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TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

DEPARTMENT OF STATE

Effective upon publication in the FEDERAL REGISTER, paragraph (e) (4) of § 6.302 is revoked.

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

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

[F. R. Doc. 57-9491; Filed, Nov. 15, 1957; 8:50 a. m.]

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

FEDERAL CIVIL DEFENSE ADMINISTRATION

Effective upon publication in the FEDERAL REGISTER, paragraph (o) is added to § 6.323 as set out below.

§ 6.323 *Federal Civil Defense Administration.* * * *

(o) One Receptionist.

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

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

[F. R. Doc. 57-9492; Filed, Nov. 15, 1957; 8:51 a. m.]

TITLE 7—AGRICULTURE

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

[Navel Orange Reg. 122]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

LIMITATION OF HANDLING

§ 914.422 *Navel Orange Regulation 122*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) 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 section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The Committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require

(Continued on p. 9131)

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FEDERAL REGISTER

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Order from Superintendent of Documents, Government Printing Office, Washington 25, D. C.

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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.

any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on November 14, 1957.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a. m., P. s. t., November 17, 1957, and ending at 12:01 a. m., P. s. t., November 24, 1957, are hereby fixed as follows:

(i) District 1: 508,200 cartons;

(ii) District 2: Unlimited movement;

(iii) District 3: 69,300 cartons;

(iv) District 4: 46,200 cartons.

(2) All navel oranges handled during the period specified in this section are subject also to all applicable size restrictions which are in effect pursuant to this part during such period.

(3) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Sec. 5, 49 Stat. 853, as amended; 7 U. S. C. 608c)

Dated: November 15, 1957.

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

[F. R. Doc. 57-9594; Filed, Nov. 15, 1957; 11:37 a. m.]

[Tangerine Reg. 194]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.870 *Tangerine Regulation 194*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, 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 recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of Florida tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) 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 section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangerines, grown in the State of Florida, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 12, 1957, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangerines, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade and standard pack, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Tangerines (§§ 51.1810 to 51.1836 of this title).

(2) During the period beginning at 12:01 a. m., e. s. t., November 18, 1957, and ending at 12:01 a. m., e. s. t., December 2, 1957, no handler shall ship:

(i) Any tangerines, grown in the State of Florida, that do not grade at least U. S. No. 1; or

(ii) Any tangerines, grown in the State of Florida, that are of a size smaller than the size that will pack 176 tangerines, packed in accordance with the requirements of a standard pack, in a half-standard box (inside dimensions 9½ x 9½ x 19⅛ inches; capacity 1,726 cubic inches).

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

Dated: November 14, 1957.

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

[F. R. Doc. 57-9540; Filed, Nov. 15, 1957; 9:07 a. m.]

[Grapefruit Reg. 274]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.871 *Grapefruit Regulation 274*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, 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 recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of all Florida grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) 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 section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of all grapefruit, grown in the State of Florida, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 12, 1957, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of all grapefruit, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Grapefruit (§§ 51.750 to 51.790 of this title); and the term "mature" shall have the same meaning

as set forth in section 601.16 Florida Statutes, chapters 26492 and 28090, known as the Florida Citrus Code of 1949, as supplemented by section 601.17 (chapters 25149 and 28090) and also by section 601.18, as amended June 2, 1955 (chapter 29760).

(2) During the period beginning at 12:01 a. m., e. s. t., November 18, 1957, and ending at 12:01 a. m., e. s. t., December 2, 1957, no handler shall ship:

(i) Any grapefruit, grown in the State of Florida, which are not mature and do not grade at least U. S. No. 1 Bronze;

(ii) Any seeded grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 70 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box; or

(iii) Any seedless grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 96 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box.

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

Dated: November 14, 1957.

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

[F. R. Doc. 57-9539; Filed, Nov. 15, 1957; 9:07 a. m.]

[Orange Reg. 327]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.872 *Orange Regulation 327*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, 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 recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of all Florida oranges, including Temple oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) 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 section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of all oranges, including Temple oranges, grown in the State of Florida, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 12, 1957, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of all oranges, including Temple oranges, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the amended United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title; 22 F. R. 6676).

(2) During the period beginning at 12:01 a. m., e. s. t., November 18, 1957, and ending at 12:01 a. m., e. s. t., December 2, 1957, no handler shall ship:

(i) Any oranges, except Temple oranges, grown in the State of Florida, which do not grade at least U. S. No. 1 Bronze;

(ii) Any oranges, except Temple oranges, grown in the State of Florida, which are of a size smaller than 2$^{8}/_{16}$ inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the amended United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title; 22 F. R. 6676): *Provided,* That in determining the percentage of oranges in any lot which are smaller than 2$^{8}/_{16}$ inches in diameter, such percentage shall be based only on those oranges in such lot which are of a size 2$^{1}/_{16}$ inches in diameter and smaller;

(iii) Any Temple oranges, grown in the State of Florida, which do not grade at least U. S. No. 1; or

(iv) Any Temple oranges, grown in the State of Florida, which are of a size smaller than 3$^{3}/_{16}$ inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of Temple oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140–51.1186 of this title; 22 F. R. 6676).

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

Dated: November 14, 1957.

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

[F. R. Doc. 57-9541; Filed, Nov. 15, 1957; 9:07 a. m.]

PART 945—TOMATOES GROWN IN FLORIDA

EXEMPTION PROCEDURES

Notice of rule making regarding a proposed revision of the current Exemption Procedures (§§ 945.130 through 945.135), to be effective under Marketing Agreement No. 125 and Order No. 45 (7 CFR Part 945), regulating the handling of tomatoes grown in Florida, was published in the FEDERAL REGISTER October 10, 1957 (22 F. R. 8067). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, which were recommended by the Florida Tomato Committee (established pursuant to the aforesaid marketing agreement and order), the Exemption Procedures (§§ 945.130 through 945.135), are hereby revised to read as follows:

Sec.
945.130 Application.
945.131 Investigations.
945.132 Issuance.
945.133 Disposition of certificates.
945.134 Reports.
945.135 Appeals.

AUTHORITY: §§ 945.130 to 945.135 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 945.130 *Application.* Any person applying for exemption from regulations issued pursuant to § 945.52 shall file such application with the committee, or its duly authorized agent for such purpose, on forms to be furnished by such committee. Each application shall state the name and address of the applicant, the grade, size, and quality regulations from which exemption is requested; and facts demonstrating that the tomatoes, for which exemption is requested, were adversely affected by acts beyond his control or by acts beyond the applicant's reasonable ex-

pectation. Applications shall set forth such additional information as the committee may find necessary in making determinations with respect thereto, including, without limitation thereto, the information required on producers' applications by paragraphs (a) and (b) of this section.

(a) The location and acreage of the farm on which tomatoes for which exemption is requested, the location where such tomatoes are to be prepared for market, and the loading point from which such tomatoes are to be shipped if exemption is granted;

(b) Quantity (by grade, size, quality, and variety) of tomatoes harvested during the current season or any specific portion thereof prior to the date of application and to be harvested, subsequent to such date, during the remainder of the current season or any specific portion thereof (as may be determined pursuant to this part); an estimate of the portion of such tomatoes which can be handled under regulation issued pursuant to § 945.52, during the remainder of the season; and the reasons why all of such tomatoes cannot be handled under such regulations.

§ 945.131 *Investigations.* The committee may authorize investigations of applications by its employees, and such other persons as may be necessary to procure adequate information to pass upon the merits of such applications.

§ 945.132 *Issuance.* (a) The committee, or its duly authorized agents, shall give prompt consideration to all statements and facts relating to each application for exemption, and, pursuant to applicable provisions of this part, a determination shall be made as to whether or not the application is approved. The determination, if approving the application, shall be evidenced by the issuance of a certificate of exemption pursuant to § 945.71: *Provided,* That a separate certificate may be issued, at the request of an applicant, for each affected field.

(b) The applicant shall be notified in writing if his request for exemption is denied.

(c) Each exemption certificate issued pursuant to this subpart shall be on a form duly approved by the committee and signed by an authorized representative of such committee. At least one copy of each exemption certificate issued shall be retained in the committee records. Each such certificate shall contain the name and address of the recipient, the location of all tomatoes authorized to be shipped thereunder, the quantity (by grade, size, quality and variety) of tomatoes which will be permitted in the exempted shipments and such other information as may be deemed necessary by the committee to provide such committee, the recipient, or both, with adequate and specific information regarding such exempted tomatoes.

§ 945.133 *Disposition of certificates.* (a) Each lot of tomatoes handled under an exemption certificate shall be accompanied by such certificate, or such appropriate identifying information with respect to such certificate, as the committee may require, to facilitate the administration of regulatory provisions applicable thereto.

(b) Each shipment of a lot or portion thereof, of tomatoes covered by an exemption certificate shall be accompanied by a Federal-State Inspection Certificate which shall show the exemption certificate number covering the lot.

§ 945.134 *Reports.* Persons handling tomatoes under exemption certificates shall, at such time as may be specified in such certificates, report thereon to the committee the names and addresses of the receivers of such tomatoes, the quantity shipped (by grade, size, quality, and variety), the inspection certificates issued with respect thereto, the dates of such shipments, and such other information as may be requested by such committee in order to administer the regulatory provisions applicable thereto.

§ 945.135 *Appeals.* If any applicant is dissatisfied with the determination of the committee regarding an application for an exemption certificate, or any duly issued exemption certificate an appeal by such applicant may be taken to such committee in accordance with § 945.73.

Dated: November 12, 1957, to become effective 30 days after publication in the FEDERAL REGISTER.

[SEAL] F. R. BURKE,
Acting Deputy Administrator, Marketing Services.

[F. R. Doc. 57-9484; Filed, Nov. 15, 1957; 8:49 a. m.]

[Lemon Reg. 713]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF HANDLING

§ 953.820 *Lemon Regulation 713*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) 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 section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based becomes available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The Committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on November 13, 1957.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., November 17, 1957, and ending at 12:01 a. m., P. s. t., November 24, 1957, are hereby fixed as follows:

(i) District 1: 7,440 cartons;

(ii) District 2: 171,120 cartons;

(iii) District 3: 26,040 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

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

Dated: November 14, 1957.

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

[F. R. Doc. 57-9575; Filed, Nov. 15, 1957; 9:07 a. m.]

[Avocado Order 9, Amdt. 8]

PART 969—AVOCADOS GROWN IN SOUTH FLORIDA

CONTAINER REGULATION

Findings. 1. Pursuant to the marketing agreement, as amended, and Order No. 69, as amended (7 CFR Part 969; 22 F. R. 3513), regulating the handling of avocados grown in South Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendations of the Avocado Administrative Committee, established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found

that the limitation on the handling of avocados, as hereinafter provided, will tend to effectuate the declared policy of the act.

2. It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that, as hereinafter set forth, the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and good cause exists for making the provisions hereof effective not later than November 18, 1957. The Avocado Administrative Committee at its meeting on November 12, 1957, considered the effects of container regulation as currently prescribed by Avocado Order 9, as amended; such meeting was held after due notice thereof and growers and handlers were given opportunity to submit views and data concerning such regulation, it was concluded that it is not practicable to pack the currently prescribed net weight of avocados of the smaller sizes (20 or more per container) in the prescribed containers other than that with dimensions 11 x 16¾ x 10 inches, and it is necessary to alter such minimum net weight requirement for avocados of such sizes as hereinafter set forth; the recommendation and supporting information for such container regulation subsequent to November 18, 1957, and in the manner provided herein, were promptly submitted to the Department after such meeting and information concerning such recommendation was disseminated among handlers of avocados; it is necessary, in order to effectuate the declared policy of the act, to make this amendment effective at the time hereinafter set forth; and compliance with this amendment will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

It is, therefore, ordered, That paragraph (b) (1) (viii) of § 969.309 (Avocado Order 9, as amended; 20 F. R. 5627, 6571, 9173; 21 F. R. 4514, 6269, 8142, 9990; 22 F. R. 8117) is hereby amended to read as follows:

(viii) With respect to the containers prescribed in subdivisions (ii) through (vi) of this subparagraph, the net weight of the avocados in any such container shall be not less than 13½ pounds: *Provided,* That when such containers are packed with 20 or more avocados, the net weight of such avocados shall be not less than 13 pounds, and *Provided further,* That not to exceed 5 percent, by count, of the containers in any lot may fail to meet such applicable weight requirement.

Effective time. The provisions of this amendment shall become effective at 12:01 a. m., e. s. t., November 18, 1957.

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

Dated: November 14, 1957.

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

[F. R. Doc. 57-9538; Filed, Nov. 15, 1957; 9:06 a. m.]

[Avocado Order 14, Amdt. 7]

PART 969—AVOCADOS GROWN IN SOUTH FLORIDA

QUALITY AND MATURITY REGULATION

Findings. 1. Pursuant to the marketing agreement, as amended, and Order No. 69, as amended (7 CFR Part 969; 22 F. R. 3513), regulating the handling of avocados grown in South Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendations of the Avocado Administrative Committee, established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of avocados, as hereinafter provided, will tend to effectuate the declared policy of the act.

2. It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that, as hereinafter set forth, the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than the date specified herein. Shipments of Florida avocados are currently subject to less restrictive quality regulation pursuant to Avocado Order 14, and unless sooner modified or terminated will continue to be so regulated until April 30, 1958; determination as to the need for, and extent of, continued quality regulation of Florida avocados must await the development of the crop thereof and the availability of information on the demand for such fruit, and adequate information thereon, was not available to the Avocado Administrative Committee until November 12, 1957; recommendation as to the need for, and the extent of, regulation of the quality of shipments of such avocados on and after November 18, 1957, was made at a meeting of the said committee on November 12, 1957, after consideration of all available information as to the quality, the supply of, and demand for such avocados, at which time the recommendations and supporting information for such quality regulation in the manner and for the period herein set forth were submitted to the Department; such meeting was held to consider recommendation for such regulation after giving due notice thereof, and interested parties were afforded an opportunity to submit their views at this meeting; the provisions of this amendment are identical with the aforesaid recommendations of the committee, and information concerning such provisions has been disseminated among the handlers of avocados; and compliance with the provisions of this amendment will not require of handlers any preparation therefor which cannot be completed by the effective time hereof.

It is therefore ordered, That the provisions of § 969.314 (Avocado Order 14, as amended; 22 F. R. 3652, 4251, 5679, 6746, 7173, 7357, 8117) are hereby further amended as follows:

1. Amend paragraph (b) (1) to read as follows:

(1) During the period beginning at 12:01 a. m., e. s. t., November 18, 1957, and ending at 12:01 a. m., e. s. t., April 30, 1958, no handler shall handle any container of avocados, grown in south Florida, unless the avocados in such container (i) grade not less than 25 percent No. 1 Grade and the remainder at least No. 2 Grade: *Provided,* That not to exceed 5 percent of the containers in a lot may contain avocados which fail to meet such requirement if the entire lot is within the tolerance; and (ii) meet the requirements of Standard Pack.

2. Amend paragraph (c) to read as follows:

(c) As used herein, "No. 1 Grade", "No. 2 Grade", and "Standard Pack" shall have the same meaning as in paragraphs (a), (c), and (f), respectively, of § 969.130 of the supplementing rules and regulations, as amended (21 F. R. 2409), and the term "diameter" means the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit.

The provisions of this amendment shall become effective at 12:01 a. m., e. s. t., November 18, 1957.

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

Dated: November 14, 1957.

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

[F. R. Doc. 57-9537; Filed, Nov. 15, 1957; 9:06 a. m.]

TITLE 21—FOOD AND DRUGS

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

Subchapter C—Drugs

PART 146—GENERAL REGULATIONS FOR THE CERTIFICATION OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

ANIMAL FEED CONTAINING ANTIBIOTIC DRUGS

Under the authority vested in the Secretary of Health, Education, and

Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 357, 371) and delegated to the Commissioner of Food and Drugs by the Secretary (22 F. R. 1045), the general regulations for the certification of antibiotic and antibiotic-containing drugs (21 CFR, 1956 Supp., 146.26; 22 F. R. 7862) are amended as follows:

Section 146.26 (b) is amended by adding the following new subparagraph (34):

§ 146.26 *Animal feed containing penicillin.* * * *

(b) * * *

(34) It is intended for use as an aid in the reduction of bacterial diarrhea in dairy cattle or as an aid in reduction of losses due to respiratory infection (infectious rhinotracheitis—shipping fever complex) or as an aid in the prevention or treatment of foot rot in cattle; its labeling bears adequate directions and warnings for such uses; and it contains the following quantities of chlortetracycline, by weight of feed, for the conditions indicated:

(i) For the prevention or treatment of foot rot and as an aid in the reduction of bacterial diarrhea in dairy cattle: 0.1 milligram per pound of body weight per day.

(ii) As an aid in reduction of losses due to respiratory infection (infectious rhinotracheitis—shipping fever complex) in dairy cattle: 0.1 milligram per pound of body weight per day, except that if it is intended for use for more than 30 days it may contain chlortetracycline, in a quantity by weight of feed to provide 70 milligrams per head per day.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it was drawn in collaboration with interested members of the affected industry, since it relaxes certain requirements, and since it would be against public interest to delay publication of this amendment.

I further find that animal feeds containing chlortetracycline and conforming with the conditions prescribed in this order need not comply with the requirements of sections 502 (1) and 507 of the Federal Food, Drug, and Cosmetic Act in order to ensure their safety and efficacy.

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

(Sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 371. Interprets or applies secs. 502 (1), 507, 52 Stat. 1051, 59 Stat. 463, as amended; 21 U. S. C. 352 (1), 357)

Dated: November 8, 1957.

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

[F. R. Doc. 57-9471; Filed, Nov. 15, 1957; 8:46 a. m.]

PART 146—GENERAL REGULATIONS FOR THE CERTIFICATION OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

PART 146b—CERTIFICATION OF STREPTOMYCIN (OR DIHYDROSTREPTOMYCIN) AND STREPTOMYCIN- (OR DIHYDROSTREPTOMYCIN-) CONTAINING DRUGS

MISCELLANEOUS AMENDMENTS

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 357, 371) and delegated to the Commissioner of Food and Drugs by the Secretary (22 F. R. 1045), the regulations for the certification of antibiotic and antibiotic-containing drugs, Parts 146 and 146b (21 CFR, 1956 Supp., 146.26; 21 CFR 146b.104) are amended as indicated below:

1. In § 146.26 *Animal feed containing penicillin* * * *, subparagraph (19) of paragraph (b) is amended as follows:

a. The present text of the subparagraph is designated as subdivision (i).

b. A new subdivision (ii), reading as follows, is added at the end of the subparagraph.

(ii) It is intended for use in the disease specified in subdivision (i) of this subparagraph; it contains the ingredient in the amount and under the conditions specified in that subdivision; and it contains one, but only one, of the ingredients prescribed by paragraph (a) of this section and in the amounts specified in that paragraph.

2. In § 146b.104 *Streptomycin tablets* * * *, paragraph (c) (1) (iii) is changed to read as follows:

(c) *Labeling.* * * *

(1) * * *

(iii) The statement "Expiration date ----------," the blank being filled in with the date which is 24 months after the month during which the batch was certified, except that the blank may be filled in with the date which is 36 months or 48 months after the month during which the batch was certified if the person who requests certification has submitted to the Commissioner results of tests and assays showing that after having been stored for such time period such drug as prepared by him complies with the standards prescribed by paragraph (a) of this section: *Provided, however,* That such expiration date may be omitted from the immediate container if such immediate container is packaged in an individual wrapper or container;

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it was drawn in collaboration with interested members of the affected industry, since it relaxes existing requirements, and since it would be against public interest to delay providing for the amendments set forth above.

I further find that animal feeds containing antibiotic drugs and the other ingredients specified in amendment 1 of this order need not comply with the requirements of sections 501 (1) and 507 of the Federal Food, Drug, and Cosmetic Act in order to ensure their safety and efficacy, provided they are used in the amounts and for the purposes specified in that amendment.

Effective date. This order shall become effective upon the date of its publication in the FEDERAL REGISTER.

(Sec. 701, 52 Stat. 1055; 21 U. S. C. 371. Interpret or apply sec. 507, 59 Stat. 463, as amended; 21 U. S. C. 357)

Dated: November 8, 1957.

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

[F. R. Doc. 57-9470; Filed, Nov. 15, 1957; 8:45 a. m.]

TITLE 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

Subchapter A—Income Tax

[T. D. 6270]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME; ALIMONY AND SEPARATE MAINTENANCE PAYMENTS

On April 25, 1956, notice of proposed rule making regarding the regulations for taxable years beginning after December 31, 1953, and ending after August 16, 1954, except as otherwise provided, under section 71 of the Internal Revenue Code of 1954 was published in the FEDERAL REGISTER (21 F. R. 2659). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted, subject to the changes as set forth below:

PARAGRAPH 1. Section 1.71-1 is revised as follows:

(A) By changing paragraph (d) (3) (ii) (*b*).

(B) By redesignating subparagraph (4) of paragraph (d) as subparagraph (5) and inserting a new subparagraph (4) immediately after subparagraph (3) of such paragraph.

(C) By deleting example (5) under subparagraph (5), as so redesignated, of paragraph (d).

PAR. 2. New § 1.71-2 is added after § 1.71-1.

[SEAL] C. W. STOWE,
Acting Commissioner of Internal Revenue.

Approved: November 12, 1957.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

The following regulations are prescribed under section 71 of the Internal Revenue Code of 1954, relating to alimony and separate maintenance payments. Except as otherwise stated in the regulations, the rules are applicable to taxable years beginning after Decem-

ber 31, 1953, and ending after August 16, 1954.

ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

Sec.
1.71 Statutory provisions; alimony and separate maintenance payments.
1.71-1 Alimony and separate maintenance payments; income to wife or former wife.
1.71-2 Effective date; taxable years ending after March 31, 1954, subject to the Internal Revenue Code of 1939.

AUTHORITY: §§ 1.71 to 1.71-2 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805.

§ 1.71 *Statutory provisions; alimony and separate maintenance payments.*

SEC. 71. *Alimony and separate maintenance payments*—(a) *General rule*—(1) *Decree of divorce or separate maintenance.* If a wife is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, the wife's gross income includes periodic payments (whether or not made at regular intervals) received after such decree in discharge of (or attributable to property transferred, in trust or otherwise, in discharge of) a legal obligation which, because of the marital or family relationship, is imposed on or incurred by the husband under the decree or under a written instrument incident to such divorce or separation.

(2) *Written separation agreement.* If a wife is separated from her husband and there is a written separation agreement executed after the date of the enactment of this title, the wife's gross income includes periodic payments (whether or not made at regular intervals) received after such agreement is executed which are made under such agreement and because of the marital or family relationship (or which are attributable to property transferred, in trust or otherwise, under such agreement and because of such relationship). This paragraph shall not apply if the husband and wife make a single return jointly.

(3) *Decree for support.* If a wife is separated from her husband, the wife's gross income includes periodic payments (whether or not made at regular intervals) received by her after the date of the enactment of this title from her husband under a decree entered after March 1, 1954, requiring the husband to make the payments for her support or maintenance. This paragraph shall not apply if the husband and wife make a single return jointly.

(b) *Payments to support minor children.* Subsection (a) shall not apply to that part of any payment which the terms of the decree, instrument, or agreement fix, in terms of an amount of money or a part of the payment, as a sum which is payable for the support of minor children of the husband. For purposes of the preceding sentence, if any payment is less than the amount specified in the decree, instrument, or agreement, then so much of such payment as does not exceed the sum payable for support shall be considered a payment for such support.

(c) *Principal sum paid in installments*—(1) *General rule.* For purposes of subsection (a), installment payments discharging a part of an obligation the principal sum of which is, either in terms of money or property, specified in the decree, instrument, or agreement shall not be treated as periodic payments.

(2) *Where period for payment is more than 10 years.* If, by the terms of the decree, instrument, or agreement, the principal sum referred to in paragraph (1) is to be paid or may be paid over a period ending more than 10 years from the date of such decree, instrument, or agreement, then (notwithstanding paragraph (1)) the installment payments shall be treated as periodic payments for purposes of subsection (a), but (in the case of any one taxable year of the wife) only to the extent of 10 percent of the principal sum. For purposes of the preceding sentence, the part of any principal sum which is allocable to a period after the taxable year of the wife in which it is received shall be treated as an installment payment for the taxable year in which it is received.

(d) *Rule for husband in case of transferred property.* The husband's gross income does not include amounts received which, under subsection (a), are (1) includible in the gross income of the wife, and (2) attributable to transferred property.

(e) *Cross references.* (1) For definitions of "husband" and "wife", see section 7701 (a) (17).

(2) For deduction by husband of periodic payments not attributable to transferred property, see section 215.

(3) For taxable status of income of an estate or trust in case of divorce, etc., see section 682.

§ 1.71-1 *Alimony and separate maintenance payments; income to wife or former wife*—(a) *In general.* Section 71 provides rules for treatment in certain cases of payments in the nature of or in lieu of alimony or an allowance for support as between spouses who are divorced or separated. For convenience, the payee spouse will hereafter in this section be referred to as the "wife" and the spouse from whom she is divorced or separated as the "husband." See section 7701 (a) (17). For rules relative to the deduction by the husband of periodic payments not attributable to transferred property, see section 215 and the regulations thereunder. For rules relative to the taxable status of income of an estate or trust in case of divorce, etc., see section 682 and the regulations thereunder.

(b) *Alimony or separate maintenance payments received from the husband*—(1) *Decree of divorce or separate maintenance.* (i) In the case of divorce or legal separation, paragraph (1) of section 71 (a) requires the inclusion in the gross income of the wife of periodic payments (whether or not made at regular intervals) received by her after a decree of divorce or of separate maintenance. Such periodic payments must be made in discharge of a legal obligation imposed upon or incurred by the husband because of the marital or family relationship under a court order or decree divorcing or legally separating the husband and wife or a written instrument incident to the divorce status or legal separation status.

(ii) For treatment of payments attributable to property transferred (in trust or otherwise), see paragraph (c) of this section.

(2) *Written separation agreement.* (i) Where the husband and wife are separated and living apart and do not file a joint income tax return for the taxable year, paragraph (2) of section 71 (a) requires the inclusion in the gross income of the wife of periodic payments (whether or not made at regular intervals) received by her pursuant to a written separation agreement executed after August 16, 1954. The periodic payments must be made under the terms of the written separation agreement after its execution and because of the marital or family relationship. Such payments are includible in the wife's gross income whether or not the agreement is a legally enforceable instrument. Moreover, if the wife is divorced or legally separated subsequent to the written separation agreement, payments made under such agreement continue to fall within the provisions of section 71 (a) (2).

(ii) For purposes of section 71 (a) (2), any written separation agreement executed on or before August 16, 1954, which is altered or modified in writing by the parties in any material respect after that date will be treated as an agreement executed after August 16, 1954, with respect to payments made after the date of alteration or modification.

(iii) For treatment of payments attributable to property transferred (in trust or otherwise), see paragraph (c) of this section.

(3) *Decree for support.* (i) Where the husband and wife are separated and living apart and do not file a joint income tax return for the taxable year, paragraph (3) of section 71 (a) requires the inclusion in the gross income of the wife of periodic payments (whether or not made at regular intervals) received by her after August 16, 1954, from her husband under any type of court order or decree (including an interlocutory decree of divorce or a decree of alimony pendente lite) entered after March 1, 1954, requiring the husband to make the payments for her support or maintenance. It is not necessary for the wife to be legally separated or divorced from her husband under a court order or decree; nor is it necessary for the order or decree for support to be for the purpose of enforcing a written separation agreement.

(ii) For purposes of section 71 (a) (3), any decree which is altered or modified by a court order entered after March 1, 1954, will be treated as a decree entered after such date.

(4) *Scope of section 71 (a).* Section 71 (a) applies only to payments made because of the family or marital relationship in recognition of the general obligation to support which is made specific by the decree, instrument, or agreement. Thus, section 71 (a) does not apply to that part of any periodic payment which is attributable to the repayment by the husband of, for example, a bona fide loan previously made to him by the wife, the satisfaction of which is specified in the decree, instrument, or agreement as a part of the general settlement between the husband and wife.

(5) *Year of inclusion.* Periodic payments are includible in the wife's income under section 71 (a) only for the taxable year in which received by her. As to such amounts, the wife is to be treated as if she makes her income tax returns on the cash receipts and disbursements method, regardless of whether she normally makes such returns on the accrual method. However, if the periodic payments described in section 71 (a) are to be made by an estate or trust, such periodic payments are to be included in the wife's taxable year in which they are includible according to the rules as to income of estates and trusts provided in sections 652, 662, and 682, whether or not such payments

are made out of the income of such estates or trusts.

(6) *Examples.* The foregoing rules are illustrated by the following examples in which it is assumed that the husband and wife file separate income tax returns on the calendar year basis:

Example (1). W files suit for divorce from H in 1953. In consideration of W's promise to relinquish all marital rights and not to make public H's financial affairs, H agrees in writing to pay $200 a month to W during her lifetime if a final decree of divorce is granted without any provision for alimony. Accordingly, W does not request alimony and no provision for alimony is made under a final decree of divorce entered December 31, 1953. During 1954, H pays W $200 a month, pursuant to the promise. The $2,400 thus received by W is includible in her gross income under the provisions of section 71 (a) (1). Under section 215, H is entitled to a deduction of $2,400 from his gross income.

Example (2). During 1945, H and W enter into an antenuptial agreement, under which, in consideration of W's relinquishment of all marital rights (including dower) in H's property, and, in order to provide for W's support and household expenses, H promises to pay W $200 a month during her lifetime. Ten years after their marriage, W sues H for divorce but does not ask for or obtain alimony because of the provision already made for her support in the antenuptial agreement. Likewise, the divorce decree is silent as to such agreement and H's obligation to support W. Section 71 (a) does not apply to such a case. If, however, the decree were modified so as to refer to the antenuptial agreement, or if reference had been made to the antenuptial agreement in the court's decree or in a written instrument incident to the divorce status, section 71 (a) (1) would require the inclusion in W's gross income of the payments received by her after the decree. Similarly, if a written separation agreement were executed after August 16, 1954, and incorporated the payment provisions of the antenuptial agreement, section 71 (a) (2) would require the inclusion in W's income of payments received by W after W begins living apart from H, whether or not the divorce decree was subsequently entered and whether or not W was living apart from H when the separation agreement was executed, provided that such payments were made after such agreement was executed and pursuant to its terms. As to including such payments in W's income, if made by a trust created under the antenuptial agreement, regardless of whether referred to in the decree or a later instrument, or created pursuant to the written separation agreement, see section 682 and the regulations thereunder.

Example (3). H and W are separated and living apart during 1954. W sues H for support and on February 1, 1954, the court enters a decree requiring H to pay $200 a month to W for her support and maintenance. No part of the $200 a month support payments is includible in W's income under section 71 (a) (3) or deductible by H under section 215. If, however, the decree had been entered after March 1, 1954, or had been altered or modified by a court order entered after March 1, 1954, the payments received by W after August 16, 1954, under the decree as altered or modified would be includible in her income under section 71 (a) (3) and deductible by H under section 215.

Example (4). W sues H for divorce in 1954. On January 15, 1954, the court awards W temporary alimony of $25 a week pending the final decree. On September 1, 1954, the court grants W a divorce and awards her $200 a month permanent alimony. No part of the $25 a week temporary alimony received prior to the decree is includible in W's income under section 71 (a), but the $200 a month received during the remainder of 1954 by W is includible in her income for 1954. Under section 215, H is entitled to deduct such $200 payments from his income. If, however, the decree awarding W temporary alimony had been entered after March 1, 1954, or had been altered or modified by a court order entered after March 1, 1954, temporary alimony received by her after August 16, 1954, would be includible in her income under section 71 (a) (3) and deductible by H under section 215.

(c) *Alimony and separate maintenance payments attributable to property.* (1) (i) In the case of divorce or legal separation, paragraph (1) of section 71 (a) requires the inclusion in the gross income of the wife of periodic payments (whether or not made at regular intervals) attributable to property transferred, in trust or otherwise, and received by her after a decree of divorce or of separate maintenance. Such property must have been transferred in discharge of a legal obligation imposed upon or incurred by the husband because of the marital or family relationship under a decree of divorce or separate maintenance or under a written instrument incident to such divorce status or legal separation status.

(ii) Where the husband and wife are separated and living apart and do not file a joint income tax return for the taxable year, paragraph (2) of section 71 (a) requires the inclusion in the gross income of the wife of periodic payments (whether or not made at regular intervals) received by her which are attributable to property transferred, in trust or otherwise, under a written separation agreement executed after August 16, 1954. The property must be transferred because of the marital or family relationship. The periodic payments attributable to the property must be received by the wife after the written separation agreement is executed.

(iii) The periodic payments received by the wife attributable to property transferred under subdivisions (i) and (ii) of this subparagraph and includible in her gross income are not to be included in the gross income of the husband.

(2) The full amount of periodic payments received under the circumstances described in section 71 (a) (1), (2), and (3) is required to be included in the gross income of the wife regardless of the source of such payments. Thus, it matters not that such payments are attributable to property in trust, to life insurance, endowment, or annuity contracts, or to any other interest in property, or are paid directly or indirectly by the husband from his income or capital. For example, if in order to meet an alimony or separate maintenance obligation of $500 a month the husband purchases or assigns for the benefit of his wife a commercial annuity contract paying such amount, the full $500 a month received by the wife is includible in her income, and no part of such amount is includible in the husband's income or deductible by him. See section 72 (k) and the regulations thereunder. Likewise, if property is transferred by the husband, subject to an annual charge of $5,000, payable to his wife in discharge of his alimony or separate maintenance obligation under the divorce or separation decree or written instrument incident to the divorce status or legal separation status or if such property is transferred pursuant to a written separation agreement and subject to a similar annual charge, the $5,000 received annually is, under section 71 (a) (1) or (2), includible in the wife's income, regardless of whether such amount is paid out of income or principal of the property.

(3) The same rule applies to periodic payments attributable to property in trust. The full amount of periodic payments to which section 71 (a) (1) and (2) applies is includible in the wife's income regardless of whether such payments are made out of trust income. Such periodic payments are to be included in the wife's income under section 71 (a) (1) or (2) and are to be excluded from the husband's income even though the income of the trust would otherwise be includible in his income under subpart E, part I, subchapter J, Internal Revenue Code of 1954, relating to trust income attributable to grantors and others as substantial owners. As to periodic payments received by a wife attributable to property in trust in cases to which section 71 (a) (1) or (2) does not apply because the husband's obligation is not specified in the decree or an instrument incident to the divorce status or legal separation status or the property was not transferred under a written separation agreement, see section 682 and the regulations thereunder.

(4) Section 71 (a) (1) or (2) does not apply to that part of any periodic payment attributable to that portion of any interest in property transferred in discharge of the husband's obligation under the decree or instrument incident to the divorce status or legal separation status, or transferred pursuant to the written separation agreement, which interest originally belonged to the wife. It will apply, however, if she received such interest from her husband in contemplation of or as an incident to the divorce or separation without adequate and full consideration in money or money's worth, other than the release of the husband or his property from marital obligations. An example of the first rule is a case where the husband and wife transfer securities, which were owned by them jointly, in trust to pay an annuity to the wife. In this case, the full amount of that part of the annuity received by the wife attributable to the husband's interest in the securities transferred in discharge of his obligation under the decree, or instrument incident to the divorce status or legal separation status, or transferred under the written separation agreement, is taxable to her under section 71 (a) (1) or (2), while that portion of the annuity attributable to the wife's interest in the securities so transferred is taxable to her only to the extent it is out of trust income as provided in part I of subchapter J. If, however, the husband's transfer to his wife is made before such property is transferred in discharge of his obligation under the decree or written instrument, or pursuant to the separation agreement in an attempt to avoid the application of section 71 (a) (1) or (2) to part of such payments received by his

wife, such transfers will be considered as a part of the same transfer by the husband of his property in discharge of his obligation or pursuant to such agreement. In such a case, section 71 (a) (1) or (2) will be applied to the full amount received by the wife. As to periodic payments received under a joint purchase of a commercial annuity contract, see section 72 and the regulations thereunder.

(d) *Periodic and installment payments.* (1) In general, installment payments discharging a part of an obligation the principal sum of which is, in terms of money or property, specified in the decree, instrument, or agreement are not considered "periodic payments" and therefore are not to be included under section 71 (a) in the wife's income.

(2) An exception to the general rule stated in subparagraph (1) of this paragraph is provided, however, in cases where such principal sum, by the terms of the decree, instrument, or agreement, may be or is to be paid over a period ending more than 10 years from the date of such decree, instrument, or agreement. In such cases, the installment payment is considered a periodic payment for the purposes of section 71 (a) but only to the extent that the installment payment, or sum of the installment payments, received during the wife's taxable year does not exceed 10 percent of the principal sum. This 10-percent limitation applies to installment payments made in advance but does not apply to delinquent installment payments for a prior taxable year of the wife made during her taxable year.

(3) (i) Where payments under a decree, instrument, or agreement are to be paid over a period ending 10 years or less from the date of such decree, instrument, or agreement, such payments are not installment payments discharging a part of an obligation the principal sum of which is, in terms of money or property, specified in the decree, instrument, or agreement (and are considered periodic payments for the purposes of section 71 (a)) only if such payments meet the following two conditions:

(*a*) Such payments are subject to any one or more of the contingencies of death of either spouse, remarriage of the wife, or change in the economic status of either spouse, and

(*b*) Such payments are in the nature of alimony or an allowance for support.

(ii) Payments meeting the requirements of subdivision (i) are considered periodic payments for the purposes of section 71 (a) regardless of whether—

(*a*) The contingencies described in subdivision (i) (*a*) are set forth in the terms of the decree, instrument, or agreement, or are imposed by local law, or

(*b*) The aggregate amount of the payments to be made in the absence of the occurrence of the contingencies described in subdivision (i) (*a*) of this subparagraph is explicitly stated in the decree, instrument, or agreement or may be calculated from the face of the decree, instrument or agreement, or

(*c*) The total amount which will be paid may be calculated actuarially.

(4) Where payments under a decree, instrument, or agreement are to be paid over a period ending more than ten years from the date of such decree, instrument, or agreement, but where such payments meet the conditions set forth in subparagraph (3) (i) of this paragraph, such payments are considered to be periodic payments for the purpose of section 71 without regard to the rule set forth in subparagraph (2) of this paragraph. Accordingly, the rules set forth in subparagraph (2) of this paragraph are not applicable to such payments.

(5) The rules as to periodic and installment payments are illustrated by the following examples:

Example (1). Under the terms of a written instrument, H is required to make payments to W which are in the nature of alimony, in the amount of $100 a month for nine years. The instrument provides that if H or W dies the payments are to cease. The payments are periodic.

Example (2). The facts are the same as in example (1) except that the written instrument explicitly provides that H is to pay W the sum of $10,800 in monthly payments of $100 over a period of nine years. The payments are periodic.

Example (3). Under the terms of a written instrument, H is to pay W $100 a month over a period of nine years. The monthly payments are not subject to any of the contingencies of death of H or W, remarriage of W, or change in the economic status of H of W under the terms of the written instrument or by reason of local law. The payments are not periodic.

Example (4). A divorce decree in 1954 provides that H is to pay W $20,000 each year for the next five years, beginning with the date of the decree, and then $5,000 each year for the next ten years. Assuming the wife makes her returns on the calendar year basis, each payment received in the years 1954 to 1958, inclusive, is treated as a periodic payment under section 71 (a) (1), but only to the extent of 10 percent of the principal sum of $150,000. Thus, for such taxable years, only $15,000 of the $20,000 received is includible under section 71 (a) (1) in the wife's income and is deductible by the husband under section 215. For the years 1959 to 1968, inclusive, the full $5,000 received each year by the wife is includible in her income and is deductible from the husband's income.

