugarcane and the proper methods for determining the quantities of trash and other extraneous material delivered with sugarcane.

2. Any needed changes in the sugar recovery formula which would more accurately reflect the proper distribution of sugar recovered between producers and processors when clean cane and trashy cane are ground concurrently.

3. Admissible selling and delivery expenses on raw sugar with particular emphasis on those expenses relating to the bulk handling of raw sugar.

The hearings, after being called to order at the time and places mentioned herein, may be continued from day to day within the discretion of the presiding officers, and may be adjourned to a later day or a different place without notice other than the announcement thereof at the hearing by the presiding officers.

Thomas H. Allen, Ward S. Stevenson, Charles F. Denny, and G. Laguardia are hereby designated as presiding officers to conduct either jointly or severally the foregoing hearings.

Issued this 13th day of September 1957.

[SEAL] LAWRENCE MYERS,
Director, Sugar Division.

[F. R. Doc. 57–7703; Filed, Sept. 18, 1957; 8:55 a. m.]

Office of the Secretary

ARKANSAS

DESIGNATION OF AREA FOR PRODUCTION EMERGENCY LOANS

For the purpose of making production emergency loans pursuant to section 2 (a) of Public Law 38, 81st Congress (12 U. S. C. 1148a–2 (a)), as amended, it has been determined that in the following counties in the State of Arkansas a production disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

ARKANSAS

Clay.	Johnson.
Cleburne.	Lafayette.
Conway.	Lincoln.
Craighead.	Little River.
Crawford.	Logan.
Cross.	Miller.
Faulkner.	Mississippi.
Franklin.	Perry.
Greene.	Poinsett.
Independence.	Pope.
Pulaski.	White.
Sebastian.	Yell.
Van Buren.	

Pursuant to the authority set forth above, production emergency loan will not be made in the above-named counties after December 31, 1958, except to applicants who previously received such assistance and who can qualify under established policies and procedures.

Done at Washington, D. C., this 16th day of September, 1957.

[SEAL] MARVIN L. MCLAIN,
Acting Secretary.

[F. R. Doc. 57–7704; Filed, Sept. 18, 1957; 8:55 a. m.]

DEPARTMENT OF COMMERCE

Bureau of Foreign Commerce

[Case No. 99]

GAMBARO CORPORATION CONSTRUCTION CO. ET AL.

ORDER CONDITIONALLY TERMINATING ORDER OF DENIAL OF EXPORT PRIVILEGES

In the matter of Gambaro Corporation Construction Company, Hans Gambaro, Johann Gambaro, Lucerne, Switzerland, Respondents, Case No. 99.

An order heretofore, on the 20th day of April 1951, having been entered by the Office of International Trade (now the Bureau of Foreign Commerce) of the United States Department of Commerce (16 F. R. 3670, April 28, 1951) whereby all privileges of participating in any manner in exportations from the United States were denied to Gambaro Corporation Construction Company, Hans Gambaro, Johann Gambaro, and any person, firm, corporation or other business organization with which they might be related, as more particularly set forth in the said order; and

The said respondents having applied for a termination of said order and having submitted evidence in support thereof; and

The said application and supporting evidence having been referred to the Compliance Commissioner, who has reviewed the same, received other evidence in relation thereto, and recommended that it be granted;

Now, after careful consideration of the application, all evidence submitted in support thereof, other evidence independently obtained, the entire record prior to and since the entry of the said order, and the recommendation of the Compliance Commissioner, it is concluded that the public interest and effective enforcement of the Export Control Act of 1949, as amended, subject to the condition hereinafter provided, do not require that the said order be continued in effect: *And it is therefore ordered*, That Decretal Parts (1), (2), and (3) of the said order of April 20, 1951 (16 F. R. 3670, April 28, 1951), be and the same hereby are terminated upon the condition proposed in the declaration duly signed and acknowledged by each of the respondents on the third day of July 1957, this termination to remain in effect until such time as and if a further order is made herein revoking this termination and reviving the said decretal parts of the order of April 20, 1951.

Dated: September 13, 1957.

JOHN C. BORTON,
Director,
Office of Export Supply.

[F. R. Doc. 57–7677; Filed, Sept. 18, 1957; 8:49 a. m.]

DEPARTMENT OF LABOR

Wage and Hour Division

LEARNER EMPLOYMENT CERTIFICATES

ISSUANCE TO VARIOUS INDUSTRIES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.), the regulations on employment of learners (29 CFR Part 522), and Administrative Order No. 414 (16 F. R. 7367), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. The effective and expiration dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (§§ 522.1 to 522.11) are as indicated below. Conditions provided in certificates issued under special industry regulations are as established in these regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.20 to 522.24, as amended).

The following learner certificates were issued authorizing the employment of ten percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Anniston Sportswear Corp., 919 West Ninth Street, Anniston, Ala.; effective 9–10–57 to 9–9–58 (men's dress trousers).

Berwick Shirt Co., 10th and Pine Streets, Berwick, Pa.; effective 9–6–57 to 9–5–58 (sport shirts).

Blue Bell, Inc., Ripley, Miss.; effective 9–25–57 to 9–24–58 (work shirts).

Culler & Oblander, Inc., North, S. C.; effective 9–9–57 to 9–8–58 (children's playwear).

M. Fine & Sons Manufacturing Co., Inc., 15th and Main Streets, New Albany, Ind.; effective 9–4–57 to 9–3–58 (cotton and wool shirts and jackets, work pants).

M. Fine & Sons Manufacturing Co., Inc., Paducah, Ky.; effective 9–12–57 to 9–11–58 (work and sport shirts).

Greenwood Shirt Co., Inc., 145 Maxwell Avenue., Greenwood, S. C.; effective 9–6–57 to 9–5–58 (sport shirts).

Harde Manufacturing Co., Inc., 201 South Dillard Street, Blackstone, Va.; effective 9–26–57 to 9–25–58 (boys' zipper jackets and boys' pants).

Kayler Manufacturing, Inc., 822 Anderson Street, New Kensington, Pa.; effective 9–16–57 to 9–15–58 (blouses).

Meridian Manufacturing Co., Inc., 2315 Front Street, Meridian Miss.; effective 9–3–57 to 9–2–58 (men's bathrobes).

Sized-To-Height Corp., Inc., 560 Harrison Avenue., Boston, Mass.; effective 9–9–57 to 9–8–58 (dresses).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Arizona Garments, Inc., 19–21 East Buchanan Street., Phoenix, Ariz.; effective 9–6–57 to 9–5–58; five learners (boys' pants).

Blue Bell, Inc., Ada, Okla.; effective 9–9–57 to 9–8–58; 10 learners (men's and boys' dungarees).

Exeter Blouse Co., 54 Tunkhannock Avenue, Exeter, Pa., effective 9–6–57 to 9–5–58; five learners (ladies' blouses).

Morris Sportswear Co., 219 Arch Street, Nanticoke, Pa.; effective 9–18–57 to 9–17–58; five learners (ladies sportswear).

Vallejo Sportswear, Inc., 133 Ryder Street, Vallejo, Calif.; effective 9–9–57 to 9–8–58; six learners (men's sport shirts and jackets).

The Vanity Silk Underwear Co., Inc., 208 St. Clair Avenue, West, Cleveland, Ohio; effective 9–18–57 to 9–17–58; three learners (formal dresses and petticoats).

The following learner certificate was issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Blue Bell, Inc., Ada, Okla.; effective 9–9–57 to 3–8–58; 50 learners (men's and boys' dungarees).

Cigar Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.80 to 522.85, as amended).

General Cigar Co., Inc., White Owl Avenue and Robert Burns Drive, Mahanoy City, Pa.; effective 9–14–57 to 9–13–58; 10 percent of the total number of factory production workers for normal labor turnover purposes, in the occupations of hand stripping and machine stripping, each for a learning period of 160 hours at the rate of 80 cents an hour.