(e) *Payments for support of minor children.* Section 71 (a) does not apply to that part of any periodic payment which, by the terms of the decree, instrument, or agreement under section 71 (a), is specifically designated as a sum payable for the support of minor children of the husband. The statute prescribes the treatment in cases where an amount or portion is so fixed but the amount of any periodic payment is less than the amount of the periodic payment specified to be made. In such cases, to the extent of the amount which would be payable for the support of such children out of the originally specified periodic payment, such periodic payment is considered a payment for such support. For example, if the husband is by terms of the decree, instrument, or agreement required to pay $200 a month to his divorced wife, $100 of which is designated by the decree, instrument, or agreement to be for the support of their minor children, and the husband pays only $150 to his wife, $100 is nevertheless considered to be a payment by the husband for the support of the children. If, however, the periodic payments are received by the wife for the support and maintenance of herself and of minor children of the husband without such specific designation of the portion for the support of such children, then the whole of such amounts is includible in the income of the wife as provided in section 71 (a). Except in cases of a designated amount or portion for the support of the husband's minor children, periodic payments described in section 71 (a) received by the wife for herself and any other person or persons are includible in whole in the wife's income, whether or not the amount or portion for such other person or persons is designated.

§ 1.71–2 *Effective date; taxable years ending after March 31, 1954, subject to the Internal Revenue Code of 1939.* Pursuant to section 7851 (a) (1) (C), the regulations prescribed in § 1.71–1, to the extent that they relate to payments under a written separation agreement executed after August 16, 1954, and to the extent that they relate to payments under a decree for support received after August 16, 1954, under a decree entered after March 1, 1954, shall also apply to taxable years beginning before January 1, 1954, and ending after August 16, 1954, although such years are subject to the Internal Revenue Code of 1939.

[F. R. Doc. 57-9490; Filed, Nov. 15, 1957; 8:50 a. m.]

[T. D. 6269]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

CHARITABLE DEDUCTIONS; ESTATE AND TRUST

On August 11, 1956, notice of proposed rule making regarding the regulations for taxable years beginning after December 31, 1953, and ending after August 16, 1954, under sections 631 and 682 of the Internal Revenue Code of 1954, was published in the FEDERAL REGISTER (21 F. R. 6036). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Section 1.631–1 is deleted.

PAR. 2. Section 1.631 (a)–1 is redesignated § 1.631 (a)–2 and there is inserted a new § 1.631 (a)–1 immediately after the statutory provisions.

PAR. 3. Section 1.631 (a)–2, as redesignated, is revised as follows:

(A) By changing the last sentence of paragraph (a) to read as follows: "Charitable contributions deductions otherwise allowable under section 170, 545 (b) (2), or 642 (c) for contributions to a trust are not disallowed solely because the trust has unrelated business income."

(B) By changing the last sentence of example (1) of paragraph (c) to read as follows: "The portion allocable to the unrelated business income, and therefore disallowed as a deduction, is $15,000 reduced by $6,000 (20 percent of $30,000, the charitable contributions deduction

which would be allowable under section 512 (b) (11)), or $9,000."

(C) By changing the last two sentences of example (3) of paragraph (c) to read as follows: "Since the entire income from the trade or business is paid to Y charity, the amount allocable to the unrelated business income computed before the charitable contributions deduction under section 512 (b) (11) is $30,000 ($31,000 less the deduction of $1,000 allowed by section 512 (b) (12)). The amount allocable to the unrelated business income and therefore disallowed as a deduction is $24,000 ($30,000 less $6,000)."

(D) By changing the third and fourth sentences of subdivision (i) of example (4) to read as follows: "The trust has taxable income of $50,000 computed without any deduction for personal exemption, charitable contributions, or distributions. The amount of $50,000 includes $10,000 capital gains, $30,000 ($31,000 less the $1,000 deduction allowed under section 512 (b) (12)) unrelated business income (computed before the charitable contributions deduction which would be allowed under section 512 (b) (11)) and other income of $9,000."

PAR. 4. The second sentence of § 1.681 (b)–1 (a) (3) is revised to read as follows: "See examples under § 1.681 (b)–2 and the regulations under section 503."

[SEAL] C. W. STOWE,
Acting Commissioner.

Approved: November 12, 1957.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

The following regulations for taxable years beginning after December 31, 1953, and ending after August 16, 1954, except where otherwise specifically provided, are hereby prescribed under sections 681 and 682 of the Internal Revenue Code of 1954:

MISCELLANEOUS

Sec.
1.681 (a) Statutory provisions; estates and trusts; limitation on charitable contributions deduction; unrelated business income.
1.681–1 Limitations on charitable contributions deduction of trusts; in general.
1.681 (a)–1 Limitations on charitable contributions deduction of trusts; scope of section 681.
1.681 (a)–2 Limitation on charitable contributions deduction of trusts with trade or business income.
1.681 (b) Statutory provisions; estates and trusts; limitation on charitable contributions deduction; prohibited transactions.
1.681 (b)–1 Limitation on charitable contributions deduction of trusts engaged in prohibited transactions.
1.681 (b)–2 Disallowance to donors of certain charitable, etc., deductions for gifts made in trust.
1.681 (c) Statutory provisions; estates and trusts; limitation on charitable contributions deductions; trusts accumulating income.
1.681 (c)–1 Limitation on charitable contributions deduction of trusts accumulating income.
1.681 (d) Statutory provisions; estates and trusts; disallowance of certain charitable contributions deductions; cross reference.
1.681 (d)–1 Disallowance of certain charitable contributions deductions.
1.682 (a) Statutory provisions; estates and trusts; income of an estate or trust in case of divorce; inclusion in gross income of wife.
1.682 (a)–1 Income of trust in case of divorce, etc.
1.682 (b) Statutory provisions; estates and trusts; income of an estate or trust in case of divorce; wife considered a beneficiary.
1.682 (b)–1 Application of trust rules to alimony payments.
1.682 (c) Statutory provisions; estates and trusts; income of an estate or trust in case of divorce; definitions of "husband" and "wife".
1.682 (c)–1 Definitions.

AUTHORITY: §§ 1.681 (a) to 1.682 (c)–1 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805.

MISCELLANEOUS

§ 1.681 (a) *Statutory provisions; estates and trusts; limitation on charitable contributions deduction; unrelated business income.*

SEC. 681. *Limitation on charitable deduction*—(a) *Trade or business income.* In computing the deduction allowable under section 642 (c) to a trust, no amount otherwise allowable under section 642 (c) as a deduction shall be allowed as a deduction with respect to income of the taxable year which is allocable to its unrelated business income for such year. For purposes of the preceding sentence, the term "unrelated business income" means an amount equal to the amount which, if such trust were exempt from tax under section 501 (a) by reason of section 501 (c) (3), would be computed as its unrelated business taxable income under section 512 (relating to income derived from certain business activities and from certain leases).

§ 1.681 (a)–1 *Limitations on charitable contributions deduction of trusts; scope of section 681.* Under section 681, the unlimited charitable contributions deduction otherwise allowable to a trust under section 642 (c) is, in general, subject to percentage limitations, corresponding to those applicable to contributions by an individual under section 170 (b) (1) (A) and (B), under the following circumstances:

(a) To the extent that the deduction is allocable to "unrelated business income";

(b) If the trust has engaged in a "prohibited transaction";

(c) If income is accumulated for a charitable purpose and the accumulation is (1) unreasonable, (2) substantially diverted to a noncharitable purpose, or (3) invested against the interests of the charitable beneficiaries.

Further, if the circumstance set forth in paragraph (a) or (c) of this section is applicable, the deduction is limited to income actually paid out for charitable purposes, and is not allowed for income only set aside or to be used for those purposes. If the circumstance set forth in paragraph (b) of this section is applicable, deductions for contributions to the trust may be disallowed. The provisions of section 681 are discussed in detail in §§ 1.681 (a)–2 through 1.681 (c)–1. For definition of the term "income" see section 643 (b) and § 1.643 (b)–1.

§ 1.681 (a)–2 *Limitation on charitable contributions deduction of trusts with trade or business income*—(a) *In general.* No charitable contributions deduction is allowable to a trust under section 642 (c) for any taxable year for amounts allocable to the trust's unrelated business income for the taxable year. For the purpose of section 681 (a) the term "unrelated business income" of a trust means an amount which would be computed as the trust's unrelated business taxable income under section 512 and the regulations thereunder, if the trust were an organization exempt from tax under section 501 (a) by reason of section 501 (c) (3). For the purpose of the computation under section 512, the term "unrelated trade or business" includes a trade or business carried on by a partnership of which a trust is a member, as well as one carried on by the trust itself. While the charitable contributions deduction under section 642 (c) is entirely disallowed by section 681 (a) for amounts allocable to "unrelated business income", a partial deduction is nevertheless allowed for such amounts by the operation of section 512 (b) (11), as illustrated in paragraphs (b) and (c) of this section. This partial deduction is subject to the percentage limitations applicable to contributions by an individual under section 170 (b) (1) (A) and (B), and is not allowed for amounts set aside or to be used for charitable purposes but not actually paid out during the taxable year. Charitable contributions deductions otherwise allowable under section 170, 545 (b) (2), or 642 (c) for contributions to a trust are not disallowed solely because the trust has unrelated business income.

(b) *Determination of amounts allocable to unrelated business income.* In determining the amount for which a charitable contributions deduction would otherwise be allowable under section 642 (c) which are allocable to unrelated business income, and therefore not allowable as a deduction, the following steps are taken:

(1) There is first determined the amount which would be computed as the trust's unrelated business taxable income under section 512 and the regulations thereunder if the trust were an organization exempt from tax under section 501 (a) by reason of section 501 (c) (3), but without taking the charitable contributions deduction allowed under section 512 (b) (11).

(2) The amount for which a charitable contributions deduction would otherwise be allowable under section 642 (c) is then allocated between the amount determined in subparagraph (1) of this paragraph and any other income of the trust. Unless the facts clearly indicate to the contrary, the allocation to the amount determined in subparagraph (1) of this paragraph is made on the basis of the ratio (but not in excess of 100 per-

cent) of the amount determined in subparagraph (1) of this paragraph to the taxable income of the trust, determined without the deduction for personal exemption under section 642 (b), the charitable contributions deduction under section 642 (c), or the deduction for distributions to beneficiaries under section 661 (a).

(3) The amount for which a charitable contributions deduction would otherwise be allowable under section 642 (c) which is allocable to unrelated business income as determined in subparagraph (2) of this paragraph, and therefore not allowable as a deduction, is the amount determined in subparagraph (2) of this paragraph reduced by the charitable contributions deduction which would be allowed under section 512 (b) (11) if the trust were an organization exempt from tax under section 501 (a) by reason of section 501 (c) (3).

(c) *Examples.* (1) The application of this section may be illustrated by the following examples, in which it is assumed that the Y charity is not a church, an educational organization, or a hospital described in section 170 (b) (1) (A) (see subparagraph (2) of this paragraph):

Example (1). The X trust has income of $50,000. There is included in this amount a net profit of $31,000 from the operation of a trade or business. The trustee is required to pay half of the trust income to A, an individual, and the balance of the trust income to the Y charity, an organization described in section 170 (c) (2). The trustee pays each beneficiary $25,000. Under these facts, the unrelated business income of the trust (computed before the charitable contributions deduction which would be allowed under section 512 (b) (11)) is $30,000 ($31,000 less the deduction of $1,000 allowed by section 512 (b) (12)). The deduction otherwise allowable under section 642 (c) is $25,000, the amount paid to the Y charity. The portion allocable to the unrelated business income (computed as prescribed in paragraph (b) (2) of this section) is $15,000, that is, an amount which bears the same ratio to $25,000 as $30,000 bears to $50,000. The portion allocable to the unrelated business income, and therefore disallowed as a deduction, is $15,000 reduced by $6,000 (20 percent of $30,000, the charitable contributions deduction which would be allowable under section 512 (b) (11)), or $9,000.

Example (2). Assume the same facts as in example (1), except that the trustee has discretion as to the portion of the trust income to be paid to each beneficiary, and the trustee pays $40,000 to A and $10,000 to the Y charity. The deduction otherwise allowable under section 642 (c) is $10,000. The portion allocable to the unrelated business income computed as prescribed in paragraph (b) (2) of this section is $6,000, that is, an amount which bears the same ratio to $10,000 as $30,000 bears to $50,000. Since this amount does not exceed the charitable contributions deduction which would be allowable under section 512 (b) (11) ($6,000, determined as in example (1)), no portion of it is disallowed as a deduction.

Example (3). Assume the same facts as in example (1), except that the terms of the trust instrument require the trustee to pay to the Y charity the trust income, if any, derived from the trade or business, and to pay to A all the trust income derived from other sources. The trustee pays $31,000 to the Y charity and $19,000 to A. The deduction otherwise allowable under section 642 (c) is $31,000. Since the entire income from the trade or business is paid to Y charity, the amount allocable to the unrelated business income computed before the charitable contributions deduction under section 512 (b) (11) is $30,000 ($31,000 less the deduction of $1,000 allowed by section 512 (b) (12)). The amount allocable to the unrelated business income and therefore disallowed as a deduction is $24,000 ($30,000 less $6,000).

Example (4). (i) Under the terms of the trust, the trustee is required to pay half of the trust income to A, an individual, for his life, and the balance of the trust income to the Y charity, an organization described in section 170 (c) (2). Capital gains are allocable to corpus and upon A's death the trust is to terminate and the corpus is to be distributed to the Y charity. The trust has taxable income of $50,000 computed without any deduction for personal exemption, charitable contributions, or distributions. The amount of $50,000 includes $10,000 capital gains, $30,000 ($31,000 less the $1,000 deduction allowed under section 512 (b) (12)) unrelated business income (computed before the charitable contributions deduction which would be allowed under section 512 (b) (11)) and other income of $10,000. The trustee pays each beneficiary $20,000.

(ii) The deduction otherwise allowable under section 642 (c) is $30,000 ($20,000 paid to Y charity and $10,000 capital gains allocated to corpus and permanently set aside for charitable purposes). The portion allocable to the unrelated business income is $15,000, that is, an amount which bears the same ratio to $20,000 (the amount paid to Y charity) as $30,000 bears to $40,000 ($50,000 less $10,000 capital gains allocable to corpus). The portion allocable to the unrelated business income, and therefore disallowed as a deduction, is $15,000 reduced by $6,000 (the charitable contributions deduction which would be allowable under section 512 (b) (11)), or $9,000.

(2) If, in the examples in subparagraph (1) of this paragraph, the Y charity were a church, an educational organization, or a hospital described in section 170 (b) (1) (A), then the deduction allowable under section 512 (b) (11) would be computed at a rate of 30 percent.

§ 1.681 (b) *Statutory provisions; estates and trusts; limitation on charitable contributions deduction; prohibited transactions.*

SEC. 681. *Limitation on charitable deduction.* * * *

(b) *Operations of trusts*—(1) *Limitation on charitable, etc., deduction.* The amount otherwise allowable under section 642 (c) as a deduction shall not exceed 20 percent of the taxable income of the trust (computed without the benefit of section 642 (c) but with the benefit of section 170 (b) (1) (A)) if the trust has engaged in a prohibited transaction, as defined in paragraph (2).

(2) *Prohibited transactions.* For purposes of this subsection, the term "prohibited transaction" means any transaction after July 1, 1950, in which any trust while holding income or corpus which has been permanently set aside or is to be used exclusively for charitable or other purposes described in section 642 (c)—

(A) Lends any part of such income or corpus, without receipt of adequate security and a reasonable rate of interest, to;

(B) Pays any compensation from such income or corpus, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(C) Makes any part of its services available on a preferential basis to;

(D) Uses such income or corpus to make any substantial purchase of securities or any other property, for more than an adequate consideration in money or money's worth, from;

(E) Sells any substantial part of the securities or other property comprising such income or corpus, for less than an adequate consideration in money or money's worth, to; or

(F) Engages in any other transaction which results in a substantial diversion of such income or corpus to;

the creator of such trust; any person who has made a substantial contribution to such trust; a member of a family (as defined in section 267 (c) (4)) of an individual who is the creator of the trust or who has made a substantial contribution to the trust; or a corporation controlled by any such creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(3) *Taxable years affected.* The amount otherwise allowable under section 642 (c) as a deduction shall be limited as provided in paragraph (1) only for taxable years after the taxable year during which the trust is notified by the Secretary that it has engaged in such transaction, unless such trust entered into such prohibited transaction with the purpose of diverting such corpus or income from the purposes described in section 642 (c), and such transaction involved a substantial part of such corpus or income.

(4) *Future charitable, etc., deductions of trusts denied deduction under paragraph (3).* If the deduction of any trust under section 642 (c) has been limited as provided in this subsection, such trust, with respect to any taxable year following the taxable year in which notice is received of limitation of deduction under section 642 (c), may, under regulations prescribed by the Secretary or his delegate, file claim for the allowance of the unlimited deduction under section 642 (c), and if the Secretary, pursuant to such regulations, is satisfied that such trust will not knowingly again engage in a prohibited transaction, the limitation provided in paragraph (1) shall not apply with respect to taxable years after the year in which such claim is filed.

(5) *Disallowance of certain charitable, etc., deductions.* No gift or bequest for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), otherwise allowable as a deduction under section 170, 545 (b) (2), 642 (c), 2055, 2106 (a) (2), or 2522, shall be allowed as a deduction if made in trust and, in the taxable year of the trust in which the gift or bequest is made, the deduction allowed the trust under section 642 (c) is limited by paragraph (1). With respect to any taxable year of a trust in which such deduction has been so limited by reason of entering into a prohibited transaction with the purpose of diverting such corpus or income from the purposes described in section 642 (c), and such transaction involved a substantial part of such income or corpus, and which taxable year is the same, or before the, taxable year of the trust in which such prohibited transaction occurred, such deduction shall be disallowed the donor only if such donor or (if such donor is an individual) any member of his family (as defined in section 267 (c) (4)) was a party to such prohibited transaction.

(6) *Definition.* For purposes of this subsection, the term "gift or bequest" means any gift, contribution, bequest, devise, or legacy, or any transfer without adequate consideration.

§ 1.681 (b)-1 *Limitation on charitable contributions deduction of trusts engaged in prohibited transactions*—(a) *In general.* (1) If a trust has engaged in a "prohibited transaction", the charitable contributions deduction which would

otherwise be allowable to the trust under section 642 (c) is limited by section 681 (b) (1) to 20 percent of the taxable income of the trust (computed without any charitable contributions deduction), except that an additional deduction of up to 10 percent of such taxable income is allowed for amounts actually paid to a church, an educational organization, or a hospital qualifying under section 170 (b) (1) (A). There is no requirement that amounts subject to the 20-percent limitation be actually paid, if they are set aside or are to be used exclusively for charitable or other purposes so that they would be deductible under section 642 (c).

(2) A "prohibited transaction" is any transaction described in section 681 (b) (2) (A) through (F), entered into after July 1, 1950, by a trust holding income or corpus permanently set aside or to be used exclusively for purposes described in section 642 (c), with (i) the creator of the trust, (ii) any substantial contributor to the trust, (iii) a member of the family (as defined in section 267 (c) (4), dealing with transactions between related taxpayers) of the creator or of a substantial contributor, or (iv) a corporation which the creator or a substantial contributor controls (within the meaning of the last portion of section 681 (b) (2)).

(3) If the trust entered into a prohibited transaction for the purpose of diverting income or corpus from the charitable or other purposes described in section 642 (c), and if the transaction involved a substantial portion of such income or corpus, the limitation of section 681 (b) (1) is applicable for the taxable year of the trust in which the transaction was commenced and for all subsequent taxable years. See examples under § 1.681 (b)–2 and the regulations under section 503. Otherwise, the limitation is only applicable for taxable years of the trust after the taxable year in which there is mailed to it, by registered or certified mail directed to the last known address of the fiduciary, a written notice by the Commissioner that it has engaged in a prohibited transaction.

(b) *Restoration of unlimited deduction.* A trust whose charitable contributions deduction under section 642 (c) has been limited by reason of the provisions of section 681 (b) (1) may file, in any taxable year following the taxable year in which notice of limitation of the deduction was issued, a claim for allowance of an unlimited deduction under section 642 (c). This claim shall be filed with the district director with whom the fiduciary is required to file the income tax return of the trust. The claim must contain or have attached to it a written declaration made under the penalties of perjury by the fiduciary (or fiduciaries) that he will not knowingly permit the trust again to engage in a prohibited transaction. If the district director is satisfied that the trust will not knowingly again engage in a prohibited transaction, he shall so notify the trust in writing. In such case the trust will be allowed an unlimited deduction under section 642 (c) (subject to the provisions of section 681) with respect to taxable years subsequent to the taxable year in which the claim is filed. Section 681 (b) (3) contemplates that a trust whose charitable contributions deduction has been limited as prescribed therein shall be subject to such limitation for at least one full taxable year.

§ 1.681 (b)–2 *Disallowance to donors of certain charitable, etc., deductions for gifts made in trust*—(a) *In general.* Section 681 (b) (5) provides that no contribution which would otherwise be allowable as a deduction under section 170 (c) (2), 545 (b) (2), or 642 (c) is allowable if made to a trust whose charitable contribution deduction under section 642 (c) is limited, in the taxable year of the trust in which the contribution is made, under the provisions of section 681 (b) (1) by reason of a prohibited transaction. However, this disallowance is applicable only to contributions made in taxable years of the trust after the taxable year in which occurred the prohibited transaction causing the trust's charitable deduction to be limited, unless—

(1) The trust has been notified in a previous taxable year (in or subsequent to the year in which the transaction was commenced) by the Commissioner, pursuant to section 681 (b) (3), that it has engaged in a prohibited transaction, or

(2) The donor of the contribution or, if the donor is an individual, any member of his family (as defined in section 267 (c) (4), dealing with transactions between related taxpayers) was a party to the prohibited transaction.

(b) *Subsection not exclusive.* The prohibited transactions enumerated in section 681 (b) (2) are in addition to and not in limitation of the restrictions contained in section 170 (c) (2), 545 (b) (2), or 642 (c). A deduction may not be allowed in view of the general provisions of those sections, even though the trust has not engaged in any of the prohibited transactions referred to in section 681 (b) (2). Thus, if the donor or the fiduciary of the trust enters into a transaction with the trust, the transaction will be closely scrutinized to ascertain whether the contribution is in fact made for the stated exempt purposes.

(c) *Example.* Under the terms of an irrevocable trust established by A in 1954, the trustees were to pay half of the income of the trust to A's wife for life, and the trustees were given discretion either to accumulate the remaining half of the income for, or distribute it to, a specified charitable beneficiary. Upon the death of the wife, the entire corpus was to be paid to the named charity. The trust makes its income tax returns on the basis of the calendar year. For 1954, A takes a charitable contributions deduction for the amount of the gift in trust to the charity. In 1957, 1958, 1959, and 1960, A makes further contributions to the trust and he takes deductions for those years under section 170 (c) (2). In 1958, 1959, and 1960, B (not a member of A's family) also makes contributions to the trust for its designated charitable purpose and he takes deductions for those years. In 1958, the trust commences purposely to divert to A, the creator of the trust, income and corpus which had been set aside for its charitable purpose and a substantial amount of income and corpus is so diverted by the close of the year 1959. For 1958 and subsequent years, the deduction allowed the trust under section 642 (c) is limited by reason of the provisions of section 681 (b) (1). Both A and B are disallowed any deduction for their charitable contributions made during 1960 to the trust. Moreover, the deductions taken by A for contributions to the trust in the years 1958 and 1959 would also be disallowed since A was a party to the prohibited transaction. If the facts and surrounding circumstances indicate that the contribution in 1957 by A was for the purpose of the prohibited transaction, then A's charitable contribution deduction for the year 1957 is also disallowed since the prohibited transaction would then have commenced with the making of the contribution and the deduction allowed the trust under section 642 (c) would then be limited for 1957 by reason of the provisions of section 681 (b) (1). The deductions taken by B for 1958 and 1959 are allowed.

§ 1.681 (c) *Statutory provisions; estates and trusts; limitation on charitable contributions deduction; trusts accumulating income.*

SEC. 681. *Limitation on charitable deduction.* * * *

(c) *Accumulated income.* If the amounts permanently set aside, or to be used exclusively for the charitable and other purposes described in section 642 (c) during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year—

(1) Are unreasonable in amount or duration in order to carry out such purposes of the trust;

(2) Are used to a substantial degree for purposes other than those prescribed in section 642 (c); or

(3) Are invested in such a manner as to jeopardize the interests of the religious, charitable, scientific, etc., beneficiaries,

the amount otherwise allowable under section 642 (c) as a deduction shall be limited to the amount actually paid out during the taxable year and shall not exceed 20 percent of the taxable income of the trust (computed without the benefit of section 642 (c) but with the benefit of section 170 (b) (1) (A)). Paragraph (1) shall not apply to income attributable to property of a decedent dying before January 1, 1951, which is transferred under his will to a trust created by such will. In the case of a trust created by the will of a decedent dying on or after January 1, 1951, if income is required to be accumulated pursuant to the mandatory terms of the will creating the trust, paragraph (1) shall apply only to income accumulated during a taxable year of the trust beginning more than 21 years after the date of death of the last life in being designated in the trust instrument.

§ 1.681 (c)–1 *Limitation on charitable contributions deduction of trusts accumulating income*—(a) *In general.* If income of a trust permanently set aside or to be used by a trust exclusively for charitable or other purposes described in section 642 (c) during the taxable year or any prior taxable year (including taxable years beginning before the effective date of section 681), is not actually paid out by the end of the taxable year, the charitable contributions deduction which would otherwise be allowable to the trust under section 642 (c) for the taxable year is subject to the limitations

of section 681 (c), described in paragraph (b) of this section, under the following circumstances:

(1) If accumulations of income are unreasonable. (See paragraph (c) of this section.)

(2) If income accumulated for the charitable or other purposes is used to a substantial degree for purposes other than those described in section 642 (c).

(3) If income accumulated for the charitable or other purposes is invested in such a manner as to jeopardize the interests of the religious, charitable, scientific, etc., beneficiaries.

Whether the foregoing conditions are present in any case must be determined from all relevant facts. Such conditions may result from the use of a chain of two or more organizations, as well as from the use of only one trust. Charitable contributions deductions otherwise allowable under section 170, 545 (b) (2), or 642 (c) for contributions to a trust are not disallowed solely because the trust is subject to the provisions of section 681 (c).

(b) *Extent of limitation.* If a trust is subject to the limitations of section 681 (c) for any taxable year, the charitable deduction which would otherwise be allowable to the trust under section 642 (c) is limited to amounts actually paid out during the taxable year, and is limited to 20 percent of the taxable income of the trust (computed without any charitable deduction), except that an additional deduction of up to 10 percent of such taxable income is allowed for amounts actually paid to a church, an educational organization or a hospital qualifying under section 170 (b) (1) (A).

(c) *Unreasonable accumulations.* Accumulations of income for a charitable or other purpose described in section 642 (c) are unreasonable when more income is accumulated than is needed, or when the duration of the accumulation is longer than is needed, in order to carry out the charitable or other purpose for which the income was set aside. If the gain upon the sale or exchange of property held for the production of investment income, such as dividends, interest, and rents, is not within a reasonable time reinvested in property acquired and held in good faith for the production of investment income, the gain (except the gain upon the sale or exchange of a donated asset to the extent that the gain represents the excess of the fair market value of the asset when acquired by the trust over its substituted basis in the hands of the trust) will be considered income for the purposes of this section. The limitation of section 681 (c) (1) upon trusts unreasonably accumulating income does not apply to a testamentary trust created by a decedent dying before January 1, 1951, except to the extent that its income is attributable to property transferred to the trust by some one other than the decedent. Further, the limitation of section 681 (c) (1) does not apply to income accumulated pursuant to the mandatory terms of testamentary trusts created by decedents dying on or after January 1, 1951, except as to income accumulated during a taxable year beginning more than 21 years after the death of the last life in being designated in the trust instrument.

(d) *Restoration of unlimited deduction.* A trust whose charitable contributions deduction under section 642 (c) has been limited by reason of the provisions of section 681 (c) may file a claim for allowance of unlimited deduction under section 642 (c). This claim shall be filed with the district director with whom the fiduciary is required to file the income tax return of the trust. The claim must contain or be accompanied by information or evidence showing that the circumstances that brought about the application of section 681 (c) no longer exist, and a written declaration made under the penalties of perjury by the fiduciary (or fiduciaries) that he will not knowingly permit the trust again to violate the terms of such section. Section 681 (c) contemplates that a trust whose charitable, etc., deduction has been limited as prescribed therein shall be subject to such limitation for at least one full taxable year.

§ 1.681 (d) *Statutory provisions; estates and trusts; disallowance of certain charitable contributions deductions; cross reference.*

SEC. 681. *Limitation on charitable deduction.* * * *

(d) *Cross reference.* For disallowance of certain charitable, etc., deductions otherwise allowable under section 642 (c), see section 503 (e).

§ 1.681 (d)-1 *Disallowance of certain charitable contributions deductions.* For disallowance of certain charitable contributions deductions otherwisce allowable under section 642 (c), see section 503 (e) and the regulations thereunder.

§ 1.682 (a) *Statutory provisions; estates and trusts; income of an estate or trust in case of divorce; inclusion in gross income of wife.*

SEC. 682. *Income of an estate or trust in case of divorce, etc.*—(a) *Inclusion in gross income of wife.* There shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of separate maintenance (or who is separated from her husband under a written separation agreement) the amount of the income of any trust which such wife is entitled to receive and which, except for this section, would be includible in the gross income of her husband, and such amount shall not, despite any other provision of this subtitle, be includible in the gross income of such husband. This subsection shall not apply to that part of any such income of the trust which the terms of the decree, written separation agreement, or trust instrument fix, in terms of an amount of money or a portion of such income, as a sum which is payable for the support of minor children of such husband. In case such income is less than the amount specified in the decree, agreement, or instrument, for the purpose of applying the preceding sentence, such income, to the extent of such sum payable for such support, shall be considered a payment for such support.

§ 1.682 (a)-1 *Income of trust in case of divorce, etc.*—(a) *In general.* (1) Section 682 (a) provides rules in certain cases for determining the taxability of income of trusts as between spouses who are divorced, or who are separated under a decree of separate maintenance or a written separation agreement. In such cases, the spouse actually entitled to receive payments from the trust is considered the beneficiary rather than the spouse in discharge of whose obligations the payments are made, except to the extent that the payments are specified to be for the support of the obligor spouse's minor children in the divorce or separate maintenance decree, the separation agreement or the governing trust instrument. For convenience, the beneficiary spouse will hereafter in this section and in § 1.682 (b)-1 be referred to as the "wife" and the obligor spouse from whom she is divorced or legally separated as the "husband". (See section 7701 (a) (17).) Thus, under section 682 (a) income of a trust—

(i) Which is paid, credited, or required to be distributed to the wife in a taxable year of the wife, and

(ii) Which, except for the provisions of section 682, would be includible in the gross income of her husband,

is includible in her gross income and is not includible in his gross income.

(2) Section 682 (a) does not apply in any case to which section 71 applies. Although section 682 (a) and section 71 seemingly cover some of the same situations, there are important differences between them. Thus, section 682 (a) applies, for example, to a trust created before the divorce or separation and not in contemplation of it, while section 71 applies only if the creation of the trust or payments by a previously created trust are in discharge of an obligation imposed upon or assumed by the husband (or made specific) under the court order or decree divorcing or legally separating the husband and wife, or a written instrument incident to the divorce status or legal separation status, or a written separation agreement. If section 71 applies, it requires inclusion in the wife's income of the full amount of periodic payments received attributable to property in trust (whether or not out of trust income), while, if section 71 does not apply, section 682 (a) requires amounts paid, credited, or required to be distributed to her to be included only to the extent they are includible in the taxable income of a trust beneficiary under sections 641 through 668.

(3) Section 682 (a) is designed to produce uniformity as between cases in which, without section 682 (a), the income of a so-called alimony trust would be taxable to the husband because of his continuing obligation to support his wife or former wife, and other cases in which the income of a so-called alimony trust is taxable to the wife or former wife because of the termination of the husband's obligation. Furthermore, section 682 (a) taxes trust income to the wife in all cases in which the husband would otherwise be taxed not only because of the discharge of his alimony obligation but also because of his retention of control over the trust income or corpus. Section 682 (a) applies whether the wife is the beneficiary under the terms of the trust instrument or is an assignee of a beneficiary.

(4) The application of section 682 (a) may be illustrated by the following ex-

amples, in which it is assumed that both the husband and wife make their income tax returns on a calendar year basis:

Example (1). Upon the marriage of H and W, H irrevocably transfers property in trust to pay the income to W for her life for support, maintenance, and all other expenses. Some years later, W obtains a legal separation from H under an order of court. W, relying upon the income from the trust payable to her, does not ask for any provision for her support and the decree recites that since W is adequately provided for by the trust, no further provision is being made for her. Under these facts, section 682 (a), rather than section 71, is applicable. Under the provisions of section 682 (a), the income of the trust which becomes payable to W after the order of separation is includible in her income and is deductible by the trust. No part of the income is includible in H's income or deductible by him.

Example (2). H transfers property in trust for the benefit of W, retaining the power to revoke the trust at any time. H, however, promises that if he revokes the trust he will transfer to W property in the value of $100,000. The transfer in trust and the agreement were not incident to divorce, but some years later W divorces H. The court decree is silent as to alimony and the trust. After the divorce, income of the trust which becomes payable to W is taxable to her, and is not taxable to H or deductible by him. If H later terminates the trust and transfers $100,000 of property to W, the $100,000 is not income to W nor deductible by H.

(b) *Alimony trust income designated for support of minor children.* Section 682 (a) does not require the inclusion in the wife's income of trust income which the terms of the divorce or separate maintenance decree, separation agreement, or trust instrument fix in terms of an amount of money or a portion of the income as a sum which is payable for the support of minor children of the husband. The portion of the income which is payable for the support of the minor children is includible in the husband's income. If in such a case trust income fixed in terms of an amount of money is to be paid but a lesser amount becomes payable, the trust income is considered to be payable for the support of the husband's minor children to the extent of the sum which would be payable for their support out of the originally specified amount of trust income. This rule is similar to that provided in the case of periodic payments under section 71. See § 1.71–1.

§ 1.682 (b) *Statutory provisions; estates and trusts; income of an estate or trust in case of divorce; wife considered a beneficiary.*

SEC. 682. *Income of an estate or trust in case of divorce, etc.* * * *

(b) *Wife considered a beneficiary.* For purposes of computing the taxable income of the estate or trust and the taxable income of a wife to whom subsection (a) or section 71 applies, such wife shall be considered as the beneficiary specified in this part. A periodic payment under section 71 to any portion of which this part applies shall be included in the gross income of the beneficiary in the taxable year in which under this part such portion is required to be included.

§ 1.682 (b)–1 *Application of trust rules to alimony payments.* (a) For the purpose of the application of sections 641 to 668, inclusive, the wife described in section 682 or section 71 who is entitled to receive payments attributable to property in trust is considered a beneficiary of the trust, whether or not the payments are made for the benefit of the husband in discharge of his obligations.

(b) A periodic payment includible in the wife's gross income under section 71 attributable to property in trust is included in full in her gross income in her taxable year in which any part is required to be included under section 652 or 662. Assume, for example, in a case in which both the wife and the trust file income tax returns on the calendar year basis, that an annuity of $5,000 is to be paid to the wife by the trustee every December 31 (out of trust income if possible and, if not, out of corpus) pursuant to the terms of a divorce decree. Of the $5,000 distributable on December 31, 1954, $4,000 is payable out of income and $1,000 out of corpus. The actual distribution is made in 1955. Although the periodic payment is received by the wife in 1955, since under section 662 the $4,000 income distributable on December 31, 1954, is to be included in the wife's income for 1954, the $1,000 payment out of corpus is also to be included in her income for 1954.

§ 1.682 (c) *Statutory provisions; estates and trusts; income of an estate or trust in case of divorce; definitions "husband" and "wife".*

SEC. 682. *Income of an estate or trust in case of divorce, etc.* * * *

(c) *Cross reference.* For definitions of "husband" and "wife", as used in this section, see section 7701 (a) (17).

§ 1.682 (c)–1 *Definitions.* For definitions of the terms "husband" and "wife" as used in section 682, see section 7701 (a) (17) and the regulations thereunder.

[F. R. Doc. 57–9489; Filed, Nov. 15, 1957; 8:50 a. m.]

Subchapter F—Procedure and Administration

[T. D. 6268]

PART 301—PROCEDURE AND ADMINISTRATION

ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

On September 19, 1957, notice of proposed rule making regarding the regulations under chapter 68 of the Internal Revenue Code of 1954, relating to additions to the tax, additional amounts, and assessable penalties, was published in the FEDERAL REGISTER (22 F. R. 7465). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted, subject to the changes as set forth below.

PARAGRAPH 1. Section 301.6651–1 is revised as follows:

(A) By striking out all of paragraph (a) (2) (iii) and inserting in lieu thereof a new subdivision (iii).

(B) By striking out the fourth sentence of paragraph (b) and inserting in lieu thereof the following two sentences: "The tax shown on the return is $800 and a deficiency of $200 is subsequently assessed, making the tax required to be shown on the return $1,000. Of this amount, $300 has been paid by withholding from wages and $400 has been paid as estimated tax."

PAR. 2. Section 301.6652–1 (a) (2) is revised by striking out the first sentence and inserting in lieu thereof the following: "The penalty imposed by section 6652 shall not apply if it is established to the satisfaction of the district director that such failure to file was due to a reasonable cause and not to willful neglect."

[SEAL] C. W. STOWE,
Acting Commissioner of Internal Revenue.

Approved: November 12, 1957.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

The following regulations relating to additions to the tax, additional amounts, and assessable penalties are prescribed under chapter 68 of Subtitle F of the Internal Revenue Code of 1954, and except as hereinafter provided, are effective on and after August 17, 1954, and are applicable with respect to taxes imposed under the Internal Revenue Code of 1954. Sections 301.6654 and 301.6654–1 are applicable with respect to taxable years beginning after December 31, 1954; §§ 301.6655 and 301.6655–1 are applicable with respect to taxable years ending on or after December 31, 1955; and §§ 301.66775 and 301.6675–1 are effective, in the case of claims under section 6420, with respect to gasoline purchased after December 31, 1955, and, in the case of claims under section 6421, with respect to gasoline purchased after June 30, 1956, and before July 1, 1972.

ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

ADDITIONS TO THE TAX AND ADDITIONAL AMOUNTS

ASSESSABLE PENALTIES

GENERAL RULES

EFFECTIVE DATE AND RELATED PROVISIONS

AUTHORITY: §§ 301.6651 to 301.7851, issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805.

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 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 machine guns 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) If a return is not timely filed, the fact that the date prescribed for filing the return, or the corresponding date in any succeeding calendar month, 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 $800 and a deficiency of $200 is subsequently assessed, making the tax required to be shown on the return $1,000. Of this amount, $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 to the satisfaction of the district director 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, 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 sub-

section (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 paragraph (a) (2) of § 301.6651–1.

(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 de-

ficiency 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. 57-9488; Filed, Nov. 15, 1957; 8:50 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter XIV—General Services Administration

[Revision 1]

REG. 11—MERCURY REGULATION: PURCHASE PROGRAM FOR MERCURY MINED IN THE CONTINENTAL UNITED STATES (INCLUDING TERRITORY OF ALASKA)

This revision of General Services Administration Regulation 11, establishing a purchase program for mercury mined in the United States (including the Territory of Alaska), eliminates the time limitation for making application for participation in the program, extends the program on a limited basis during calendar year 1958, modifies the packaging requirements, combines the previously published Regulation and amendments thereto and makes other miscellaneous changes.

Sec.
1. Basis and purpose.
2. Specifications.
3. Deliveries.
4. Price.
5. Program duration and quantity limitations.
6. Participation.
7. Access to books and records.

AUTHORITY: Sections 1 to 7 issued under sec. 704, 64 Stat. 816, as amended; 50 U. S. C. App. 2154. Interpret or apply sec. 303, 64 Stat. 801, as amended; 50 U. S. C. App. 2093, E. O. 10480, 18 F. R. 4939, 3 CFR, 1953 Supp.

SECTION 1. *Basis and purpose.* The purpose of this regulation is to encourage expansion in the production of prime virgin mercury in the Continental United States (including the Territory of Alaska) and to provide a uniform price in accordance with the purchase Program described herein, as certified by the Director of the Office of Defense Mobilization. The Administrator of General Services will buy prime virgin mercury mined in the Continental United States (including Territory of Alaska) in accordance with the terms and conditions set forth herein.

SEC. 2. *Specifications.* Purchases under this Program shall be restricted to prime virgin mercury mined in the Continental United States (including Territory of Alaska) which shall have a mercury content of not less than 99.9 percent and shall be bright and clean.

SEC. 3. *Deliveries.* (a) All purchases under this Program shall be delivered by the seller f. o. b. delivery point as directed by the appropriate Regional Commissioner of the General Services Administration (see section 6 of this regulation).

(b) Deliveries shall be offered to the Government under this Program in lots containing not less than five flasks of prime virgin mercury.

(c) All shipments found not to meet the specifications provided for herein shall be rejected and shall be removed at the expense of the seller.

(d) All shipments shall be packed in clean flasks of standard quality and design, the body of which will be fabricated from seamless wrought-iron or steel tubing—the bottom of the flask to be swaged to form a concave bottom so that closure can be made with a wrought-iron or steel plug of 1" maximum diameter welded in place. The neck shall be formed around a ½" pipe thread collar welded in place. All welds must be certified to pass a flask pressure test of 90 pounds per square inch air pressure with soap and water applied to all weld seams. Flasks shall be securely stoppered with an iron or steel screw-plug having a ⅛" hole drilled transversely through the head of the plug. Flasks shall be free of rust or other foreign material and shall be in good physical condition. Standard-size flasks usually contain seventy-six (76) pounds of mercury. Flasks of other sizes may be accepted provided all flasks in any lot are the same nominal size and shape. There shall be attached to each flask a nonferrous metal tag upon which shall be punched "Mercury (Domestic Purchase Program)" and the following information with respect to such flask: the flask serial number, the place of origin of the mercury, and the gross, tare and net weights. Such tag shall be wired firmly with nonferrous wire through the head of the plug of the flask.

(e) Inspection of each shipment shall be made by a representative of the Government at the designated delivery point. The decision of the Government with regard to acceptance (including chemical, physical or other requirements) or rejection will be final.

(f) At least thirty (30) days prior to each shipment, the seller shall inform the appropriate Regional Commissioner, General Services Administration. Shipment shall be made only upon and in accordance with instructions issued to the seller by the said Regional Commissioner. Each shipment shall be accompanied by a certificate executed by the seller disclosing the source of the mercury.

SEC. 4. *Price.* For deliveries accepted under this Program, the price shall be Two Hundred Twenty-Five Dollars ($225.00) per flask containing seventy-six (76) pounds of mercury, f. o. b. delivery point.

SEC. 5. *Program duration and quantity limitations.* This Program shall terminate at the close of business December 31, 1958. The total quantity of prime virgin mercury accepted or to be accepted under this Program prior to January 1, 1958 shall be limited to the equivalent of one hundred twenty-five thousand (125,000) flasks containing seventy-six (76) pounds of mercury each. The total quantity of such mercury to be accepted under this Program during the calendar year 1958 shall be limited to the equivalent of thirty thousand (30,000) flasks containing seventy-six (76) pounds of mercury each.

SEC. 6. *Participation.* Any person or firm wishing to participate in this Program shall give notice to the Regional Commissioner, General Services Administration, having jurisdiction of the area in which the mercury is mined, as indicated below:

Region No	Location of regional office	Area of jurisdiction
1	Regional Commissioner, General Services Administration, 620 Post Office and Court House, Boston 9, Mass.	Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island.
2	Regional Commissioner, General Services Administration, 250 Hudson St., New York 13, N. Y.	New York, Pennsylvania, New Jersey, Delaware.
3	Regional Commissioner, General Services Administration, Regional Office Bldg., 7th and D Sts. SW., Washington 25, D. C.	District of Columbia, Maryland, West Virginia, Virginia.
4	Regional Commissioner, General Services Administration, Peachtree—7th Bldg., 50 7th St. NE., Atlanta, Ga.	North Carolina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, Florida.
5	Regional Commissioner, General Services Administration, U. S. Courthouse, 219 S. Clark St., Chicago 4, Ill.	Kentucky, Illinois, Wisconsin, Michigan, Indiana, Ohio.
6	Regional Commissioner, General Services Administration, GSA Bldg., 2306 E. Bannister Rd., Kansas City 14, Mo.	Missouri, Kansas, Iowa, Nebraska, North Dakota, South Dakota, Minnesota.
7	Regional Commissioner, General Services Administration, 1114 Commerce St., Dallas 2, Tex.	Texas, Louisiana, Arkansas, Oklahoma.
8	Regional Commissioner, General Services Administration, 41 Denver Federal Center, Denver 2, Colo.	Colorado, Wyoming, Utah, New Mexico.
9	Regional Commissioner, General Services Administration, 4th Floor, 49 4th St., San Francisco 3, Calif.	California, Arizona, Nevada.
10	Regional Commissioner, General Services Administration, Federal Office Bldg., 909 1st Ave., Seattle 4, Wash.	Washington, Oregon, Idaho, Montana, Territory of Alaska.

Such notice shall be in the form of a letter, post card or telegram stating that participation in this Program is desired. The notice must be signed and return address given. Upon receipt of such notice a certificate of participation will

be issued to the applicant, authorizing delivery of prime virgin mercury conforming to the requirements of this regulation.

SEC. 7. *Access to books and records.* By participating in the Program each seller agrees to permit authorized representatives of the United States Government, during the duration of the Program, and for a period of three years thereafter, to have access to and the right to examine any pertinent books, documents, papers and records of the seller involving transactions related to the Program.

Dated: November 8, 1957.

FRANKLIN G. FLOETE,
Administrator of General Services.

[F. R. Doc. 57-9487; Filed, Nov. 15, 1957; 8:50 a. m.]

[Revision 1]

REG. 12—MERCURY REGULATION: PURCHASE PROGRAM FOR MERCURY MINED IN MEXICO

This revision of General Services Administration Regulation 12, establishing a purchase program for mercury mined in Mexico, eliminates the time limitation for making application for participation in the program, extends the program on a limited basis during calendar year 1958, modifies the packaging requirements, provides for access to seller's books and records, combines the previously published Regulation and amendments thereto and makes other miscellaneous changes.

Sec.
1. Basis and purpose.
2. Specifications.
3. Deliveries.
4. Price.
5. Program duration and quantity limitations.
6. Participation.
7. Access to books and records.

AUTHORITY: Sections 1 to 7 issued under sec. 704, 64 Stat. 816, as amended; 50 U. S. C. App. 2154. Interpret or apply sec. 303, 64 Stat. 801, as amended; 50 U. S. C. App. 2093, E. O. 10480, 18 F. R. 4939, 3 CFR, 1953 Supp.

SECTION 1. *Basis and purpose.* The purpose of this regulation is to encourage expansion in the production of prime virgin mercury in Mexico and to provide a uniform price in accordance with the purchase Program described herein, as certified by the Director of the Office of Defense Mobilization. The Administrator of General Services will buy prime virgin mercury mined in Mexico in accordance with the terms and conditions set forth herein.

SEC. 2. *Specifications.* Purchases under this Program shall be restricted to prime virgin mercury of Mexican origin which shall have a mercury content of not less than 99.9 percent and shall be bright and clean.

SEC. 3. *Deliveries.* (a) All purchases under this Program shall be delivered by the seller f. o. b. Government Purchase Depot at El Paso, Texas, duty paid by the seller.

(b) Deliveries shall be offered to the Government under this Program in lots containing not less than five flasks of prime virgin mercury.

(c) All shipments found not to meet the specifications provided for herein shall be rejected and shall be removed at the expense of the seller.

(d) All shipments shall be packed in clean flasks of standard quality and design, the body of which will be fabricated from seamless wrought-iron or steel tubing—the bottom of the flask to be swaged to form a concave bottom so that closure can be made with a wrought-iron or steel plug of 1'' maximum diameter welded in place. The neck shall be formed around a ½'' pipe thread collar welded in place. All welds must be certified to pass a flask pressure test of 90 pounds per square inch air pressure with soap and water applied to all weld seams. Flasks shall be securely stoppered with an iron or steel screw-plug having a ⅛'' hole drilled transversely through the head of the plug. Flasks shall be free of rust or other foreign material and shall be in good physical condition. Standard-size flasks usually contain seventy-six (76) pounds of mercury. Flasks of other sizes may be accepted provided all flasks in any lot are the same nominal size and shape. There shall be attached to each flask a non-ferrous metal tag upon which shall be punched "Mercury (Mexican Purchase Program)" and the following information with respect to such flask: the flask serial number, the place of origin of the mercury, and the gross, tare and net weights. Such tag shall be wired firmly with non-ferrous wire through the head of the plug of the flask.

(e) Inspection of each shipment shall be made by a representative of the Government at the Government Purchase Depot. The decision of the Government with regard to acceptance (including chemical, physical or other requirements) or rejection will be final.

(f) At least thirty (30) days prior to each shipment, the seller shall inform the Regional Commissioner, General Services Administration, 1114 Commerce Street, Dallas 2, Texas of a delivery to be made to the Purchase Depot. Shipment shall be made only upon and in accordance with instructions issued to the seller by the said Regional Commissioner. Each shipment shall be accompanied by a certificate executed by the seller disclosing the source of the mercury.

SEC. 4. *Price.* For deliveries accepted under this Program, the price shall be Two Hundred Twenty-Five Dollars ($225.00) per flask containing seventy-six (76) pounds of mercury, duty paid f. o. b. Government Purchase Depot, El Paso, Texas.

SEC. 5. *Program duration and quantity limitations.* This Program shall terminate at the close of business December 31, 1958. The total quantity of prime virgin mercury accepted or to be accepted under this Program prior to January 1, 1958 shall be limited to the equivalent of seventy-five thousand (75,000) flasks containing seventy-six (76) pounds of mercury each. The total quantity of such mercury to be accepted under this Program during the calendar year 1958 shall be limited to the equivalent of twenty thousand (20,000) flasks containing seventy-six (76) pounds of mercury each.

SEC. 6. *Participation.* Any person or firm wishing to participate in this Program shall give notice to the Regional Commissioner, General Services Administration, 1114 Commerce Street, Dallas 2, Texas. Such notice shall be in the form of a letter, post card or telegram stating that participation in this Program is desired. The notice must be signed and return address given. Upon receipt of such notice a certificate of participation will be issued to the applicant, authorizing delivery of prime virgin mercury conforming to the requirements of this regulation.

SEC. 7. *Access to books and records.* By participating in the Program each seller agrees to permit authorized representatives of the United States Government, during the duration of the Program, and for a period of three years thereafter, to have access to and the right to examine any pertinent books, documents, papers and records of the seller involving transactions related to the Program.

Dated: November 8, 1957.

FRANKLIN G. FLOETE,
Administrator of General Services.

[F. R. Doc. 57-9486; Filed, Nov. 15, 1957; 8:50 a. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 207—NAVIGATION REGULATIONS

BONNEVILLE DAM NAVIGATION LOCK AND APPROACH CHANNELS, COLUMBIA RIVER, OREGON AND WASHINGTON

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U. S. C. 1), § 207.700 is hereby amended to make the regulations governing the use, administration and navigation of the Bonneville Dam Navigation Lock and approach channels, Columbia River, Oregon and Washington consistent with those approved for The Dalles Dam Navigation Lock, as follows:

§ 207.700 *Bonneville Dam Navigation Lock and Approach Channels, Columbia River, Oregon and Washington; use, administration and navigation*—(a) *General.* The lock and its approach channels, and all its appurtenances, shall be in charge of the District Engineer, U. S. Army Engineer District, in charge of the locality. His representative at Bonneville Dam shall be the Project Engineer who shall customarily give orders and instructions to the lock master and assistant lock masters in charge of the lock. Hereinafter, the term "lock master" shall be used to designate the lock official in immediate charge of the lock

at any given time. In case of emergency and on all routine work in connection with the operation of the lock, the lock master shall have authority to take such steps as may be immediately necessary without waiting for instructions from the Project Engineer.

(b) *Immediate control.* The lock master shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He shall see that all laws, rules and regulations for the use of the lock and lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the limits of the lock or lock area, whether navigating the lock or not. It shall be the duty of the Project Engineer to establish lines of succession for the men operating the lock on all shifts in order that in case of absence or accident to the designated lock master, one of his assistants will immediately assume the position of lock master.

(c) *Authority of lock master.* No one shall cause any movement of any vessel, boat, or other floating thing in the lock or approaches except by or under the direction of the lock master or his assistants.

(d) *Signals*—(1) *Sound.* All craft desiring lockage shall signal by two long and two short blasts of the whistle, delivered at a distance of one-half mile from the lock. When the lock is ready for entrance, notice will be given by one long blast. Permission to leave the lock will be given by one short blast.

(2) *Visual.* Lights are located at only the upstream end of the lock and will be used in conjunction with the sound signals for downstream bound traffic. When a green light is on, the lock is ready for entrance by all craft except log rafts, and vessels may enter under full control. When a red light is on, the lock cannot be made ready immediately and the vessel shall stand clear. When an amber light is on, log rafts only may enter the lock.

(3) *Radio.* The lock is equipped with two-way radio operating on frequencies of 2182 and 2784 kc. These frequencies will be monitored by the lock master. Vessels equipped with two-way radio may communicate with the crew operating the lock, but communications or signals so received will only augment and not replace the sound and visual signals.

(e) *Permissible dimensions of boats.* The lock chamber is 76 feet wide by 500 feet long in the clear. Single tows of lesser dimensions will be permitted to lock through without disassembly. If desired, a tow of dimensions greater than 76 feet by 500 feet may be rearranged to less than clear lock dimensions prior to entering the lock, and be passed through the lock in one lockage. Such rearrangements may be done at the moorage in the downstream lock approach channel or along the upstream guide wall if it will not interfere with other river traffic. If other river traffic will be hindered, upstream rearrangement should be done above the guide wall. During periods when other river traffic will not be held up, and, if in the opinion of the lock master vehicular and pedestrian traffic over the swing bridge or other Bonneville Project functions will not be appreciably affected, rearrangement of craft within the lock chamber will be permitted provided that rearrangement maneuvers will not result in barges or tugs wedging against or striking the miter gates in their recesses. Maneuvering of craft in the lock chamber will be permitted only when both miter gates at the open end of the lock are in their recesses in the block walls. Tows wider than 50 feet will not be permitted to enter the lock during extreme high water when tailwater at the lock is higher than 35 feet above m. s. l. since the downstream guide wall will be inundated at that stage and will offer no guidance.

(f) *Depths.* At normal pool elevation of 72 feet above m. s. l., the depth of water over the upstream miter gate sill will be 32 feet. The downstream miter gate sill has an elevation of 16 feet below m. s. l. The depth of water over the downstream miter gate sill will depend upon the flow in the river but will usually exceed 24 feet which would exist at a tailwater elevation of 8 feet above m. s. l. Gauges reading in elevation above m. s. l. are located on the south wall of the lock adjacent to each lock gate. A boat must not attempt to enter the lock if its draft exceeds the depth indicated by references to the gauges, with due allowances for clearance.

(g) *Precedence at lock.* Ordinarily the boat arriving before all others at the lock will be locked through first; however, depending upon whether the lock is full or empty, this precedence may be modified at the discretion of the lock master if boats are approaching from the opposite direction and are within reasonable distances of the lock at the time of the approach by the first boat. When several boats are to pass through the locks precedence shall be given as follows:

First: Boats and craft owned by the United States and engaged upon river and harbor improvement work.
Second: Freight and towboats.
Third: Rafts.
Fourth: Passenger boats.
Fifth: Small vessels and pleasure boats.

(h) *Loss of turn.* Boats that fail to enter the lock with reasonable promptness, after being authorized to do so, shall lose their turn.

(i) *Multiple lockage.* The lock master shall decide whether one or more vessels may be locked through at the same time.

(j) *Speed.* Vessels shall not be raced or crowded alongside another in the approach channels. When entering the lock, speed shall be reduced to a minimum consistent with safe navigation. As a general rule, when a number of vessels are entering the lock, the following vessel shall remain at least 200 feet astern of the vessel ahead.

(k) *Lockage of small boats.* In general the lockage of pleasure boats, skiffs, fishing boats, and other small craft will be coordinated with the lockage of commercial craft other than barges handling petroleum products or highly hazardous materials. If no combined lockage can be scheduled within a reasonable time not to exceed one hour after the arrival of the small craft at the lock, separate lockage will be made for such small craft.

(l) *Mooring in lock.* All boats, rafts and other craft when in the locks shall be moored by head and spring lines and such other lines as may be necessary to the fastenings provided for that purpose, and the lines shall not be let go until the signal is given for the vessel to leave the lock.

(m) *Mooring in approaches prohibited.* The mooring or anchoring of boats or other craft in the approaches to the lock where such mooring will interfere with navigation of the lock is prohibited. Rafts to be passed through the lock shall be moored in such a manner as not to interfere with the navigation of the lock or its approaches, and if the raft is to be divided into sections for locking, the sections shall be brought into the lock as directed by the lock master. After passing through the lock, the sections shall be reassembled at such a distance from the entrance as not to obstruct or interfere with navigation of the lock and approaches.

(n) *Waiting for lockage.* Boats and tows waiting downstream of the dam for lockage shall wait in the clear downstream of the navigation lock approach channel, or contingent upon prior radio clearance of the lock master, may at their own risk lie at the downstream moorage facility on the south shore downstream from the guide wall, provided that a 100-foot wide open channel is maintained. Vessels waiting upstream of the dam for lockage may lay to against the guide wall provided they remain not less than 400 feet upstream of the upstream lock gate; or contingent upon prior radio clearance by the lock master they may tie to the upstream guide wall.

(o) *Delay in lock.* Boats or barges must not obstruct navigation by unnecessary delay in entering or leaving the lock.

(p) *Damage to lock or other structures.* The owners and masters of vessels shall be liable for any damage caused by their operation to the lock or other structures. They must use great care not to strike any part of the lock, any gate or appurtenance thereto, or machinery for operating the gates, or the walls protecting the banks of the approach channels. All boats with metal nosings or projecting irons, or rough surfaces that would be liable to damage the gates or lock walls, will not be permitted to enter the lock unless provided with suitable buffers and fenders.

(q) *Tows.* Persons in charge of a vessel that is towing a second vessel or barge by lines, shall take the second vessel or barge alongside at a distance of at least 500 feet from the lock and keep it alongside until at least 500 feet clear of the lock.

(r) *Crew to move craft.* The masters in charge of tows and the persons in charge of rafts and other craft must provide a sufficient number of men to move barges, rafts, and other craft into and out of the lock easily and promptly.

(s) *Handling valves, gates, bridges, and machinery.* No person, unless authorized by the lock master shall open or close any bridge, gate, valve, or operate any machinery in connection with the lock, but the lock master may call for assistance from the master of any boat using the lock, should such aid be necessary, and when rendering such assistance the men so employed shall be strictly under the orders of the lock master.

(t) *Landing of freight.* No one shall land freight or baggage on or over the walls of the lock so as in any way to delay or interfere with navigation or the operations of the lock; and freight and baggage consigned to Bonneville Project shall be landed only at such places as are designated by the lock master or his assistants.

(u) *Refuse in lock.* No material of any kind shall be thrown or discharged into the lock, and no material of any kind shall be deposited in the lock area.

(v) *Statistics.* On each passage through the lock, masters or pursers of vessels shall make to the lock master such written statement of passengers, freight, and registered tonnage and other information as are indicated on forms furnished such masters or pursers by the lock master.

(w) *Persistent violation of regulations.* If the owner or master of any boat persistently violates the regulations in this section after due notice of the same, the boat or master may be refused lockage by the lock master at the time of violation or subsequent thereto if deemed necessary in the opinion of the lock master to protect the Government property and works in the vicinity of the lock.

(x) *Restricted areas.* (1) All waters described in subparagraph (2) of this paragraph are restricted to all boats, except those of the United States Coast Guard and Corps of Engineers.

(2) All waters of the Columbia River and Bradford Slough within 1,000 feet above and 2,000 feet below the spillway dam and 500 feet above and 600 feet below the powerhouse are hereby designated as restricted areas. No vessel or other floating craft shall enter or remain in any of the restricted areas at any time without first obtaining permission from the District Engineer, U. S. Army Engineer District, Portland, or his duly authorized representative. The restricted areas will be designated by signs posted in conspicuous and appropriate places.

[Regs., Oct. 28, 1957, 800.21 (Bonneville Dam, Ore.)—ENGWO] (Sec. 7, 40 Stat. 266; 33 U. S. C. 1)

[SEAL] HERBERT M. JONES,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 57-9468; Filed, Nov. 15, 1957; 8:45 a. m.]

PART 207—NAVIGATION REGULATIONS

PUGET SOUND AREA, WASH.

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U. S. C. 1), § 207.750 (c) establishing and governing the use and navigation of a naval restricted area in Admiralty Inlet, Puget Sound Area, Washington, is hereby amended modifying the boundary of the area, as follows:

§ 207.750 *Puget Sound Area, Wash.* * * *

(c) *Admiralty Inlet, entrance; naval restricted area*—(1) *The area.* Beginning at Point Wilson Light thence southwesterly along the coast line to latitude 48°07′ N.; thence northwesterly to a point at latitude 48°15′ N. longitude 123°00′ W.; thence due east to Whidbey Island; thence southerly along the coast line to latitude 48°12.5′ N.; thence southerly to the point of beginning.

(2) *The regulations.* (i) Use of any equipment such as anchors, fishing gear, grapnels, etc., which may foul underwater installations within the restricted area, is prohibited. Dumping of any non-buoyant objects in this area is prohibited.

(ii) The regulations of this paragraph shall be enforced by the Commandant, Thirteenth Naval District, or his duly appointed representative.

[Regs., Oct. 25, 1957, 800.21 (Admiralty Inlet, Wash.)—ENGWO] (Sec. 7, 40 Stat. 266; 33 U. S. C. 1)

[SEAL] HERBERT M. JONES,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 57-9469; Filed, Nov. 15, 1957; 8:45 a. m.]

TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 52—INSURANCE

PART 54—PAYMENT FOR LOSSES

MISCELLANEOUS AMENDMENTS

a. In § 52.2 *Fees* (22 F. R. 4389) make the following changes:

1. Amend paragraph (b) to read as follows:

(b) *Restricted delivery.*

(Not available for mail insured for $10 or less)—50c.

2. In paragraph (c) amend the opening, parenthetical statement to read as follows: "(Not available for mail insured for $10 or less)."

NOTE: The corresponding Postal Manual section is 162.22 and 23.

b. In § 52.3 *Mailing,* make the following changes:

1. Amend paragraph (a) to read as follows:

(a) *Payment of fees and postage.* Insurance fees must be paid in addition to the regular postage. The mailer guarantees to pay return and forwarding postage unless he writes instructions on the wrapper or envelope not to forward or return the mail.

2. Amend paragraph (c) to read as follows:

(c) *Individual receipts for mailing.* You are issued a receipt for each insured parcel mailed. The post office keeps no record of the mailing of insured packages. You must enter the name and address of addressee on the receipt and retain it. You must submit the receipt if you file an application for payment of insurance or if you file an inquiry concerning the parcel.

3. Amend paragraph (d) to read as follows:

(d) *Firm mailing books.* Mailing books, Form 3877-A, are furnished without charge to patrons who mail an average of three or more parcels at one time. Spaces are provided for entering the description of parcels to be insured. The sheets of these books become the sender's receipts. The books must be presented with the parcels to be mailed. Following are instructions for their use:

(1) Parcels to be insured for $10 or less are not to be numbered and should be listed on separate sheets or grouped together. Prepare on copy only.

(2) For parcels to be insured for more than $10, the postmaster will assign a series of numbers. The mailer must number the articles and the items in the book to correspond.

(3) The parcels must be conspicuously endorsed with the stamped or printed official insurance endorsement.

4. Amend paragraph (f) to read as follows:

(f) *Mailing on rural routes.* You may give the mail to the rural carriers; or you may leave the mail in rural mail boxes, provided stamps are fixed for postage and fee, or money for postage and fee is left in the box. You must leave a note stating the amount of insurance desired. The Postal Service assumes no responsibility for articles or money left in rural mailboxes until the articles are receipted for by the carrier.

NOTE: The corresponding Postal Manual section is 162.3.

(R. S. 161, 396, as amended; sec. 1, 41 Stat. 581, sec. 12, 65 Stat. 676; 5 U. S. C. 22, 369, 39 U. S. C. 246f, 382)

c. In § 54.4 *How to request payment* (22 F. R. 2712), amend subdivision (i) of paragraph (e) (1) to read as follows:

(i) The receipt issued at the time of mailing an exact copy thereof made by any of the various photographic processes, or a notarized copy of the original; or

NOTE: The corresponding Postal Manual section is 164.451a.

(R. S. 161, 396, as amended, 3926, as amended; sec. 1, 41 Stat. 581; 5 U. S. C. 22, 369, 39 U. S. C. 381, 382)

[SEAL] HERBERT B. WARBURTON,
Acting General Counsel.

[F. R. Doc. 57-9477; Filed, Nov. 15, 1957; 8:47 a. m.]

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

Subchapter D—Grants

PART 53—GRANTS FOR SURVEY, PLANNING AND CONSTRUCTION OF HOSPITALS AND MEDICAL FACILITIES

INCLUSION OF GUAM AS A "STATE"; GENERAL STANDARDS OF CONSTRUCTION AND EQUIPMENT

Notice of proposed rule making, public rule making procedures and postponement of effective date have been omitted in the issuance of the following amendments of this part, which relate solely to grants to States, political subdivisions and public or other nonprofit agencies for the construction of public and other nonprofit hospitals and medical facilities.

1. Paragraph (w) of § 53.1 is amended by inserting immediately after the words "Puerto Rico" the word "Guam" so that the paragraph will read as follows:

(w) *State.* The 48 States, Alaska, Hawaii, Puerto Rico, Guam, Virgin Islands, and the District of Columbia.

2. Subpart M is revised to read as follows:

SUBPART M—(APPENDIX A) GENERAL STANDARDS OF CONSTRUCTION AND EQUIPMENT

Sec.

AUTHORITY: §§ 53.131 to 53.155 issued under sec. 215, 58 Stat. 690, as amended; 42 U. S. C. 216. Interpret or apply secs. 622, 631, 60 Stat. 1042, 1046, as amended; 42 U. S. C. 291e, 291l, 291u.

§ 53.131 *Introduction.* (a) The standards set forth in this subpart have been established by the Surgeon General of the U. S. Public Health Service as required by Title VI of the Public Health Service Act. These standards constitute minimum requirements for construction and equipment and shall apply to all projects for which Federal assistance is requested under the act. They are considered necessary to insure properly planned and well constructed hospitals and public health centers which can be maintained and efficiently operated to furnish adequate services.

(b) Throughout these general standards reference is made to certain sizes of hospitals such as, "up to and including 100 beds", "over 100 beds", etc. These references are not meant to be applied strictly. They indicate the approximate sizes at which certain changes in requirements will occur.

(c) It should be particularly noted that the small hospital of 50 beds or under presents a special problem. The size of the various departments will be generally smaller and will depend upon the requirements of the particular hospital. Some of the functions allotted separate spaces or rooms in these general standards may be combined provided that the resulting plan will not compromise the best standards of medical and nursing practice. In other respects the general standards set forth in this subpart, including the area requirements, will apply.

(d) In the case of types of hospitals not specifically treated herein the standards for general hospitals will apply. Due allowance will be made for the specialized or unusual requirements of the particular hospital involved.

(e) Since these are minimum requirements it is desirable only that they form a basis for development of higher standards. In the interest of promoting the development of higher standards it is the intention of the Public Health Service to make suggestions and disseminate the latest information as to current good practice in planning and design of health facilities. This information will be distributed from time to time to State agencies and other interested persons.

(f) No attempt has been made in establishing these standards to comply with all the various State and local codes and regulations which, of course, must be observed. The standards set forth in this subpart must be followed where they exceed any State and local codes and regulations. Likewise, compliance is required with minimum standards of construction and equipment promulgated by the State Agency where such requirements provide a higher standard than the standards set forth in this subpart.

§ 53.132 *Site survey and soil investigation.* (a) The applicant shall provide for a survey and soil investigation of the site and furnish a plat of the site. The purpose of this survey and soil investigation is to obtain all information necessary for the design of the building foundations and mechanical service connections and development of the site. It is suggested that this matter be deferred until the architect has been selected in order that he may co-operate with the engineer who obtains the data.

(b) If any existing structures or improvements on the site are to be removed by the owners or others, the buildings or improvements must be so designated on the plat.

(c) Any discrepancies between the survey and the recorded legal description shall be reconciled or explained.

(d) The plat shall indicate:

(1) The courses and distances of property lines.

(2) Dimensions and location of any buildings, structures, easements, rights-of-way or encroachments on the site.

(3) Details of party walls, or walls and foundations adjacent to the lot lines.

(4) The position, dimensions and elevations of all cellars, excavations, wells, back-filled areas, etc., and the elevation of any water therein.

(5) All trees which may be affected by the building operations.

(6) Detailed information relative to established curb and building lines and street, alley, sidewalk and curb grades at or adjacent to the site and the materials of which they are constructed.

(7) All utility services and the size, characteristics, etc., of these services.

(8) The location of all piping, mains, sewers, poles, wires, hydrants, manholes, etc., upon, over or under the site or adjacent to the site if within the limits of the survey.

(9) Complete information as to the disposal of sanitary, storm water and subsoil drainage and suitability of subsoil for rainwater or sanitary disposal purposes if dry wells are used.

(10) Official datum upon which elevations are based and a bench mark established on or adjacent to the site.

(11) Elevations on a grid system of not more than 20-foot intervals to indicate changes of slope, etc., over that portion of the site to be developed.

(12) Elevations of contours, bottoms of excavations, etc.

(13) Contemplated date and description of any proposed improvements to approaches or utilities adjacent to the site.

(e) The plat shall bear a certification by the city engineer or other qualified official, that the true street lines and the officially established grades of curbs, sidewalks and sewers are correctly given.

(f) Adequate investigation shall be made to determine the sub-soil conditions. The investigations shall include a sufficient number of test pits or test borings as will determine, in the judgment of the architect, the true conditions.

(g) Samples of strata of soil or rock taken in each pit or boring shall be retained in suitable containers. Each sample container shall be identified as to the boring and elevations at which taken and the labels initialed by the engineer making the soil investigation.

(h) The following information shall be noted on the plat:

(1) Thickness, consistency, character, and estimated safe bearing value of the various strata encountered in each pit or boring.

(2) Amount and elevation of ground water encountered in each pit or boring, its probable variation with the seasons and effect on the subsoil.

(3) The elevation of rock, if known and the probability of encountering quicksand.

(4) Average depth of frost effect below surface of ground.

(5) High and low water levels of nearby bodies of water affecting the ground water level.

(6) The probability of freshets overrunning the site.

(7) Whether the soil contains alkali in sufficient quantities to affect concrete foundations.

(8) The elevation and location of the top of workings relative to the site, if the site is underlaid with mines, or old workings are located in the vicinity.

(9) Whether the site is subject to mineral rights which have not been developed.

§ 53.133 *Site.* (a) The site of any hospital should be reasonably accessible to the center of community activities. Public transportation should be available within a reasonable distance, especially if an out-patient service is to be maintained.

(b) Hospitals should be located in relation to the center of population, close to where patients live and where competent special medical and surgical consultation is readily available and where employees can be recruited and retained.

(c) The site should not be near insect breeding areas, noise or other nuisance producing industrial developments; airports, railways or highways producing noise or air pollution, or near penal or other objectionable institutions or near a cemetery.

(d) Adequate roads and walks shall be provided within the lot lines to the main entrance, ambulance entrance and community activities.

(e) The site for a public health center should be convenient to the center of community activities.

§ 53.134 *General hospital.* Units required in the general hospital:

(a) *Administration department.*

Up to and including 100 beds:
- Business office with information counter.
- PBX Board and night information.[1]
- Administrator's office.
- Director of nurses' office.[1]
- Medical record room.
- Staff lounge.
- Lobby.
- Public toilets.

Over 100 beds:
- Business office.
- Information counter.
- PBX Board and night information.[1]
- Administrator's office.
- Director of nurses' office.
- Admitting office.
- Medical social service room.[1]
- Medical record room (should be easily available to O. P. D.)
- Staff lounge.
- Library, conference and board room.
- Lobby.
- Retiring room.[1]
- Public toilets.

(b) *Adjunct diagnostic and treatment facilities.* Except for the morgue and autopsy, this department preferably should be located convenient to both in- and out-patients.

Laboratory:
- Adequate facilities for chemical, bacteriological, serological, pathological and hematological services.

Basal metabolism and electrocardiography:
- Up to and including 100 beds; No special provisions required. Can be done in bed rooms.
- Over 100 beds: One room near the laboratory.

Morgue and autopsy: [1] may not be required in hospitals under 50 beds if other facilities such as undertaker or coroner are available. Where provided: Combination morgue and autopsy with mortuary refrigerator.

Radiology: Each hospital to have at least 1 radiographic room with adjoining darkroom, toilet, and office. Hospitals of 150 beds and over should have at least 1 additional radiographic room. The radiology department should have ray protection as required.

Physical therapy: [1] In hospitals of 100 beds and over: Space should be provided for electrotherapy, hydrotherapy, massage, and exercise. Equipment to be furnished when competent technician is acquired.

Pharmacy:
- Up to and including 100 beds: Drug room with minimum facilities for compounding.
- Over 100 beds: Complete pharmacy and may include space for manufacturing and solution preparation depending on policy of hospital.

(c) *Nursing department.*

General:
- No room should have more than 4 beds. Each room shall have a lavatory. Nursing units composed of multi-bed rooms shall have a quiet room. No patients' bed rooms shall be located on any floor which is below grade.

Approximately ⅓ of the hospital beds shall be in one-bed rooms, ⅓ in two-bed rooms, and ⅓ in four-bed rooms.[1]

Size of nursing unit: Not more than 35 beds.[1] Larger units permissible, if additional facilities are provided.

Minimum room areas: 80 sq. ft. per bed in two- and four-bed rooms. 100 minimum sq. ft. in one-bed rooms.

Service rooms in each nursing unit:
- Nurses' station.
- Utility room.
- Floor pantry (one per floor).
- Toilet facilities.
- Bedpan facilities.
- One bathroom.
- Stretcher alcove.[1]
- Linen and supply storage.
- Janitors' closet.

Isolation suite: One for each hospital unless contagious disease nursing unit is available in hospital.

Treatment room: [1] One for each two nursing units per floor.

Solarium: One for each nursing floor.[1]

Nurses' toilet room: One for each nursing floor.

In hospitals of 100 beds and over the maternity department shall be housed in a separate wing or floor.

(d) *Nursery department.*

Full term nursery:
- Area required: Not less than 24 square feet per bassinet, 30 square feet recommended.
- Number of bassinets: No more than 12 bassinets in each full term nursery, 8 recommended.
- Examination and work room: One examination and work room between each two full term nurseries.

Premature nursery: Recommended in hospitals of 16 or more maternity beds and required in hospitals of 25 or more maternity beds.
- Area required: 30 square feet per bassinet.
- Number of bassinets: Not more than six in each premature nursery.
- Workroom: Each premature nursery to have own work areas.

Suspect nursery:
- Area required: 40 square feet per bassinet.
- Number of bassinets: Approximately 10% of full term bassinets. Not more than 6 bassinets in each suspect nursery.
- Workroom: One workroom for each two suspect nurseries.

Formula room: Location in obstetrical nursery area or near kitchen optional.

(e) *Surgical department.* (Shall be located to prevent traffic through it to any other part of the hospital.)

Operating rooms:
- Major: One operating room for each 50 beds or major fraction thereof up to and including 200 beds. Above 200 beds the number of operating rooms will be based on the expected average of daily operations.
- Cystoscopy: One in each hospital over 100 beds highly desirable. Should have an adjoining toilet room. Location in hospital optional.
- Fracture room: [1] One in each hospital over 100 beds. Shall have an adjoining splint room. Location in hospital optional.

Auxiliary rooms:
- Sub-sterilizing facilities.
- Scrub-up facilities.
- Nurses' locker room with toilet.
- Janitors' closet.
- Instrument storage.
- Clean-up room.
- Anesthesia equipment storage.
- Surgical Supervisor station.
- Doctor's locker room with toilet.
- Storage closet.
- Stretcher alcove.[1]
- Storage room for sterile supplies beginning at 100 beds.
- Dark room beginning at 100 beds.[1]

Central sterilizing and supply room:
- Divided into work space, sterilizing space and sterile storage space.
- Adjacent room for storage of unsterile supplies.
- Location in hospital optional.

(f) *Obstetrics department.* (Shall be located to prevent traffic through it to any other part of the hospital. Shall be completely separated from surgical department.)

Delivery rooms: One for each 20 maternity beds.

Labor beds: One for each 10 maternity beds.

Auxiliary rooms:
- Sub-sterilizing facilities.
- Scrub-up facilities.
- Clean-up room or utility room.
- Supervisors' station.
- Nurses' locker room with toilet starting at 50 beds.[1]
- Sterile storage closet.
- Stretcher alcove.[1]
- Janitors' closet.
- Doctors' locker room with toilet starting at 50 beds.

(g) *Emergency department.*

Accident room:
- With separate ambulance entrance.[1]
- Should be separated from operating suite and obstetrical suite.
- Additional facilities will depend on amount of accident work expected.

(h) *Service department.*

Dietary facilities:
- Main kitchen and bakery.
- Dietitian's office.
- Dishwashing room.
- Adequate refrigeration.
- Garbage refrigerator.[1]
- Can washing facilities.
- Day storage room.
- Personnel dining space.
- Provide 12 square feet per person; may be designed for multiple seatings.
- Cafeteria or table service optional.

[1] Desirable but not mandatory.

Housekeeping facilities:
Laundry; unless commercial or other laundry facilities are available, each hospital shall have a laundry of sufficient capacity to process full 7 days' laundry in work week and contain the following areas:
Sorting area.
Processing area.
Clean linen and sewing room separate from laundry.
Sewing room may be included in clean linen room in hospitals up to and including 100 beds.
Where no laundry is provided in the hospital, a soiled linen room and a clean linen and sewing room shall be provided.
Housekeeper's office: May be combined with clean linen room in hospitals up to 100 beds.
Mechanical facilities:
Boiler and pump room.
Shower and locker facilities.[1]
Engineers' space.
Maintenance shops: In hospitals up to and including 100 beds at least one room shall be provided.[1] In larger hospitals separation of carpentry, painting and plumbing should be provided.
For minimum requirements for mechanical and electrical work see the respective sections.
Employees' facilities:
Nurses' locker room without nurses' residence:
Locker room: one locker for each two hospital beds.[1]
Rest room.
Toilet and shower room.
Nurses' locker room with nurses' residence adjacent:
Rest room.
Lockers as required.
Toilet room.
Female help lockers:
Locker room.
Rest room.
Toilet and shower room.
Male help lockers:
Locker room.
Toilet and shower room.
Ratio of male and female help will vary and size of locker rooms must be adjusted accordingly.
Storage:
Inactive record storage.
General storage: 20 square feet per bed and to be concentrated in one area insofar as possible. Mechanical maintenance storage may be in a separate area.

(i) *Out-patient department.* (If survey indicated that the out-patient department is unnecessary it may be omitted.)

General:
Out-patient department should be located on the most easily accessible floor. It should have convenient access to radiology, pharmacy, laboratory, and physical therapy.
The size will vary in different locations and is not necessarily proportional to the size of the hospital. The patient load must be estimated to determine the number of rooms required.
An out-patient department may be combined with the public health center clinics if the health center is a part of the hospital.
Administrative:
Waiting space with public toilets.
Appointment and cashiers' office.
Social service office.
Clinical:
History or screening room.
Clinical—Continued
Examination and treatment rooms:
Eye, ear, nose, and throat room.[1]
Dental facilities (2 chairs desirable).[1]
Utility room.

(j) *Contagious disease nursing unit.*[1] Where 10 or more beds are contemplated for nursing contagious diseases, they should be housed in a separate contagious disease nursing unit.