Glove Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.60 to 522.65, as amended).

Monte Glove Co., Inc., Maben, Miss.; effective 10–1–57 to 9–30–58; 10 learners for normal labor turnover purposes (work gloves).

Portage Hosiery Co., Portage, Wis.; effective 9–5–57 to 9–4–58; five learners for normal labor turnover purposes (mittens).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.40 to 522.43, as amended).

Alba Hosiery Mills, Inc., Valdese, N. C.; effective 9–5–57 to 9–4–58; 5 percent of the total number of factory production workers for normal labor turnover purposes (full fashioned).

Davenport Hosiery Mills, Inc., Ellijay Plant, Ellijay, Ga.; effective 9–5–57 to 3–4–58; 50 learners for plant expansion purposes (seamless).

Davenport Hosiery Mills, Inc., Ellijay Plant, Ellijay, Ga.; effective 9–5–57 to 9–4–58; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Ft. Payne Manufacturing Co., Inc., North Grand Avenue, Fort Payne, Ala.; effective 9–9–57 to 9–8–58; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Wm. G. Leininger Knitting Co., Lyons Station, Pa.; effective 9–9–57 to 9–8–58; five learners for normal labor turnover purposes (seamless).

Portage Hosiery Co., Portage, Wis.; effective 9–5–57 to 9–4–58; 5 percent of the total number of factory production workers engaged in the manufacture of hosiery products for normal labor turnover purposes (seamless).

Van Raalte Co., Inc., Blue Ridge, Ga.; effective 9–1–57 to 2–28–58; 15 learners for plant expansion purposes (seamless).

Shoe Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.50 to 522.55, as amended).

Alco Ranch Washable Footwear Co., 324 South Chadbourne St., San Angelo, Tex.; effective 9–9–57 to 3–8–58; 25 learners for plant expansion purposes.

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.11, as amended).

S and M Manufacturing Co., 634–642 South Main Street, Greenville, S. C.; effective 9–9–57 to 3–8–58; authorizing the employment of 10 learners for normal labor turnover purposes, in the occupation of sewing machine operator for a learning period of 320 hours at the rate of 85 cents an hour (crib and youth sheets).

Michaels Stern and Co., 204 Liberty Street, Penn Yan, N. Y.; effective 9–9–57 to 3–1–58; authorizing the employment of 5 percent of the total number of factory production workers for normal labor turnover purposes, in the occupations of sewing machine operator, hand sewer, final presser, and finishing operations involving hand sewing, each for a learning period of 480 hours at the rates of 85 cents an hour for the first 280 hours and 90 cents an hour for the remaining 200 hours (replacement certificate) (men's suit coats and sport coats).

Timely Clothes, Inc., 1415 North Clinton Avenue, Rochester, N. Y.; effective 9–17–57 to 3–16–58; authorizing the employment of 5 percent of the total number of factory production workers for normal labor turnover purposes, in the occupations of sewing machine operator, hand sewer, final presser, and finishing operations involving hand sewing, each for a learning period of 480 hours at the rates of 85 cents an hour for the first 280 hours and 90 cents an hour for the remaining 200 hours (men's suits, outercoats, and slacks).

Timely Clothes, Inc., 65 Sullivan Street, Rochester, N. Y.; effective 9–17–57 to 3–16–58; authorizing the employment of 5 percent of the total number of factory production workers for normal labor turnover purposes, in the occupations of sewing machine operator, final presser, hand sewer, and finishing operations involving hand sewing, each for a learning period of 480 hours at the rates of 85 cents an hour for the first 280 hours and 90 cents and hour for the remaining 200 hours (men's suits, outercoats, and slacks).

The following learner certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods, and the number or proportion of learners authorized to be employed, are as indicated.

General Electric Wiring Devices, Inc., Km. 67.2 Ponce-Juana Diaz Road, Juana Diaz, P. R.; effective 8–19–57 to 2–18–58; authorizing the employment of 106 learners for plant expansion purposes, in the occupation of molders-assemblers for a learning period of 480 hours at the rates of 65 cents an hour for the first 240 hours and 75 cents an hour for the remaining 240 hours (electrical wiring devices).

High Fidelity, Inc. Mirasol Street, Ponce Playa, P. R.; effective 8–6–57 to 2–5–58; authorizing the employment of 36 learners for plant expansion purposes, in the occupations of: (1) press operators for a learning period of 320 hours at the rates of 60 cents an hour for the first 160 hours and 70 cents an hour for the remaining 160 hours; (2) blenders, spreaders, and quality inspectors, each for a learning period of 160 hours at the rate of 60 cents an hour; and (3) stampers maintenance for a learning period of 480 hours at the rates of 60 cents an hour for the first 240 hours and 70 cents an hour for the remaining 240 hours (phonograph records).

International Molded Plastics of Puerto Rico, Inc., Loiza Street Station, Santurce, P. R.; effective 8–14–57 to 2–13–58; authorizing the employment of 14 learners for plant expansion purposes, in the occupations of: (1) performers, molders, buffers, and sanders, for a learning period of 200 hours; and (2) inspectors for a learning period of 160 hours. Each occupation shall be paid for at the rate of 60 cents an hour (plastic dinnerware).

Overseas Sports Co., Inc., Mayaguez, P. R.; effective 8–15–57 to 2–14–58; authorizing the employment of 50 learners for plant expansion purposes, in the occupation of handsewing of baseballs and softballs for a learning period of 320 hours at the rates of 40 cents an hour for the first 160 hours and 45 cents an hour for the remaining 160 hours (baseballs and softballs).

Puerto Rico Automatics, Inc., Guaynabo, P. R.; effective 8–12–57 to 2–11–58; authorizing the employment of 8 learners for plant expansion purposes, in the occupation of automatic screw machine operators for a learning period of 480 hours at the rates of 75 cents an hour for the first 240 hours and 88 cents an hour for the remaining 240 hours (automatic screw machine products).

Rio Manufacturing Corp., State Road 838, Rio Piedras, P. R.; effective 8–6–57 to 1–31–58; authorizing the employment of 8 learners for normal labor turnover purposes, in the occupations of grinders, crimpers, spotters, silver welders, and spiral tool, each for a learning period of 480 hours at the rates of 68 cents an hour for the first 240 hours and 80 cents an hour for the remaining 240 hours (replacement certificate) (fishing tackle hardware).

Stadium Manufacturing Co. of Puerto Rico, Inc., Villalba, P. R.; effective 8–15–57 to 2–14–58; authorizing the employment of 25 learners for plant expansion purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 53 cents an hour for the first 240 hours and 59 cents an hour for the remaining 240 hours (men's pajamas).

Each learner certificate has been issued upon the employer's representation that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be annuled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9.

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.), and Part 527 of the Regulations issued thereunder (29 CFR Part 527) special certificates authorizing the employment of student-workers at hourly wage rates lower than the minimum wage rates applicable under section 6 of the act have been issued to the firms listed below. Effective and expiration dates, occupations, wage rates, number or porportion of student-

workers as learners, and learning periods for certificates issued under Part 527 are as indicated below.

Regulations Applicable to the Employment of Student-Workers (29 CFR 527.1 to 527.9).

Atlantic Union College, Main Street, South Lancaster, Mass.; effective 9–1–57 to 8–31–58; authorizing the employment of: (1) 15 student-workers in the print shop industry, in the occupations of compositor, pressman, bindery worker, and related skilled and semi-skilled occupations, each for a learning period of 1,000 hours; and (2) 20 student-workers in the bookbindery industry, in the occupations of bookbinder, bindery worker, and related skilled and semi-skilled occupations, each for a learning period of 600 hours. Each occupation shall be paid for at the rates of 80 cents an hour for the first half and 85 cents an hour for the second half of the respective authorized learning periods.