Patient rooms:
A maximum of 2 beds in each room.
Glazed partition between beds.[1]
Patient rooms shall have a view window from corridor.
Each patient room shall have a separate toilet and a lavatory in the room.
Each nursing unit shall contain:
Nurses' station.
Utility room.
Nurses' work room.
Treatment room.
Scrub sinks strategically located in the corridor.
Serving pantry with separated dishwashing room adjacent.
Doctors' locker space and gown room.
Nurses' locker space and gown room.
Janitors' closet.
Storage closet.
Stretcher alcove.[1]

(k) *Pediatric nursing service.*[1]

Where 16 or more pediatric beds are contemplated, a separate pediatric nursing unit shall be provided and contain the following items:
General:
Each bed in a multi-bedroom shall be in a clear glazed cubicle.[1]
Each room shall have a lavatory.
Patients' rooms wherever possible should have clear glazing between them and in the corridor partitions.
Minimum area:
80 square feet per bed in two-bed rooms and over.
100 square feet in single rooms.
40 square feet per bassinet in nurseries.
Each nursing unit shall contain:
Nursery with bassinets in cubicles.
Isolation suite.
Treatment room.
Nurses' station: with adjoining toilet room.
Utility room.
Floor pantry.
Play room or solarium.
Bath and toilet room: with raised free-standing tub and 50% children's fixtures.
Bed pan facilities.
Wheelchair and stretcher alcove.[1]
Janitors' closet.
Storage closet.

(l) *Psychiatric nursing unit in the general hospital.*[1]

General: Layout and design of details to be such that the patient will be under close observation and will not be afforded opportunity for escape, suicide, hiding, etc. Care must be taken to avoid sharp projections of corners of structure, exposed pipes, heating elements, fixtures, etc., to prevent injury by accident.
Minimum room areas:
80 square feet per bed in 4-bed rooms.
100 square feet in single rooms.
40 to 50 square feet per patient in day rooms.
Each nursing unit shall contain:
Doctors' office.
Examination room.
Nurses' station.
Day room.
Utility room.
Bedpan facilities.
Pantry.
Dining room.
Toilet room.
Each nursing unit shall contain—Continued
Shower and bathroom.
Continuous tub room (for disturbed patients).[2]
Patients' laundry (personal) for women's wards only.
Patients' locker room.
Storage closet (for recreational and occupational therapy).
Stretcher closet.
Linen closet.
Supply closet.
Janitors' closet.

§ 53.135 *Tuberculosis hospital*—(a) *Administration department.*

From 50 up to and including 200 beds:
Business office with information counter.[3]
Medical social service office.[3]
Medical director's office.
Secretary's office.[3]
Supervisor's office.
Medical record and film filing room.[3]
Viewing room, library[3] and conference room. Singly or in combination.
Lobby and waiting room.
Retiring room.[1]
Toilets.
Over 200 and up to 500 beds:
Business office and information counter.[3]
Business manager's office.[3]
Secretary.[3]
Admitting office.[3]
Two medical social service offices.[3]
Medical director's office.
Secretary.
Assistant medical director's office.
Supervisor's office.
Secretary.
Assistant director of nurses' office.
Medical record room.[3]
Library[3] and conference room.
Staff lounge and locker room.
Lobby and waiting room.
Retiring room.[1]
Toilets.

(b) *Adjunct diagnostic and treatment Facilities.*

Except for the morgue and autopsy this department should be preferably located convenient to both in- and out-patients.
Laboratory:
Adequate facilities for chemical, bacteriological, serological, pathological and hematological services.
Basal metabolism and electrocardiography:
One room near the laboratory.
Morgue and autopsy:
From 50 up to and including 200 beds: combination morgue and autopsy room with mortuary refrigerator.[2]
Over 200 and up to 500 beds:
Morgue with mortuary refrigerator.
Autopsy room.
Shower and toilet room.
Separate exit.
Radiology:
From 50 up to and including 200 beds:
Radiographic room.[3]
Dark room.[3]
Dressing booths.[3]
Must be convenient to out-patient department as well as in-patients.
Over 200 and up to 500 beds:
Radiographic room.
Dark room.
Dressing booths.
Viewing room.
Roentgenologist's office.
Film file room.
Must be convenient to out-patient department as well as in-patients.

[1] Desirable but not mandatory.

[2] If required by program.

[3] These facilities need not be provided if the Tuberculosis Hospital is in connection with a general hospital in which such facilities exist.

Pharmacy:
- From 50 up to and including 200 beds:
  - Drug room with minimum facilities for mixing.[3]
- Over 200 and up to 500 beds: Complete pharmacy and may include space for manufacturing and solution preparation depending on policy of hospital.

Dental and eye, ear, nose, and throat:
- From 50 up to and including 200 beds:
  - Dental facilities (2 chairs desirable).[3]
  - One eye, ear, nose, and throat room.[3]
- Over 200 and up to 500 beds:
  - Dental facilities (2 chairs desirable).
  - Eye, ear, nose, and throat room.
  - Waiting room.

Occupational therapy:
- Library.
- Barber shop.
- Canteen.
- Assembly room.
- Flexible space for learning and working in crafts and classroom for patient instruction shall be provided.

(c) *Nursing department.*

General: At least 30 percent of the hospital beds should be in single rooms.[1] No room should have more than four beds.[1] Each room shall have a lavatory. No patients' bedrooms shall be located on any floor which is below grade.

Size of nursing unit: No nursing unit shall be larger than 50 beds.

Minimum room areas:
- 80 square feet per bed in two- and four-bed rooms.
- 100 square feet in one-bed rooms.

Service rooms in each nursing unit:
- Nurses' station.
- Utility room.
- Floor pantry (one per floor).
- Toilet and washroom:
  - Water closets—1 to each 8 patients.
  - Lavatories.
  - Dental basins.[1]
- Storage closet for supplies.
- Bath and shower room:
  - Bath tubs and/or showers—1 to 14 patients.
- Gowning space.
- Bed pan facilities.
- Linen closet.
- Janitors' closet.
- Space for wheel chairs and stretchers.[1]
- Storage closet for equipment.

Doctors' office and treatment room—one for each nursing unit.

Solarium: One for each nursing unit.

Sputum technique facilities.

Nurses' toilet room: One for each nursing floor.

Nurses' cloak closet—one for each nursing floor.

(d) *Surgical department.* (Shall be located to prevent traffic through it to any other part of the hospital.)

From 50 up to and including 200 beds:
- Major operating room.[3]
- Sterilizing room.[3]
- Central supply and work room.[3]
- Scrub-up facilities.[3]
- Clean-up room.[3]
- Storage closet.[3]
- Janitors' closet.[3]
- Doctors' locker room with toilet and showers.[3]
- Nurses' locker room with toilet and showers.[3]

Over 200 and up to 500 beds:
- Major operating room: One for each 200 beds or major fraction thereof.
- Minor operating and fracture room.
- Sub-sterilizing facilities.
- Clean-up room.
- Scrub-up facilities.
- Janitors' closet.
- Storage room for sterile supplies.
- Anesthesia storage.
- Surgical supervisor office.
- Doctors' locker room with toilet and shower.
- Nurses' locker room with toilet and shower.
- Storage closet.
- Stretcher alcove.
- Central sterilizing and supply room divided into work space, sterilizing space, and sterile storage space.
- Adjacent room for storage of unsterile supplies.

Pneumothorax suite:
- Pneumothorax room with dressing booths.
- Fluoroscopy room.
- Waiting space.
- From 50 up to and including 200 beds: One pneumothorax suite for 100 beds or major fraction thereof.
- Over 200 and up to 500 beds: One pneumothorax suite for 100 beds or major fraction thereof.

(e) *Service department.*

Dietary facilities:
- Main kitchen and bakery.[3]
- Dietitian's office.[3]
- Patients' dishwashing room.
- Staff and help dishwashing room.[3]
- Adequate refrigeration.[3]
- Garbage refrigerator.[1]
- Can washing room.
- Day storage room.[3]
- Help dining room.[3]
- Staff dining room.[3]
- Patients' dining space—to serve 40 percent of the patients.[1]
- Provide 12 square feet per person in dining rooms. May be designed for two seatings. Cafeteria or table service optional.

Housekeeping facilities:
- Laundry:[3]
  - Sorting area.
  - Processing area.
  - Clean linen room.
  - Sewing room.
- Laundry capacity shall be adequate to process full 7 days laundry in workweek.
- Housekeeper's office.
- Incinerator.

Mechanical facilities:[3]
- Boiler and pump room.
- Engineers' office.
- Shower and locker facilities.
- Maintenance shops:
  - Carpentry.
  - Painting.
  - Plumbing.
- For minimum requirements for mechanical and electrical work, see the respective sections.

Employees' facilities:[3]
- Nurses' locker room without nurses' residence:
  - Locker room with lockers as required.
  - Rest room.
  - Toilet and shower room.
- Where nurses' residence is adjacent provide only rest room and toilet.
- Female help locker room:
  - Locker room.
  - Rest room.
  - Toilet and shower room.
- Male help locker room:
  - Locker room.
  - Rest room.
  - Toilet and shower room.

Storage:[3]
- General storage. Provide 20 square feet per bed, preferably concentrated in one area.
- Record storage.

Out-patient department:[3]
- Out-patient department should be located on most easily accessible floor. Must be convenient to radiology, pharmacy, and laboratory departments.
- Size will vary in different locations and with the availability of other examination and diagnostic facilities, and is not necessarily proportionate to the size of the hospital. The estimated patient load will determine the number, size, and scope of individual facilities in out-patient department.

Facilities required:

Administrative:
- Waiting room with public toilets.
- Information, appointment and records office.
- Medical social service office.
- Janitors' closet.

Clinical:
- History or screening room.
- Examination rooms.
- Dressing booths.
- Pneumothorax room.
- Fluoroscopy room.
- Utility room.
- Storage room.

§ 53.136 *Mental hospital*—(a) *General.* (1) A mental hospital should be on a large acreage with ample space around all buildings for recreation, attractive landscaping and the proper segregation of the various patient classification groups and building functions; and should be readily accessible to the community which it is to serve. It is strongly urged that mental hospitals be not greater than 1,500 beds.

(2) The mental hospital presents a special problem of patient classification, treatment and supervisory function. In the following minimum requirements an over-all organization is designated with certain supervisory or organizational functions mentioned in their most desirable, but not mandatory, locations and these may, therefore, be changed to other locations.

(3) Patients have been classified and grouped according to behavior, and requirements vary somewhat for each classification. Minimum room area requirements are grouped into the following main categories, as follows:

(i) Medical and surgical and chronic disease classification: 70 square feet per bed in alcoves and four-bed rooms; 100 square feet in single rooms.

(ii) Tuberculosis classification: 70 square feet per bed in alcoves and four-bed rooms; 100 square feet in single rooms.

(iii) Reception, convalescent, chronic disturbed, industrial classifications: 70 square feet per bed in alcoves and four- (or more) bed rooms; 80 square feet in single rooms.

(iv) Infirm and inactive: 60 square feet per bed in four- (or more) bed rooms; 80 square feet in single rooms.

(4) No patient bedrooms shall be located on any floor which is below grade.

(b) *Administration.* This area includes the administrative, business and public contact functions of the institution.

Location: Near main entrance to institution and close to reception area.

General:
- Entrance lobby.
- Public toilets (male and female).
- Information and telephones (main switchboard).
- Post office.
- Personnel toilets (male and female).
- Mechanical room.

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[1] Desirable but not mandatory.

[3] These facilities need not be provided if the tuberculosis hospital is in connection with a general hospital in which such facilities exist.

Offices:
- Director.
- Assistant director.
- Conference room.
- Business administrator.
- Business.
- Public relations and services.
- Secretaries.
- Janitors' closet.

Medical:
- Central records office.
- Central records room.
- Inactive records storage.

(c) *Reception.* (1) This area includes the reception and treatment of new patients, most of whom will be entering a mental hospital for the first time. Since they are new patients, and in need of very careful treatment, it is necessary to separate and prohibit contact between patients in the following classifications of behavior:

- Quiet.
- Depressed.
- Disturbed.

(2) In addition, each of the above classifications should be separated by sexes, and each classification should have its own complete nursing units with all nursing facilities available, and each should be readily accessible to an outdoor area. All safety and security measures should be observed in this group. Intensive care and treatment will be given these new patients in an effort to cure them in the first few weeks of treatment. Should the patient fail to recover in this comparatively short period of time he will be sent to other nursing areas for continued treatment. Three other nursing areas will be classified according to the behavior of the patients which they are to house.

(3) The reception area should be set well apart from the other areas of the hospital, and should contain sufficient diagnostic, treatment, recreational and occupational facilities, to furnish complete treatment in order that these new patients may recover without having been transferred to the other areas of the mental hospital.

(4) The number of beds required in this reception area must be determined by study of the total receiving and intensive treatment facilities in the community which is served. The total number of beds in this and the convalescent area should be in accord with the admissions within a three- to six-month period.

Location: Near administration area.

General:
- Lobby.
- Visitors' toilets (male and female).
- Main visitors room with alcoves.
- Janitors' closets.
- Mechanical room.

Administration:
- Medical records office.
- Information.
- Chief psychiatrist's office and conference room.
- Secretaries' offices.
- Clinical psychologist's office.
- Chief of nursing service and staff.
- Chief of social service and offices.
- Personnel toilets (male and female).

Staff facilities:
- Doctors' toilet room.
- Nurses' lounge and toilet room.

Admission:
- Ambulance entrance.
- Patients' bath and toilet.[1]
- Utility room.[1]
- Examination and consultation rooms.

Adjunct diagnostic and treatment facilities:
- Minor surgery and treatment room.
- Portable X-ray storage room.[1]
- Dark room.[1]
- Small laboratory.[1]
- Patients' toilet and shower.
- Small treatment room (for shock therapy, etc.).
- Patients' exercise room (directly accessible to outdoor exercise yard).

Occupational therapy:
- Occupational therapy room (to be located near quiet patient units).
- Storage closets.
- Occupational therapists' office.[1]
- Barber and beauty shop.

Nursing units: The following classifications of nursing units of not more than 25 beds will be required:
- Quiet nursing units (male and female).
- Depressed nursing units (male and female).
- Disturbed nursing units (male and female).
- For small reception facilities a combination of patient classifications may be provided in one nursing unit of not more than 25 beds provided that contact between the patients of each classification may be prohibited or limited.

Suggested bed distribution of nursing units:

Each disturbed nursing unit:	*Patients*
Two 4-bed wards	8
Three 2-bed or 3-bed wards	6 or 9
Four or six 1-bed rooms	4 or 6
Two 1-bed rooms (isolation unit) [1]	2
Total	20 to 25

Each depressed nursing unit:	*Patients*
Two 4-bed wards	8
Two 3-bed alcoves	6
Four 1-bed rooms	4
(Isolation unit)[1]	2
Total	20

Quiet unit: Same bed distribution as disturbed nursing units.

Facilities in each nursing unit:
- Doctor's consultation room for each two units).
- Examination room.
- Nurses' station.
- Utility room.
- Bed pan facilities.
- Small dining room and pantry:
  - Essential for disturbed.
  - Convenient for depressed.
  - Unnecessary for quiet.
- Patients' locker room.
- Linen closet.
- Patients' shower and bath room.
- Patients' dressing room.
- Patients' toilets.
- Patients' wash room.
- Continuous tub room (for disturbed units).[2]
- Day room (40 to 50 square feet per patient and preferably divided into one small and one large room).
- Occupational therapy storage closet.
- Janitors' closet.

Dietary:
- Patients' dining room cafeteria service: this dining room will be used by patients from convalescent houses as well as from reception area (two seatings may be used).
- Janitors' closet.
- Coat room and toilets (male and female)[1]
- Kitchen (serving).

Dietary—Continued
- Dishwashing room (enclosed).
- Employees' toilet.
- Patients' toilet (male and female).
- Refrigerated garbage storage.
- Can washing room.

(d) *Convalescent.* (1) This area is considered a part of the reception area and will house new patients who have been sent from the reception building, and who are expected to recover within six months to a year. Most of these patients will have the same classification as those in the reception area. Small complete nursing units, separate for each sex, should be provided. Special treatment, such as mechanical fever, electric shock, special electro and hydro therapy, and insulin, etc., can be given in the reception building.

(2) These patients will also use the dining room facilities of the reception area.

(3) In general, while most of these patients are continuing to receive intensive treatment, they are well enough and manageable enough to go freely or be escorted to their activities.

(4) The same security and safety measures are required as those for the reception area.

(5)

Location: Grouped by sexes near reception area.

General:
- Entrance lobby.
- Visitors' room with alcoves.
- Visitors' toilets (male and female).
- Attendants' locker and toilet room.
- Mechanical room.
- Nursing units (to contain not more than 50 beds).
- Suggested bed distribution of each nursing unit:

	Patients
One 8-bed ward	8
Four 4-bed wards	16
Eleven 1-bed wards	11
Total	35

Facilities in each nursing unit:
- Doctors' consultation room (for each two units).
- Examination room.
- Nurses' station.
- Utility room.
- Bed pan facilities.
- Pantry (one for each two nursing units).
- Patients' locker.
- Patients' toilet room.
- Patients' shower or bath room.
- Day room (40 to 50 square feet per patient—preferably divided into one large and one small room).
- Storage closet (occupational and recreational therapy equipment).
- Linen closet.
- Janitors' closet.
- Patients' wash room.
- One-third of the nursing units, for both men and women should have one continuous tub room.[2]

(e) *Chronic disturbed.* This area should be separate from the main group of mental hospital facilities and set apart from the nursing areas of other patient classifications because of possible noise or other disturbance. It will be used to treat restless, noisy, assaultive or suicidal patients and must be designed to provide the greatest security and observation. Since these patients are very active it is necessary to have an outdoor area or

[1] Desirable but not mandatory.
[2] If required by program.

exercise yard, and due to the amount of equipment and care these patients require, and the resulting necessary space for treatment, not less than two nursing units to a building are recommended.

Location: These buildings to be located away from the other nursing buildings.
General:
- Entrance lobby.
- Visitors' room.
- Visitors' toilets (male and female).
- Beauty shop (female buildings).
- Barber shop (male buildings).
- Attendants' locker and toilet room.
- Pantry (for two nursing units).
- Mechanical room.
- Enclosed exercise yard (100 square feet per patient).

Treatment facilities:
- Hydrotherapist's office and toilet.[2]
- Continuous tub room.[2]
- Linen storage facilities.[2]
- Patients' dressing room.
- Janitors' closet.
- Exercise room (near outdoor exercise yard).
- Storage closet (for small gymnasium equipment).

Nursing units (to contain not more than 30 beds):
Suggested bed distribution of each unit:

	Patients
One 8-bed ward	8
Two 4-bed wards	8
Ten 1-bed rooms	10
Total	26

Facilities in each nursing unit:
- Doctors' office with toilet (for each two units).
- Examination room.
- Nurses' station.
- Utility room.
- Patients' locker room.
- Patients' toilet room.
- Patients' wash room.
- Patients' shower and dressing room.
- Day room (40 to 50 square feet per patient). Preferably divided into (1) small room and (1) large room.
- Storage closet (recreational equipment).
- Occupational therapy room (one for each two units).
- Linen closet.
- Janitors' closet.

Dietary:
- Dining room—cafeteria service.
- Serving kitchen.
- Dishwashing room.
- Employees' toilet.
- Janitors' closet.

(f) *Infirm.* This area will house patients who are in need of considerable medical care and who may be infirm. The very sick will be transferred to the medical and surgical or chronic disease building, but these infirm patients will need constant and careful nursing. Minimum security and all safety measures will be required, and the nursing units should be complete with all facilities available and readily accessible to an out-door yard or area.

Location: Close to medical and surgical building.
General:
- Entrance lobby.
- Visitors' room.
- Visitor's toilets (male and female).
- Barber shop (male buildings).[1]
- Beauty shop (female buildings).[1]
- Attendants' locker and toilet room (male and female).
- Mechanical room.
- Enclosed yard (40 square feet per patient).[1]

Nursing units (to contain not more than 60 beds). Suggested bed distribution for each unit:

	Patients
Two 10-bed wards	20
Four 4-bed wards	16
Four 1-bed rooms	4
Total	40

Facilities in each nursing unit:
- Doctors' office (for each 3 units).
- Examination room.
- Nurses' station.
- Utility room.
- Bed pan facilities.
- Pantry and dining room (one for each two units).
- Patients' locker room.
- Patients' wash room.
- Patients' toilet room.
- Patients' dressing room.
- Patients' shower or bath room.
- Day room (30 square feet per patient).
- Storage closet (for recreational and occupational therapy equipment).
- Linen closet.
- Wheel chair and stretcher closet.
- Janitors' closet.

Dietary:
- Serving kitchen.
- Dishwashing room.
- Employees' toilet.
- Janitors' closet.

(g) *Inactive.* This area will house patients who are lethargic. They need a considerable amount of attention, most of which will be furnished by the physical therapist and occupational therapist. They will be urged into activities furnished in the occupational and recreational therapy buildings, but some of the lighter occupational and physical therapy should be provided in this area. All security and safety measures will be required.

Location: In main group of nursing buildings and near gymnasium and recreation buildings.
General:
- Entrance lobby.
- Visitors' room.
- Visitors' toilets (male and female).
- Occupational therapy room.
- Attendants' locker and toilet room.
- Mechanical room.
- Enclosed yard (100 square feet per patient).[1]

Nursing units (to contain not more than 50 beds) suggested bed distribution (of each unit):

	Patients
Three 10-bed wards	30
Two 4-bed wards	8
Four 1-bed rooms	4
Total	42

Facilities in each nursing unit:
- Doctors' office (for each 3 units).
- Examination room.
- Nurses' station.
- Utility room.
- Bedpan facilities.
- Pantry (for each 2 units).
- Patients' locker room.
- Patients' wash room.
- Patients' toilet room.
- Patients' shower or bath room.
- Patients' dressing room.
- Day room (40 to 50 square feet per patient and preferably divided into one small and one large room).
- Storage closet (for recreational and occupational therapy equipment).
- Linen closet.
- Janitors' closet.

Dietary:
- Dining room.
- Serving kitchen.
- Dishwashing room.
- Employees' toilet.
- Janitors' closet.

(h) *Industrial.* This area will house patients who are well enough to be occupied on the grounds, farm, industrial buildings, shops, kitchens, laundry, etc. Less supervision and care is necessary than in the other groups, and these patients can go to the out-patient department of the medical and surgical building for examination and treatment.

Location: In main group of nursing buildings near service buildings.
General:
- Entrance lobby.
- Visitors' room.
- Visitors' toilets (male and female).
- Attendants' locker and toilet room.
- Mechanical room.

Nursing units (to contain not more than 60 beds) suggested bed distribution:

	Patients
Two 16-bed wards	32
Two 8-bed wards	16
Four 1-bed rooms	4
Total	52

Facilities in each nursing unit:
- Doctors' office and examination room—one for each 3 units.
- Nurses' station.
- Patients' toilet.
- Patients' dressing room.
- Patients' shower room.
- Patients' locker room.
- Patients' wash room.
- Day room (40 to 50 square feet per patient) preferably divided into one small and one large room.
- Storage closet (for recreation equipment).
- Linen closet.
- Janitors' closet.

(i) *Medical and surgical.* This area will house patients who have been hospitalized from nursing units of other classifications for short periods of illnesses, and should be housed in a modern general hospital complete with all facilities to serve the entire mental hospital community. Nursing units should be arranged for easy segregation of patients and the adjunct diagnostic and treatment facilities are recommended to be on the first or ground floor for easy access to the out-patient department. All security and safety measures should be incorporated in this building. The number of beds shall be approximately 4 percent of the total patients which this building serves.

Location: Between main group of nursing area and reception area.
General:
- Entrance lobby.
- Information counter.
- Visitors' toilets (male and female).
- Mechanical room.

Administration:
- Chief physician's office.
- Medical record room.
- Head nurse's office.
- Secretaries' offices.
- Personnel toilets (male and female).

Staff facilities:
- Doctors' locker and shower room.
- Nurses' locker and shower room.

[1] Desirable but not mandatory.
[2] If required by program.

Adjunct diagnostic and treatment facilities:
- Laboratory: Separate spaces for office, clinical pathology, bacteriology and serology, washing and sterilizing.
- Basal metabolism and electrocardiography: Near laboratory and convenient to out-patient department.
- Morgue and autopsy room:[1] Combination morgue and autopsy with mortuary refrigerator.
- Radiology:
  - Radiographic room with an adjoining dark room and office.
  - X-ray therapy suite.[1]
- Physical therapy: Suite for electro-therapy, hydro-therapy, and exercise room with adjoining office.
- Pharmacy: Drug room with minimum facilities for mixing. (May be in service area).

Nursing units (to contain not more than 30 beds) suggested bed distributions:
Medical wards (25 beds each):

	Patients
Two 4-bed wards	8
Three 2-bed rooms	6
Nine 1-bed rooms	9
Isolation suite[1]	2
Total	25

- Surgical wards (25 beds each) same as medical wards.
- Employees' wards:[1] Maximum size, 25 to 30 beds.

NOTE: Where isolation suite or contagious disease nursing unit is available the small units in each nursing unit are not required.

Facilities in each nursing unit:
- Doctors' examination room (one for each two nursing units).
- Nurses' station.
- Utility room.
- Bed pan facilities.
- Pantry (one for each two nursing units).
- Patients' bath and shower room.
- Supply closet.
- Patients' toilet room (male and female).
- Day room (approximately 25 square feet per patient). Omit for employees' wards.
- Storage closet (recreational and occupational therapy equipment).
- Stretcher and wheel chair closet.
- Linen closet.
- Janitors' closet.

Surgical department: Should be located to prevent traffic through it to any other part of hospital.
Operating rooms:
- Major: One for each 50 beds up to and including 200 beds. Above 200 beds the number of operating rooms will be based on the expected average of daily operations.
- Minor: One in each hospital over 50 beds.
- Cystoscopy:[1] One in each hospital over 100 beds. Shall have an adjoining toilet room.
- Fracture room: One in each hospital over 100 beds. Shall have an adjoining splint room.

Auxiliary rooms:
- Substerilizing facilities.
- Scrub-up facilities.
- Nurses' locker room with toilet and shower.
- Instrument room beginning at 100 beds.
- Clean-up room.
- Anesthesia equipment storage.
- Surgical supervisor's station.
- Doctors' locker room with toilet and shower.
- Storage closet.
- Stretcher closet.
- Storage room for sterile supplies beginning at 100 beds.
- Janitors' closet.
- Dark room beginning at 100 beds.

[1] Desirable but not mandatory.

Central sterilizing and supply room:
- Divided into work space, sterilizing space, and sterile storage space.
- Adjacent room for storage of unsterile supplies.

Emergency department:
- Ambulance entrance.
- Receiving bath and toilet.
- Utility room.
- Supply and stretcher storage.
- Emergency operating room, near out-patient department.

Service department:
- Kitchen (serving).
- Dishwashing room.
- Refrigerated garbage room.
- Can washing room.
- Dining rooms (for ⅓ of patients).
- Storage.
- General storage (20 square feet per bed).
- Housekeepers' office.
- Linen storage room.
- Sewing room.
- Linen sorting room.
- Personnel facilities:
  - Locker and toilet rooms (male and female).
  - Attendants' locker and toilet rooms (male and female).

Out-patient department:
- Waiting room.
- Examination and treatment rooms (including eye, ear, nose and throat rooms and gynecology room[1]).
- Record room.
- Dental facilities (2 chairs desirable).
- Electroencephalographic unit.

NOTE: Out-patient department should be convenient to radiology, laboratory, therapy, emergency, etc.

(j) *Chronic disease.* (1) This area will house patients who have chronic illness, or who are in need of intensive treatment and nursing care or those who, because of infectious diseases, need to be isolated.

(2) Nursing units of this classification should be attached to the medical and surgical building for easy access to the diagnostic and treatment facilities.

(3) Not all of these nursing units need have maximum safety and security measures.

(4) The number of beds shall be approximately 7.5 percent of the total number of patients which these buildings serve.

Location: Attached to medical and surgical building.
General: Corridors to service department and adjunct facilities.
Nursing units (to contain not more than 30 beds) suggested bed distribution (of each nursing unit):

	Patients
Two 4-bed wards	8
Three 2-bed wards	6
Eight 1-bed rooms	8
Total	22

Facilities in each nursing unit:
- Doctors' office (for each 2 units).
- Examination room.
- Nurses' station.
- Utility room.
- Bed pan facilities.
- Pantry (for each 2 nursing units).
- Dining room (for ½ of patients in nursing unit).
- Patients' locker room.
- Patients' wash room.
- Patients' toilet.
- Patients' dressing room.
- Patients' shower or bath room.
- Day room (30 square feet per patient).
- Closet (recreational and occupational therapy equipment).
- Stretcher and wheel chair closet.

Facilities in each nursing unit—Continued
- Linen closet.
- Janitors' closet.

(k) *Tuberculosis.* (1) For patients of this classification, it is recommended to use the requirements of the tuberculosis hospital. In addition, patients will be grouped according to behavior as Quiet or Disturbed. Security and safety measures comparable to those of the reception area are required.

(2) The number of beds shall be determined as approximately 5 percent of the total patients which this building serves.

(l) *Gymnasium, theater, recreation, library and chapel.* (Combination or separate buildings acceptable.)

Location: Adjacent to main group of nursing and reception areas.
General:
- Entrance lobby.
- Coat rooms and toilets (male and female).
- Personnel toilets (male and female).
- Mechanical room.

Theater facilities:
- Office.
- Hall (seating capacity based on 7 square feet per person with 40 percent attendance of patients and personnel).
- Projection booth.
- Stage.
- Dressing rooms with toilets (two for each sex).
- Work shop.

Chapel facilities:
- Three offices for ecclesiastics.
- Toilets.
- Three small prayer rooms.
- Portable altars (where chapel is not separate).
- Storage rooms.

Gymnasium facilities:
- Recreational therapists' office.
- Personnel locker and toilet rooms (male and female).
- Patients' locker and toilet rooms (male and female).
- Basketball court (standard college size plus space for collapsible seating).
- Small gymnasium (for exercise equipment).
- Storage rooms.

Recreation facilities:
- Chief recreational therapist's office.
- Bowling alleys (with space for spectators).
- Billiard room.
- Ping pong room.
- Patients' barber shop.
- Patients' beauty shop.
- Canteen (for light lunch, drinks, etc.):
  - Office and table areas.
  - Cooking and fountain areas.
  - Dishwashing and sterilizing.
  - Storage.
  - Garbage refrigeration.[1]
  - Can washing facilities.
- Sales rooms.
- Storage room.

Library:
- Librarians' office.
- Reading room (current and request matter).
- Stock room.
- Work room and storage space.

Music rooms:
- Music therapists' office.
- Music room (approximately 500 square feet with portable stage).
- Store rooms.
- Music rooms (approximately 250 square feet).

(m) *Occupational therapy.*

Location: Adjacent to main group of nursing areas and reception area.

General:
- Entrance lobby.
- Patient coat room and toilets (male and female).
- Personnel coat room and toilets (male and female).
- Mechanical room.

Administration: Office for occupational therapist.

Facilities:
- Open floor space (for occupational equipment).
- One or more special purpose rooms.
- Storage rooms (for materials and equipment).
- Industrial therapy occupations should be located near the service group of buildings.

(n) *Central kitchen and dining rooms.*

Location: In main group of nursing buildings.

General: Load on dining rooms, kitchens and preparation will vary; see requirements of each.
- Men patients' coat room and toilet.[1]
- Women patients' coat room and toilet.[1]
- Men attendants' coat room and toilet.
- Women's attendants' coat room and toilet.
- Dining rooms: Patients' and personnel (capacity 15 square feet per person).
- Kitchen:
  - Dietitians' office and toilet.
  - Complete cooking and baking facilities.
  - Dishwashing room.
  - Preparation (meat and vegetables).
  - Adequate refrigeration.
  - Day storage.
  - Garbage refrigeration.[1]
  - Can washing facilities.
  - Janitors' closet.
  - Personnel lockers and toilets.

(o) *Storage buildings.*

Location: In service groups of buildings.

General: Area (20 square feet per patient).

(p) *Laundry.* Adequate to process seven full days of laundry per work week.

Location: In service group of buildings.

Facilities:
- Manager's office and toilet.
- Receiving room.
- Sorting area.
- Contaminated receiving room.
- Sterilizing room.
- Processing room.
- Clean linen storage.
- Sewing room.
- Personnel locker and toilet room.

(q) *Heating plant.*

Location: In service group of buildings.

General:
- Heating plant (to be determined by engineering studies).
- Emergency generating facility.
- Office.
- Personnel toilets.
- General repair shop.
- Carpenter shop.
- Electrical shop.
- Plumbing shop.
- Paint shop.

(r) *Incinerator.* As required. See § 53.153 (a) (13).

§ 53.137 *Psychiatric hospital.*—(a) *General.* (1) The principles of psychiatric safety shall be followed throughout. Materials and details of construction shall be such that patients will not be afforded opportunity for escape, suicide, etc. Care must be taken to avoid sharp projections of corners of structure, exposed piping, heating elements, fixtures, hardware, etc.

[1] Desirable but not mandatory.

(2) For requirements of sizes of doors, widths of corridors, sizes of elevators, provisions for ventilation, fire protection, etc., see sections on Details, Finishes, etc.

(b) *Administration department.*

Up to and including 100 beds:
- Business office with information counter.
- Chief psychiatrist's office.
- Chief psychologist's office (if there is no out-patient department).
- Record office.
- Director of nurses' office.[1]
- Social service offices (if there is no out-patient department to be near receiving).
- Staff lounge.
- Lobby.
- Public toilets.

From 100 to 500 beds:
- Business office.
- Chief psychiatrist's office.
- Chief psychologist's office (if there is no out-patient department).
- Social service offices (if there is no out-patient department).
- Director of nursing.
- Record room.
- Staff lounge.
- Library and conference room.
- Lobby.
- Public toilets.
- Toilets for administrative personnel.

(c) *Receiving department.*

Facilities for male and female receiving:
- Entrance hall.
- Dressing room.
- Bath and toilet room.
- Medical examination room.
- Waiting room.
- Stretcher closet.
- Clerks' offices.
- Doctors' office.

(d) *Adjunct diagnostic and treatment facilities.*

Laboratory:
- Up to and including 100 beds:
  - Office.
  - Laboratory.
- Over 100 beds: Separate spaces for office, clinical pathology, bacteriology, washing and sterilizing.

Basal metabolism and electrocardiography:
- Up to and including 100 beds: No special provision necessary.
- Over 100 beds: Room near laboratory and convenient to out-patient department.

Morgue and autopsy: Combination morgue and autopsy with mortuary refrigerator. (Is not required in hospital of less than 100 beds if similar facilities are available nearby.)

Dental facilities (2 chairs desirable).

Eye, ear, nose and throat suite.

Electro-encephalographic suite.

Radiology:
- Up to and including 100 beds: One radiographic room and dark room and convenient to out-patient department.
- Over 100 beds: At least one additional radiographic room.

Physical therapy:
- Electro-therapy.
- Hydro-therapy with exercise space.
- Continuous tub and pack room.[2]
- Small gymnasium, convenient to outdoor area, and to disturbed patients.

Pharmacy: One room with minimum facilities for compounding.

Occupational therapy:
- Space for small woodworking tools and benches for carpentry, metal work, leatherwork, printing, weaving, rug making, etc.
- Office.
- Storage room.

[2] If required by program.

(e) *Surgical department.*

Operating rooms:
- Major: One.
- Minor: One, with adjoining splint room.

Auxiliary rooms:
- Sub-sterilizing facilities.
- Scrub-up facilities.
- Clean-up room.
- Anesthesia room.[1]
- Anesthesia storage.
- Doctors' locker room with toilet.
- Nurses' locker room with toilet.
- Storage closet.
- Stretcher closet.
- Janitors' closet.
- Storage room for sterile supplies and instruments.
- Surgical department to be located to prevent traffic through it from other parts of the hospital.
- Central sterilizing and supply room—divided into work space, sterilizing space, and sterile storage—adjacent room for storage of unsterile supplies.

(f) *Nursing department.*

General: The layout and the design of details to be such that the patient will be under close observation and will not be afforded opportunity for escape, suicide, hiding, etc. No patients' bedrooms shall be located on any floor which is below grade. Provision shall be made for the following classifications:
- New admissions (male).
- New admissions (female).
- Quiet ambulant (male).
- Quiet ambulant (female).
- Medical and surgical.
- Disturbed (male).
- Disturbed (female).
- Alcoholic (male).
- Alcoholic (female).
- Criminalistic (male).
- Criminalistic (female).
- Children.

Minimum room areas:
- 80 square feet per bed in alcoves and four-bed rooms.
- 100 square feet in single rooms.
- 40 to 50 square feet per patient in day rooms and preferably divided into one large and one small room.

Facilities for each nursing unit:
- Doctors' office and examination room.
- Nurses' station and toilet.
- Day rooms.
- Utility room.
- Pantry.
- Dining room.
- Wash room and toilets.
- Patients' locker.
- Shower and bath room.
- Storage closet (for recreational and occupational therapy).
- Supply closet.
- Linen closet.
- Janitors' closet.
- Stretcher closet (medical and surgical unit).
- Bedpan facilities (medical and surgical unit).

Isolation suite: In medical and surgical unit.

(g) *Service department.*

Dietary facilities:
- Main kitchen and bakery.
- Dietitians' office.
- Dishwashing room.
- Adequate refrigerators.
- Garbage refrigerator.[1]
- Can washing room.
- Day storage room.
- Staff dining room (12 square feet per person).

Housekeeping facilities:
- Laundry (if provided): Capacity shall be adequate to process full 7 days laundry in work week.
- Sorting area.

Housekeeping facilities—Continued
Processing room.
Clean linen and sewing room separate from laundry.
Housekeeper's office: Near linen storage.
Mechanical facilities:
Boiler room and pump room (if provided).
Engineers' office.
Shower and locker room.
Maintenance shops—carpentry, painting, mechanical repair rooms.
Employees' facilities:
Nurses' locker rooms. If no nurses residence:
Locker room.
Rest room.
Toilet and shower room.
Attendants' locker rooms. If no attendants residence (male and female):
Locker room.
Toilet and shower rooms.
Other female help lockers:
Locker room.
Rest room.
Toilet and shower room.
Other male help lockers:
Locker room.
Toilet and shower room.
Storage:
Record space.
General storage: 20 square feet per bed and to be concentrated in one area.

(h) *Out-patient department.* (If provided.)

General:
Located on the ground floor. Entrance separate from main entrance of hospital.[1] It must be convenient to radiology, laboratory and physical therapy.
The patient load must be estimated in order to determine the number of consultation and examining rooms.
Facilities required:
Administrative:
Waiting room with public toilets.
Cashiers' and appointment office.
Social service offices.
Psychological examination rooms.
Medical examination rooms.
Utility rooms.
Children's rooms.

§ 53.138 *Chronic disease hospital.* The facilities listed below need not be provided if functionally available in an adjoining hospital.

(a) *Administration department.*

Business office with information counter, telephone switchboard, and cashier's window.
Administrator's office.
Director of nurses' office.
Medical Director's office.
Medical record room.
Medical social service office.
Combination conference room, doctors' lounge, and staff library.
Lobby and waiting room.
Public telephone.
Public toilets.
Personnel toilets.[1]

(b) *Adjunct diagnostic and treatment facilities.*

Except for the morgue and autopsy room, these facilities should be located convenient to both inpatients and outpatients.
Laboratory:
Adequate facilities for chemical, bacteriological, pathological and hematological services.
Basal metabolism and electrocardiography facilities.
Morgue and autopsy room: In Chronic Disease Hospitals of 100 beds or more. Desirable but not mandatory in Chronic Disease Hospitals of under 100 beds if such services are available locally.
Radiology:
Each Chronic Disease Hospital to have at least one radiographic room with toilet, adjoining dark room, film filing space and dressing facilities.
Pharmacy:
Drug room with minimum facilities for compounding and dispensing. Complete pharmacy may include facilities for bulk compounding and solution preparation depending on policy of hospital.
Physical therapy:
Examination room.
Office and work space for physical therapy staff.
Rehabilitation gymnasium for adults.[2]
Rehabilitation gymnasium for children if children are included in program.[2]
Hydrotherapy area.[2]
Thermotherapy and massage area.[2]
Storage for supplies and equipment.
Outdoor exercise area.[2]
Occupational therapy:
Office and work space for occupational therapy staff.
Therapy area:
In large units space should be divided for diversified work. (Separate room for children is desirable.)
Storage for supplies and equipment.
Toilet facilities for physical therapy and occupational therapy departments.
Facilities for teaching activities of daily living.
Speech and hearing facilities: [2]
Offices for therapists and space for examination and treatment.
Artificial appliance facilities: [2]
Space for fitting and adjustment service.

(c) *Out-patient department.*

Should be provided only if survey indicates that an out-patient department is needed.
Should be located on the most easily accessible floor and have convenient access to radiology, pharmacy, laboratory and rehabilitation facilities.
The size will vary in different locations and is not necessarily proportional to the size of the hospital. The patient load must be estimated to determine the number and type of rooms required.
Administration:
Waiting space with public toilets.
Appointment and cashier's desk.
Medical social service office.
Clinical:
Examination and treatment rooms: Number and specialties to be determined by the character of the patient load.
Utility room.

(d) *Nursing department.*

General: No patients' room shall have more than 4 beds. Six beds, not more than 3 beds deep from outside wall, will be permitted in chronic disease hospitals of 100 beds or more. Not more than 2 beds per patients' room is desirable. Each patients' room shall have a lavatory. A toilet room with lavatory accessible from adjoining patients' room is recommended. Each nursing unit shall have a separation room. No patients' rooms shall be located on any floor which is below grade.
Size of nursing unit:
Should not be more than 40 beds. Larger units will be permitted if additional service facilities are provided as required.
Minimum patients' room areas:
80 square feet per bed (100 square feet desirable) in multi-bed patients' rooms; 100 square feet per bed (125 square feet desirable) in one-bed patients' rooms.
Service facilities in each nursing unit:
Nurses' station.
Nurses' toilet.
Utility room.
Treatment room.
Floor pantry.
Solarium:
Provide 25 square feet per bed for 75 percent of beds on nursing unit.
Dining room:
Provide 25 square feet per bed for 75 percent of beds on nursing unit.
The percentage of the beds for which solarium and dining area must be provided may be reduced depending on the type of patient to be cared for.
It is recommended that the dining and solarium areas be adjacent so that they can be combined into one room for recreational and other group activity purposes.
Toilet facilities:
If centralized toilets are provided, a toilet room for each sex at a ratio of 1 water closet to each 8 beds will be required. One of the water closet enclosures in each toilet room should be at least 5 feet by 6 feet to permit toilet training.
If toilets provided adjacent to patients' rooms are not large enough, a separate training toilet, at least 5 feet by 6 feet, should be provided.
Bedpan facilities.
Bathing facilities:
1 bathtub.
1 shower. (A separate bath room for each sex, containing at least one bathtub and one shower, is recommended. A ratio of one bathtub or one shower for each 10 beds is desirable.)
Stretcher and wheelchair parking space.
Clean linen storage.
Equipment and supply storage.
Janitor's closet.
Patient's laundry.[1]

NOTE:[2] It is recommended that a specially designed nursing unit, similar to that required in the section on rehabilitation facilities in a hospital, be provided for rehabilitation patients in the chronic disease hospital.

(e) *Surgical department.*[2]

Shall be located to prevent traffic through it to any other part of the hospital.

Major operating room.
Scrub-up facilities.
Anesthesia equipment storage.
Clean-up room.
Storage closet.
Janitor's closet.
Central sterilizing and supply room.

If a surgical department is not included the central sterilizing and supply room must be provided elsewhere in the hospital.

Doctors' locker room with toilet. (Shower desirable but not mandatory.)
Nurses' locker room with toilet. (Shower desirable but not mandatory.)

(f) *Dental department.*

Facilities for dental diagnosis, treatment and laboratory procedures.

(g) *Service department.*

Dietary facilities:
Main kitchen and dieto-therapy facilities.
Dietitians' space.
Appropriate food service facilities.
Dishwashing room.
Adequate refrigeration.
Garbage disposal facilities.
Day storage room.
Personnel dining room: Provide 12 square feet per person. May be designed for multiple seating.
Janitor's closet.

[1] Desirable but not mandatory.

[2] If required by program.

Housekeeping facilities:
- Laundry; unless commercial or other laundry facilities are available, each chronic disease hospital shall have a laundry of sufficient capacity to process full 7 days laundry in work week and contain the following areas:
  - Sorting area.
  - Processing area.
  - Clean linen and sewing room separate from laundry.
- Where no laundry is provided in the hospital, a soiled linen room and a clean linen and sewing room shall be provided.
- Housekeeper's office.

Mechanical facilities:
- Boiler and pump room.
- Desk space for engineer.
- Shower and locker facilities.[1]
- Maintenance shops: In hospitals up to and including 100 beds at least one room shall be provided. In larger hospitals separation of carpentry, painting, and plumbing should be provided.

Employees' facilities:
- Nurses' lockers: [4]
  - Locker room: one locker for each 2 hospital beds.
  - Rest room.
  - Toilet room (Shower desirable but not mandatory.)
- Female help lockers: [4]
  - Locker room.
  - Rest room.
  - Toilet room. (Shower desirable but not mandatory.)
- Male help lockers:
  - Locker room.
  - Toilet room. (Shower desirable but not mandatory.)
- Ratio of male and female help will vary and size of locker rooms must be adjusted accordingly.

Storage:
- Inactive record storage.
- Patients' clothes storage room.
- General storage: 20 square feet per bed and to be concentrated in one area.
- Storage of outdoor equipment.[1]

§ 53.139 *Nurses' residence.*

Rooms:
- One nurse per room: [1]
  - 100 square feet in single rooms.
  - 150 square feet in double rooms.
- Lavatory in each room.
- Closet or wardrobe for each nurse.
- No nurses' rooms shall be located on any floor which is below grade.

Common floor facilities:
- Lounge with kitchenette to serve 30 to 60 nurses.
- Laundry room with 2 trays and 2 ironing boards to serve 30 to 60 nurses.
- Bath room: One shower or tub for each 6 beds.
- Toilet room: One water closet for each 6 beds and 1 lavatory for each 3 water closets.
- Linen closet.
- Janitors' closet.
- Telephone facilities.[1]

General facilities:
- Lobby.
- Office.
- Main lounge (with alcoves [1]).
- Men's toilet (off lobby).
- Storage room for trunks.
- Laundry distribution room.[1]
- Employees' toilet room.[1]
- Boiler room (if facilities not available elsewhere).

§ 53.140 *School of nursing*—(a) *Teaching facilities.*

One science laboratory room.
One dietetics laboratory room.
One nursing arts laboratory with adequate facilities.
One classroom to accommodate approximately twice the number of students as the nursing arts laboratory.
One lecture room to accommodate total student body.
One library.

(b) *Offices.* Offices for instructors.

(c) *General.*

Storage room convenient to class rooms.
Toilet room.
Janitors' closet.

§ 53.141 *Public health centers*—(a) *Administration.*

Where health department administration personnel has no offices in health center:
- Waiting room.
- Public toilets.
- Office for public health nurses.
- Staff toilets.
- Assembly space: Waiting room may be used for this purpose where health centers serve under 30,000 population.

Where health department administration offices are provided in health centers add:
- Health officer's office.
- Office for sanitary engineers.
- Health education office.
- Staff room and library: In health center for over 30,000 population.

(b) *Clinical.* The clinical services, and extent of such services, provided in the health center will depend on the program contemplated by the health department to take care adequately of the particular needs of the population served by the health center.

For populations up to 30,000:
- Two examination rooms for maternal and child health, V. D. and TB clinics.
- Consultation room.
- Utility room.
- Dental room.[1]

For population over 30,000, if the following services are provided, they shall include areas noted as follows:
- Maternal and child health:
  - Demonstration room.
  - Examining room.
  - Toilet.
- Tuberculosis and X-ray:
  - X-ray room with dressing booths.
  - Dark room.
  - Consultation and viewing room.
- Venereal disease:
  - Examination room.
  - Treatment room.
  - Consultation room.
  - Toilet.
- Dental:
  - Dental facilities (2 chairs desirable).
  - Small dental laboratory.
- Pharmacy: Dispensing room.

(c) *Laboratory.* The volume and type of laboratory tests in the health center will vary with local conditions and will determine the size of the laboratory. Such factors as density of population, area to be served, type of center (municipal, county, or rural), its use as a branch of the State laboratory and availability of other laboratory facilities must be considered.

- One room is required for urinalysis, hematology, and dark field examinations for syphilis and storage of biologicals furnished by the State Health Department.
- Where food control, sanitation and communicable disease work is contemplated another room shall be furnished for this purpose.

(d) *Service.*

General storage areas:
- Bulk office and janitors' supplies.
- Bulk clinical supplies.
- Educational material.

Storage closets:
- Office supplies.
- Medical supplies.
- Educational material.

Janitors' closet: Centrally located.
Heating plant.

§ 53.142 *State public health laboratory*—(a) *Administration department.*

Director's office.
Secretary's office.
Assistant Director's office.
Information desk and switchboard.
Clerical office.
Office supply room.
Library.
Staff meeting room.
Records and filing room.
Mailing and receiving room for incoming specimens, distribution of containers and of biologicals.
Specimen and emergency treatment room.

(b) *Bacteriology department.*

Office.
Water, food and milk laboratory.
Enteric disease and agglutination laboratory.
Tuberculosis laboratory.
Diagnostic laboratory.
Incubator room.
Sterile room.
Rabies room.
Adequate refrigeration.

(c) *Syphilis serology department.*

Office.
Laboratory: Section of room separated by partitions for centrifuges and preparation of specimens.

(d) *Chemistry department.*

Office.
Laboratory: Facilities for water, food, drug, toxicology, and/or industrial hygiene analyses.
Instrument room: Facilities for darkening.

(e) *Research and investigation.*

Laboratory: Complete laboratory facilities within unit.

(f) *Biologicals department.*

Adequate refrigeration.
Deep freeze unit.
Room temperature storage.

(g) *Central services.*

Culture media and reagent preparation room.
Glassware cleaning room.
Acid cleaning unit.
Sterilizing room for culture media and clean glassware only.
Supply room for storage and issue of sterile supplies, general supplies, chemicals, and glassware. Adjacent to sterilizing and glassware cleaning room.
Bulk storage room.
Janitor service room.
Maintenance and utilities unit: Provisions for metal and woodwork, and glassblowing.
Incinerator (animal).
Animal quarters:
- Animal rooms.
- Room for cleaning and sterilizing cages.
- Preparation room for food and bedding.
- Operating and animal inoculation room.

(h) *Facilities for personnel.*

Men's locker room with washroom and shower.

[1] Desirable but not mandatory.
[4] May be combined.

Women's locker room with washroom and shower.
Rest room.
Lunch room.
Staff toilets.

(i) *Additional facilities.* If the following activities are included, minimum requirements will be as follows:

Consultation and evaluation service to local laboratories:
Office.
Laboratory.
Manufacture of biologicals: This department, including Blood and Blood Products, shall be adequately isolated from the other laboratories. In the case of smallpox and tetanus vaccine preparation separation may be satisfactory in the same building if a separate entrance is provided and no interior connection exists to this department. A separate mechanical ventilating system must be provided.
Office.
Laboratory: Cubicles for isolation work.
Culture media room.
Sterile room.
Sterilizing room.
Glasswashing room.
Adequate refrigeration.
Deep freeze unit.
Storage room, controlled temperature.
Packaging room.
Blood and blood products:
Laboratory: Space and equipment for processing.
Sterile room.
Office (may be shared with biologicals department).
Adequate refrigeration (may be shared with biologicals department).
Storage room (may be shared with biologicals department).
Pathology department: Laboratory.
Clinical laboratory department: Laboratory.
Virology department: This department shall be efficiently isolated from other laboratories including a separate mechanical ventilating system:
Office.
Laboratory: Cubicles for isolation work.
Sterile room.
Sterilizing room.
Inoculation and operating room.
Animal quarters:
Facilities for storage of food and bedding.
Cleaning and sterilizing of cages.
Locker room with washroom and shower.

§ 53.143 *Diagnostic or treatment centers*—(a) *General.* (1) The extent of the diagnostic, treatment, and ancillary facilities will be determined by the services contemplated and the estimated patient load.

(2) Where the facility is to be an integral part of a hospital, the requirements of adjunct diagnostic and treatment facilities and outpatient department of general hospital, § 53.134 (b) shall apply.

(3) Where a diagnostic or treatment center is not to be an integral part of a hospital, then the facilities listed below must be provided unless available for convenient use in an associated health facility.

(4) The planning of diagnostic or treatment centers should provide for the privacy of the patient during interview, examination, and treatment.

(b) *Administration facilities.*

Administrative, business, and receptionist space.
Medical records space.
Waiting space.
Public telephone.

(c) *Diagnostic facilities.* (In certain types of specialized projects, such as mental health clinics, the need for radiological and laboratory facilities will be determined by the services contemplated.)

Radiographic room with adjoining dark room.
Utility and sterilizing facilities.
Laboratory.

(d) *Diagnostic and treatment facilities.* If medical examination and/or treatment are to be included the following shall be added:

Consultation, examination and treatment space is required by the services contemplated.

(e) *Service facilities.*

Storage.
Janitor's closet.
Employees' locker facilities.
Toilet facilities.
Boiler room.
Incinerator.
Accessible parking space.[1]

§ 53.144 *Rehabilitation facilities (general).* (a) Wherever possible rehabilitation facilities should be located on the ground floor. The evaluation and treatment facilities should be grouped to facilitate integration of the program and located for convenient access by inpatients and outpatients.

(b) In determining the size of facilities for in and outpatient services, it should be considered that the outpatient load is usually much larger than the inpatient load.

§ 53.145 *Rehabilitation facilities (multiple disability) in a hospital.* The facilities listed in this section which are in an existing hospital and which are conveniently located and available for use need not be provided.

(a) *Administration.*

Appointment and cashier's space.
Office for volunteer services coordinator.[1]
Lobby and waiting room.
Public telephone booth.
Public toilets.
Personnel toilets.[1]

(b) *Evaluation and treatment facilities.*

Conference and library room.
Medical facilities:
Offices, examination rooms and work space for medical personnel such as physicians and nurses.
Dental facilities:[2]
Office and work space for provision of appropriate dental treatment.
Physical therapy:
Office and work space for physical therapy staff.
Rehabilitation gymnasium for adults.
Rehabilitation gymnasium for children if children are included in program.[1]
Hydrotherapy area.
Thermotherapy and massage area.
Storage for supplies and equipment.
Outdoor exercise area.[1]
Occupational therapy:
Office and work space for occupational therapy staff.
Therapy area:
In large units space should be divided for diversified work (separate room for children is desirable).
Medical facilities—Continued
Storage space for supplies and equipment.
Facilities for teaching activities of daily living.
Speech and hearing facilities:[2]
Offices for therapists and space for examination and treatment.
Artificial appliance facilities:
Space for fitting and adjustment service.
Psychological facilities:
Office and work space for psychological testing evaluation and counseling.
Social service facilities:
Office space for private interview and counselling.
Vocational facilities:
Office and work space for counseling, evaluation, prevocational programs and placement. A prevocational area is not required for facilities exclusively serving children under the age of 12.
Special education:
Schoolroom for children if children are included in program.
General facilities:
Locker, toilet and shower facilities for patients.
Clean and soiled linen facilities.
Locker and toilet facilities for female volunteers.[1]
Locker and toilet facilities for male volunteers.[1]

(c) *Nursing unit for adults.*[1]

General: It is recommended that this unit be located on the ground floor near the treatment area. Approximately one-fifth of the beds should be in two-bed rooms, the remainder in four-bed rooms. Each patients' room shall have a lavatory. Generous wardrobe space for each patient should be provided in the patients' rooms. A toilet room, with lavatory, accessible from adjoining patients' rooms, is recommended. No patients' room shall be located on any floor which is below grade.
Size of nursing unit:
Not more than 50 beds, 35 to 40 beds recommended.
Minimum patients' room areas:
100 square feet per bed in multi-bed patients' rooms.
Service facilities in each nursing unit for adults:
Nurses' station.
Nurses' toilet.
Utility room.
Examination and treatment room.
Floor pantry.
Solarium: Provide 25 square feet per bed for 75 percent of beds on nursing unit.
Dining room: Provide 25 square feet per bed for 75 percent of beds on nursing unit.
It is recommended that the dining and solarium area be adjacent so that they can be combined into one room for recreational and other group activity purposes.
Toilet facilities.
If centralized toilets are provided, a toilet room for each sex at a ratio of 1 water closet to each 5 beds will be required. One of the water closet enclosures in each toilet room should be at least 5 feet by 6 feet to permit toilet training.
If toilets provided adjacent to patients' rooms are not large enough, a separate training toilet, at least 5 feet by 6 feet, should be provided.
Bedpan facilities.
Bathing facilities.
1 bathroom for each sex.
1 shower to each 8 beds.
1 bathtub.

[1] Desirable but not mandatory.
[2] If required by program.

Service facilities in each nursing unit for adults—Continued
Stretcher and wheelchair parking space.
Clean linen storage.
Equipment and supply storage.
Janitor's closet.
Telephone alcove (one per floor).
Patients' laundry.[1]

(d) *Nursing unit for children.*[1]

General: It is recommended that this unit be located on the ground floor near the treatment area. No patients room should have more than 4 beds. Provide 2 two-bed rooms in each nursing unit. Each patients' room shall have a lavatory. Generous wardrobe space for each patient should be provided in the patients' room. A toilet room, with lavatory, accessible from adjoining patient's room is recommended. No patients' room shall be located on any floor which is below grade.
Size of nursing unit:
Not more than 30 beds.
Minimum room areas:
100 square feet per bed in two-bed and four-bed rooms. 80 square feet per bed recommended for crib room if provided.
Service facilities in each nursing unit for children:
Nurses' station.
Nurses' toilet.
Utility room.
Examination and treatment room.
Floor pantry.
Solarium: Provide 25 square feet per bed for 75 percent of beds on nursing unit.
Dining room: Provide 25 square feet per bed for 75 percent of beds on nursing unit.
It is recommended that the dining and solarium area be adjacent so that they can be combined into one room for recreational and other group activity purposes.
Toilet facilities.
If centralized toilets are provided, a toilet room for each sex at a ratio of 1 water closet to each 5 beds will be required. One of the water closet enclosures in each toilet room should be at least 5 feet by 6 feet to permit toilet training.
If toilets provided adjacent to patients' rooms are not large enough a separate training toilet, at least 5 feet by 6 feet should be provided.
Bedpan facilities:
Bathing facilities:
1 bathroom for each sex.
1 shower to each 8 beds.
1 bathtub.
Stretcher and wheelchair parking space.
Clean linen storage.
Equipment and supply storage.
Janitor's closet.
Telephone alcove (one per floor).

(e) *Service department.* In general the same service facilities will be required as those noted under separate rehabilitation facility (multiple disability) for inpatients and outpatients, § 53.146, except that those service facilities which are available in the adjoining hospital need not be duplicated.

§ 53.146 *Separate rehabilitation facility (multiple disability) for inpatients and outpatients*—(a) *Administration.*

Business office with information counter, telephone switchboard and cashier's window.
Administrator's office.
Director of nurses' office.
Office for volunteer services coordinator.[1]
Case records room.
Library for staff and patients.
Lobby and waiting room.
Public telephone booth.
Public toilets.
Personnel toilets.

(b) *Evaluation and treatment facilities.*

Clinical laboratory.[2]
Radiology: Radiographic room with adjoining dark room, toilet and office.[2]
Pharmacy: Drug room with minimum facilities for compounding.[2]
Conference and library room.
Medical facilities:
Offices, examination rooms and work space for medical personnel such as physicians and nurses.
Dental facilities: [2] Office and work space for provision of appropriate dental treatment.
Physical therapy:
Office and work space for physical therapy staff.
Rehabilitation gymnasium for adults.
Rehabilitation gymnasium for children if children are included in program.[1]
Hydrotherapy area.
Thermotherapy and massage area.
Storage for supplies and equipment.
Outdoor exercise area.[1]
Occupational therapy:
Office and work space for occupational therapy staff.
Therapy area.
In large units space should be divided for diversified work (separate room for children is desirable).
Storage space for supplies and equipment.
Facilities for teaching activities of daily living.
Speech and hearing facilities: Offices for therapists and space for examination and treatment.[2]
Artificial appliance facilities: Space for fitting and adjustment service.
Psychological facilities: Office and work space for psychological testing evaluation and counseling.
Social service facilities: Office space for private interview and counseling.
Vocational facilities:
Office and work space for counseling, evaluation, prevocational programs and placement. A prevocational area is not required for facilities serving children under the age of 12.
Special education: Schoolroom for children if children are included in program.
General facilities:
Locker, toilet and shower facilities for patients.
Clean and soiled linen facilities.

(c) *Nursing unit for adults.*

General: It is recommended that this unit be located on the ground floor near the treatment area. Approximately one-fifth of the beds should be in two-bed rooms, the remainder in four-bed rooms. Each patients' room shall have a lavatory. Generous wardrobe space for each patient should be provided in the patients' rooms. A toilet room, with lavatory, accessible from adjoining patients' rooms, is recommended. No patients' room shall be located on any floor which is below grade.
Size of nursing unit: Not more than 50 beds, 35 to 40 beds recommended.
Minimum patients' room areas: 100 square feet per bed in multi-bed patients' rooms.
Service facilities in each nursing unit for adults:
Nurses' station.
Nurses' toilet.
Utility room.
Examination and treatment room.
Floor pantry.
Solarium: Provide 25 square feet per bed for 75 percent of beds on nursing unit.
Dining room: Provide 25 square feet per bed for 75 percent of beds on nursing unit.
It is recommended that the dining and solarium area be adjacent so that they can be combined into one room for recreational and other group activity purposes.
Toilet facilities.
If centralized toilets are provided, a toilet room for each sex at a ratio of 1 water closet to each 5 beds will be required. One of the water closet enclosures in each toilet room should be at least 5 feet by 6 feet to permit toilet training.
If toilets provided adjacent to patients' rooms are not large enough, a separate training toilet, at least 5 feet by 6 feet, should be provided.
Bedpan facilities.
Bathing facilities:
1 bathroom for each sex.
1 shower to each 8 beds.
1 bathtub.
Stretcher and wheelchair parking space.
Clean linen storage.
Equipment and supply storage.
Janitor's closet.
Telephone alcove (one per floor).
Patients' laundry.[1]

(d) *Nursing unit for children.*[2]

General: It is recommended that this unit be located on the ground floor near the treatment area. No patients' room should have more than 4 beds. Provide 2 two-bed rooms in each nursing unit. Each patients' room shall have a lavatory. Generous wardrobe space for each patient should be provided in the patients' rooms. A toilet room, with lavatory, accessible from adjoining patients' room is recommended. No patients' room shall be located on any floor which is below grade.
Size of nursing unit: Not more than 30 beds.
Minimum patients' room areas: 100 square feet per bed in 2-bed and 4-bed rooms. 80 square feet per bed recommended for crib room if provided.
Service facilities in each nursing unit for children:
Nurses' station.
Nurses' toilet.
Utility room.
Examination and treatment room.
Floor pantry.
Solarium: Provide 25 square feet per bed for 75 percent of beds on nursing unit.
Dining room: Provide 25 square feet per bed for 75 percent of beds on nursing unit.
It is recommended that the dining and solarium area be adjacent so that they can be combined into one room for recreational and other group activity purposes.
Toilet facilities.
If centralized toilets are provided, a toilet room for each sex at a ratio of 1 water closet to each 5 beds will be required. One of the water closet enclosures in each toilet room should be at least 5 feet by 6 feet to permit toilet training.
If toilets provided adjacent to patients' rooms are not large enough, a separate training toilet, at least 5 feet by 6 feet, should be provided.
Bedpan facilities.

[1] Desirable but not mandatory.

[2] If required by program.

Service facilities in each nursing unit for children—Continued
Bathing facilities:
1 bathroom for each sex.
1 shower to each 8 beds.
1 bathtub.
Stretcher and wheelchair parking space.
Clean linen storage.
Equipment and supply storage.
Janitor's closet.
Telephone alcove (one per floor).

(e) *Service department.*

Central sterilizing and supply room.
Dietary facilities:
Main kitchen.
Dietitians' space.
Dishwashing room.
Adequate refrigeration.
Garbage disposal facilities.
Day storage room.
Personnel dining space. Provide 12 square feet per person; may be designed for multiple seatings.
Outpatients' dining facilities as required.
Janitor's closet.
Housekeeping facilities:
Laundry; unless commercial or other laundry facilities are available, each rehabilitation facility shall have a laundry of sufficient capacity to process full 7 days laundry in work week and contain the following areas:
Sorting area.
Processing area.
Clean linen and sewing room separate from laundry.
Where no laundry is provided in the hospital, a soiled linen room and a clean linen and sewing room shall be provided.
Housekeeper's office.
Mechanical facilities:
Boiler and pump room.
Shower and locker facilities.[1]
Engineers' space.
Maintenance shops: At least one room shall be provided. In large rehabilitation facilities, separation of carpentry, painting and plumbing is recommended.
Employees' facilities:
Female staff and volunteers lockers:
Locker room.
Rest room.
Toilet and shower room.
Female help lockers:
Locker room.
Rest room.
Toilet and shower room.
Male staff and volunteers lockers:
Locker room.
Toilet and shower room.
Male help lockers:
Locker room.
Toilet and shower room.
Storage:
General storage. 20 square feet per bed and to be concentrated in one area.
Storage of out-door equipment.[1]

§ 53.147 *Separate rehabilitation facility (multiple disability) for outpatients only*—(a) *Administration.*

Business office with information counter, telephone switchboard and cashier's window.
Administrator's office.
Director of nurses' office.
Office for volunteer services coordinator.[1]
Case records room.
Library for staff and patients.
Lobby and waiting room.
Public telephone booth.
Public toilets.
Personnel toilets.[1]

(b) *Evaluation and treatment facilities.*

Conference and library room.
Medical facilities:
Offices, examination rooms and work space for medical personnel such as physicians and nurses.
Dental facilities:[2] Office and work space for provision of appropriate dental treatment.
Physical therapy:
Office and work space for physical therapy staff.
Rehabilitation gymnasium for adults.
Rehabilitation gymnasium for children if children are included in program.[1]
Hydrotherapy area.
Thermotherapy and massage area.
Storage for supplies and equipment.
Outdoor exercise area.[1]
Occupational therapy:
Office and work space for occupational therapy staff.
Therapy area: In large units space should be divided for diversified work (separate room for children is desirable).
Storage space for supplies and equipment.
Facilities for teaching activities of daily living.
Speech and hearing facilities:[2] Offices for therapists and space for examination and treatment.
Artificial appliance facilities: Space for fitting and adjustment service.
Psychological facilities: Office and work space for psychological testing evaluation and counseling.
Social service facilities: Office space for private interview and counseling.
Vocational facilities:
Office and work space for counseling, evaluation, prevocational programs and placement. A prevocational area is not required for facilities exclusively serving children under the age of 12.
Special Education:
Schoolroom for children if children are included in program.
General facilities:
Locker, toilet and shower facilities for patients.
Clean and soiled linen facilities.

(c) *Service facilities.*

Dietary facilities.[2]
Housekeeping facilities: Clean and soiled linen storage.
Janitors' closet(s).
Mechanical facilities:
Boiler room.
Maintenance shop.
Employees' facilities:
Female staff and volunteers lockers:
Locker room.
Rest room.
Toilet and shower room.
Female help lockers:
Locker room.
Rest room.
Toilet and shower room.
Male staff and volunteers lockers:
Locker room.
Toilet and shower room.
Male help lockers:
Locker room.
Toilet and shower room.
Storage:
General storage.

§ 53.148 *Single disability rehabilitation facility.* The requirements for a single disability rehabilitation facility will be dependent upon the specific project program, which shall include, however, services in the four basic areas—medical, psychological, social and vocational. In general the single disability rehabilitation facility will follow the pattern established for the multiple disability rehabilitation facility. In other respects the general standards set forth herein shall apply.

§ 53.149 *Nursing homes*—(a) *General.* (1) The facilities listed in this section need not be provided if functionally available in an adjoining hospital.

(2) Nursing homes should be planned to approximate the home atmosphere as closely as possible. It is desirable that larger bedrooms be provided than are generally provided in general hospitals, that each bed be equitably placed in relation to the windows, that wardrobe and closet space in patients' rooms be more generous. The use of more open, informal planning, the provision of inviting recreational spaces both indoors and out, the use of decoration, color, furnishings, etc., to minimize institutional effect is recommended.

(b) *Administration department.*

Business office.[4]
Administrator's office.[4]
Consultation room.[1]
Lobby and waiting room.
Public toilet facilities.
Public telephone.

(c) *Ancillary facilities.*

Recreation room.
Occupational activities room.
Patients' dining room.
Provide at least 50 square feet per bed for 75 percent of the total beds in the nursing home for recreation, occupational activities and patients' dining.
It is recommended that the recreation, occupational activities and patients' dining areas be adjacent so that they can be combined into one room for recreational and other group activity purposes.
Physical therapy services as required.
Patients' laundry.[1]
Storage for occupational and recreational equipment.
Outdoor recreation area.[2]

(d) *Nursing department.*

General: No patients' room shall have more than 4 beds. Six beds, not more than three beds deep from outside wall, will be permitted in nursing homes of over 100 beds. Not more than 2 beds per patients' room is desirable. Each patients' room shall have a lavatory. A toilet room, with lavatory, accessible from adjoining patients' room is recommended. At least one single room with private toilet shall be provided in each nursing unit for each sex for purposes of medical isolation, incompatability, personality conflict, etc. No patients' room shall be located on any floor which is below grade.
Size of nursing unit: Should not have more than 40 beds. Larger units will be permitted if additional service facilities are provided as required.
Minimum patients' room areas: 80 square feet per bed (100 square feet desirable) in multiple bed patients' rooms; 100 square feet per bed (125 square feet desirable) in one-bed patients' rooms.
Service facilities for each nursing unit:
Nurses' station.
Nurses' toilet.
Utility room.
Treatment room.

[1] Desirable but not mandatory.

[2] If required by program.

[4] May be combined.

Service facilities for each nursing unit—Continued
Floor pantry: one for each nursing floor in multi-story buildings.
Toilet facilities:
If centralized toilets are provided, a toilet room for each sex at a ratio of 1 water closet to each 8 beds will be required. One of the water closet enclosures in each toilet room should be at least 5 feet by 6 feet to permit toilet training.
If toilets provided adjacent to patients' rooms are not large enough, a separate training toilet, at least 5 feet by 6 feet, should be provided.
Bedpan facilities.
Bathing facilities:
1 bathtub.
1 shower. (A separate bath room for each sex, containing at least one bathtub and one shower, is recommended. A ratio of one bathtub or one shower for each 10 beds is desirable.)
Stretcher and wheelchair parking area.
Clean linen storage.
Equipment and supply storage.
Janitor's closet.

(e) *Service department.*

Dietary facilities:
Kitchen.
Dishwashing room.
Adequate refrigeration.
Garbage disposal facilities.
Personnel dining facilities.
Janitors' closet.
Housekeeping facilities:
Clean linen facilities.
Soiled linen facilities.
If commercial laundry is not available, laundry facilities shall be provided.
Mechanical facilities:
Boiler room.
Maintenance facilities—at least a bench in boiler room. In larger Nursing Homes, separate maintenance facilities should be provided.
Incinerator.[1]
Employees' facilities:
Male locker room and toilet.
Female locker room and toilet.
Storage:
General storage—15 square feet per bed and to be concentrated in one area.
Patients' clothes storage room.
Storage for outdoor equipment.[1]

§ 53.150 *Details.* The following general requirements apply to all hospitals. Conditions in special hospitals, not covered in the general requirements, are specifically noted.

(a) *General requirements for hospitals.*

Door widths: 3 feet 8 inches (3 feet 10 inches preferable) at all:
Bedrooms.
Treatment rooms.
Operating rooms.
X-ray therapy rooms.
Delivery rooms.
Solariums.
X-ray rooms.
Physical therapy rooms.
Labor rooms.
No doors shall swing into the corridor except closet doors. (Does not apply to mental and psychiatric hospitals and mental units in general hospitals.)
Corridor widths: 7 feet, (8 feet preferred). A greater width should be provided at elevator entrances.
Stair Widths: The width of stairways shall be not less than 3 feet, 8 inches. The width shall be measured between handrails where handrails project more than 3½ inches.

[1] Desirable but not mandatory.

Elevators: Platform size—5 feet 4 inches x 8 feet. Door opening—3 feet 10 inches. See also mechanical section.
Laundry chutes: Use optional. Where used 2' 0" minimum diameter.
Nurses' call system: (Does not apply to mental and psychiatric hospitals and mental units in general hospitals.) Call station between each two beds in two-bed rooms and four-bed rooms and one in each one-bed room.
Corridor dome light over each nursing room.
Dome light and buzzer at nurses' station, utility room and floor pantry.
Fire Safety:
Exit facilities:
All exit facilities shall follow the recommendations of the Building Exits Code of the National Fire Protection Association.
Fire protection facilities:
Other fire protection requirements such as standpipes, sprinklers, chemical fire extinguishers and fire alarm systems shall conform to the requirements of any one of the codes listed in § 53.152 (a) (Structural Requirements).
Fire-resistive construction:
See § 53.152 (c) for fire-resistive requirements affecting the structural members and connections.
Ray protection: X-ray rooms, surgeries, cystoscopic rooms and other areas containing X-ray producing equipment, other than mobile equipment, shall have ray protection as recommended in applicable handbooks of the National Bureau of Standards.
Radioisotopes: Rooms or areas where radioisotopes are used or stored, including teletherapy apparatus utilizing Radium, Cobalt-60, or Cecium-137 or other radioisotopes, shall have the ray protection necessary to limit the radiation in occupied areas to those levels required by the Atomic Energy Commission. The methods for determining radiation barriers shall be those established in the applicable handbooks of the National Bureau of Standards.
X-ray equipment: X-ray equipment and installation shall comply with the recommendations contained in the National Electrical Code and applicable handbooks of the National Bureau of Standards.
Ceiling heights:
Boiler room:
Not less than 12' 0" except that a lesser height may be used for these small buildings which may use a domestic type packaged heating unit. When a boiler is set in a depressed pit area, the height shall be measured from the pit floor.
Laundry:
Not less than 11' 0" (a higher ceiling is desirable).
Kitchen:
Not less than 10' 0" (a higher ceiling is desirable).
Operating rooms, delivery rooms, Cystoscopic rooms, emergency rooms and similar rooms having ceiling-mounted light fixtures—not less than 9' 0" (a higher clearance may be necessary for some surgical lights).
All other rooms except those containing special equipment which may require a greater height, (X-ray, etc.)—not less than 8' 0" except that ceiling heights for corridors, storage rooms, patient's room toilets and other minor auxiliary rooms may be lower.
Insulation in ceilings: Ceilings of boiler rooms, kitchens and laundries shall be insulated where the floor directly above them is to be used for hospital purposes.
Parking space: Adequate parking space should be available for all health facilities.

(b) *Chronic disease hospitals, rehabilitation facilities and nursing homes.*

Space allowances: Space allowances shall be consistent with the need in areas used by patients using crutches, wheelchairs or wheel stretchers.
Doors: All doors through which patients will pass shall be at least 3 feet 8 inches wide. Doors at least 3 feet wide will be permitted at individual toilets adjacent to patients' bedrooms.
Corridors: Corridors used by patients shall be at least 8 feet wide. A greater width should be provided at elevator entrances.
Handrails: Handrails will be required on both sides of corridors used by patients in chronic disease hospitals and nursing homes. Handrails are not required in corridors of rehabilitation facilities.
Thresholds: Thresholds at doorways shall be flush.
Telephone alcoves: Telephone alcoves shall be a minimum of 4 feet square. Phone shall be located on a shelf convenient for patients in wheelchairs. Doors to telephone booths are not recommended.
Drinking fountains: Drinking fountains shall be located in corridors of nursing units and treatment areas and lobby. The fountain shall be accessible to patients in wheelchairs.
Brackets: In rehabilitation facilities brackets should be provided adjacent to patients' beds for braces and crutches.
Water closet stalls: Water closet stalls for patient use shall have handrails on both sides. Curtains are recommended in lieu of doors to stalls.
Toilet rooms: Toilet rooms adjacent to patients' rooms shall permit movement of wheelchairs and shall have handrails on both sides.
Hardware: Hardware on water closet enclosures shall be operable from outside.
Lavatories: Lavatories for patient use shall be supported on brackets to allow wheelchairs to slide under.
Mirrors: Mirrors shall be arranged for the convenience of patients in wheelchairs as well as patients in a standing position.
Bathtubs: Bathtubs shall not be elevated in rehabilitation facilities. It is recommended that bathtubs shall not be elevated in chronic disease hospitals and nursing homes. Handrails shall be provided at all bathtubs.
Showers: Showers should be approximately 4 feet square and should have handrails and curtains. Curbs shall be omitted.

(c) *Mental hospitals, psychiatric hospitals and psychiatric units in general hospitals.* The principles of psychiatric security and safety shall be followed throughout. Materials and details of construction shall be such that patients will not be afforded opportunity for escape, suicide, hiding, etc. Care must be taken to avoid projecting sharp corners, exposed piping, heating elements, fixtures, hardware, etc.

(d) *Public health centers and diagnostic or treatment centers.* Width of corridors shall be not less than 5' 0". Greater width preferred. Windows of examination and treatment rooms shall be glazed with obscure glass to insure privacy.[1]

(e) *State public health laboratories.* Provide separate air conditioning or ventilation system for bacteriological and virus laboratories with ample supply and exhaust to function properly with closed windows. Emergency showers shall be provided in chemical laboratories. Each chemical laboratory room shall have a minimum of two exits. All windows must be screened.

§ 53.151 *Finishes*—(a) *General.*

Floors:
The floors of the following areas shall have smooth, waterproof surfaces which are wear resistant:
Toilets.
Baths.
Bedpan rooms.
Floor pantries.
Utility rooms.
Treatment rooms.
Sterilizing rooms.
Janitors' closets.
The floors of the following areas shall be smooth and easily cleaned:
Pharmacies.
Laboratories.
Patient rooms.
The floors of the following areas shall be waterproof, greaseproof, smooth and resistant to heavy wear:
Kitchens.
Butcher shops.
Food preparation.
Formula rooms.
The floors of the following areas shall have conductive flooring as recommended by the National Fire Protection Association:
Operating rooms.
Delivery rooms.
Anesthesia rooms.
Adjoining spaces.

Walls:
The walls of the following areas shall have a smooth surface with painted or equal washable finish in light color. At the base, they shall be waterproof and free from spaces which may harbor ants and roaches:
All rooms where food and drink are prepared, served or stored.
The walls of the following areas shall have waterproof painted, glazed or similar finishes to a point above the splash or spray line:
Kitchens.
Sculleries.
Utility rooms.
Baths.
Showers.
Dishwashing rooms.
Janitors' closets.
Sterilizing rooms.
Spaces with sinks.
The walls of the following areas shall have waterproof glazed, painted or similar surface which will withstand washing to a distance of not less than 5′ 0″:
Operating rooms.
Delivery rooms.

Ceilings:
The ceilings of the following areas shall be painted with waterproof paint:
Operating rooms.
Delivery rooms.
All sculleries, kitchens and other rooms where food and drink are prepared.
The ceilings of the following areas shall be acoustically treated:
Corridors in patient areas.
Nurses' stations.
Labor rooms.
Utility rooms.[1]
Floor pantries.
Kitchens.[1]

(b) *State public health laboratory.*

Floors:
Resilient, smooth and stain resistant: All laboratories other than chemistry laboratories.
Resilient, smooth and acid resistant: Chemistry laboratories.
Smooth, waterproof, grease-proof, easily cleaned, non-slip, resistant to heavy traffic:
Culture media rooms.
Glasswashing rooms.

[1] Desirable but not mandatory.

Floors—Continued
Smooth, waterproof, grease-proof, easily cleaned, non-slip, resistant to heavy traffic—Continued
Sterilization rooms.
Acid cleaning rooms.
Animal rooms.

Walls:
Waterproof, painted, glazed or similar finishes to a point above the splash or spray line. They shall be without cracks, and in conjunction with floors shall be waterproof and free of cracks and spaces which may harbor ants and roaches:
Laboratories.
Incubator rooms.
Sterilizing rooms.
Culture media rooms.
Glasswashing rooms.
Acid cleaning rooms.
Inoculation and operating rooms.
Animal rooms.
Same as above, but finish to reach to ceiling: Sterile rooms.

Ceilings: Waterproof painted: Sterile rooms.