Hawaiian Mission Academy, 1438 Pensacola Street, Honolulu, T. H.; effective 9–1–57 to 8–31–58; authorizing the employment of: (1) 5 student-workers in the print shop industry, in the occupations of compositor, pressman, bindery worker, and related skilled and semi-skilled occupations, each for a learning period of 1,000 hours; and (2) 1 student-worker in the clerical industry, in the occupations of typist, bookkeeper, and related skilled and semi-skilled occupations, each for a learning period of 480 hours. Each occupation shall be paid for at the rates of 90 cents an hour for the first half and 95 cents an hour for the second half of the respective authorized learning periods.

Indiana Academy, Cicero, Ind.; effective 9–1–57 to 8–31–58; authorizing the employment of 40 student-workers in the furniture industry, in the occupations of woodworking machine operator, assembler, furniture finisher helper, and related skilled and semi-skilled occupations, each for a learning period of 600 hours at the rates of 80 cents an hour for the first 300 hours and 85 cents an hour for the remaining 300 hours.

Wisconsin Academy, Columbus, Wis.; effective 9–1–57 to 8–31–58; authorizing the employment of 25 student-workers in the furniture manufacturing (outdoor Redwood) industry, in the occupations of woodworking machine operator, assembler, furniture finisher, and related skilled and semi-skilled occupations, each for a learning period of 600 hours at the rates of 80 cents an hour for the first 300 hours and 85 cents an hour for the remaining 300 hours.

These student-worker certificates were issued upon the applicant's representations and supporting material fulfilling the statutory requirements for the issuance of such certificates, as interpreted and applied by Part 527.

Signed at Washington, D. C., this 10th day of September, 1957.

MILTON BROOKE,
Authorized Representative of the Administrator.

[F. R. Doc. 57–7668; Filed, Sept. 18, 1957; 8:48 a. m.]

ATOMIC ENERGY COMMISSION

[Docket 50–80]

COLORADO STATE UNIVERSITY

NOTICE OF ISSUANCE OF FACILITY LICENSE

Please take notice that no request for a formal hearing having been filed following the filing of notice of the proposed action with the Federal Register Division on August 27, 1957, the Atomic Energy Commission has issued License R–26 authorizing Colorado State University to acquire, possess and operate at the location in Fort Collins, Colorado, described in the application in Docket 50–80, a 100-milliwatt nuclear reactor constructed by Aerojet-General Nucleonics and designated by AGN as Model AGN–201, Serial No. 109. Notice of the proposed action was published in the FEDERAL REGISTER on August 29, 1957, 22 F. R. 6977.

Dated at Washington, D. C. this 12th day of September 1957.

For the Atomic Energy Commission.

H. L. PRICE,
Director,
Division of Civilian Application.

[F. R. Doc. 57–7654; Filed, Sept. 18, 1957; 8:45 a. m.]

[Docket 50–72]

UNIVERSITY OF UTAH

NOTICE OF ISSUANCE OF FACILITY LICENSE

Please take notice that no request for a formal hearing having been filed following the filing of notice of the proposed action with the Federal Register Division on August 27, 1957, the Atomic Energy Commission has issued License R–25 authorizing the University of Utah to acquire, possess and operate at the location in Salt Lake City, Utah, described in the application in Docket 50–72, a 100-milliwatt nuclear reactor constructed by Aerojet-General Nucleonics and designated by AGN as Model AGN–201, Serial No. 107. Notice of the proposed action was published in the FEDERAL REGISTER on August 29, 1957, 22 F. R. 6976.

Dated at Washington, D. C., this 12th day of September 1957.

For the Atomic Energy Commission.

H. L. PRICE,
Director,
Division of Civilian Application.

[F. R. Doc. 57–7655; Filed, Sept. 18, 1957; 8:45 a. m.]

[Docket No. 50–2]

UNIVERSITY OF MICHIGAN

NOTICE OF ISSUANCE OF FACILITY LICENSE

Please take notice that no request for a formal hearing having been filed following the filing of the notice of proposed action with the Federal Register Division, the Commission on September 13, 1957, issued facility license R–28 authorizing the University of Michigan to possess and operate as a utilization facility the nuclear reactor described in the license application. Notice of the proposed action was published in the FEDERAL REGISTER on August 30, 1957, 22 F. R. 6998.

Dated at Washington, D. C., this 13th day of September 1957.

For the Atomic Energy Commission.

H. L. PRICE,
Director,
Division of Civilian Application.

[F. R. Doc. 57–7656; Filed, Sept. 18, 1957; 8:45 a. m.]

[Docket No. 50–62]

UNIVERSITY OF VIRGINIA

NOTICE OF ISSUANCE OF CONSTRUCTION PERMIT

Please take notice that no request for a formal hearing having been filed following filing of the notice of the proposed action with the Federal Register Division, the Commission on September 13, 1957, issued Construction Permit No. CPRR–15 authorizing the University of Virginia to construct a nuclear reactor. Notice of the proposed action was published in the FEDERAL REGISTER on August 29, 1957, 22 F. R. 6978.

Dated at Washington, D. C., this 13th day of September 1957.

For the Atomic Energy Commission.

H. L. PRICE,
Director,
Division of Civilian Application.

[F. R. Doc. 57–7657; Filed, Sept. 18, 1957; 8:45 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 6436 et al.]

NORTHEASTERN STATES AREA INVESTIGATION

NOTICE OF HEARING

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 205 (a) and 401 of the said act and the applicable regulations thereunder, that a hearing in the above-entitled proceeding is assigned to be held commencing October 22, 1957, at 10:00 a. m., e. d. s. t., in Room 207, Massachusetts State House, Boston, Massachusetts, continuing October 28, 1957, at 10:00 a. m., e. s. t., in the Court Room, U. S. District Court, Albany, New York, before Examiner John A. Cannon. Upon completion of the Albany session, the hearing will reconvene in Washington, D. C., on November 12, 1957, at 10:00 a. m., e. s. t., in Room E–210, Temporary Building No. 5, Sixteenth Street and Constitution Avenue, Northwest.

Without limiting the precise scope of the issues, particular attention will be directed to the following matters and questions:

(1) Whether the public convenience and necessity require the amendment of existing certificates of public convenience and necessity or the issuance of new certificates as contemplated in the applications and investigations consolidated in this proceeding pertaining to improvements in the local air service pattern in

the Northeastern States Area as defined in the Board's Orders Nos. E–11015, E–11234, E–11346, E–11347, E–11659, E–11660 and E–11672, and explained in Notices to All Parties, dated March 14, 26, April 15, May 28, June 20, 26, July 3, and September 11, 1957.

(2) Are the applicants fit, willing and able to conduct the proposed air transportation and to conform to the provisions of the act and the regulations of the Board thereunder?

For further details regarding this proceeding, interested parties are referred to the Prehearing Conference Report, Orders, Notices and documents on file in the Docket Section of the Civil Aeronautics Board.

Notice is further given that any person not a party of record desiring to be heard in support of or in opposition to questions involved in this consolidated proceeding must file with the Board on or before October 22, 1957, a statement setting forth the matters of fact or law which he desires to advance. Any person filing such a statement may appear at the hearing in accordance with Rule 14 of the Board's rules of practice in economic proceedings.

Dated at Washington, D. C., September 11, 1957.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 57–7700; Filed, Sept. 18, 1957; 8:54 a. m.]

[Docket No. 6093 et al.]

INTRA-ALASKA CASE

NOTICE OF POSTPONEMENT OF ORAL ARGUMENT

Notice is hereby given that at the request of Counsel for the Bureau of Air Operations the oral argument in the above-entitled proceeding now assigned to be held September 24 is being postponed to October 15, 1957, 10 a. m., e. d. s. t., Room 5042, Commerce Building, Constitution Avenue, between 14th and 15th Streets NW., Washington, D. C., before the Board.