Shelves and cabinets: Shelves and cabinets which are used for the storage of food, dishes, and cooking utensils shall be so constructed and mounted that there shall be no openings or spaces which cannot be cleaned and which might harbor vermin or insects. Cabinets which are used for the storage of open food containers and dishes shall be dust tight.

(c) *Chronic disease hospitals, rehabilitation facilities and nursing homes.*

Wainscot: A wainscot of durable material should be provided in all rooms used by patients for protection of walls against damage caused by wheelchairs, stretchers and carts. Such a wainscot is desirable but not mandatory in chronic disease hospitals and nursing homes.

§ 53.152 *Structural*—(a) *Codes.* In addition to compliance with the standards set forth in this subpart, all applicable local and State building codes and regulations must be observed. In areas which are not subject to local or State building codes, the recommendations of any one of the following national codes shall apply insofar as such recommendations are not in conflict with the standards set forth in this subpart.

1. National Building Code: National Board of Fire Underwriters, 85 John Street, New York 38, New York.
2. Basic Building Code: Building Officials Conference of America, 110 East 42d Street, New York 17, New York.
3. Southern Building Code: Southern Building Code Congress, Brown-Marx Building, Birmingham, Alabama.
4. Uniform Building Code: International Conference of Building Officials, 610 South Broadway, Los Angeles 14, Calif.

(b) *Design data*—(1) *General.* The buildings and all parts thereof shall be of sufficient strength to support all dead, live and lateral loads without exceeding the working stresses permitted for the materials of their construction in the applicable code.

(2) *Special.* Special provisions shall be made for machine or apparatus loads which would cause a greater stress than that produced by the specified minimum live load, with due consideration of vibration or impact resulting from operation of such equipment (e. g., some portable X-ray machines weigh as much as 1,000 pounds). Consideration shall be given to structural members and connections of structures which may be subject to hurricanes, tornadoes and earthquakes. Suitable allowance shall be made for future partition changes.

(3) *Live loads.* The following unit live loads shall be taken as the minimum uniformly distributed live loads for the occupancies listed:

Hospital wards, bedrooms, and all adjoining service rooms which comprise a typical nursing unit (except solaria and corridors)—40 p. s. f. Solaria, corridors in nursing units and all corridors above the first floor, operating suites, examination and treatment rooms, laboratories, toilets and locker rooms—60 p. s. f.

Corridors on first floor, waiting rooms and similar public areas, offices, conference room, library, kitchen and radiographic room—80 p. s. f.

Stairways, laundry, large rooms used for dining, recreation or assembly purposes, work shops—100 p. s. f.

Records file room, storage, supply—125 p. s. f.

Mechanical equipment room (unless actual equipment loads are accurately determined)—150 p. s. f.

Roofs (except use increased value where snow and ice may occur)—20 p. s. f.

Wind—as required by local conditions, but not less than—15 p. s. f.

(c) *Construction including fire resistive requirements.* (1) Foundations shall rest on natural solid ground and shall be carried to a depth of not less than one foot below the estimated frost line or shall rest on leveled rock or load-bearing piles when solid ground is not encountered. Footings, piers, and foundation walls shall be adequately protected against deterioration from the action of ground water. Proper bearing values for the soil shall be established in accordance with recognized standards.

(2) One-story buildings shall be constructed of not less than one-hour fire-resistive construction throughout except as follows:

(i) Boiler rooms and rooms used for the storage of combustible materials shall be of two-hour fire-resistive noncombustible construction.

(ii) Interior non-load-bearing partitions, other than those enclosing corridors and vertical shafts, may be of noncombustible construction without a fire-resistive rating.

(3) Structures built of other than noncombustible materials shall adhere to the floor area restrictions set forth in any one of the national codes listed in paragraph (a) of this section. For purposes of evacuation, the window sills of one-story buildings constructed of other than non-combustible materials shall be not more than six feet above the adjacent ground level.

(4) Buildings more than one story in height shall be constructed of non-combustible materials, using a structural framework of reinforced concrete or structural steel except that load-bearing masonry walls and piers may be utilized for buildings up to and including three stories in height. The fire-resistive requirements of the various building elements shall follow the requirements of any one of the four national codes listed in paragraph (a) of this section except for the modifications listed below:

(i) Corridor partitions shall be of one-hour fire-resistive construction.

(ii) Walls enclosing stairways, elevators, laundry and trash chutes, and other vertical shafts, boiler rooms and rooms used for storage of combustible materials shall be of two-hour fire-resistive construction.

(5) Interior finish of all exit ways, storage rooms and all areas of unusual fire hazard shall have a flame spread rating of less than 20.

(6) Interior finish of patient rooms, patient day rooms and other areas occupied by patients shall have a flame spread rating of less than 75.

(7) Interior finish of other areas shall have a flame spread rating of less than 75, except that ten percent of the aggregate wall and ceiling areas of any space may have a flame spread rating up to 200.

(8) Interior finish materials shall be classified in accordance with their average flame spread rating on the basis of tests conducted in accordance with ASTM Standard No. E 84.

§ 53.153 *Mechanical and electrical—*(a) *Heating; steam systems and ventilation—*(1) *Codes.* The heating system, steam, system, boilers and ventilation shall be furnished and installed to meet all requirements of the local and State codes and regulations, and the regulations of the National Board of Fire Underwriters and the minimum general standards as set forth in this section. Where there is no local or State boiler code, the recommendations of the A. S. M. E. shall apply. Gas fired equipment shall comply with the regulations of the American Gas Association.

(2) *Boilers.* Boilers shall have the necessary capacity when operating at normal rating to supply the heating system, hot water, and steam operated equipment, such as sterilizers, laundry and kitchen equipment. Spare boiler capacity shall also be provided in a separate unit to replace any boiler which might break down, except that spare boiler capacity for heating will not be required in design temperature zone +20° F. or higher as shown by the current edition of the A. S. H. & V. E. Guide. Boilers which supply high pressure steam to sterilizers, kitchens, laundry, etc., shall meet the requirements of the city and State boiler codes for 125 pounds working pressure. It is desirable to operate boilers, supplying steam for laundries, at not less than 105 pounds pressure while boilers for sterilizers and kitchen may operate at 50 pounds pressure.

(3) *Heating system.* The building shall be heated by a hot water, steam, or equal type heating system.

(4) *Steam system.* A system of steam and return mains and appurtenances shall be provided to supply all equipment which requires steam heat.

(5) *Boiler accessories.* Boiler feed pumps, return pumps and circulating pumps shall be furnished in duplicate, each of which has a capacity to carry the full load. Blow off valves, relief valves, non-return valves, injectors and fittings shall be provided to meet the requirements of the city and state codes. Where no city or state codes are in force the recommendations of the ASME shall apply.

(6) *Radiation.* The necessary radiation shall be furnished in each room and occupied space to maintain a temperature of 70° F. except in operating, delivery, and nurseries where a temperature of 75° F. shall be maintained. In spaces where radiant heat is used, the minimum temperatures specified may be reduced to maintain an equivalent comfort level. Each radiator shall be provided with hand control valve except where individual room automatic control is provided.

(7) *Piping.* Steam and hot water piping may be copper pipe and fittings, standard weight steel or iron pipe and cast iron fittings. Pipe used in heating and steam systems shall not be smaller sizes than prescribed by the latest edition of the American Society of Heating and Ventilating Engineers Guide. The ends of all steam mains and low points in steam mains shall be dripped.

(8) *Valves.* Steam, return and heating risers, steam, return and heating mains shall be controlled separately by a valve. Each steam and return main shall be valved. Each piece of equipment supplied with steam shall be valved on the supply and return ends.

(9) *Thermostatic control.* The heating system shall be thermostatically controlled in one or more zones.

(10) *Auxiliary heat.* Radiation or ventilation systems in operating rooms, delivery rooms, recovery rooms and nurseries shall be arranged so that an auxiliary source of heat is available independent of the building space heating system. It may be desirable to serve such radiation or ventilation systems with steam which is available the year round.

(11) *Coverings.* Boilers and smoke breeching shall be insulated with covering not less than 1-inch magnesia blocks and ½-inch plastic asbestos finish. All high pressure steam and high pressure return piping shall be insulated with covering not less than the equivalent of 1-inch four ply asbestos covering. Heating mains in the boiler room, in unheated spaces, unexcavated spaces, and where concealed, shall be insulated with covering not less than 1-inch asbestos air cell.

(12) *Ventilation.* (i) Rooms which do not have outside windows and which are used by patients or hospital personnel, such as utility rooms, toilets, bed pan rooms, baths, sterilizer rooms, sterilizer equipment chambers and food storage rooms shall be provided with forced or suitable ventilation to change the air at least once every six minutes.

(ii) Kitchens, morgues and laundries which are located inside the hospital building shall be ventilated by exhaust systems which will discharge the air above the main roof or 50′ 0″ from any window. The ventilation of these spaces shall comply with the State or local codes but if no code governs, the air in the work spaces shall be exhausted at least once every six minutes with the greater part of the air being taken from the flat work ironer and ranges. Rooms used for the storage of combustible anesthetic agents, paints and other highly flammable materials shall be ventilated to the outside air with intake and discharge ducts. Oxygen storage and oxygen manifold rooms shall comply with the regulations set forth in the latest edition of the NFPA–56.

(iii) The operating and delivery rooms shall be provided with a supply ventilating system with heaters and humidifiers which will change the air at least eight times per hour by supplying fresh filtered air humidified to prevent static. No recirculation will be permitted. The air shall be removed from these rooms by forced system of exhaust. The adjoining sterilizing rooms and sterilizing equipment chambers shall be provided with exhaust ventilation.

(13) *Incinerators.* (i) Incinerators shall be installed in hospitals except where coal fired boilers suitable for waste destruction are available. If provided, the incinerator shall be designed to completely burn 60 percent wet garbage without objectionable smoke or odor. Where garbage is removed from the premises or disposed of by other means, incinerators will be required for the disposal of dressings, contagious and infectious materials, amputations and general rubbish. Rubbish incinerators shall be designed to completely burn 50 percent wet rubbish without objectionable smoke or odor. Gas or oil fired incinerators are desirable. The incinerator shall be designed with furnace and combustion chamber lined with 9″ fire brick. The gases shall be carried to a point above the roof of the hospital.

(ii) Incinerators for diagnostic or treatment facilities need not conform in all respects to the above requirements but shall be of such design, construction and capacity to fulfill the needs of such facilities.

(14) *Tests.* The systems shall be tested to demonstrate to the satisfaction of the State agencies having jurisdiction that: The boilers will carry the full load with one boiler in reserve, that the steam supply to all steam heated equipment is ample, that the ventilating equipment meets the minimum requirements and that all systems circulate satisfactorily without leaks or noise.

(15) *Health centers, nurses' residences, laboratories, diagnostic or treatment centers, rehabilitation facilities and nursing homes.* (i) A spare boiler may not be required for health centers, nurses' residences, laboratories, diagnostic or treatment centers, rehabilitation facilities and nursing homes. Incinerators are recommended in health centers, nurses' residences, laboratories, rehabilitation facilities and nursing homes.

(ii) Separate special ventilation or air-conditioning systems are required for the bacteriological and virus laboratories.

(16) *Mental hospitals.* Radiators, grilles, pipes, valves and equipment shall be so located that they are not accessible to patients. Hot air heating may be used for spaces occupied by mental patients.

(b) *Plumbing and drainage.* All parts of the plumbing systems shall comply with all applicable local and State codes and the requirements of the State Department of Health and the minimum

general standards as set forth in this paragraph. Where no State or local codes are in force or where such codes do not cover special hospital equipment, appliances, and water piping, the National Plumbing Code ASA–A40.8–1955 shall apply.

(1) *Water service.* (i) The water supply available for the hospital shall be tested and approved by the State Department of Health.

(ii) The water service shall be brought into the building to comply with the requirements of the local water department and shall be free of cross connections.

(2) *Hot water heaters and tanks.* (i) The hot water heating equipment shall have sufficient capacity to supply 6½ gallons of water at 125° F. per hour per bed for hospital fixtures, 4 gallons of water at 180° F. per hour per bed for kitchen and 4½ gallons of water at 180° F. per hour per bed for laundry.

(ii) The hot water storage tank or tanks shall have a capacity equal to 80 percent of the heater capacity.

(iii) Where direct fired hot water heaters are used they shall be of an approved high pressure type. Submerged steam heating coils shall be of copper. Storage tanks shall be of non-corrosive metal or be lined with non-corrosive material to comply with the A. S. M. E. Code for pressure vessels. Tanks and heaters shall be fitted with vacuum and relief valves, and where the water is heated by coal or gas they shall have thermostatic relief valves. Heaters shall be thermostatically controlled.

(3) *Water supply systems.* (i) From the cold water service and hot water tanks, cold water and hot water mains and branches shall be run to supply all plumbing fixtures and equipment which require hot or cold water or both for their operation. Pipes shall be sized to supply water to all fixtures with a minimum pressure of 15 pounds at the top floor fixtures during maximum demand periods. All plumbing fixtures except water closets, urinals, bedpan washers and drinking fountains shall have both hot and cold water supplies. Every supply outlet or connection to a fixture or appliance shall be protected against back flow in accordance with the provisions of standards for air gaps and backflow preventers as provided by National Plumbing Code ASA–A40.8–1955. Wherever the usage of fixture or appliance will permit, water supplied to all fixtures, open tanks and equipment, shall be introduced through a suitable air gap between the water supply and the flood level of the fixture. No connections shall be made which will permit backflow.

(ii) Hot water circulating mains and risers shall be run from the hot water storage tank to a point directly below the highest fixture at the end of each branch main. Where the building is higher than 3 stories, each riser shall be circulated. Water pie sizes shall be equal to those prescribed by the National Plumbing Code ASA–A40.8–1955.

(4) *Drainage system.* All fixtures and equipment shall be connected through traps to soil and waste piping and to the sewer. Indirect waste connections shall be provided for devices or fixtures in which food, drink, water and ice are processed or stored, dishwashing machines, sterilizers, stills and equipment requiring cooling water. All shall conform to the requirements of the National Plumbing Code ASA–A40.8–1955.

(5) *Rain water drains.* Leaders shall be provided to drain the water from roof areas to a point from which it cannot flow into the basement or areas around the building. Courts, yards, and drives which do not have natural drainage from the building shall have catch basins and drains to low ground, storm water system, or dry wells. Where dry wells are used they shall be located at least 20′ 0″ from the building.

(6) *Gas piping.* Gas appliances shall be approved by the American Gas Association and shall be connected in accordance with the requirements of the company furnishing the gas. Gas outlets shall not be provided in patients' bedrooms.

(7) *Oxygen systems.* Where oxygen systems are installed the oxygen piping, outlets, manifolds, manifold rooms and storage rooms shall be installed in accordance with the requirements of N. F. P. A. Bulletins No. 56 and No. 565.

(8) *Pipe.* The building drain, to a point 5′ 0″ from the building, shall be of cast iron. Soil stacks, drains, vents, waste lines, and leaders shall be of copper, cast iron or steel except drain lines in back-fill or soil shall be of cast iron. Oxygen lines shall be of copper tubing not lighter than type "K" or I. P. S. red brass with fittings of brass or copper. Drains from sinks which use chemicals shall be of approved acid resistant material. Gas piping shall be of black iron with malleable fittings or copper tubing.

(9) *Valves.* Each main, branch main, riser and branch to a group of fixtures of the water systems shall be valved.

(10) *Insulaton.* (i) Tanks and heaters shall be insulated with covering equal to 1″ 4-ply air cell.

(ii) Hot water and circulating pipes shall be insulated with covering equal to canvas jacketed 3-ply asbestos air cell.

(iii) Cold water mains in occupied spaces and in store rooms shall be insulated with canvas jacketed felt covering to prevent condensation. All pipes in outside walls shall also be insulated to prevent freezing.

(11) *Stand pipe system.* The stand pipe system shall be installed as required by the local and State departments having jurisdiction. Where no local or State codes are in force, the stand pipe system shall comply with the requirements of the National Board of Fire Underwriters.

(12) *Sprinkler system.* To reduce the danger from fire, it is desirable to provide automatic sprinkler systems in those areas which are considered hazardous from a fire safety point of view. Such hazardous areas may include the soiled linen rooms, basement corridors, paint shops, wood working shops, trash rooms, storage rooms, accessible attics, laundry and trash chutes, and entire nonfireproofed buildings.

(13) *Plumbing fixtures.* (i) The material used for plumbing fixtures shall be of an approved non-absorptive acid resisting material.

(ii) Water closets in and adjoining patients' areas shall be of a quiet operating type.

(iii) Flush valves shall be designed for quiet operation with non-return stops, back flow preventers and silencers.

(iv) Faucet spouts shall have the discharge opening above the rim of the fixture. Goose neck spouts shall be used for patients' lavatories, nurses' lavatories and sinks which may be used for filling pitchers. Knee or elbow action controls shall be used for doctors' wash up, utility and clinic sinks and in treatment rooms. Elbow action spade handles shall be used on other lavatories and sinks used by doctors or nurses.

(14) *Drinking fountains.* Drinking fountains shall comply with the A. S. A. Z4.2–1942.

(15) *Tests.* (i) All soil, waste, vent and drain lines shall be tested by water or air test before they are built in.

(ii) A smoke or chemical test shall be applied after fixtures have been set. Water pipe shall be hydraulically tested to a pressure equal to twice the working pressure. The tests shall demonstrate to the satisfaction of the State Agency that there are no leaks, that hot water is circulating satisfactorily, that all traps are properly vented, that there is ample supply of hot and cold water to all fixtures, that no fixture or equipment can be back syphoned and that there are no backflow connections.

(16) *Sterilizers.* Sterilizers and autoclaves shall be provided of the required types and necessary capacity to adequately sterilize instruments, utensils, dressings, water, operating room material, such as gloves, sutures, etc., and as required for laboratories. The sterilizers shall be of recognized hospital types with approved controls and safety features.

(17) *Mental, psychiatric, tuberculosis and chronic disease hospitals, rehabilitation facilities and nursing homes.* (i) Plumbing fixtures which require hot water and which are accessible to patients shall be supplied with water which is thermostatically controlled to provide a maximum water temperature of 110° F. at the fixture.

(ii) Special consideration shall be given to piping, controls, and fittings of plumbing fixtures as required by the types of mental patient and the doctor in charge of planning. No pipes or traps shall be exposed and fixtures shall be substantially bolted through walls. Generally, for disturbed patients, prison type water closets without seats shall be used and shower and bath controls shall not be accessible to patients.

(iii) The hot water heat and tank capacities for laundries in T. B. and mental hospitals may be reduced to 40 percent of that required for general hospitals.

(18) *Laboratories, nurses' residences and health centers.* (i) Emergency quick acting cold water showers are required at convenient points in chemical laboratories.

(ii) Only one system of hot water will be required in laboratories, nurses' residences and health centers and the elbow

or knee action lavatory and sink faucet handles will be required only in clinical rooms of health centers.

(c) *Electrical installations*—(1) *Codes and regulations.* The installation of electrical work and equipment shall comply with all local and State codes and laws applicable to electrical installations and the minimum general standards as set forth in this paragraph. Where such codes and laws are not in effect or where they do not cover special installations the National Electrical Code and standards referenced therein which are applicable shall apply. The regulations of the local utility company shall govern service connections. All materials shall be new and shall equal standards established by the Underwriters Laboratories, Inc. Certificates of approval shall be issued by these departments having jurisdiction before the work will be approved for final payment.

(2) *Service.* Connections from the service mains, with meter connections and service switches shall be installed as required by the Public Service Company.

(3) *Feeders and circuits.* Separate power and light feeders shall be run from the service to a main switchboard and from there sub-feeders shall be provided to the motors and power and light distributing panels. Where there is only one service feeder, separate power and light feeders from the service entrance to the switchboard will not be required. From the power panels feeders shall be provided for large motors, and circuits from the light panels shall be run to the lighting outlets. Large heating elements shall be supplied by separate feeders from the power or light service as directed by the local public service company. Independent feeders shall be furnished for X-ray equipment.

(4) *Switchboard and power panels.* Circuit breakers or dead front type fused switches shall be installed to protect all feeders and sub-feeders. Motors shall be connected with breakers or fused switches.

(5) *Light panels.* Light panels shall be provided on each floor for the lighting circuits on that floor. Light panels shall be located near the load centers not more than 100′ 0″ from the farthest outlet.

(6) *Lighting outlets and switches.* All occupied areas shall be adequately lighted as required by duties performed in the space. Patients' bedrooms shall have as a minimum general illumination a night light and a patient's reading light. The outlets for general illumination and night lights shall be switched at the door. Switches in patients' rooms shall be of an approved mercury or equal, quiet operating type, or shall be placed in the corridor. Operating and delivery rooms shall have general illumination and special lights for the tables each on an independent circuit.

(7) *Equipment and installation in hazardous areas.* All electrical equipment and installation in operating, delivery, emergency, anethesia storage and anesthesia induction rooms shall comply with National Fire Protection Association pamphlet NFPA No. 56.

(8) *X-ray film illuminator.* Each operating room shall have a film illuminator.

(9) *Receptacles (convenience outlets).* Receptacles suitable for the service shall be located where plug-in service is required. Each bedroom shall not have less than two duplex receptacles, with at least one receptacle near the head of each bed. Polarized receptacles for use of special equipment such as portable X-ray, shall be installed in all nursing corridors, not more than 50 feet apart and at locations convenient to operating, delivery, and emergency rooms. At least three three-pole grounded receptacles shall be installed in each operating, delivery, and emergency room.

(10) *Emergency lighting.* Emergency lighting shall be provided for exits, stairs, and patient corridors which shall be supplied by an emergency service, an automatic emergency generator or battery with automatic switch. Operating and delivery room lights shall be connected with an automatic transfer switch which will throw the circuits to the emergency service in case of current failure. Should an emergency service from the street be used it shall be from a generating plant independent of that used for the main electric service.

(11) *Nurses call.* Each patient shall be furnished with a nurses' call station which will register a call from the patient; at the corridor door, at the nurses' station, and in each pantry and utility room of the nursing unit. A duplex unit may be used for 2 patients. Indicating lights shall be provided at each station where there are more than two beds in a room. Nurses' call stations will not be required for beds which are used only for children. Operating, delivery and recovery rooms, rooms used for children and nurseries shall have one emergency call each for use of the nurse. Wiring for nurses call systems shall be installed in conduit.

(12) *Lighting fixtures.* Lighting fixtures shall be furnished for all lighting outlets. They shall be of a type suitable for the space. Should ceiling lights be used in patients' rooms, they shall be of a type which does not shine in the patients' eyes.

(13) *Fire alarms.* A manually operated fire alarm system shall be installed in each hospital, rehabilitation facility, and nursing home. It is recommended that this system be coded and electrically supervised. The alarm system shall comply with applicable local codes, or in the absence of such codes the "Building Exits Code" shall apply.

(14) *Clocks.* A clock system is desirable but not mandatory. Where provided, it should be complete with master clock and time indicator clocks in administrative offices, main lobby, and work areas as required.

(15) *Tests.* Lighting fixtures, all wiring and equipment shall be tested to show that it is free from grounds, shorts, or open circuits.

(16) *Health centers, nurses' residences, laboratories, diagnostic or treatment facilities, and separate rehabilitation facilities for outpatients only.* Emergency lighting and call systems will not be required in health centers, nurses' residences, laboratories, diagnostic or treatment facilities and separate rehabilitation facilities for outpatients only except as provided for by local and State codes.

(17) *Mental hospitals.* (i) No lighting fixtures, switches, receptacles or electrical equipment shall be accessible to mental patients.

(ii) Nurses' call systems will not be required in areas occupied by mental patients.

(d) *Elevators and dumbwaiters*—(1) *Codes.* The elevator installations shall comply with all local and State codes, American Standard Safety Code for Elevators, the National Board of Fire Underwriters, the National Electric Codes, and the minimum general standards as set forth in this paragraph.

(2) *Number of cars.* (i) Any hospital, rehabilitation facility, or nursing home with patients on one or more floors above the first or where the operating or delivery rooms are above the first floor shall have at least one electric motor driven elevator. Hospitals, rehabilitation facilities, or nursing homes with a bed capacity of from 60 to 200 above the first floor shall have not less than two elevators. Hospitals with a bed capacity of from 200 to 350 above the first floor shall have not less than 3 elevators, two passenger and one service. A larger number may be required by the hospital plan, a large visitors' traffic and food distribution.

(ii) Elevators with a rise of more than 6 stories require special consideration.

(3) *Cab.* (i) Cabs shall be constructed with fireproof material. Passenger cab platforms shall be not less than 5′ 4″ x 8′ 0″ with a capacity of 3,500 pounds. Service elevators shall be of sufficient size to receive a stretcher with patient.

(ii) Cab and shaft doors shall be not less than 3′ 10″ clear opening.

(4) *Controls.* Elevators, for which operators will not be employed, shall have automatic push-button control, signal control or dual control for use with or without operator. Where two push-button elevators are located together and where one such elevator serves more than three floors and basement; they shall have collective or signal control. Where the car has a speed of more than 100′ 0″ per minute or has a rise of four or more floors, the elevator shall be equipped with automatic self-leveling control which will automatically bring the car platform level with the landing with no load or full load. Multivoltage or variable voltage machines shall be used where speeds are greater than 150′ 0″ per minute. For speeds above 350′ 0″ per minute, the elevators shall be of the gearless type.

(5) *Dumbwaiters.* Dumbwaiter cabs shall be not less than 24″ x 24″ x 36″ of steel with one shelf to operate at speed of 50′ to 100′ per minute when carrying a load of 100 pounds. Dumbwaiters serving basement and four floors shall have a minimum speed of 100′ 0″.

(6) *Tests.* Elevator machines shall be tested for speed and load with and without loads in both directions and shall

be given overspeed tests as covered by the "Safety Code for Elevators."

(e) *Refrigeration* — (1) *Codes.* (i) The refrigerators and refrigerating systems shall be furnished and installed to meet all requirements of the local and State codes and regulations, the National Board of Fire Underwriters, and the minimum general standards as set forth in this paragraph.

(ii) This section shall include portable refrigerators, built-in refrigerators, garbage refrigeration, ice-making and refrigerator equipment, morgue boxes.

(2) *Box construction.* (i) Boxes shall be insulated with waterproof, nonabsorbent, verminproof insulation. For the portable boxes, the insulation in the doors and walls shall be equal to 2-inch cork. Outer walls and doors of the walk-in boxes shall have insulation equal to 4-inch cork. Boxes shall be lined with nonabsorbent sanitary material which will withstand the heavy use to which it will be subjected and constructed so as to be easily cleaned.

(ii) Refrigerators of adequate capacity shall be provided in all kitchens and other preparation centers, where perishable foods will be stored.

(iii) In the main kitchen, a minimum of two separate sections or boxes shall be provided, one for meats and dairy products, and one for general storage.

(3) *Refrigerator machines.* (i) Toxic, "irritant", or inflammable refrigerants shall not be used in refrigerator machines located in buildings occupied by patients.

(ii) The compressors and evaporators shall have sufficient capacity to maintain temperatures of 35° F. in the meat and dairy boxes, and 40° F. in the general storage boxes when the boxes are being used normally. Compressors shall be automatically controlled.

(4) *Tests.* Compressors, piping, and evaporators shall be tested for leaks and capacity.

(f) *Kitchen equipment*—(1) *Codes.* The kitchen equipment shall be so constructed and installed as to comply with the applicable local and State laws, codes, regulations and requirements, and with the applicable sanitation standards of Public Health Bulletin No. 280, entitled "Ordinance and Code Regulating Eating and Drinking Establishments, recommended by the U. S. Public Health Service," and with the minimum general standards set forth in this section.

(2) *Equipment.* (i) The equipment shall be adequate and so arranged as to enable the storage, preparation, cooking, and serving of food and drink to patients, staff and employees to be done in an efficient and sanitary manner. The equipment shall be selected and arranged in accordance with the types of food service adopted for the hospital.

(ii) Adequate cabinets or other facilities shall be provided for the storage or display of food, drink, and utensils, and shall be designed as to protect them from contamination by insects, rodents, other vermin, splash, dust, and overhead leakage.

(iii) Adequate facilities shall be provided for the washing and bactericidal treatment of utensils used for eating, drinking, and food preparation. Where utensils are to be washed by hand, there shall be provided an adequate sink equipped with heating facilities to maintain a water temperature of at least 170° F. in the bactericidal treatment compartment throughout the dishwashing period. Where utensils are to be washed by machine, there shall be provided facilities for supplying to the dishwashing machine an adequate supply of rinse water at 170° F., measured at the rinse sprays, throughout the dishwashing period. All tables, shelves, counters, display cases, stoves, hoods, and similar equipment shall be so constructed as to be easily cleaned and shall be free of inaccessible spaces providing harborage for vermin. Where there is not sufficient space between equipment and the walls or floor to permit easy cleaning, the equipment shall be set tight against the walls or floor and the joint properly sealed. All utensils and equipment surfaces with which food or drink comes in contact shall be of smooth, not readily corrodible material free of breaks, corrosion, open seams or cracks, chipped places, and V-type threads. All surfaces with which food or drink comes in contact shall be easily accessible for inspection and cleaning and shall be self-draining, and shall not contain or be plated with cadmium or lead. All water supply and waste line connections to kitchen equipment shall be installed in compliance with the plumbing requirements of these standards.

(g) *Laundry*—(1) *Codes.* (i) The laundry equipment shall be designed and installed to comply with all local and State codes and laws, and the requirements of the State Department of Health and the minimum general standards as set forth in this section.

(ii) Where laundries are provided they shall be complete with washers, extractors, tumblers, ironer and presses which shall be provided with all safety appliances and sanitary requirements.

(2) *Washers.* There shall be at least two washers which shall have a combined rated capacity of not less than 12 pounds of dry laundry per day per patient bed, when operating not more than 40 hours per week.

(3) *Ironer.* Provide one flat work ironer with a capacity equal to 70 percent of the washer capacity when operating 40 hours per week.

(4) *Extractor.* There shall be not less than one extractor with a daily capacity equal to that given above for the washers and for hospitals with more than 100 beds there shall be two extractors.

(5) *Tumbler.* Provide a minimum of one tumbler with a rated capacity equal to 25 percent of the washers, when operating 40 hours per week.

(6) *Presses.* For finished work provide not less than 1 nurses uniform unit consisting of 3 presses or one utility unit with 2 presses which shall be increased for the larger hospitals.

(7) *Wash tubs.* Provide 2 wash tubs.

(8) *Mental and tuberculosis hospitals.* The capacity per bed of laundry equipment for tuberculosis and mental hospitals shall be 40 percent of that required for general hospitals.

§ 53.154 *Preparation of plans, specifications and estimates*—(a) *General.* (1) The requirements contained in this section have been established for the guidance of the applicant and the architect to provide a standard method of preparation of drawings, specifications and estimates.

(2) It is expected that the applicant will find it advantageous to submit the material through the State Agency in three stages for its recommendation and approval. However, the applicant may, if he so elects, combine the first two stages.

(3) If the data required under stage 3 is available, it may be submitted without the drawings required under stages one and two.

(4) Copies of the final working drawings and specifications previously submitted under stage three will be submitted for approval with the formal application for the project. The requirements for the material submitted at each of the three stages are as follows:

(b) *Drawings and specifications.*

(1) (*First stage*) *program and schematic plans*—(i) Program: (*a*) List in outline form the rooms or spaces to be included in each department, explaining the functions or services to be provided in each, indicating the approximate size, the number of personnel and the kind of equipment or furniture it will contain. Note any special or unusual services or equipment to be included in the facility.

(*b*) If a hospital project, submit a schedule showing the total number of beds, their distribution in room and in the services, such as medicine, surgery, obstetrics, etc.

(ii) Schematic plans: Single line drawings of each floor showing the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room should be noted. The proposed roads and walks, service and entrance courts, parking and orientation may be shown on either a small plot plan or the 1st floor plan. Simple vertical space diagram should be submitted at this stage.

(iii) Construction outline: A brief description of the type of construction.

(iv) Description of site: If a survey has been made, a plat shall be submitted at this time, if not, it should be submitted with the Preliminary Plans (Second Stage). In lieu of a plat of the survey, a description of the site may be submitted at this time. This shall note the general characteristics of the site, easement, availability of electricity, water and sewer lines, main roadway approaches, direction of prevailing breezes, orientation, etc. A map indicating location of the hospital in its geographic area with particular reference to recommendation given under § 53.133, should be submitted.

(v) Preliminary cost estimates.

(2) (*Second stage*) *preliminary plans, elevations, and outline specifications.* (i) (*a*) Development of the preliminary sketch plans indicating in more detail the assignment of all spaces, size of areas and rooms, indicating in outline, the

fixed and movable equipment and furniture.

(b) The plans shall be drawn at a scale sufficiently large to clearly present the proposed design.

(c) The total floor area shall be computed and shown on the drawings.

(d) The drawings shall include a plan of each floor including the basement or ground floor, roof plan, approach plan showing roads, parking areas, sidewalks, etc., elevations of all facades, sections through the building. A print of the "Site Survey and Soil Information" which is described under § 53.132 shall be included unless it has already been submitted in Stage I.

(ii) Outline specifications shall provide a general description of the construction including interior finishes; acoustical material, its extent and type; extent of the conductive floor covering; heating and ventilating systems; and the type of elevators.

(iii) Revised cost estimates.

(3) *(Third stage) working drawings and specifications.* (i) All working drawings shall be well prepared so that clear and distinct prints may be obtained; accurately dimensioned and include all necessary explanatory notes, schedules and legends. Working drawings shall be complete and adequate for contract purposes. Separate drawings shall be prepared for each of the following branches of work: Architectural, structural, mechanical, electrical. They shall include or contain the following:

(a) *Architectural drawings.* (1) Approach plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new buildings and structures, roadways, walks, and the extent of the areas to be seeded. All structures and improvements which are to be removed under the construction contract shall be shown. A print of the survey shall be included with the working drawings for the information of bidders only. The survey shall not be made a contract drawing.

(2) Plan of each floor and roof.

(3) Elevations of each facade.

(4) Sections through building.

(5) Scale and full size details as necessary; scale details at one and one-half (1½) inches to the foot may be necessary to properly indicate portions of the work. Full size details may be prepared after award of construction contract.

(6) Schedule of finishes.

(b) *Equipment drawings.* Large scale drawings of typical and special rooms indicating all fixed equipment and major items of furniture and movable equipment. The furniture and movable equipment will not be included in the construction contract but should be indicated by dotted lines.

(c) *Structural drawings.* (1) Plans of foundations, floors, roofs and all intermediate levels shall show a complete design with sizes, sections, and the relative location of the various members. Schedule of beams, girders and columns.

(2) Floor levels, column centers, and offsets shall be dimensioned.

(3) Special openings and pipe sleeves shall be dimensioned or otherwise noted for easy reference.

(4) Details of all special connections, assemblies and expansion joints shall be given.

(5) Notes on design data shall include the name of the governing building code, values of allowable unit stresses, assumed live loads, wind loads, earthquake load, and soil-bearing pressures.

(6) For special structures, a stress sheet shall be incorporated in the drawings showing:

(i) Outline of the structure.

(ii) All load assumptions used.

(iii) Stresses and bending moments separately for each kind of loading.

(iv) Maximum stress and/or bending moment for which each member is designed, when not readily apparent from (iii).

(v) Horizontal and vertical reactions at column bases.

(d) *Mechanical drawings.* These drawings with specifications shall show the complete heating, steam piping and ventilation systems; plumbing, drainage and stand pipe systems; and laundry.

(1) *Heating, steam piping and ventilation.* (i) Radiators and steam heated equipment, such as sterilizers, warmers and steam tables.

(ii) Heating and steam mains and branches with pipe sizes.

(iii) Diagram of heating and steam risers with pipe sizes.

(iv) Sizes, types and heating surfaces of boilers, furnaces, with stokers and oil burners, if any.

(v) Pumps, tanks, boiler breeching and piping and boiler room accessories.

(vi) Air conditioning systems with refrigerators, water and refrigerant piping, and ducts.

(vii) Exhaust and supply ventilating systems with steam connections and piping.

(2) *Plumbing, drainage and stand pipe systems,* (i) Size and elevation of: Street sewer, house sewer, house drains, street water main and water service into the building.

(ii) Location and size of soil, waste, and vent stacks with connections to house drains, fixtures and equipment.

(iii) Size and location of hot, cold and circulating mains, branches and risers from the service entrance and tanks.

(iv) Riser diagram to show all plumbing stacks with vents, water risers and fixture connections.

(v) Gas, oxygen and special connections.

(vi) Standpipe system.

(vii) Plumbing fixtures and fixtures which require water and drain connections.

(3) *Elevators and dumbwaiters.* Shaft details and dimensions, size car platform and doors; travel, pit and machine room.

(4) Kitchens, laundry, refrigeration and laboratories shall be detailed at a satisfactory scale to show the location, size and connection of all fixed and movable equipment.

(e) *Electrical drawings.* Drawings shall show all electrical wirings, outlets, and equipment which require electrical connections.

(1) Electrical service entrance with service switches, service feeders to the public service feeders and characteristics of the light and power current. Transformers and their connections if located in the building, shall be shown.

(2) Plan and diagram showing main switchboard, power panels, light panels and equipment. Feeder and conduit sizes shall be shown with schedule of feeder breakers or switches.

(3) Light outlets, receptacles, switches, power outlets and circuits.

(4) Telephone layout showing service entrance, telephone switchboard, strip boxes, telephone outlets and branch conduits as approved by the Telephone Co. Where public telephones are used for inter-communication, provide separate room and conduits for racks and automatic switching equipment as required by the Telephone Company.

(5) Nurses' call systems with outlets for beds, duty stations, door signal lights, annunciators and wiring diagrams.

(6) Doctors' call and doctors' in-and-out systems with all equipment wiring, if provided.

(7) Fire alarm system with stations, gongs, control board and wiring diagrams.

(8) Emergency lighting system with outlets, transfer switch, source of supply, feeders and circuits.

(f) *Additions to existing projects.* (1) Procedures and requirements for working drawings and specifications to be followed and in addition the following information shall be submitted:

(i) Type of activities within the existing building and distribution of existing beds, etc.

(ii) Type of construction of existing building and number of stories high.

(iii) Plans and details showing attachment of new construction to the existing structure and mechanical systems.

(ii) Specifications shall supplement the drawings and shall comply with the following:

(a) The specifications shall fully describe, except where fully indicated and described on the drawings, the materials, workmanship, the kind, sizes, capacities, finishes and other characteristics of all materials, products, articles and devices.

(b) The specifications shall include:

(1) Cover or title sheet.

(2) Index.

(3) Invitation for bids.

(4) General conditions.

(5) Wage schedule, section 2, Labor Standards and Kickback Regulations.

(6) General requirements.

(7) Sections describing material and workmanship in detail for each class of work.

(8) Form of bid bond.

(9) Bid form.

(10) Form of agreement.

(11) Performance and payment bond forms.

(c) In order to obtain a standard procedure Standard Specification Forms will be furnished to the State Agency as a guide to the Architect.

(iii) Estimates shall show in convenient form and detail the probable total cost of the work to be performed under the contract for construction of new

buildings, expansion, remodeling and alteration of existing buildings including provision of fixed equipment contemplated by plans and specifications.

§ 53.155 *Equipment*—(a) *General.* Equipment necessary for the functioning of the facility as planned shall be provided in the kind and to the extent required to perform the desired service. The necessary equipment shall be included in the cost of the project and is considered an essential part of the project.

(b) *Definition of equipment.* The term "equipment" as used in this section means all items necessary for the functioning of all services of the facility, including such services as accounting and records, maintenance of buildings and grounds, laundry service, public waiting rooms, public health, and related services. The term "equipment" does not include items of current operating expense such as food, fuel, drugs, dressings, paper, printed forms, soap, and the like.

(c) *Classification of equipment.* All equipment shall be classified in three groups as indicated below; the basis of classification being the usual methods of purchasing the equipment and suggested accounting practices in regard to depreciation.

(1) *Group I. Built-in equipment usually included in construction contracts.* Hospital cabinets and counters, laboratory and pharmacy cabinets, X-ray darkroom equipment, cubicle curtain equipment, shades and venetian blinds and any other built-in equipment, including items which have been included previously under §§ 53.134 through 53.154, such as: Kitchen equipment, laundry chutes, elevators, dumbwaiters, boilers, incinerators, refrigerating equipment, sterilizing equipment, surgical lighting and the like.