Dated at Washington, D. C., September 12, 1957.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 57–7701; Filed, Sept. 18, 1957; 8:54 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 12071; FCC 57M–851]

RADIO HAWAII, INC. (KPOA)

ORDER FOR PRE-HEARING CONFERENCE

In re application of Radio Hawaii, Inc. (KPOA), Honolulu, Hawaii, Docket No. 12071, File No. BP–10786; for construction permit.

A pre-hearing conference in the above-entitled proceeding will be held on Wednesday, September 18, 1957, beginning at 10:00 a. m. in the offices of the Commission, Washington, D. C. This conference is called pursuant to the provisions of section 1.813 of the Commission's rules and the matters to be considered are those specified in that section of the rules.

It is so ordered this the 12th day of September 1957.

Released: September 13, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F. R. Doc. 57–7693; Filed, Sept. 18, 1957; 8:52 a. m.]

[Docket Nos. 10284–10286; FCC 57M–847]

HERBERT MUSCHEL ET AL.

ORDER CONTINUING HEARING

In re applications of Herbert Muschel, New York, N. Y., Docket No. 12084, File No. BPH–2184; Richard W. Brahm, d/b as Independent Broadcasting Co., New York, N. Y., Docket No. 12085, File No. BPH–2192; New Broadcasting Company, Inc., New York, N. Y., Docket No. 12086, File No. BPH–2194; for construction permits.

The Hearing Examiner having under consideration the desirability of changing the date for commencement of hearing;

It appearing that because of problems involved in the current hearing schedule a postponement of the present date of September 17 for commencing the hearing is desirable; and

It further appearing that a conference should be held prior to the exchange of exhibits or taking of evidence;

It is ordered, On the Hearing Examiner's own motion, this 12th day of September 1957, that the hearing now scheduled to commence on September 17 is continued to September 27, 1957, at 10:00 a. m., at which time a hearing conference will be held.

Released: September 13, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F. R. Doc. 57–7694; Filed, Sept. 18, 1957; 8:53 a. m.]

[Docket No. 12132; FCC 57–993]

CLASS B FM BROADCAST STATIONS

AMENDMENT OF REVISED TENTATIVE ALLOCATION PLAN

In the matter of amendment of the revised tentative allocation plan for Class B FM broadcast stations; Docket No. 12132.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 11th day of September 1957;

The Commission having under consideration a proposal to amend the Revised Tentative Allocation Plan for Class B FM Broadcast Stations, and

It appearing that Notice of Proposed Rule Making (FCC 57–880) setting forth the above proposal was issued by the Commission on August 5, 1957 and was duly published in the FEDERAL REGISTER (22 F. R. 6368), which notice provided that interested parties might file statements or briefs with respect to the said proposal on or before September 3, 1957; and

It further appearing that no comments were received either favoring or opposing the proposed amendment; and

It further appearing that the immediate adoption of the proposed amendment would facilitate action on an application (File No. BPH–2246) for a new FM broadcast station in Franklin, North Carolina, to operate on Channel 233; and

It further appearing that authority for the adoption of the proposed amendment is contained in sections 4 (i), 301, 303 (c), (d), (f), and (r), and 307 (b) of the Communications Act of 1934, as amended;

It is ordered, That effective immediately, the Revised Tentative Allocation Plan for Class B FM Broadcast Stations is amended as follows in respect to Franklin, North Carolina:

General area	Channel	
	Delete	Add
Franklin, N. C.	----------	233

Released: September 16, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F. R. Doc. 57–7695; Filed, Sept. 18, 1957; 8:53 a. m.]

[Docket No. 12162; FCC 57–991]

BASIN BROADCASTING CO.

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Basin Broadcasting Company, Durango, Colorado, Docket No. 12162, File No. BP–11051; for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 11th day of September 1957;

The Commission having under consideration the above-captioned application of the Basin Broadcasting Company for a construction permit for a new standard broadcast station to operate on 1490 kilocycles with a power of 250 watts, unlimited time, at Durango, Colorado;

It appearing that the applicant is legally, technically, financially and otherwise qualified, except as may appear from the issues specified below, to operate the proposed station, but that the proposed nighttime interference-free contour would not encompass the city of Durango; that the applicant did not submit data showing the areas and population encompassed within said contour; and that the proposed site may not be satisfactory in that a minimum field intensity of 25 mv/m would not be pro-

vided over the business and factory areas of the city sought to be served; and

It further appearing that, pursuant to section 309 (b) of the Communications Act of 1934, as amended, the subject applicant was advised by letter dated July 17, 1957, of the aforementioned deficiencies and that the Commission was unable to conclude that a grant of the application would be in the public interest; and

It further appearing that the applicant filed a timely reply to the Commission's letter of July 17, 1957, but failed to remedy the noted deficiencies; and

It further appearing that the Commission, after consideration of the above, is of the opinion that a hearing is necessary;

It is ordered, That, pursuant to section 309 (b) of the Communications Act of 1934, as amended, the said application is designated for hearing, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service from the proposed operation and the availability of other primary service to such areas and populations.

2. To determine whether the proposed operation would comply with § 3.188 of the Commission's rules concerning coverage of the city sought to be served; and if compliance with § 3.188 is not achieved, whether circumstances exist which would warrant a waiver of said section of the rules.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether the above-captioned application should be granted.

It is further ordered, That, to avail itself of the opportunity to be heard, the applicant, pursuant to § 1.387 of the Commission's rules, in person or by attorney, shall within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

Released: September 16, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F. R. Doc. 57-7696; Filed, Sept. 18, 1957; 8:53 a. m.]

[Docket No. 12163; FCC 57-992]

CLASS B FM BROADCAST STATIONS; SAN DIEGO, CALIF.

NOTICE OF PROPOSED ALLOCATION AND ORDER TO SHOW CAUSE

In the matter of amendment of the revised tentative allocation plan for Class B FM Broadcast Stations, San Diego, California; Docket No. 12163.

1. In order to remedy an interference problem between Stations KFSD-FM and KPAY,[1] San Diego, California, notice is hereby given of proposed rule making in the above-entitled matter to amend the Commission's Tentative Allocation Plan For Class B FM Broadcast Stations to delete Channel 284 and add Channel 281 at San Diego, California; and Music Unlimited, licensee of Station KPAY, is being ordered to show cause why its license should not be modified to specify operation on Channel 281 in lieu of Channel 284, in the event that the above-referenced rule making proceeding is finalized.

2. In a petition and engineering statement filed on May 6, 1957, KFSD, Inc., licensee of Station KFSD-FM, San Diego, California (Channel 231, 94.1 Mc), contends that KFSD-FM has received objectionable interference from Station KPAY, San Diego, California since KPAY was authorized to operate on Channel 284, 104.7 Mc (1954) and requests that the Commission change its Revised Tentative Allocation Plan For Class B FM Stations to delete Channel 284 and add Channel 281 at San Diego, California and order Music Unlimited, licensee of Station KPAY, to show cause why the license of KPAY should not be modified to specify operation on Channel 231.

3. Station KFSD-FM has been licensed to operate on Channel 231 (94.1 megacycles) since February 23, 1949. A construction permit for Station KPAY was granted on July 7, 1954 for operation on Channel 268. An application to change the assignment of KPAY to Channel 284 was granted on October 6, 1954, and an application to increase the power of KPAY on Channel 284 was granted on November 23, 1954. A license to cover this construction permit was granted on January 25, 1955. On January 16, 1956, KPAY made application for a change in site, increase antenna height above average terrain from 14 to 210 feet, and decrease power from 14 to 13 kw. This application was granted February 28, 1956 and the operation subsequently licensed on September 4, 1956.