(2) *Group II. Depreciable equipment of five years' life or more normally purchased through other than construction contracts.* Large items of furniture and equipment having a reasonably fixed location in the building but capable of being moved. Example: Furniture, surgical apparatus, diagnostic and therapeutic equipment, office machines, dental equipment, laboratory and pharmacy equipment (except cabinets) wheeled equipment and the like.

(3) *Group III. Non-depreciable equipment of less than five years' life normally purchased through other than construction contract.* Small items of low unit cost and suited to storeroom control. Examples: Chinaware, silverware, kitchen utensils, bedside lamps, waste baskets, bed pans, dressing jars, catheters, surgical instruments, linens, sheets, blankets, mattresses and the like.

(d) *Responsibility of applicant.* (1) It shall be the responsibility of the applicant to select and purchase all necessary equipment for the complete functioning of all services included in the project in accordance with these standards and any further standards prescribed by the State Agency.

(2) It is essential that the equipment shall be properly apportioned and budgeted to the various services of the facility so that unduly expensive or elaborate equipment is not provided for some services of the project, necessitating the use of cheap and inadequate equipment for other services.

(3) As soon as possible after the award of the construction contract, the applicant shall submit to the Surgeon General through the State Agency for approval a complete list in triplicate of all proposed Groups II and III equipment, including itemized estimate of cost.

These amendments were approved by the Federal Hospital Council at a meeting held June 21, 1957, and shall become effective immediately on the date of publication in the FEDERAL REGISTER.

[SEAL] L. E. BURNEY,
Surgeon General.

Approved: November 8, 1957.

M. B. FOLSOM,
Secretary.

[F. R. Doc. 57-9473; Filed, Nov. 15, 1957; 8:46 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1002, 1009]

[Docket No. AO-268-A3]

MILK IN GREATER WHEELING AND CLARKSBURG, W. VA., MARKETING AREAS

DECISION WITH RESPECT TO PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENTS AND TO ORDERS

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 Clarksburg, West Virginia, on March 26, 1957, and at Wheeling, West Virginia, on March 27-28, 1957, pursuant to notice thereof issued on March 6, 1957 (22 F. R. 1575).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on September 10, 1957 (22 F. R. 7316), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

A number of proposals and much of the testimony on the record were directed towards similar amendments to both orders. For this reason the issues on the record are herein considered as bearing upon the need for amendment of either or both orders except in those instances where the proposals were specifically intended for only one of the orders.

Material issues. The material issues of record relate to:

1. The marketing area:

(a) Whether Kingwood, West Virginia, should be deleted from the Clarksburg marketing area;

(b) Whether Monroe County, Ohio, the remainder of Guernsey County, Ohio, and the township of Union in Muskingum County, Ohio, should be added to the Greater Wheeling marketing area.

2. Provisions affecting whether a plant qualifies as a pool plant, and regulation of nonpool plants.

3. Definition of "producer" with respect to diversion.

4. The price for Class I milk, including supply-demand adjustment provisions and seasonal price differentials in both markets.

5. The price for Class II milk.

6. Classification of various special types of receipts and disposition.

7. Definition of "base milk", changes in months in which producers earn base, and months in which producers are paid for base.

8. Location differentials.

9. Certain conforming and clarifying changes of order language.

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

1. *Marketing Area*—(a) *Clarksburg marketing area.* Kingwood, West Virginia, should be retained as part of the Clarksburg marketing area.

A handler regulated under the Clarksburg order proposed the deletion of Kingwood from the marketing area. The principal reasons advanced by the proponent for this action were to alleviate his surplus disposal problem in flush months, and to enable him to compete more favorably with unregulated handlers for fluid sales in areas not included in the Clarksburg order. Kingwood is the largest population center in Preston County, and is the only part of the County included in the Clarksburg area. It is one of several population centers included in the Clarksburg marketing area which are separated by intervening rural territory from the main part of the area.

Nearly all fluid sales in Kingwood (not including raw Grade A milk sold by local producer-handlers) are made by four handlers regulated under either the Clarksburg or Wheeling order. Two of these handlers, who opposed the deletion of Kingwood, testified that their firms each distribute about 35 percent of the total fluid sales in Kingwood. A third regulated handler has only a fractional share of the market; and the fourth, the proponent handler, distributes about 30 percent. If Kingwood were deleted, the proponent handler would become non-

regulated while the other three handlers, who market approximately 70 percent of the fluid milk sold in the town, would remain regulated.

Approximately 70 percent of the proponent handler's sales are outside the marketing area but within Preston County. His competition within the nonregulated portion of the County consists of regulated handlers and an unregulated handler whose plant is located in Cumberland, Maryland. The evidence indicates that this unregulated handler purchases milk at less than order prices. The proponent testified that competition was severe in the unregulated portion of the County, particularly in Terra Alta. It was indicated, however, that his sales, both in and outside the marketing area, have remained relatively constant. Deletion of Kingwood from the marketing area would expose regulated handlers who now provide about 70 percent of the sales in Kingwood to the unregulated competition of the proponent and other handlers.

It is concluded the proposal should be denied.

(b) *Greater Wheeling marketing area.* The Greater Wheeling marketing area should be expanded to include Monroe County, Ohio. The remainder of Guernsey County, Ohio, and Union Township in Muskingum County, Ohio, should not be added to the marketing area.

Some of the handlers under the Wheeling order proposed that Monroe County, Ohio, be added to the marketing area. Such enlargement of the area was supported on the basis of uniformity of health standards, and that the County is largely served by Wheeling handlers.

Monroe County was not included in the marketing area at the time of the order's promulgation. The evidence at the original hearing on the proposed order was insufficient to justify its inclusion.

Monroe County, which is contiguous to the presently defined marketing area, had a population of 15,362, according to the United States Census of 1950. Since this census, there has been a marked degree of industrial expansion within the area. This industrialization of Monroe County and its concomitant population growth have transformed the County from one of predominantly rural characteristics to one of more urban characteristics.

Regulated handlers now market a substantial majority of the total fluid distribution within Monroe County. There are 13 known retail and/or wholesale distributing routes within the County. Of these, 10 originate from plants regulated under the terms of the Wheeling order and 3 originate from 3 unregulated plants located outside of Monroe County and outside the marketing area.

A Grade A health ordinance has recently been adopted by the County. Milk plants in the County and dairy farms serving such plants are subject to health standards similar to those enforced in the communities presently comprising the Wheeling marketing area.

No evidence was submitted in opposition to the inclusion of Monroe County. Handlers who might be brought under regulation did not oppose this expansion.

Because of the similarity of health standards in effect in Monroe County with those in effect at the present marketing area, and because handlers regulated under the terms of the Wheeling order control the large majority of fluid sales within the County, it is concluded that Monroe County should be part of the marketing area.

Certain Wheeling handlers proposed that the remainder of Guernsey County, Ohio, not now in the marketing area, and Union Township in Muskingum County, Ohio, be added to the Greater Wheeling marketing area. This proposal was supported on the basis of similar health requirements, and that regulated handlers have substantial business in these proposed areas, but they claim they have lost business to unregulated handlers.

Regulated handlers have the smaller share of the fluid milk distributed in Union Township and that part of Guernsey County not already included in the marketing area. There are about 25 fluid distribution routes within this area, and of these, 9 are operated by handlers regulated under the Wheeling order.

These additions to the marketing area were opposed by two unregulated handlers whose plants are located in Zanesville, Ohio, which is outside the proposed area, because such expansion would regulate their plants without regulating other plants with which their plants compete for the major share of their fluid business. Wheeling handler operations do not extend to the Zanesville market.

Dairy farmers who deliver to plants which might be brought under regulation by such expansion of the area were not represented at the hearing. The association representing the majority of producers in the Greater Wheeling market opposed these additions to the area because of problems involved in regulated handlers with their principal business elsewhere.

Although addition of the proposed areas would no doubt reduce the problem of competition for some regulated handlers, it appears the same type of problem would be transferred to newly regulated handlers.

It is concluded that the remainder of Guernsey County and Union Township in Muskingum County should not be added to the marketing area.

2. *Pool plant qualifications and payments on nonpool milk.* The definitions of "pool plant", "distributing plant", and "supply plant" should be revised.

An association representing producers in both markets requested that the definition of "distributing plant" be changed to increase the required percentage of milk distributed on routes to 55 percent in the months of April, May and June, and 65 percent in other months. These percentages would be based upon the receipts at the plant from producers. The order now requires route distribution of 45 and 55 percent, in the same months, based on combined receipts from producers and other pool plants. An accompanying proposal made by this association was to eliminate the 10-day limit which applies to diversion of a producer's milk during the months of August through February, so that unlimited diversion would be permitted during any month of the year. This latter proposal was conditioned, however, on adoption of the higher percentage requirements for pool distributing plants. This association proposed also that the order should allow for "diversion" of milk between pool plants, so that the "diverted" producers would remain on the payroll of the diverting plants, and not appear in the receipts or pool plant qualification computations of the plant to which they were diverted. This, it was indicated, would facilitate movement of milk to handlers temporarily in need of additional supplies and would help in handling seasonal surplus.

Testimony given by handlers with respect to pool plant qualifications opposed changing the present percentage figures for distributing plants, but did favor basing these percentages on only receipts of milk from producers, and the elimination of the 10-day limit on diversion. One handler representative proposed that any plant which distributes more than 600 pounds of milk per day on routes in the marketing area should be a pool plant.

The qualifications for pool plants in these two orders are generally described within the definitions for "pool plant," "approved plant," "distributing plant," and "supply plant." A pool plant is defined as meaning a "distributing plant" or a "supply plant."

The pool plant qualification requirements now in the order have been designed to include in the market-wide pool those plants which have a substantial association with the market and whose business is primarily that of supplying fluid milk markets. For the months of July through March, a "distributing plant" is defined as having 55 percent of its receipts of milk (from producers and in the form of fluid milk products from other pool plants) distributed on routes inside or outside the marketing area. A seasonally lower requirement of 45 percent in the months of April, May and June, reflects the natural change in the level of a plant's utilization caused by a higher level of production in spring and early summer. A distributing pool plant must have 5 percent of such receipts distributed on routes in the marketing area. Nondistributing plants may qualify as pool plants in the months of September through January by shipping 55 percent of their receipts of producer milk to distributing plants. Such plants are called "supply plants." Any supply plant meeting the requirements for the months of September through January may continue as a pool plant through the following August. The market is not now served by any supply plants.

The definition of "pool plant" should take account of the variations in types of plant operations. One special type of plant which must be considered is a plant which has a substantial distribution of milk in the marketing area and receives its entire supply, or most of its supply, from a plant(s) regulated under another order. If this special type of plant is not regulated under any other

order, it is necessary that it be regulated in some manner under one of these orders, so as to assure appropriate accounting for all milk in such plant. Pool plant qualification of distributing plants is not affected under present order provisions by receipts from other Federal order plants, since such receipts are not included in the computation. This type of receipt is an important factor, however, in market supply. On the other hand, receipts of milk from other pool plants under the same order (Wheeling or Clarksburg) do affect pool plant qualification.

The problem of handling seasonal surpluses of producer milk is also affected by the pool plant definition. One handler pointed out that he was limited as to the extent to which he could accommodate other handlers in processing their surplus producer milk, because if he received a volume of milk from other pool plants such that he would make full use of his manufacturing facilities, his percentage for route distribution would fall below the minimum required for pool plants.

A pool plant definition for distributing plants should not ordinarily include plants primarily in the business of manufacturing milk products, because pooling such operations will dilute the returns to producers for Class I milk. Such an occurrence would interfere with the function of the Class I price which is to provide the incentive for producers to supply the fluid market.

The objective of preventing dissipation of the returns from Class I sales to milk produced for manufacturing may be achieved in these markets by basing the definition of "distributing plant" on the percentage of receipts from qualified dairy farmers sold on routes out of such plant. It is concluded that such a definition should be adopted.

Under this definition, milk received in bulk as transfers from other plants would not affect the qualifications of a distributing plant for pooling. The integrity of pooling requirements would be maintained, however, by application of the "distributing plant" definition, or an appropriate "supply plant" definition in the case of the plant making such transfer. Shipments received from plants not meeting these definitions would be other source milk. The allocation provisions of the order assure that such other source receipts will not reduce the value of producer milk in the pool.

The producer proposal to raise the percentage requirements for distributing plants should not be adopted. Such a change could cause difficulty for some plants which receive all their milk from dairy farmers, but with a percentage in Class I only slightly in excess of the current minimum. Such a change is not necessary to assure the integrity of the pooling arrangement. The percentage figures should be the same as now in the order.

The present order provisions base a distributing plant's connection with the market on the requirement that distribution on routes in the marketing area amount to at least 5 percent of receipts from producers and fluid milk products received from other pool plants. In view of the aforementioned possible variations in the make-up of a plant's receipts, a better measure of connection with the market would be the proportion of the plant's total route sales which are in the marketing area. It is concluded that a pool distributing plant should have 5 percent of its route sales in the marketing area.

It is possible that some plants with substantial distribution business in the marketing areas may not receive any milk from qualified dairy farmers. Such plants may obtain their supply from pool plants under the orders for the market in which they sell, from plants under other orders, or from plants which do not qualify as pool plants under any order. Under present provisions of either order, if such plants sell on routes in the marketing area an amount of milk equal to or exceeding 5 percent of their receipts from pool plants, they then qualify as pool plants. For purposes of uniformity and effectiveness of the application of regulation, it is necessary that such plants continue to be regulated as pool plants, with the modification, however, that the 5 percent be the minimum proportion of their Class I route sales which are in the marketing area.

The proposal to include in the pool any plant which distributes in the marketing area more than 600 pounds of milk per day would bring under regulation any plant, however large its business outside the area, which had such a volume of business inside the area. Such a method of regulation appears to be unnecessary to achieve effective regulation in view of other provisions, particularly in view of the pool plant requirements previously discussed. Furthermore, any advantage which a nonpool handler might have with respect to procurement and sales outside the marketing area is removed with respect to sales within the marketing area by reason of payments required to be made into a producer-settlement fund.

The definition of "supply plant" should be modified to assure a more definite association of the plant with the needs of the fluid market. For this purpose, the qualification of a supply plant should be related to the average utilization of Grade A milk in the distributing plant to which it ships. Such shipments should not qualify a plant for pooling unless the average utilization of all Grade A milk (including the shipments) received by the distributing plant is at least 55 percent in the form of route sales out of such plant. There should be retained in the order a provision which allows a plant which meets the qualifications of a supply plant during the months of September through January, to continue as a pool plant for the following months through August. The provision now in the order requires that written application be made to the market administrator if the operator desires to maintain pool status of the plant. This provision should be modified so that such a plant will remain in the pool for the months of February through August unless the operator makes request for withdrawal.

The order provisions which determine whether or not a plant shall be included in the pool for the respective market are related to the provisions affecting use of other source milk by pool plants and sales of milk in the marketing area by nonpool plants. On the basis of previous hearing records, it has been found necessary to provide that certain payments into the market pool be made on such other source milk. For these reasons, proposals with respect to compensatory payments on other source milk are considered in connection with the evidence on pool plant qualifications.

A handler representative proposed the deletion of the order provisions which set aside the requirement of compensatory payments on other source milk in any month in which total deliveries by producers are less than 110 percent of all handlers' Class I sales. The witness supported this proposal for the Clarksburg market on the basis that handlers do not attempt to maintain a full supply for year around needs even if additional producers are available, but prefer to depend upon other source milk to supplement their supply of producer milk. As a result, producer milk could be less than 110 percent of handlers' Class I sales, although the supply situation is not fundamentally so short that handlers should be excused from compensatory payments.

However, while such a condition conceivably could exist, the record did not indicate that any handlers are purchasing significant volumes of nonregulated other source milk. Nor is there evidence that handlers are unwilling to receive additional supplies of milk from dairy farmers who are desirous of shipping to the Clarksburg market. It is therefore concluded that this proposal should be denied.

From time to time, some plants may qualify as pool plants under more than one Federal order. The provisions in the Wheeling and Clarksburg orders which exempt such plants from regulation as pool plants should be revised for clarification, as described in the applicable provisions, and to provide, for determination by the Secretary, as to the order which should regulate when a plant is eligible for regulation under more than one order.

The producer request for specific provision with respect to "diversion" of producers between pool plants should be dealt with in terms of transfers of milk between plants. For this purpose, language should be included in the provisions dealing with classification of transfers, to indicate that transfers made by direct movement from the producer's farm to the transferee plant for the account of the transferor plant, shall be classified in the same manner as milk transferred as bulk shipments. Handlers who cause milk to be moved in this manner to another handler's plant should be responsible, under the orders, for reporting the receipt and disposition of such milk, and should be responsible for payment of the producer whose milk is so moved. Location differentials with respect to such milk should be applied at the point where the milk is physically

received at a handler's plant although such receipt, for other purposes, may be reported at the plant from which the transfer is made. The provision for transfer of milk in such manner should not apply to plants which do not distribute in the marketing area, because of the effect such an extension of the provision could have upon the qualification for pool status of plants which are primarily shipping plants. No plants currently qualify as pool plants on the basis of shipments.

3. *Producer diversion to nonpool plants.* No change should be made in the provisions affecting diversion of producers to nonpool plants, except in the case where such nonpool plant is regulated pursuant to another order.

A proposal was made by producers to delete the limitation to ten days of any one month during the months of August–February for diversion of a producer to a nonpool plant. This proposal was made conditional upon adoption of a proposed increase in percentage of utilization requirement in the "distributing plant" definition. The latter proposal is not adopted herein.

Handlers also favored deletion of the ten-day limit on diversion in the months mentioned.

The definition of "producer" in the order allows diversion of a producer any day during the months of March through July, and not more than ten days in any other month. Such a limit is needed to establish a producer's substantial association with the market in the months when the supply-sales relationship is closest. The present allowance for diversion is ample. The proposal is denied.

It is possible that a nonpool plant may be a plant regulated under another order. In this case, the regular diversion provision contained in the definition of "producer" should not apply, and the dairy farmer should not be considered to be a producer with respect to milk so delivered to a plant under another order. This will avoid conflict in regulations between the two orders. A similar provision is presently contained in the "producer milk" definitions of the orders.

4. *Class I price.* No change should be made in the Class I price formulas or in the supply-demand adjustments used in the Wheeling and Clarksburg orders.

A proposal was made by a producer association that the Class I prices in both the Wheeling and Clarksburg markets be increased 35 cents per hundredweight in each month. Another proposal, made by a representative of some producers in the Clarksburg area, requested that the Class I price for that area be 45 cents higher than the present price for the months of August through February, and that this level of prices be used in every month without seasonal changes. A proposal was also made for both markets which would modify the supply-demand adjustment so as to give some effect to the combined supply-sales relationship in the two markets, rather than depending entirely on the similar relationship in the Cleveland and Akron-Stark County markets as now provided in these orders.

The proposals to increase the level of the Class I prices in these markets were based largely on the increases in costs of production experienced by dairy farmers and the low margin by which supplies of producer milk cover Class I sales in some months. It was indicated in this connection that some handlers have had to supplement their producer milk supplies with milk from other sources to meet Class I needs.

The supply situation for both the Wheeling and Clarksburg markets is affected by the supply and demand situations in neighboring markets. This is particularly true with respect to the Cleveland and Akron-Stark County markets, because handlers in those markets distribute milk directly in the Greater Wheeling marketing area. Almost 10 million pounds of Class I milk, representing more than 10 percent of the total Class I sales in the market, were distributed directly in the Wheeling market during 1956 by handlers regulated under these other orders. It may be recognized that recent changes in the operations of one of the handlers, in this connection, could result in a lesser volume of Cleveland and Akron-Stark County milk in the Wheeling market in 1957, but nevertheless, the direct distribution by other order handlers may be expected to continue to be a substantial portion of all sales.

With respect to the Clarksburg area, an important intermarket relationship is established by the fact that a substantial volume of the distribution is from a Wheeling order pool plant. Some Tri-State order milk is also sold in the Clarksburg market.

The dependency of the Wheeling and Clarksburg handlers upon supplies from the other markets mentioned is further shown both by purchases on a regular basis and occasional purchases to supplement producer milk in months of short supply.

The principal non-Federal order market which competes for supplies in the same areas as the Wheeling and Clarksburg markets is the Pittsburgh market. The supply areas also overlap with the Youngstown market.

Class I prices under the Wheeling and Clarksburg orders are established in a manner which maintains a close relationship with prices in the Cleveland and Akron-Stark County markets. The Wheeling price is 10 cents higher than the Cleveland price and 15 cents higher than the Akron-Stark County price. This exact relationship is not maintained in every month because the Wheeling and Clarksburg markets use the Cleveland supply-demand adjustment but apply it one month later. The Clarksburg price is 25 cents over the Wheeling price. These intermarket price relationships are maintained season by season. The seasonally lower level of the Wheeling market Class I differential, $1.50, applies in the months of February through July which is the same as the period of seasonally lower price levels of the Cleveland and Akron-Stark County markets. In other months, the Class I price differential is $1.95.

The price differentials between these and the other Federal order markets within the region generally offset the cost of moving milk from the other markets to Wheeling or Clarksburg. The fact that milk continues to move from the other markets into these markets is an indication that these price differentials are sufficient to cover the cost. Any increase in the general level of Class I prices in Wheeling and Clarksburg would give an added incentive for handlers in the other markets to sell milk in these markets.

The supply of producer milk in some months exceeds Class I sales of pool plants by only a small margin. In the shortest months, this margin may be as low as 5 to 7 percent. However, this supply-sales relationship cannot be considered independently from the supply situations in neighboring markets. As mentioned elsewhere in this decision, many of the handlers do not have adequate facilities for processing into manufactured products regular and seasonal supply reserves. In this situation, there is a tendnecy for such handlers to carry a relatively short supply in relation to their Class I sales and also a tendency to depend on the larger neighboring markets for supplemental supplies. Consequently, in these particular markets, the percentage of producer milk classified as Class I does not accurately portray the whole supply-sales relationship for the market.

In these circumstances, it is necessary to judge the appropriateness of the level of Class I prices in the light of the price in effect in nearby Federal orders. This situation is, in fact, recognized in the use of the Cleveland supply and demand adjustment for these markets.

Prices in these markets should continue to be related closely to the prices in other major neighboring markets. It is concluded that the Class I prices in the Wheeling and Clarksburg markets should not be increased under present conditions.

Many of the considerations decided with respect to the general level of Class I prices in the Wheeling and Clarksburg markets also bear on the proposal to change the supply-demand adjustment. The producer proposal would allow for continued use of the Cleveland supply-demand adjustment except when producer milk in the two markets is less than 115 percent of producer milk in Class I, or more than 145 percent of producer milk in Class I. Under the proposal, 3 cents per hundredweight would be added to the Class I price for each percent that producer deliveries are less than 115 percent of producer milk in Class I and conversely, 3 cents per hundredweight would be subtracted for each percent that producer milk exceeds 145 percent of producer milk classified as Class I.

The producer proposal would have resulted in plus price adjustments several months in which the supply-demand adjustment borrowed from the Cleveland order would have been negative. On the basis of the preceding findings and conclusions, such a widening in the intermarket differentials is not necessary

to assure an adequate supply for the Wheeling and Clarksburg markets. Furthermore, such a widening of inter-market differentials would give Wheeling and Clarksburg handlers an incentive to carry less producer milk and depend, to a greater extent, on supplies from other markets. An additional difficulty in using the type of supply-demand adjustment proposed is that the volume of producer milk classified as Class I does not give an adequate indication of the volume of Class I sales by all handlers operating in these markets. It is concluded that the present arrangement under which the Wheeling and Clarksburg Class I prices are adjusted by the supply-demand adjustment effective in the previous month in the Cleveland and Akron-Stark County markets should be continued. That supply-demand adjustment is based on the combined supply-sales relationship under the Cleveland and Akron-Stark County orders.

5. *Class II price.* The Class II price in all months should be the basic formula price.

The Class II prices under the Wheeling and Clarksburg orders are calculated by identical formulas. In each market, the Class II price is the basic formula price, subject to the exception, however, for the months of April, May and June, that this formula is reduced 20 cents per hundredweight if the supply-demand adjustment affecting the Class I price is negative. Aside from this exception, the Class II price is thus the highest of three alternative values for manufacturing milk: the average of the paying prices of Mid-west condenseries, a butter-powder formula, and a butter-cheese formula.

The Class II price formulas in these orders result in the same level of prices for surplus producer milk as in the nearby Federal order markets of Cleveland and Akron-Stark County, except for the possibility of the 20-cent deduction in these markets in the April-June period, and the 30-cent higher price for milk used in cottage cheese in the Cleveland and Akron-Stark County orders. The Cleveland and Akron-Stark County orders do not contain the butter-cheese formula as do the Wheeling and Clarksburg orders, but the butter-cheese formula has consistently been the lower of the three alternatives and, thus, has not been effective in establishing prices.

For the months of April, May and June 1956, the 20-cent per hundredweight deduction was effective in the Wheeling and Clarksburg markets because of a negative supply-demand factor in April and by order amendment for May and June 1956.

Producers proposed that the Wheeling and Clarksburg orders be amended to provide regular seasonal changes in the Class II price formulas without any contingency features depending on the supply-demand adjustment. They requested, however, that the annual average level of the price should be maintained at the average level of the basic formula price. The general basis given for this proposal was that there is a need for seasonal reduction of prices in the high production months of the spring so as to facilitate orderly marketing of producer milk, and that maintenance of the average annual level is necessary to return full value of milk to producers.

Handler witnesses requested that a 20-cent reduction during the months of April, May and June be a regular part of the Class II price formula, and that no compensating amount be added during other months of the year. Handlers maintained that the return obtainable in marketing the seasonal surplus during this three-month period is considerably below the basic formula price level.

The objectives in establishing prices for reserve and surplus producer milk under order regulation are related to the problem of establishing appropriate prices for Class I milk. If the price for milk in Class II is set at too low a level, the handling of milk for manufacture will become, in itself, an attractive business such that handlers will be encouraged to develop supplies solely for manufacturing. Particularly in a market-wide pool, this could result in a general increase of handlers' supplies, and also in the entrance into the market of new plants to take advantage of this situation. The effect of these developments which could take place over a period of time would be to dissipate the higher value contributed to the market-wide pool by Class I sales. Inasmuch as the Class I price is designed to attract an adequate but not excessive market supply of milk for fluid use, such development of supplies in excess of ordinary reserve requirements of handlers tends to defeat this purpose.

Handlers normally carry a supply which includes some reserve over the actual volume of Class I sales to allow for variations in production and sales. The Class II price should be established at a level low enough to allow for the orderly disposition of such reserve milk in manufacturing uses, but should not be so low as to encourage handlers to develop excessive supplies for manufacturing purposes, as explained previously.

The volume of Class II producer milk and other source fluid milk products used for manufacturing by Wheeling handlers in 1956 was approximately 34½ million pounds, of which about 26.4 million pounds was producer milk and the remainder was accounted for as other source milk. In the Clarksburg market, the volume of Class II milk reported by handlers for the year 1956 was 8.7 million pounds, of which producer milk accounted for about 7.5 million pounds and other source milk for the remainder. Handlers in both markets used milk on a year around basis in the manufacture of cottage cheese. Some handlers in both markets have regular ice cream manufacturing operations. The manufacture of butter also represents a lesser but relatively stable year around disposition of producer butterfat. The volume of milk in these various Class II items throughout the year indicates that they are part of the continuous, regular business of some of the handlers in these markets.

The proposals for seasonal reductions in the Class II price formula related particularly to the April, May and June quarter. For the Wheeling market, the percentages of producer milk reported in Class II in these months of 1956 were 17.8, 27.7, 25.0 percent, respectively. In the Clarksburg market, the corresponding percentages were 7.6, 21.4, and 20.6 percent. The lowest percent of Class II in any month of 1956 was, for Wheeling, about 11.0 percent in January, and for Clarksburg, 4.8 percent in March.

Other source milk used by Wheeling handlers in manufacturing operations also shows a seasonal pattern. The approximate volumes of other source milk classified as Class II during the several calendar quarters of 1956 were as follows: 0.7 million pounds for January-March, 2.8 million pounds for April-June, 2.5 million pounds for July-September, and 1.8 million pounds for October-December. From this analysis it is apparent that at least for some handlers plant capacity is not a problem in disposing of producer milk in Class II uses.

Handlers contended that without the 20-cent deduction during the months of April, May and June, the Class II price would be unduly high in relation to prices paid by nearby unregulated manufacturing plants. The only paying prices of an unregulated plant entered in the record, however, were prices paid by United Dairies at Barnesville, Ohio. This plant, from time to time, has served as a principal outlet for producer Class II milk. For the months of November 1955 through March 1956, the prices at this plant were lower than the order Class II price by 6 to 16 cents per hundredweight. For the months of April, May and June 1956, when the 20-cent deduction was effective in the Class II price formula, the Barnesville plant's prices were 3 to 4 cents lower than the order price. In the months of November 1956 through February 1957, however, the prices at the Barnesville plant were 2 to 7 cents higher than the order price.

The dependency of changes in the Class II price upon the supply-demand factor is no longer desirable. Uncertainty as to the outcome of such a relationship could occur at times when it would be difficult to make timely changes if such changes were needed. Also, changes in the supply-demand adjustment, which is based on data for preceding months in Cleveland and Akron-Stark County areas, may depend on a range of circumstances not directly related to the appropriate level of the Class II price for the Wheeling and Clarksburg markets.

Producers' contention for increase in the Class II formula price in months other than April, May and June would result in prices higher than the basic formula price. The basic formula price is the highest of three representative values for milk in manufacturing uses. It was not shown by proponents that special health requirements apply to any of handlers' regular Class II uses. Under these circumstances, there is no basis for establishing a price for Class II milk in these months higher than the basic formula price.

The proposals for a seasonal reduction in the Class II price are also denied.

The Wheeling and Clarksburg markets are not subject to relatively large and burdensome amounts of surplus milk in the months of April, May and June. In fact, handlers, collectively, continue to import other source milk for manufacturing in these months. In addition, the prices paid at a local manufacturing plant for ungraded milk, at least in months immediately prior to the hearing, approximated basic formula prices.

The problem of surplus disposal experienced by those handlers without sufficient facilities to manufacture the seasonal surplus of their producers should be relieved by the revised definitions of pool distributing plants which do not include receipts from other pool distributing plants in determining qualification percentages.

It is therefore concluded that the Class II price in all months should be the basic formula price.

The proposal to reduce the Class II butterfat differential, made by certain Clarksburg area handlers, is denied. In view of the conclusion contained in this decision relative to Class II pricing, there is no basis for further consideration of a reduction in the general level of Class II milk values. The Class II butterfat differential per one-tenth of a percent of butterfat is 0.115 times the wholesale price per pound of butter. This value is not excessive for butterfat in Grade A milk used for manufacturing purposes.

6. *Classification.* No change should be made in the classification of butterfat dumped or used for livestock feed. No change should be made in the method of classifying and accounting for nonfat solids used to fortify fluid milk products.

Certain handlers under the Clarksburg order proposed that Class II classification should be allowed for butterfat dumped or disposed of in livestock feed. Such usage was described as resulting when certain types of route returns contain butterfat not readily separable for use in other milk products.

The provisions of the orders affecting classification of such butterfat operate uniformly with respect to all handlers. Accordingly, the order provisions do not operate to the disadvantage of one handler compared to another, and are equitable. The amount of butterfat in route returns depends on the success of the handler in coordinating the volumes of milk products bottled with the volumes he can sell. Change of order provisions in the manner proposed would tend to shift the burden of any inefficiency in this matter from handlers to producers. Handlers may utilize butterfat from route returns in the manufacture of certain Class II products. In such circumstances, this butterfat will be classified as Class II utilization. If a handler accounts for butterfat in route returns as a loss, such loss is classified pursuant to the provisions applicable to shrinkage or unaccounted for milk. Classification of actual shrinkage of producer milk in Class II up to 2 percent of such receipts is allowed in the order. Such a limit has been found to be reasonable. Such a limitation serves to prevent advantage to handlers who fail to keep full and accurate records.

Another handler proposal would establish a special price 10 percent higher than the Class II price for skim milk equivalent of nonfat solids used to fortify fluid milk products.

Nonfat solids used to fortify Class I products are classified under the order as Class I milk at the volume of the fluid skim milk used in the manufacture of the added solids. The witness presenting the proposal conceded that the applicable health department requires that the nonfat solids be from Grade A milk.

The value of each pound of nonfat milk solids utilized by addition to, or as, a Class I product has a value to the handler the same as every other pound contained therein. Neither the form in which, nor the source from which, such solids are obtained alter their value to the handler for this purpose and they may not be distinguished on the basis of cost of production, need for regular supplies, sanitary requirements, seasonality of production, or value to consumers. Since the Class I price provisions are designed to encourage producers to deliver an adequate and dependable supply of milk in all seasons, the returns to producers for one portion of Class I milk should not be reduced below the level of the remaining portion disposed of in such class. The proposal for a lesser value, therefore, is denied.

7. *Base-excess plan.* No change should be made in the base earning or base effective months under these orders. Provisions should be made so that bases may be assigned to producers delivering to plants which become pool plants after the beginning of the base-forming period. The definition of "base milk" should be clarified.

Under the Wheeling and Clarksburg orders, the base for each producer is calculated by dividing the total pounds of milk received from such producer at pool plants during the preceding months of September through December by the number of days from the first day of delivery to the last day of September, but not less than 90 days. Such bases are effective for the months of March through July, following.

Various proposals were made to change the months in which producers earn their base and the months in which bases apply. A proposal made by the cooperative association representing a majority of producers in the market would include the months of February and August in the period when bases are effective.

During the period in which the orders have been effective in these markets, the level of production has been such that there would have been a very small percentage of producer milk in the excess category in February and August if bases had been effective in these months. Consequently, there would have been very little difference between the base and excess prices. From this, it is apparent that adding the months of February and August to the base effective period would not be of any consequence in furthering the purpose of the base plan to even out the seasonal variations in production. Also, under the proposal, September would be the only month of the year in which a farmer could come on the market as a new producer and earn a full base without going through a period in which he receives only an excess price or payment on a base less than he would normally earn. Such a base plan does not appear suitable for a market which experiences a relatively short supply during several fall and winter months. This proposal is denied.

A handler in the Clarksburg area proposed that the months of January and February be added to the base earning months. The handler claimed that producers are freshening cows early in the base-forming period and, consequently, their deliveries fell off in the months of January and February as compared to the preceding months.

Deliveries per day per dairy in the Clarksburg area were higher in January and February 1956 than in December 1955, and similarly that production per day per dairy in January and February 1957 was at practically the same level as in December 1956. The rate of production in these two months was higher than in some other months in the base earning period. In view of the relatively short history of the base plan under this order it is not clear yet whether such a later base earning period would benefit the market. No modification of the base earning period should be made at this time.

The proposal was made by a producers' association which would allow a producer whose production is interrupted by causes beyond his control to earn a full base. The types of disaster which might interrupt production and would come within the meaning of the special provisions were described as animal diseases, destruction of crops and barns after the harvest period, enforced retirement, and entrance into the military service. Under the proposal, if a producer's deliveries were interrupted for these reasons, the number of days of interruption would not be included in computing his base.

Such a provision would be difficult to administer, since it would require the administrative agency to make determinations upon matters which are difficult to define in a manner to cover all circumstances and relate to production conditions rather than the marketing of milk after it leaves the farm. The order presently allows producers to compute a full base on a minimum of 90 days' shipments. In effect, this allows a producer to interrupt deliveries during the base-forming period and earn a full base. This proposal is denied.

The base rules allow a producer to transfer his base to another person. These rules therefore allow for transfers of base in the case of any involuntary withdrawal from the dairy business.

A handler proposed that producers who come on the market during the base-paying months should be allowed the base price on some of their milk. His proposal appears to be that such a new producer should be given a base such that the proportion of his deliveries paid for at the base price would be 60 percent as much as a proportion for the market average. This proposal was offered so

that producers could come on the market in fall and winter months when the market most needs additional supplies, after it is too late to earn a full base, and be assured of at least a partial base. One handler testified also that in March he needed additional milk but could not take on new producers because they would receive only the excess price for their entire deliveries.

Under the order, the base earning period is September through December, but a producer may enter the market on the third day of October and earn a full base equal to his average deliveries during the October-December period. A producer who enters the market later than this is given a base which is less than average deliveries because the smallest divisor is 90 days. The proposal to allow a producer some portion of his milk as base milk although he enters the market too late to earn a full base, has some merit in that it would help handlers to obtain supplies of producer milk in the short season. However, insufficient evidence was adduced at the hearing to determine if the type of base allowance proposed by the handler would dilute the base price to an extent which would be inequitable to producers who earn a full base, or would impair the effectiveness of the base plan. The proposal should be denied at this time.

From time to time, there are changes in plants associated with a market. Some provision should be made in the order for assigning bases to producers delivering to a plant which enters the market after the beginning of the base earning period. Such producers should be assigned an earned base computed from the records of the deliveries to such plant to the extent that such records are available for the base earning period. However, bases earned in this manner should be nontransferable. The assignment of bases to dairy farmers under this provision should not result, through transfers of bases, in a reduction of the value of bases earned by producers on the market in the base-forming period.

The definition of "base milk" should be clarified so that it applies to the number of days of milk production delivered in the month rather than the number of days on which such milk is delivered. This will accommodate instances where producers regularly deliver on every other day.

8. *Location differentials.* No change should be made in the location differential provisions of either the Wheeling or Clarksburg order except to clarify the provisions.

Producers were primarily concerned with the necessity for an additional basing point for location differentials if the marketing area should be expanded to include all of Guernsey County. This expansion proposal is denied in another part of this decision.

Producers also proposed that the provisions which apply to the location differential to producers should be amended to eliminate the application of the adjustment to producer milk allocated to Class II, and to excess milk in the base-paying months.

The order provides location differentials which apply to the Class I prices charged to handlers. These reflect representative costs of transporting whole milk from outlying points to the market. No location differential applies to Class II use of handlers. With respect to payments to producers, the uniform price is adjusted for location at the same rate as the Class I price.

No plants now supplying the market are receiving producer milk to which location differentials apply.

The value of milk for fluid use when it is delivered by farmers to plants located some distance from the market is affected by the cost of transporting whole milk to market. Accordingly, the uniform prices paid producers should reflect such variations in the value of milk at point of delivery at a distance from the marketing area in contrast to its value when delivered to the marketing area.

During base-paying months in these markets, some excess milk is generally used in Class I. In these circumstances, it would be inappropriate for excess milk to be unaffected by location differentials.

In the case of milk caused by a handler to be delivered to the pool plant of another handler, location differentials on such milk should apply at the plant of the second handler, although for purposes of classification and calculation of pool plant qualification such milk may be treated as if received and handled by the first handler. The order provisions should be clarified to indicate the point at which location differentials apply in the case of such receipts, and also for diverted milk. This will recognize the necessity to relate location allowances to the point of actual physical receipt.

The volume of milk to which the Class I location differential applies should be clarified by indicating that it applies to a volume of Class I disposition from the plant which does not exceed producer milk receipts, such Class I disposition in the case of transfers to be determined by the same allocation procedure as now set forth in the orders.

9. *Clarification.* (a) The classification provisions of the Wheeling and Clarksburg orders should be amended to classify specifically as Class II that skim milk and butterfat which is disposed of in bulk to commercial manufacturers, other than dairy plants, which do not dispose of fluid milk products. The present provisions provide for Class I classification of such disposition.

It was within the intent of the Secretary in the decision relative to these orders issued September 6, 1955, that skim milk and butterfat so disposed of should be classified as Class II. This decision said, in part, "skim milk and butterfat disposed of to commercial food product manufacturing plants, other than dairy plants, which do not dispose of fluid milk products for fluid consumption, should be Class II milk."

(b) In the sections of the Wheeling and Clarksburg orders which define the computation of the uniform price, reference to location differentials should be § 1002.74 and § 1009.74, respectively. In § 1009.5 of the Clarksburg order which defines the marketing area, "the City of Weston" in Lewis County is correct instead of "the City of Western".

(c) The designation of East Liverpool in the definition of the Greater Wheeling marketing area should be corrected.