4. The Commission's Engineer In Charge, Los Angeles, California, in a report to the Commission dated October 2, 1956, stated that numerous complaints and inquiries had been received from persons in the San Diego, California, area relative to interference between Stations KPAY and KFSD-FM and that an investigation thereof indicated that the interference situation arises from the difference of frequency of 10.6 megacycles, resulting in mixing and detection in the FM receiving sets, many of which have an intermediate frequency of 10.7 megacycles.

5. In a letter dated October 18, 1956, and addressed jointly to the licensees of Stations KFSD-FM and KPAY, the Commission stated that apparently the only solution to the problem is for one of the two stations to change frequency. Listed in said letter were other frequencies then allocated to but unassigned in San Diego. Comments were requested from KFSD-FM and KPAY.

6. Both licensees acknowledged receipt of the Commission's letter and advised that the matter had been referred to their respective engineering consultants. Nothing further has been received from the licensee of Station KPAY. KFSD-FM, on May 6, 1957, filed the above-described petition requesting the Commission to issue an order requiring KPAY to show cause why its channel assignment should not be changed to Channel 281.

7. In support of its petition, KFSD-FM states that it has operated continuously since 1949 on Channel 231, 94.1 Mc; that a construction permit for operation on Channel 268 (101.5 mc) was issued to KPAY in July 1954; that KPAY began operation pursuant to a special temporary authorization; that KPAY was granted a change to Channel 284 (104.7 Mc) in October 1954; that "beat" interference to KFSD-FM has resulted since that time; that even greater mutual interference resulted after KPAY increased its antenna height in 1956; that "the present conditions are intolerable because the public of the San Diego area is being unnecessarily deprived of effective FM service from one of the established stations in the area"; that "KFSD-FM was broadcasting over its facilities for over five years before KPAY"; that "KPAY has indicated that it is unwilling to change its frequency voluntarily and, in fact, insists that KFSD should incur that hardship"; that "this would be manifestly unfair to KFSD, who not only would incur more substantial costs in changing its equipment than KPAY, but would also be compelled to change to Channel 300 at the top of the FM band in order to insure itself against further interference; that operation by KFSD-FM or KPAY on any of the other frequencies presently available in San Diego would not be satisfactory; and that "KFSD had its license first, and based all of its planning and broadcast policies on the premise that it would be protected by the Commission from unfair and unjust interference."

8. Channels 223, 243 and 300 are allocated to and unassigned in San Diego, California. Based on the chart of Ground Wave Signal Range for FM Broadcasting, maximum limitations on the channels now assigned or available in San Diego appear to be approximately as hereinafter indicated. Operating on its presently assigned Channel 231, KFSD-FM is limited to its 130 uv/m contour by Station KPOL-FM, Los Angeles, California. If KFSD-FM were to operate on Channel 223, it would receive objectionable interference to its 1500 uv/m contour from KFAC-FM, Los Angeles, California; on Channel 243, KFSD-FM would be limited to its 210 uv/m contour by KRKD-FM, Los Angeles; and, on Channel 300, KFSD-FM would not be limited within its 50 uv/m contour. Station KPAY is not limited within its 50 uv/m contour on its presently assigned Channel 284. If KPAY were to operate on Channel 223, it would experience objectionable interference to its 1200 uv/m contour from KFAC-FM; on Channel 243, it would be limited to its 170 uv/m contour from KRKD-FM; and on Channel 300 it would not be limited within its 50 uv/m contour. However, Channel 300 is not a desirable channel because many receivers do not function well thereon. Channels 281 or 283 could be made available for San Diego. If KPAY were to

[1] Call letters were changed to KPAY from KSON-FM on July 26, 1957.

operate on either of these two channels, it would not be limited within the 50 uv/m contour. However, operation of KPAY on Channel 281 appears to be more desirable than operation on Channel 283 because of "beat frequency" considerations. According to KFSD's engineering report, the beat frequency interference now obtaining between KFSD–FM and KPAY would be completely eliminated if KPAY were to operate on Channel 281, but such may not be the case if KPAY were to operate on Channel 283.

9. In view of the foregoing, we are of the opinion that the public interest requires remedial action with respect to the conflict which presently obtains between KFSD–FM and KPAY. It appears that the only practical solution to the problem is for one of the two stations to operate on a different channel which would not include a 10.7 megacycle beat factor with the other. While a certain amount of expense and inconvenience to either KFSD–FM or KPAY would result from being required to change channels, we believe the equities here involved are in favor of KFSD–FM since KFSD–FM commenced operation in San Diego some 5 years before KPAY. For the reasons set forth in paragraph 8, supra, we believe that none of the channels presently available for assignment in San Diego would provide as satisfactory a service to the San Diego area as would Channel 281. Accordingly, we believe Channel 284 should be deleted and Channel 281 added at San Diego and, if such proposal should be finalized, KPAY should be required to change to Channel 281.

10. We are directing Music Unlimited to show cause why its authorization for Station KPAY should not be modified to specify operation on Channel 281 in lieu of Channel 284.

11. Pursuant to Section 316 of the Communications Act of 1934, as amended, Music Unlimited, is hereby notified of our proposed modification of its authorization to operate Station KPAY on Channel 281 in lieu of Channel 284, and the grounds and reasons therefor, and is directed to show cause why such order of modification should not issue by filing with the Commission at its offices in Washington, D. C., on or before October 10, 1957, a response stating in detail the reasons why it believes that its authorization should not be so modified.

12. Authority for the adoption of the amendment herein is contained in sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h) and (r), 307 (b) and 316 of the Communications Act of 1934, as amended.

13. Any interested party who is of the view that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before October 10, 1957, a written statement setting forth his comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

14. Responses to the show cause order issued herein should be filed on or before October 10, 1957.

15. In accordance with the provisions of § 1.764 of the Commission's rules and regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished to the Commission.

16. In view of the foregoing: *It is ordered*, That KFSD–FM's above-referenced petition is granted, and that, pursuant to sections 303 (f) and 316 of the Communications Act of 1934, as amended: Music Unlimited, is ordered to show cause why its license for Station KPAY on Channel 284 in San Diego, California should not be modified to specify operation on Channel 281.

Adopted: September 11, 1957.

Released: September 16, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F. R. Doc. 57–7697; Filed, Sept. 18, 1957; 8:53 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G–6180]

SUPERIOR OIL CO.

NOTICE OF HEARING

SEPTEMBER 13, 1957.

The Superior Oil Company (Applicant), a California corporation, with principal place of business at 550 South Flower Street, Los Angeles, California, filed on November 29, 1954, as amended May 14, August 3 and September 26, 1956, an application for a certificate of public convenience and necessity, pursuant to section 7 (c) of the Natural Gas Act (act), authorizing Applicant to sell and continue the sale of natural gas in interstate commerce from and adjacent to the Canyon Largo Unit, Rio Arriba County, New Mexico, to El Paso Natural Gas Company (El Paso) for resale. Subsequently, Applicant filed on March 4, as amended May 6, 1957, pursuant to section 7 (b) of the act, an application for permission to abandon the aforesaid sale of natural gas to El Paso from the Canyon Largo Unit only.

Notice of the filing of the aforesaid applications was issued on July 31, 1957, and published in the FEDERAL REGISTER on August 6, 1957 (22 F. R. 6281–82). This notice fixed August 19, 1957, as the last day for filing protests or petitions to intervene in this proceeding.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a formal hearing will be held on October 2, 1957, at 10:00 a. m., e. d. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications.

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57–7669; Filed, Sept. 18, 1957; 8:48 a. m.]

[Docket No. G–12409]

TOWN OF NEW HARMONY, INDIANA

NOTICE OF APPLICATION

SEPTEMBER 13, 1957.

Take notice that on April 12, 1957, the Town of New Harmony, Indiana, (Applicant), a municipal corporation, organized under the laws of the State of Indiana, filed its application and supplements thereto on August 2 and August 5, 1957 for an order, pursuant to section 7 (a) of the Natural Gas Act, directing Texas Eastern Transmission Corporation (Texas Eastern) to establish physical connection of its transportation facilities with the proposed facilities of Applicant and to sell and deliver to Applicant sufficient natural gas for distribution and resale to the public in New Harmony, Indiana, and environs, all as more fully described in the application, which is on file with the Commission and open for public inspection.

Applicant proposes to make interconnection with the pipeline facilities of Texas Eastern at a point approximately 2 miles northwest of New Harmony. From this point to the city limits, Applicant proposes to construct a 3½ inch transmission line.

The total estimated construction cost of Applicant's proposed natural gas system is $138,000. Applicant proposes to finance the proposed facilities by the issuance of revenue bonds, in the amount of $153,000 and bearing interest at 5 percent.

The estimated annual natural gas requirements and peak day requirements in Mcf at 14.73 psia, for Applicant's proposed system are as follows:

Year	Annual Mcf	Peak day demand Mcf
1	37,716	406
2	53,800	604
3	62,727	723
4	69,793	784
5	72,008	810

Texas Eastern timely filed on April 25, 1957, pursuant to § 1.9 (a) of the Commission's rules of practice and procedure, an answer to the application of the Town of New Harmony, which stated that Applicant's estimated third year peak day requirements of 723 Mcf (709 Mcf, at 15.025 psia) amounted to approximately 0.042 percent of its then authorized long term firm sales; that it then had pending two applications, Docket Nos. G–12227 and G–12446, requesting authorization to construct and operate additional facilities to increase its system capacity; that with its new facilities and with the utilization of its Oakford Storage Field facilities, Texas Eastern will be able to deliver the volumes requested by Applicant; and that Texas Eastern did not object to Applicant's proposal if the Commission determined that the proposed project was economically feasible and in the public interest.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take notice that protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before October 3, 1957.

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-7670; Filed, Sept. 18, 1957; 8:48 a. m.]

[Docket No. G-13259]

NEVADA NATURAL GAS PIPE LINE CO.

ORDER PROVIDING FOR HEARING AND SUSPENDING PROPOSED REVISED TARIFF SHEET

SEPTEMBER 13, 1957.

Nevada Natural Gas Pipe Line Co. (Nevada Natural), on August 14, 1957, tendered for filing First Revised Sheet No. 4 to its FPC Gas Tariff, Original Volume No. 1, proposing an increase in rates and charges from 42.5 cents per Mcf to 50.5 cents per Mcf in its firm service Rate Schedule G-1, amounting to $172,580, or 18.8 percent annually, based on sales for the year ended June 30, 1957, as adjusted. The increased rate is intended to become effective on September 14, 1957.

The proposed increase is stated to be based on (1) increased purchased gas costs reflecting rate increases of its supplier, El Paso Natural Gas Company (El Paso), including a proposed increase which was suspended until January 1, 1958, by Commisison order issued in Docket No. G-12948; (2) increased operating expenses; and (3) a rate of return of 6.9 percent.

Nevada Natural requests that if the proposed increase is suspended, the suspension period end on January 1, 1958, concurrently with that of El Paso.

A substantial portion of the proposed increase is sought to be justified by reliance on items other than the El Paso rate increase. Nevada Natural has not fully supported other aspects of its proposed increased rates and charges, including its rate base and computation of working capital, rate of return, and allocation of costs. In the circumstances, the shortening of the suspension period as requested by Nevada Natural does not appear to be warranted.

The increased rates and charges proposed in said revised sheet, as tendered on August 14, 1957, have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission enter upon a hearing concerning the lawfulness of the rates, charges, classifications, and services contained in Nevada Natural's FPC Gas Tariff, Original Volume No. 1, as proposed to be changed by the revised tariff sheet tendered on August 14, 1957; and that the aforesaid First Revised Sheet No. 4 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the rates, charges, classifications, and services contained in Nevada Natural's FPC Gas Tariff, Original Volume No. 1, as proposed to be changed by the aforesaid revised sheet tendered for filing on August 14, 1957.

(B) Pending such hearing and decision thereon, Nevada Natural's proposed First Revised Sheet No. 4 to its FPC Gas Tariff, Original Volume No. 1, is hereby suspended and the use thereof deferred until February 14, 1958, and until such further time as it may be made effective in the manner prescribed by the Natural Gas Act.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-7671; Filed, Sept. 18, 1957; 8:48 a. m.]

[Docket No. G-13260]

C. N. HOUSH, ET AL.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

SEPTEMBER 13, 1957.

C. N. Housh, et al. (Housh), on August 16, 1957, tendered for filing a proposed change in his presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, undated.
Purchaser: Texas Illinois Natural Gas Pipeline Company.
Rate schedule designation: Supplement No. 8 to Housh's FPC Gas Rate Schedule No. 1.
Effective date:[1] September 16, 1957.

A prior proposed periodic increase of Housh to 15.74976 cents per Mcf was suspended by the Commission in Docket No. G-11112 until February 6, 1957. Housh has made no motion to place this suspended rate in effect and has given no reason for his failure to do so. Consequently, the prior rate of 15.54784 cents per Mcf is the effective rate since this rate, although suspended by the Commission in Docket No. G-9383, was made effective subject to refund by order issued September 21, 1956.

In support of the proposed increased rate, Housh states that the increase is more than justified by increased costs, but failed to furnish any supporting data. The proposed rate would be the highest increased rate for a sale to any pipeline purchaser in the area.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until February 16, 1958, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.[1]

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-7672; Filed, Sept. 18, 1957; 8:48 a. m.]

[1] The stated effective date is the first day after expiration of the required thirty days' notice, or the effective date proposed by Housh, if later.

[1] Commissioner Digby dissenting.

GENERAL SERVICES ADMINISTRATION

[Delegation of Authority No. 199, Rev.]

DIRECTOR OF CENTRAL INTELLIGENCE AGENCY

DELEGATION OF AUTHORITY TO APPOINT SPECIAL POLICEMEN

1. Pursuant to authority vested in me by the provisions of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377), authority is hereby delegated to the Director, Central Intelligence Agency to appoint not to exceed twenty special policemen, under section 9 of the act of May 27, 1924 as amended (D. C. Code 4-208) to police buildings and grounds occupied in the District of Columbia by the Agency, such authority to be exercised only to protect Agency employees,

property, and classified documents and material, or in the event of fire or enemy attack.

2. This authority shall be exercised strictly in accordance with the "Authority of Special Police" set forth below and any other standards, procedures or regulations hereafter prescribed by the General Services Administration.

3. There shall be submitted to the General Services Administration an annual report at the close of each fiscal year summarizing operations under this delegation of authority. The report shall be in the form prescribed by the General Services Administration for the purpose.

4. The Director, Central Intelligence Agency may redelegate this authority to the Chief, Physical Security Branch.

5. This delegation shall be effective as of the date hereof. The prior delegation to the Director, Central Intelligence Agency on the same subject dated May 12, 1954 (19 F. R. 2833) is hereby rescinded.

FRANKLIN G. FLOETE,
Administrator.

SEPTEMBER 12, 1957.

AUTHORITY OF SPECIAL POLICE

Special police. The Administrator of General Services and duly authorized officials of the General Services Administration are authorized by law to appoint special policemen. Pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 USC 471) the Administrator may delegate that authority to the heads of Federal agencies when so requested by such agencies. The Act of May 27, 1924 as amended (D. C. Code 4–208), and the Act of June 1, 1948, as amended (40 USC 319) the pertinent provisions of which are set forth hereunder, specify the degree of police power conferred and the scope of activity of such special police.

1. *Act of May 27, 1924.* Under this enactment and subsequent transfers of functions and authorities, the Administrator of General Services is authorized to appoint special policemen, without compensation, to police reservations under his jurisdiction in the District of Columbia. These special policemen have the same powers and perform the same duties as the United States Park Police and the Metropolitan Police Force of the District of Columbia, but such powers are restricted to reservations within the District of Columbia and under the control of the Administrator of General Services.

2. *Act of June 1, 1948.* Under this enactment, the Administrator of General Services is authorized to appoint uniformed guards as special policemen, without additional compensation, for duty in connection with the policing of public buildings and other areas under the jurisdiction of the General Services Administration. These special policemen have the same powers as sheriffs and constables, upon such Federal property, to enforce the laws enacted for the protection of persons and property, to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce rules and regulations made and promulgated by the Administrator or other duly authorized officials. The jurisdiction and police powers of these special policemen are restricted to Federal property over which the United States has acquired exclusive or concurrent criminal jurisdiction.

Definitions. 1. Exclusive Federal Criminal Jurisdiction exists when the Federal Government has the exclusive right to enforce the criminal laws in effect in a location or area, ordinarily one which is owned by the United States. Such jurisdiction is obtained through legislation by the State in which the property is located, or in the enabling act governing the admission of the State. Where such jurisdiction exists the State and local authorities have no responsibility for criminal law enforcement, which rests entirely upon the Federal Government.

2. Concurrent Federal Criminal Jurisdiction exists when the Federal Government and the State in which the property is located both enforce criminal laws in a location or area. The State jurisdiction usually results from the reservation by the State of the right concurrently to exercise the same or part of the same powers as are vested in the Federal Government.

Local procedures. When properties over which the Federal Government has exclusive or concurrent criminal jurisdiction are guarded by special police every effort must be made to obtain the co-operation of local and Federal law enforcement agencies, as well as other protection organizations in the vicinity. Mutual assistance agreements should be entered into with these agencies in order to cope with large scale disorders, the handling and prosecution of Federal prisoners, fire fighting, and any other mission of the special police which might require more manpower, equipment, or facilities than are at their immediate disposal. Special policemen must be thoroughly instructed in the type of jurisdiction applicable to each facility in which they operate, their authorities under such jurisdiction, and the procedures which they should follow.

[F. R. Doc. 57–7678; Filed, Sept. 18, 1957; 8:50 a. m.]

[Delegation of Authority No. 155, Rev.]

SECRETARY OF COMMERCE

DELEGATION OF AUTHORITY TO ESTABLISH SPECIAL POLICE FORCE FOR PROTECTION OF MARITIME ADMINISTRATION INSTALLATIONS

1. Pursuant to authority vested in me by provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, authority is hereby delegated to the Secretary of Commerce to appoint uniformed guards as special policemen with such powers as are conferred in the Act of June 1, 1948 (62 Stat. 281) for duty in connection with the protection of Maritime Administration installations.

2. This authority shall be exercised strictly in accordance with the "Authority of Special Police" set forth below and any other standards, procedures or regulations hereafter prescribed by the General Services Administration.

3. There shall be submitted to the General Services Administration an annual report at the close of each fiscal year summarizing operations under this delegation of authority. The report shall be in the form prescribed by the General Services Administration for the purpose.

4. This authority may be redelegated to such officials of the Maritime Administration as the Secretary of Commerce may deem necessary.

5. This delegation shall be effective as of the date hereof and supersedes the prior delegation to the Secretary of Commerce on the same subject dated January 19, 1953 (18 F. R. 526).

FRANKLIN G. FLOETE,
Administrator.

SEPTEMBER 12, 1957.

AUTHORITY OF SPECIAL POLICE

Special police. The Administrator of General Services and duly authorized officials of the General Services Administration are authorized by law to appoint special policemen. Pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 USC 471) the Administrator may delegate that authority to the heads of Federal agencies when so requested by such agencies. The Act of May 27, 1924 as amended (D. C. Code 4–208), and the Act of June 1, 1948, as amended (40 USC 319) the pertinent provisions of which are set forth hereunder, specify the degree of police power conferred and the scope of activity of such special police.

1. *Act of May 27, 1924.* Under this enactment and subsequent transfers of functions and authorities, the Administrator of General Services is authorized to appoint special policemen, without compensation, to police reservations under his jurisdiction in the District of Columbia. These special policemen have the same powers and perform the same duties as the United States Park Police and the Metropolitan Police Force of the District of Columbia, but such powers are restricted to reservations within the District of Columbia and under the control of the Administrator of General Services.

2. *Act of June 1, 1948.* Under this enactment, the Administrator of General Services is authorized to appoint uniformed guards as special policemen, without additional compensation, for duty in connection with the policing of public buildings and other areas under the jurisdiction of the General Services Administration. These special policemen have the same powers as sheriffs and constables, upon such Federal property, to enforce the laws enacted for the protection of persons and property, to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce rules and regulations made and promulgated by the Administrator or other duly authorized officials. The jurisdiction and police powers of these special policemen are restricted to Federal property over which the United States has acquired exclusive or concurrent criminal jurisdiction.

Definitions. 1. Exclusive Federal Criminal Jurisdiction exists when the Federal Government has the exclusive right to enforce the criminal laws in effect in a location or area, ordinarily one which is owned by the United States. Such jurisdiction is obtained through legislation by the State in which the property is located, or in the enabling act governing the admission of the State. Where such jurisdiction exists the State and local authorities have no responsibility for criminal law enforcement, which rests entirely upon the Federal Government.

2. Concurrent Federal Criminal Jurisdiction exists when the Federal Government and the State in which the property is located both enforce criminal laws in a location or area. The State jurisdiction usually results from the reservation by the State of the right concurrently to exercise the same or part of the same powers as are vested in the Federal Government.

Local procedures. When properties over which the Federal Government has exclusive or concurrent criminal jurisdiction are guarded by special police every effort must be made to obtain the cooperation of local and Federal law enforcement agencies, as well as other protection organizations in the vicinity. Mutual assistance agreements should be entered into with these agencies in order to cope with large scale disorders, the handling and prosecution of Federal prisoners, fire fighting, and any other mission of the special police which might require more manpower, equipment, or facilities than area at their immediate disposal. Special

policemen must be thoroughly instructed in the type of jurisdiction applicable to each facility in which they operate, their authorities under such jurisdiction, and the procedures which they should follow.

[F. R. Doc. 57-7679; Filed, Sept. 18, 1957; 8:50 a. m.]

[Delegation of Authority No. 247, Rev.]

SECRETARY OF THE INTERIOR

DELEGATION OF AUTHORITY TO APPOINT SPECIAL POLICEMEN FOR PROTECTION OF ELECTRO DEVELOPMENT LABORATORY, ALBANY, OREGON

1. Pursuant to authority vested in me by provisions of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377), authority is hereby delegated to the Secretary of the Interior to appoint uniformed guards as special policemen with such powers as are conferred in the Act of June 1, 1948, (62 Stat. 281) for duty in connection with the protection of the Electro Development Laboratory, Albany, Oregon.

2. This authority shall be exercised strictly in accordance with the "Authority of Special Police" set forth below and any other standards, procedures or regulations hereafter prescribed by the General Services Administration.

3. There shall be submitted to the General Services Administration an annual report at the close of each fiscal year summarizing operations under this delegation of authority. The report shall be in the form prescribed by the General Services Administration for the purpose.

4. This authority may be redelegated to such officials of the Department of the Interior as the Secretary of the Interior may deem necessary.

5. This delegation shall be effective as of the date hereof. The prior delegation to the Secretary of the Interior on the same subject dated June 27, 1955, (20 F. R. 4695) is hereby rescinded.

FRANKLIN G. FLOETE,
Administrator.

SEPTEMBER 12, 1957.

AUTHORITY OF SPECIAL POLICE

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1. *Act of May 27, 1924.* Under this enactment and subsequent transfers of functions and authorities, the Administrator of General Services is authorized to appoint special policemen, without compensation, to police reservations under his jurisdiction in the District of Columbia. These special policemen have the same powers and perform the same duties as the United States Park Police and the Metropolitan Police Force of the District of Columbia, but such powers are restricted to reservations within the District of Columbia and under the control of the Administrator of General Services.

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[F. R. Doc. 57-7680; Filed, Sept. 18, 1957; 8:50 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-340]

INTERMOUNTAIN PETROLEUM, INC.

ORDER AND NOTICE OF HEARING

SEPTEMBER 12, 1957.

In the matter of Intermountain Petroleum, Inc., (Formerly MAGNOLIA URANIUM & OIL COMPANY), File No. 1-340.

I. Intermountain Petroleum, Inc. (hereinafter called "registrant"), a corporation organized and incorporated under the laws of the State of Utah, filed an application for registration of its common stock, ten cent par value, with the Salt Lake Stock Exchange ("the Exchange") on October 19, 1950 on Form 8-A, pursuant to section 12 of the Securities Exchange Act of 1934 ("the 1934 Act") and the rules and regulations adopted by the Commission thereunder and filed a duplicate original Form 8-A with the Commission on October 23, 1950. The registration became effective November 22, 1950.

II. The Commission has reason to believe that the registrant has failed to comply with the provisions of section 13 of the 1934 Act in the following regards:

1. Registrant, in its current report filed September 19, 1955 with the Commission, on Form 8-K for the month of August, 1955, falsely claimed an exemption from the registration requirements of the Securities Act of 1933 for the issuance of 1,400,000 shares of its stock in exchange for certain leases held by General Oil & Uranium, Inc., and Powder River Lease & Minerals Co. This report was not filed within the time provided by Commission Rule X-13A-11 under the 1934 act.

2. On March 20, 1957 the registrant delinquently filed a current report on Form 8-K for the month of April 1956. Registrant falsely stated in said report that 274,500 shares of its stock were issued for leases acquired from General Oil & Uranium, Inc. and Powder River Lease & Minerals Co. when in fact these shares were issued to another company. Moreover, the registrant failed to furnish all of the information required by Item 2 of Form 8-K and falsely claimed an exemption from the registration requirements of the Securities Act of 1933 for the issuance of these shares.

3. Registrant has failed to file a current report on Form 8-K with the Commission reflecting the acquisition of all of the assets of Aztec Uranium Company in exchange for approximately 274,500 shares of stock of the registrant in or about April 1956, as required by Item 2 of Form 8-K.

4. On March 20, 1957, the registrant delinquently filed its current report on Form 8-K for the month of May 1956. This report discloses certain transactions with officers and directors involving the sales of approximately 60 uranium mining claims to the registrant in exchange for securities, and the issuance of additional securities by the registrant to its officers and directors for cash. Said report appears to be false and misleading concerning the exemption from registration claimed under the Securities Act of 1933 and the valuation of uranium mining claims involved.

III. *It is ordered,* That a public hearing pursuant to section 19 (a) (2) of the 1934 Act, be held at 10:00 a. m., m. s. t., October 21, 1957, at the offices of the Salt Lake City Branch Office of the Commission, 301 Boston Building, Salt Lake City, Utah, to determine whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months, or to withdraw, the registration of the common stock of registrant on the Salt Lake Stock Exchange for failure to comply with section 13 of the act and the rules and regulations adopted there-

under, as set forth in paragraph II above.

It is further ordered, That Robert N. Hislop is hereby designated and assigned as Hearing Officer in this proceeding and is authorized to exercise the powers and perform the duties specified in the rules of practice of the Commission and any other duties which he may be authorized to perform in accordance with law.

Notice of such hearing is hereby given to registrant, the Salt Lake Stock Exchange, and to any other person or persons whose participation in such proceeding may be necessary or appropriate in the public interest or for the protection of investors. Any such further persons desiring to be heard in such proceeding should file with the Hearing Officer or the Secretary of the Commision on or before October 17, 1957 his application therefor as provided by the rules of practice of the Commission, setting forth therein any of the above matters or issues of fact or law upon which he desires to be heard and any additional issues he deems raised by the aforesaid order.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F. R. Doc. 57-7675; Filed, Sept. 18, 1957; 8:49 a. m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 166]

WISCONSIN

DECLARATION OF DISASTER AREA

Whereas, it has been reported that during the month of September 1957, because of the effects of certain disasters, damage resulted to residences and business property located in certain areas in the State of Wisconsin;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

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, as amended;

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) (1) of the Small Business Act of 1953, as amended, may be received and considered by the Office below indicated from persons or firms whose property situated in the following County (including any areas adjacent to said County) suffered damage or other destruction as a result of the catastrophe hereinafter referred to:

County: Polk (flood beginning on or about Sept. 1, 1957).

Office: Small Business Administration Regional Office, 301 Metropolitan Building, Second Avenue and Third Street, Minneapolis 1, Minn.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to March 31, 1958.

Dated: September 4, 1957.

WENDELL B. BARNES, *Administrator.*

[F. R. Doc. 57-7676; Filed, Sept. 18, 1957; 8:49 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

SEPTEMBER 16, 1957.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 34160: *Wrought pipe—Baton Rouge, La., to Arkansas and Missouri.* Filed by F. C. Kratzmeir, Agent, (SWFB No. B-7113), for interested rail carriers. Rates on wrought iron or steel pipe, carloads, as described in the application from Baton Rouge, La., to points in Arkansas and Missouri described in the application.

Grounds for relief: Short-line distance formula and grouping.

Tariff: Supplement 121 to Agent Kratzmeir's tariff I. C. C. 4116.

FSA No. 34161: *Substituted service—Motor and rail, Pennsylvania Railroad.* Filed by Household Goods Carriers' Bureau, Agent, (No. 13), for The Pennsylvania Railroad Company and interested motor carriers. Rates on property loaded in highway trailers and transported on railroad flat cars in substituted service by The Pennsylvania Railroad Company between Chicago and East St. Louis, Ill., on the one hand, and Harrisburg, Pa., on the other, also between Cincinnati, Cleveland, Ohio, and Indianapolis, Ind., on the one hand, and Harrisburg, Pa., and Kearny, N. J., on the other, and also between Indianapolis, Ind., and Pittsburgh, Pa.

Grounds for relief: Motor truck competition.

Tariff: Supplement 5 to Household Goods Carriers' Bureau, Agent, tariff MF-I. C. C. No. 76.

FSA No. 34162: *Crude rubber—Dowling, Tex., to Louisiana and Oklahoma points.* Filed by F. C. Kratzmeir, Agent (SWFB No. B-7111), for interested rail carriers. Rates on crude rubber, namely, artificial, synthetic, or neoprene, carloads from Dowling, Tex., to specified points in Louisiana and Oklahoma.

Grounds for relief: Short-line distance formula.

Tariffs: Supplement 120 to Agent Kratzmeir's tariff I. C. C. 4161. Supplement 130 to Agent Kratzmeir's tariff I. C. C. 4025.

FSA No. 34163: *Substituted service—Motor and rail, N. Y., N. H. & H. R. R.* Filed by The New York, New Haven and Hartford Railroad Company, for itself (No. 198), and interested motor carriers. Rates on property loaded in semi-trailers, and empty trailers, transported in substituted service on railroad flat cars between Worcester, Mass., on the one hand, and Harlem River, N. Y., on the other.

Grounds for relief: Motor-truck competition.

FSA No. 34164: *Substituted service—Motor and rail, N. Y., N. H. & H. R. R.* Filed by the New York, New Haven and Hartford Railroad Company, for itself, (197) and interested motor carriers. Rates on property, loaded in semi-trailers, and empty trailers, transported on railroad flat cars, in substituted service, by the New Haven line between, Worcester, Mass., on the one hand, and Harlem River, N. Y., on the other.

Grounds for relief: Motor-truck competition.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F. R. Doc. 57-7674; Filed, Sept. 18, 1957; 8:49 a. m.]