(d) The allocation provisions, as they apply to receipts from plants regulated under the terms of another Federal order, should be clarified. It is concluded that the use of identical language in both orders will facilitate their administration and remove any possibility of misunderstanding.

(e) The provisions describing the determination to be made pursuant to section 54 in both orders should be clarified so that it is understood that the percentage relationship depends on producer receipts and Class I milk volume at pool plants, except those which do not receive milk from producers.

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

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

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

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

Marketing agreement and order. Annexed hereto and made a part hereof are

four documents entitled, respectively, "Marketing agreement regulating the handling of milk in the greater Wheeling, West Virginia, marketing area," "Order amending the order regulating the handling of milk in the greater Wheeling, West Virginia, marketing area," "Marketing agreement regulating the handling of milk in the Clarksburg, West Virginia, marketing area," and "Order amending the order regulating the handling of milk in the Clarksburg, West Virginia, 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 agreements are identical with those contained in the orders as hereby proposed to be amended by the attached orders which will be published with this decision.

Referenda order; determination of representative period; and designation of referenda agent. It is hereby directed that separate referenda be conducted to determine whether the issuance of the attached orders amending the orders regulating the handling of milk in the Greater Wheeling, West Virginia, and Clarksburg, West Virginia, marketing areas, is approved or favored by the producers, as defined under the terms of each order, respectively, as hereby proposed to be amended, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing areas, respectively.

The month of August 1957 is hereby determined to be the representative period for the conduct of each referendum.

William Kidd is hereby designated agent of the Secretary to conduct such referenda 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 referenda to be completed on or before the 15th day from the date this decision is issued.

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

[SEAL] DON PAARLBURG,
Assistant Secretary.

Order[1] *Amending Order Regulating Handling of Milk in Greater Wheeling, West Virginia, Marketing Area*

Sec.

[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.

AUTHORITY: §§ 1002.0 to 1002.111 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 1002.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

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

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

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

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

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

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

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Greater Wheeling, West Vir-

ginia, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended to read as follows:

DEFINITIONS

§ 1002.1 *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.).

§ 1002.2 *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.

§ 1002.3 *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 in this part.

§ 1002.4 *Person.* "Person" means any individual, partnership, corporation, association, or other business unit.

§ 1002.5 *Greater Wheeling marketing area.* "Greater Wheeling marketing area", hereinafter called the "marketing area", means all territory included within the boundaries of (a) Jefferson, Belmont and Monroe counties, Ohio, (b) Hancock, Brooke, Ohio, and Marshall counties, West Virginia, (c) East Liverpool, St. Clair, Wellsville, Yellow Creek, Madison, and Washington townships in Columbiana County, Ohio, and (d) Londonderry, Oxford and Millwood townships in Guernsey County, Ohio.

§ 1002.6 *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 having jurisdiction in the marketing area, which milk is received during the month at a pool plant: *Provided,* That if such milk is diverted from a pool plant by a handler to a nonpool plant (except a nonpool plant at which the handling of milk is subject to the classification and pricing provisions of another order) for his account any day during the months of March through July or on not more than 10 days during any other month, the milk so diverted shall be deemed to have been received at a pool plant at the location of the plant from which diverted.

§ 1002.7 *Approved plant.* "Approved plant" means all of the buildings, premises and facilities of (a) a plant in which any fluid milk product is processed or packaged and from which any fluid milk product is disposed of during the month on routes (including disposal through plant stores, vendors or by vending machines) to wholesale or retail outlets (excluding other plants) in the marketing area, or (b) a plant from which fluid milk products eligible for distribution in the marketing area under a Grade A label are shipped during the month to a plant described in paragraph (a) of this section.

§ 1002.8 *Distributing plant.* "Distributing plant" means an approved plant which meets the conditions of both paragraphs (a) and (b) of this section:

(a) Not less than the required percentage (as specified herein) of the volume of milk received thereat from dairy farmers who meet the inspection requirements pursuant to § 1002.6 is disposed of as Class I milk during the month on routes (including disposal through plant stores, vendors or by vending machines) to wholesale or retail outlets (except pool plants), such required percentages being 45 percent in April, May and June, and 55 percent in other months; and

(b) Not less than 5 percent of such disposition on routes as described in paragraph (a) of this section is to wholesale or retail outlets (except pool plants) in the marketing area.

§ 1002.9 *Supply plant.* "Supply plant" means: During any of the months of September through January, inclusive, an approved plant from which, during the month, fluid milk products equal to not less than 55 percent of its receipts from dairy farmers who meet the inspection requirements pursuant to § 1002.6 are shipped to distributing plants or plants described in § 1002.10 (c) which during the month dispose of as Class I milk on routes described in § 1002.8 (a), a volume not less than 55 percent of the sum of: (a) Milk received by the plant from producers pursuant to § 1002.14 (a) and (b); (b) milk caused to be delivered to the plant pursuant to § 1002.63; and (c) any other fluid milk product received by the plant and eligible for distribution in the marketing area under a Grade A label: *Provided,* That if a plant qualifies as a supply plant pursuant to this section in each of the months of September, October, November, December, and January, such plant shall be a pool plant until the end of the following August, unless the operator requests in writing that such plant not be a pool plant beginning in the month following the date of such request.

§ 1002.10 *Pool plant.* "Pool plant" means:

(a) A distributing plant;

(b) A supply plant; or

(c) An approved plant which receives no milk from dairy farmers and from which Class I milk equal to not less than 5 percent of milk disposed of during the month on routes (including disposal through plant stores, vendors or by vending machines) to retail or wholesale outlets (excluding pool plants), is so disposed of in the marketing area.

§ 1002.11 *Nonpool plant.* "Nonpool plant" means any milk plant other than a pool plant.

§ 1002.12 *Handler.* "Handler" means: (a) A cooperative association with respect to milk of producers diverted for the account of such association from a pool plant to a nonpool plant in accordance with the provisions of § 1002.6; or (b) Any person in his capacity as the operator of one or more approved plants.

§ 1002.13 *Producer-handler.* "Producer-handler" means a person who operates both a dairy farm(s) and a milk processing or bottling plant at which each of the following conditions is met during the month:

(a) Milk is received from the dairy farm(s) of such person but from no other dairy farm;

(b) Fluid milk products are disposed of on routes or through a plant store to retail or wholesale outlets in the marketing area; and

(c) The butterfat or skim milk disposed of in fluid milk products does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm(s) of such person and in the form of fluid milk products from pool plants of other handlers.

§ 1002.14 *Producer milk.* "Producer milk" means only that skim milk and butterfat contained in milk (a) received by a handler directly from producers, not including milk delivered for another handler's account pursuant to § 1002.63; or (b) diverted by a handler to a nonpool plant (except a nonpool plant at which the handling of milk is subject to the classification and pricing provisions of another order issued pursuant to the act) in accordance with the provisions of § 1002.6; or (c) caused by a handler to be delivered for his account to the pool plant of another handler pursuant to § 1002.63.

§ 1002.15 *Fluid milk product.* "Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, yogurt, cream or any mixture in fluid form of milk, skim milk and cream (except sterilized products packaged in hermetically sealed containers, egg nog, ice cream mix and aerated cream).

§ 1002.16 *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.

§ 1002.17 *Cooperative association.* "Cooperative association" means any cooperative association of producers 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;"

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

(c) To have all of its activities under the control of its members.

§ 1002.18 *Chicago butter price.* "Chicago butter price" means the simple average, as computed by the market ad-

ministrator, 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.

§ 1002.19 *Base milk.* "Base milk" means milk received at pool plants from a producer during any of the months of March through July which is not in excess of such producer's daily average base computed pursuant to § 1002.90 multiplied by the number of days of milk production delivered in such month.

§ 1002.20 *Excess milk.* "Excess milk" means milk received at pool plants from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk received during such months from a producer for whom no daily average base can be computed pursuant to § 1002.90.

MARKET ADMINISTRATOR

§ 1002.25 *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.

§ 1002.26 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1002.27 *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, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer 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 received pursuant to § 1002.86: (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 § 1002.85 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 section, and upon request by the Secretary, surrender the same to such other person 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 §§ 1002.30 and 1002.31 or payments pursuant to §§ 1002.80 through 1002.86;

(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) On or before the 12th day after the end of each month, report to each cooperative association which so requests the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler;

(i) Verify all reports and payments of each handler by audit if necessary, 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;

(j) 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; and

(k) On or before the date specified publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, and mail to each handler at his last known address a notice of, the following:

(1) The 5th day of each month, the Class I milk price and the Class I butterfat differential, both for the current month; and the Class II milk price, and the Class II butterfat differential, both for the preceding month, and

(2) The 11th day of each month, the uniform prices, computed pursuant to §§ 1002.71 and 1002.72, and the producer butterfat differential, both for the preceding month.

REPORTS, RECORDS, AND FACILITIES

§ 1002.30 *Reports of sources and utilization.* On or before the 7th day after the end of each month each handler, except a producer-handler, shall report for each of his approved plants for such 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;

(2) Fluid milk products received from other pool plants;

(3) Other source milk;

(4) Inventories of fluid milk products on hand at the beginning of the month;

(5) Milk caused to be moved from a producer's farm to a plant of another handler; and

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including separate statements as to the disposition of Class I milk outside the marketing area, and inventories of fluid milk products on hand at the end of the month.

§ 1002.31 *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 the detail and on forms prescribed by the market administrator:

(1) On or before the 7th day of each of the months of April through August the aggregate quantity of base milk received at his pool plant(s) for the preceding month,

(2) 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, including for the months of March through July, the pounds of base milk, (iii) the days for which milk was received from such producer if less than the entire month, (iv) the average butterfat content of such milk, and (v) the net amount of such handler's payment to the producer, together with the price paid and the amount and nature of any deductions,

(3) On or before the day prior to diverting producer milk pursuant to § 1002.6 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted, and

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

§ 1002.32 *Records and facilities.* Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data for each month with respect to:

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

(b) The weights and tests for butterfat and other content of all products handled;

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

(d) Payments to producers, including any deductions authorized by producers and disbursement of money so deducted.

§ 1002.33 *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 calendar month to which such books and records pertain: *Provided,* That if, within such three-year period, the market administrator notifies the handler in writing that the

retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further 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 OF MILK

§ 1002.40 *Skim milk and butterfat to be classified.* The skim milk and butterfat to be reported pursuant to § 1002.30 (a) shall be classified each month pursuant to the provisions of §§ 1002.41 through 1002.45.

§ 1002.41 *Classes of utilization.* Subject to the conditions set forth in §§ 1002.42 through 1002.45, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat: (1) Disposed of from the plant in the form of fluid milk products, except those classified pursuant to paragraph (b) (3) and (4) of this section, and (2) not specifically accounted for as Class II milk; and

(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 inventories of fluid milk products on hand at the end of the month; (3) disposed of in bulk to any manufacturer of candy, soup or bakery products who does not dispose of milk in fluid form; (4) disposed of as skim milk and used for livestock feed or skim milk dumped subject to prior notification to and inspection (at his discretion) by the market administrator; and (5) in shrinkage not to exceed 2 percent, respectively, of the skim milk and butterfat contained in producer milk (except that diverted pursuant to § 1002.6) and other source milk: *Provided,* That if shrinkage of skim milk or butterfat is less than such 2 percent it shall be assigned pro rata to the skim milk or butterfat contained in producer milk (except that diverted pursuant to § 1002.6) and other source milk, respectively.

§ 1002.42 *Responsibility of handlers.* All skim milk and butterfat to be classified pursuant to this order shall be classified Class I milk, unless the handler who first receives such skim milk and butterfat establishes to the satisfaction of the market administrator that it should be classified as Class II milk.

§ 1002.43 *Transfers.* (a) Skim milk and butterfat transferred to a pool plant of another handler (including that which the handler causes to be delivered from a producer's farm to the pool plant of the other handler, but not including transfers to a producer-handler) in the form of fluid milk products shall, to the extent required, be classified so as to result in the maximum assignment of the producer milk of both handlers to Class I milk. Any additional amounts of skim milk and butterfat shall be classified Class I milk, unless the operators of both plants claim utilization thereof in Class II milk in their reports submitted pursuant to § 1002.30: *Provided,* That the skim milk or butterfat so assigned to Class II milk for any month shall be limited to the respective amounts thereof remaining in Class II milk for such month at the pool plant(s) of the receiving handler after the subtraction of other source milk pursuant to § 1002.45;

(b) Skim milk and butterfat transferred to the plant of a producer-handler in the form of fluid milk products, shall be classified Class I milk;

(c) Skim milk and butterfat transferred or diverted in bulk form as milk or skim milk to a nonpool milk plant shall be classified Class I milk unless, (1) the transferee-plant is located less than 250 miles from the Court House in Wheeling, West Virginia, by the shortest hard surfaced highway distance, as determined by the market administrator, (2) the transferring or diverting handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 1002.30 for the month within which such transaction occurred, (3) the operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification, and (4) not less than an equivalent amount of skim milk and butterfat was actually utilized in the nonpool plant in the use indicated in such report: *Provided,* That if it is found that an equivalent amount of skim milk and butterfat was not actually used in such plant during the month in such indicated use, the pounds transferred in excess of such actual use shall be classified Class I milk; and

(d) Skim milk and butterfat transferred in bulk form as cream to a nonpool plant shall be classified Class I milk unless, (1) the transferring handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 1002.30, (2) the handler attaches tags or labels to each container of such cream bearing the words "for manufacturing uses only" and the shipment is so invoiced, (3) the handler gives the market administrator sufficient notice to allow him to verify such shipment, (4) the operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification, and (5) not less than an equivalent amount of skim milk and butterfat was actually utilized in the nonpool plant in the use indicated in such report: *Provided,* That if it is found that an equivalent amount of skim milk and butterfat was not actually used in such plant during the month in such indicated use, the pounds transferred in excess of such actual use shall be classified Class I milk.

§ 1002.44 *Computation of skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to § 1002.30 and compute the total pounds of skim milk and butterfat respectively, in Class I milk and Class II milk at all of the pool plants of such handler: *Provided,* That the skim milk contained in any product utilized, produced, or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 1002.45 *Allocation of skim milk and butterfat classified.* (a) The pounds of skim milk remaining in each class after making the following computations each month with respect to the pool plant(s) of each handler, shall be the pounds of skim milk in such class allocated to the producer milk of such handler for such month,

(1) Subtract from the total pounds of skim milk in Class II milk the shrinkage of skim milk in producer milk classified as Class II milk pursuant to § 1002.41 (b),

(2) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in other source milk except that to be subtracted pursuant to subparagraph (3) of this paragraph: *Provided,* That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk,

(3) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in fluid milk products received from plants regulated under another order(s) issued pursuant to the act and classified as Class I pursuant to such other order(s): *Provided,* That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk,

(4) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month: *Provided,* That if the pounds of skim milk in such inventory exceed the remaining pounds of skim milk in Class II milk the balance shall be subtracted from the pounds of skim milk remaining in Class I milk,

(5) Subtract the pounds of skim milk in fluid milk products received from pool plants of other handlers from the pounds of skim milk remaining in the class to which assigned, pursuant to § 1002.43 (a),

(6) 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,

(7) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in milk received from producers, subtract such excess from the pounds of skim milk remaining in the various classes in series beginning with Class II milk;

(b) Determine the pounds of butterfat in each class to be allocated to producer milk in the manner prescribed in paragraph (a) of this section for de-

termining the allocation of skim milk to producer milk; and

(c) Add the pounds of skim milk and the pounds of butterfat in each class calculated pursuant to paragraphs (a) and (b) of this section and determine the percentage of butterfat in the producer milk allocated to each class.

MINIMUM PRICES

§ 1002.50 *Basic formula price.* The higher of the prices computed pursuant to paragraph (a), (b), or (c) of this section, rounded to the nearest whole cent, shall be known as the basic formula price.

(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 market administrator or to the Department:

Present Operator and Location

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

(b) The price resulting from the following computation:

(1) Multiply by 6 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) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the month for which prices are being computed,

(2) Add an amount equal to 2.4 times the simple average as published by the Department of Agriculture of the prices determined per pound of "Cheddars" on the Wisconsin Cheese Exchange at Plymouth, Wisconsin, for the trading days that fall within the month, and

(3) Divide by 7 and to the resulting amount add 30 percent; and then multiply by 3.5;

(c) The price per hundredweight computed by adding together the plus values of 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 the carlot prices per pound for nonfat dry milk solids, 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, deduct 5.5 cents and multiply by 8.2.

§ 1002.51 *Class prices.* Subject to the provisions of §§ 1002.52 and 1002.53, the minimum class prices per hundredweight of milk containing 3.5 percent butterfat to be paid by each handler for milk received at his pool plant from producers during the month shall be determined as follows:

(a) *Class I milk price.* The Class I milk price shall be the basic formula price (computed pursuant to § 1002.50) for the preceding month plus the following amount for the month indicated:

Month	*Amount*
February, March, April, May, June, and July	$1.50
All others	1.95

Provided, That this Class I price shall be increased or decreased by the amount of any "supply-demand adjustment" effective in the calculation of the Class I price for the preceding month under the terms of the order, as amended, regulating the handling of milk in the Cleveland, Ohio, marketing area (Order No. 75, Part 975 of this chapter); and

(b) *Class II milk price.* The Class II milk price shall be the basic formula price computed pursuant to § 1002.50.

§ 1002.52 *Butterfat differentials to handlers.* For milk containing more or less than 3.5 percent butterfat, the class prices calculated pursuant to § 1002.51 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 0.13; and

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

§ 1002.53 *Location differentials to handlers.* For milk disposed of from a pool plant located 60 miles or more from the city halls of Wheeling, West Virginia, East Liverpool, Ohio, or Steubenville, Ohio, whichever is nearest by shortest hard-surfaced highway distance as determined by the market administrator, as Class I milk pursuant to paragraphs (a) and (b) of this section, but not to exceed producer milk received and milk caused to be delivered pursuant to § 1002.63 at such plant, the price specified in § 1002.51 (a) shall be reduced at the rate set forth in the following schedule:

Distance from the city hall of Wheeling, W. Va., East Liverpool or Steubenville, Ohio, whichever is nearest (miles):	*Rate per hundredweight (cents)*
60 but not more than 70	15.0
70 but not more than 80	16.5
80 but not more than 90	18.0
For each additional 10 miles or fraction thereof an additional	1.0

(a) In the case of fluid milk products which are moved from the pool plant to another pool plant, assign to Class I milk for the purposes of this section, that portion of the milk moved which remains after assigning such milk to the quantity of Class II milk in the transferee plant as determined by the calculations prescribed in § 1002.45 (a) (1) through (4), and the comparable steps in § 1002.45 (b) for the transferee plant, such assignment to Class II milk in the case of transfers from several plants to be made in the sequence to the transferring plants according to the location differential applicable at each transferring plant, beginning with the plant having the largest differential; and

(b) Class I disposition from the plant other than disposition to the other pool plants.

§ 1002.54 *Rate of compensatory payments.* The rate of compensatory payment per hundredweight shall be calculated as follows, except that the rate shall be zero in any month in which total deliveries by producers are less than 110 percent of Class I utilization (excluding duplications) in plants qualified as pool plants pursuant to § 1002.10 (a) and (b):

(a) Subtract the Class II milk price, adjusted by the Class II butterfat differential, from the Class I milk price adjusted by the Class I butterfat differential and adjusted by the location differential rates set forth in § 1002.53 for the location of the plant at which the milk was received from farmers.

§ 1002.55 *Use of equivalent prices.* If for any reason a price quotation required by this part 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

§ 1002.60 *Producer-handlers.* Sections 1002.40 through 1002.45, 1002.50 through 1002.53, 1002.61 through 1002.63, 1002.70 through 1002.75, and 1002.80 through 1002.87 shall not apply to a producer-handler.

§ 1002.61 *Plants subject to other Federal orders.* Upon determination by the Secretary, a plant specified in paragraph (a) or (b) of this section shall be treated as a nonpool plant, except that the operator of such plant shall, with respect to 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 and allow verification of such reports by the market administrator:

(a) Any plant qualified pursuant to § 1002.10 (a) or (c) which disposes of a lesser volume of Class I milk in the Greater Wheeling marketing area than in a marketing area where milk is regulated pursuant to another order issued pursuant to the act, and which is subject to the classification and pricing provisions of such other order if exempted pursuant to this paragraph from regulation as a pool plant under this part;

(b) Any plant qualified pursuant to § 1002.10 (b) for any portion of the period February through August, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of another order issued pursuant to the act and the Secretary determines that such plant should be exempted from this part.

§ 1002.62 *Handlers operating nonpool plants.* Each handler who is the operator of a nonpool plant which is not subject to the classification and pricing

provisions of another order issued pursuant to the act, shall on or before the 12th day after the end of each month, pay to the market administrator for deposit into the producer-settlement fund an amount calculated by multiplying the total hundredweight of butterfat and skim milk disposed of in the form of fluid milk products from such nonpool plant to retail or wholesale outlets (including deliveries by vendors and sales through plant stores) in the marketing area during the month, by the rate of compensatory payment calculated pursuant to § 1002.54: *Provided,* That such payments shall not apply to butterfat or skim milk in excess of butterfat or skim milk received by such nonpool plant from dairy farmers and in the form of fluid milk products from plants not fully regulated under any Federal order.

§ 1002.63 *Milk caused by a handler to be delivered to another handler's pool plant.* Milk caused by a handler, as the operator of a pool plant which is an approved plant pursuant to § 1002.7 (a), to be delivered for his account to another handler's pool plant similarly qualified pursuant to § 1002.7 (a), shall be considered, for purposes of reporting, classification, and payment, to be received by the handler who so caused the milk to be delivered, if both handlers report such milk as so caused to be delivered.

DETERMINATION OF PRICES TO PRODUCERS

§ 1002.70 *Computation of the obligation of each handler.* For each month the market administrator shall compute the obligation of each pool handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 1002.45 by the applicable class price, as adjusted by location differentials on the amount of milk to which location differential allowance applies pursuant to § 1002.53;

(b) Add an amount computed by multiplying the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1002.45 (a) (2) and (b) by the rate of compensatory payment as determined pursuant to § 1002.54 for the nearest plant(s) from which an equivalent amount of other source milk was received in the form of fluid milk products;

(c) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 1002.45 (a) (7) and (b) by the applicable class price; and

(d) Add the amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I milk price for the current month by the hundredweight of skim milk and butterfat remaining in Class II milk after the calculations pursuant to § 1002.45 (a) (5) and (b) for the preceding month or the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1002.45 (a) (4) and (b) for the current month, whichever is less, respectively.

§ 1002.71 *Computation of the uniform price.* For each of the months of August through February, the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content, f. o. b. market, as follows:

(a) Combine into one total the obligations computed pursuant to § 1002.70 for all pool plants which submit reports prescribed in § 1002.30 and who are not in default of payments pursuant to § 1002.80 or § 1002.82;

(b) Subtract, if the average butterfat content of the producer milk included under paragraph (a) of this section is greater than 3.5 percent, or add, if such average butterfat content is less than 3.5 percent, an amount computed as follows: Multiply the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1002.73, and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the sum of deductions to be made from producer payments for location differentials pursuant to § 1002.74;

(d) Add an amount equal to one-half of the unobligated balance on hand in the producer-settlement fund;

(e) Add the total amount of payment due pursuant to § 1002.62;

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

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

§ 1002.72 *Computation of uniform prices for base milk and excess milk.* For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, f. o. b. market, as follows:

(a) Compute the aggregate value of excess milk for all handlers who submit reports pursuant to § 1002.30, and who are not in default of payments pursuant to §§ 1002.80 or 1002.82 as follows: (1) Multiply the hundredweight of such milk not in excess of the total quantity of producer milk assigned to Class II milk in the pool plants of such handlers by the Class II milk price, (2) multiply the hundredweight of milk not included in subparagraph (1) of this paragraph by the Class I milk price, and (3) add together the resulting amounts;

(b) Divide the total value of excess milk obtained in paragraph (a) of this section by the total hundredweight of such milk, adjust to the nearest cent and subtract 4 cents. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(c) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b) of this section, plus 4 cents, times the hundredweight of excess milk from the total value of producer milk for the month as determined according to the calculations set forth in § 1002.71 (a) through (d) then add the total amount of payments due pursuant to § 1002.62;

(d) Divide the amount calculated pursuant to paragraph (c) of this section by the total hundredweight of base milk included in these computations; and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f. o. b. market.

§ 1002.73 *Butterfat differential to producers.* The applicable uniform prices to be paid each producer shall be increased or decreased for each one-tenth of one percent which the average butterfat content of his milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the pounds of butterfat in producer milk allocated to each class by the appropriate butterfat differential for such class as determined pursuant to § 1002.52, dividing by the total butterfat in producer milk and rounding to the nearest even tenth of a cent.

§ 1002.74 *Location differential to producers.* The applicable uniform prices to be paid for producer milk, as defined in § 1002.14 (a) and (b), received at a pool plant located 60 miles or more from the city hall of Wheeling, West Virginia, East Liverpool, Ohio, or Steubenville, Ohio, whichever is nearest by shortest hard-surfaced highway distance, as determined by the market administrator, or caused to be delivered pursuant to § 1002.63, to a pool plant so located shall be reduced at the rates set forth in § 1002.53 according to the location of such plant.

§ 1002.75 *Notification of handlers.* On or before the 11th day after the end of each month, the market administrator shall mail to each handler, who submitted the report(s) prescribed in § 1002.30 at his last known address, a statement showing:

(a) The amount and value of his producer milk in each class and the totals thereof;

(b) For the months of March through July the amounts and value of his base and excess milk respectively, and the totals thereof;

(c) The uniform price(s) computed pursuant to §§ 1002.71 and 1002.72 and the butterfat differential computed pursuant to § 1002.73; and

(d) The amounts to be paid by such handler pursuant to §§ 1002.82, 1002.85 and 1002.86, or 1002.62 and the amount due such handler pursuant to § 1002.83.

PAYMENTS

§ 1002.80 *Time and method of payment for producer milk.* (a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class II price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph,

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price(s) adjusted by the butterfat and location differentials to producers multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to subparagraph (1) of this paragraph, (ii) less marketing service deductions made pursuant to § 1002.85, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1002.83 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the 2d day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from the producer members of such association as determined by the market administrator an amount equal to not less than the amount due such producer members as determined pursuant to paragraph (a) of this section; and

(c) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month, and

(2) On or before the 7th day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) for the months of March through July the total pounds of base milk received, (iii) the amount or rate and nature of any deductions to be made from payments, and (iv) the amount and nature of payments due pursuant to § 1002.84.

§ 1002.81 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1002.62, 1002.82 and 1002.84, and out of which he shall make all payments pursuant to §§ 1002.83 and 1002.84: *Provided,* That any payments due to any handler shall be offset by any payments due from such handler.

§ 1002.82 *Payments to the producer-settlement fund.* On or before the 12th day after the end of each month, each handler shall pay to the market administrator any amount by which his obligation as computed pursuant to § 1002.70 for such month, is greater than the amount owed by him for such milk at the appropriate uniform price(s) adjusted by the producer butterfat and location differentials.

§ 1002.83 *Payments out of the producer-settlement fund.* On or before the 13th day after the end of each month, the market administrator shall pay to each handler any amount by which his obligation computed pursuant to § 1002.70, for such month is less than the amount owed by him for such milk at the appropriate uniform price(s) adjusted by the producer betterfat and location differentials. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1002.84 *Adjustment of accounts.* Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in monies due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1002.85 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1002.80, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association;

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

§ 1002.86 *Expenses of administration.* On or before the 15th day after the end of each month, each handler shall pay to the market administrator for each of his approved plants, 4 cents or such lesser amount as the Secretary may prescribe, for each hundredweight of butterfat and skim milk contained in (a) producer milk, (b) other source milk allocated to Class I milk pursuant to § 1002.45 (a) (2) and (b), or (c) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant as determined pursuant to § 1002.62.

§ 1002.87 *Termination of obligations.* The provisions of this section shall apply to any obligations 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 2 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 2-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 representative 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 representative;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this order to pay money shall not be terminated with respect to any transaction involv-

ing fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the 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 8c (15) (A) of the act, a petition claiming such money.

DETERMINATION OF BASE

§ 1002.90 *Computation of daily average base for each producer.* Subject to the rules set forth in § 1002.91, the daily average base for each producer shall be an amount calculated by dividing the total pounds of milk produced by and received from such producer at all pool plants during the months of September through December immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of December, inclusive, or by 90, whichever is more: *Provided*, That any producer who, during the preceding months of September through December, delivered his milk to a nonpool plant which became a pool plant after the beginning of such period shall be assigned a base, in the same manner as if he had been a producer during such period, calculated from his deliveries during such September–December period to such plant.

§ 1002.91 *Base rules.* The following rules shall apply in connection with the establishment and assignment of bases:

(a) Subject to the provisions of paragraph (b) of this section, the market administrator shall assign a base calculated pursuant to § 1002.90 to each person for whose account producer milk was delivered to pool plants during the months of September through December; and

(b) A base which is assigned pursuant to the proviso of § 1002.90 shall be nontransferable. An entire base which is otherwise assigned shall be transferred from a person holding such base to any other person, effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred: *Provided*, That if a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred.

§ 1002.92 *Announcement of established bases.* On or before February 15 of each year, the market administrator shall notify each producer, and the handler receiving milk from such producer, of the daily average base established by such producer.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 1002.100 *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.

§ 1002.101 *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.

§ 1002.102 *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.

§ 1002.103 *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 and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1002.110 *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.

§ 1002.111 *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.

Order[1] Amending Order Regulating Handling of Milk in Clarksburg, W. Va., Marketing Area

Sec.
1009.0 Findings and determinations.

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

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1009.3 Department of Agriculture.
1009.4 Person.
1009.5 Clarksburg marketing area.
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1009.84 Adjustment of accounts.
1009.85 Marketing services.
1009.86 Expenses of administration.
1009.87 Termination of obligations.

DETERMINATION OF BASE

1009.90 Computation of daily average base for each producer.
1009.91 Base rules.

AUTHORITY: §§ 1009.0 to 1009.111 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 1009.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

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

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

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

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

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

DEFINITIONS

§ 1009.1 *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.).

§ 1009.2 *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.

§ 1009.3 *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 in this part.

§ 1009.4 *Person.* "Person" means any individual, partnership, corporation, association, or other business unit.

§ 1009.5 *Clarksburg marketing area.* "Clarksburg marketing area", hereinafter called the "Marketing Area" means all territory included within the boundaries of (a) Monongalia, Marion and Harrison Counties, (b) Grafton magisterial district in Taylor County, (c) Philippi magisterial district in Barbour County, (d) Leadsville magisterial district in Randolph County, (e) the City of Buckhannon in Upshur County, (f) the City of Weston in Lewis County and (g) the Town of Kingwood in Preston County, all in the State of West Virginia.

§ 1009.6 *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 having jurisdiction in the marketing area, which milk is received during the month at a pool plant: *Provided,* That if such milk is diverted from a pool plant by a handler to a nonpool plant (except a nonpool plant at which the handling of milk is subject to the classification and pricing provisions of another order) for his account any day during the months of March through July or on not more than 10 days during any other month, the milk so diverted shall be deemed to have been received at a pool plant at the location of the plant from which diverted.

§ 1009.7 *Approved plant.* "Approved plant" means all of the buildings, premises and facilities of (a) a plant in which any fluid milk product is processed or packaged and from which any fluid milk product is disposed of during the month on routes (including disposal through plant stores, vendors or by vending machines) to wholesale or retail outlets (excluding other plants) in the marketing area, or (b) a plant from which fluid milk products eligible for distribution in the marketing area under a Grade A label are shipped during the month to a plant described in paragraph (a) of this section.

§ 1009.8 *Distributing plant.* "Distributing plant" means an approved plant which meets the conditions of both paragraphs (a) and (b) of this section:

(a) Not less than the required percentage (as specified herein) of the volume of milk received thereat from dairy farmers who meet the inspection requirements pursuant to § 1009.6 is disposed of as Class I milk during the month on routes (including disposal through plant stores, vendors or by vending machines) to wholesale or retail outlets (except pool plants), such required percentages being 45 percent in April, May and June, and 55 percent in other months; and

(b) Not less than 5 percent of such disposition on routes as described in paragraph (a) of this section is to wholesale or retail outlets (except pool plants) in the marketing area.

§ 1009.9 *Supply plant.* "Supply plant" means: During any of the months of September through January, inclusive, an approved plant from which, during the month, fluid milk products equal to not less than 55 percent of its receipts from dairy farmers who meet the inspection requirements pursuant to § 1009.6 are shipped to distributing plants or plants described in § 1009.10 (c) which during the month dispose of as Class I milk on routes as described in § 1009.8 (a), a volume not less than 55 percent of the sum of: (a) Milk received by the plant from producers pursuant to § 1009.14 (a) and (b); (b) milk caused to be delivered to the plant pursuant to § 1009.63; and (c) any other fluid milk product received by the plant and eligible for distribution in the marketing area under a Grade A label: *Provided,* That if a plant qualifies as a supply plant pursuant to this section in each of the months of September, October, November, December, and January, such plant shall be a pool plant until the end of the following August, unless the operator requests in writing that such plant not be a pool plant beginning in the month following the date of such request.

§ 1009.10 *Pool plant.* "Pool plant" means:

(a) A distributing plant;

(b) A supply plant; or

(c) An approved plant which receives no milk from dairy farmers and from which Class I milk equal to not less than 5 percent of milk disposed of during the month on routes (including disposal through plant stores, vendors or by vending machines) to retail or wholesale outlets (excluding pool plants) is so disposed of in the marketing area.

§ 1009.11 *Nonpool plant.* "Nonpool plant" means any milk plant other than a pool plant.

§ 1009.12 *Handler.* "Handler" means: (a) A cooperative association with respect to milk of producers diverted for the account of such association from a pool plant to a nonpool plant in accordance with the provisions of § 1009.6; or (b) any person in his capacity as the operator of one or more approved plants.

§ 1009.13 *Producer-handler.* "Producer-handler" means a person who operates both a dairy farm(s) and a milk processing or bottling plant at which each of the following conditions is met during the month:

(a) Milk is received from the dairy farm(s) of such person but from no other dairy farm;

(b) Fluid milk products are disposed of on routes or through a plant store to retail or wholesale outlets in the marketing area; and

(c) The butterfat or skim milk disposed of in fluid milk products does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm(s) of such person and in the form of fluid milk products from pool plants of other handlers.

§ 1009.14 *Producer milk.* "Producer milk" means only that skim milk and butterfat contained in milk (a) received by a handler directly from producers, not including milk delivered for another handler's account pursuant to § 1009.63; or (b) diverted by a handler to a nonpool plant (except a nonpool plant at which the handling of milk is subject to the classification and pricing provisions of another order issued pursuant to the act) in accordance with the provisions of § 1009.6; or (c) caused by a handler to be delivered for his account to the pool plant of another handler pursuant to § 1009.63.

§ 1009.15 *Fluid milk product.* "Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, yogurt, cream, or any mixture in fluid form of milk, skim milk and cream (except sterilized products packaged in hermetically sealed containers, egg nog, ice cream mix and aerated cream).

§ 1009.16 *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.

§ 1009.17 *Cooperative association.* "Cooperative association" means any cooperative association of producers 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";

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

(c) To have all of its activities under the control of its members.

§ 1009.18 *Chicago butter price.* "Chicago butter price" means the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department of Agriculture.

§ 1009.19 *Base milk.* "Base milk" means milk received at pool plants from a producer during any of the months of March through July which is not in excess of such producer's daily average base computed pursuant to § 1009.90 multiplied by the number of days of milk production delivered in such month.

§ 1009.20 *Excess milk.* "Excess milk" means milk received at pool plants from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk received during such months from a producer for whom no daily average base can be computed pursuant to § 1009.90.

MARKET ADMINISTRATOR

§ 1009.25 *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.

§ 1009.26 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1009.27 *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, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer 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 received pursuant to § 1009.86: (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 § 1009.85 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 section, and upon request by the Secretary, surrender the same to such other person 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 §§ 1009.30 and 1009.31 or payments pursuant to §§ 1009.80 through 1009.86;

(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) On or before the 12th day after the end of each month, report to each cooperative association which so requests the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler;

(i) Verify all reports and payments of each handler by audit if necessary, 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;

(j) 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; and

(k) On or before the date specified publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, and mail to each handler at his last known address a notice of, the following:

(1) The 5th day of each month, the Class I milk price and the Class I butterfat differential, both for the current month; and the Class II milk price, and the Class II butterfat differential, both for the preceding month, and

(2) The 11th day of each month, the uniform prices computed pursuant to §§ 1009.71 and 1009.72 and the producer butterfat differential, both for the preceding month.

REPORTS, RECORDS, AND FACILITIES

§ 1009.30 *Reports of sources and utilization.* On or before the 7th day after the end of each month each handler, except a producer-handler, shall report for each of his approved plants for such 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,

(2) Fluid milk products received from other pool plants,

(3) Other source milk,

(4) Inventories of fluid milk products on hand at the beginning of the month;

(5) Milk caused to be moved from a producer's farm to a plant of another handler; and

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including separate statements as to the disposition of Class I milk outside the marketing area, and inventories of fluid milk products on hand at the end of the month.

§ 1009.31 *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 the detail and on forms prescribed by the market administrator:

(1) On or before the 7th day of each of the months of April through August the aggregate quantity of base milk received at his pool plant(s) for the preceding month;

(2) 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, including, for the months of March through July, the pounds of base milk, (iii) the days for which milk was received from such producer if less than the entire month, (iv) the average butterfat content of such milk, and (v) the net amount of such handler's payment to the producer, together with the price paid and the amount and nature of any deductions,

(3) On or before the day prior to diverting producer milk pursuant to § 1009.6 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted, and

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

§ 1009.32 *Records and facilities.* Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data for each month with respect to:

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

(b) The weights and tests for butterfat and other content of all products handled;

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

(d) Payments to producers, including any deductions authorized by producers, and disbursement of money so deducted.

§ 1009.33 *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 calendar month to which such books and records pertain: *Provided,* That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further 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 OF MILK

§ 1009.40 *Skim milk and butterfat to be classified.* The skim milk and butterfat to be reported pursuant to § 1009.30 (a) shall be classified each month pursuant to the provisions of §§ 1009.41 through 1009.45.

§ 1009.41 *Classes of utilization.* Subject to the conditions set forth in §§ 1009.42 through 1009.45, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat: (1) Disposed of from the plant in the form of fluid milk products, except those classified pursuant to paragraph (b) (3) and (4) of this section, and (2) not specifically accounted for as Class II milk; and

(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 inventories of fluid milk products on hand at the end of the month; (3) disposed of in bulk to any manufacturer of candy, soup or bakery products who does not dispose of milk in fluid form; (4) disposed of as skim milk and used for livestock feed or skim milk dumped subject to prior notification to and inspection (at his discretion) by the market administrator; and (5) in shrinkage not to exceed 2 percent, respectively, of the skim milk and butterfat contained in producer milk (except that diverted pursuant to § 1009.6) and other source milk: *Provided,* That if shrinkage of skim milk or butterfat is less than such 2 percent it shall be assigned pro rata to the skim milk or butterfat contained in producer milk (except that diverted pursuant to § 1009.6) and other source milk, respectively.

§ 1009.42 *Responsibility of handlers.* All skim milk and butterfat to be classified pursuant to this order shall be classified Class I milk, unless the handler who first receives such skim milk and butterfat establishes to the satisfaction of the market administrator that it should be classified as Class II milk.

§ 1009.43 *Transfers.* (a) Skim milk and butterfat transferred to a pool plant of another handler (including that which the handler causes to be delivered from a producer's farm to the pool plant of the other handler, but not including transfers to a producer-handler) in the form of fluid milk products, shall, to the extent required, be classified so as to result in the maximum assignment of the producer milk of both handlers to Class I milk. Any additional amounts of skim milk and butterfat shall be classified Class I milk, unless the operators of both plants claim utilization thereof in Class II milk in their reports submitted pursuant to § 1009.30: *Provided,* That the skim milk or butterfat so assigned to Class II milk for any month shall be limited to the respective amounts thereof remaining in Class II milk for such month at the pool plant(s) of the receiving handler after the subtraction of other source milk pursuant to § 1009.45;

(b) Skim milk and butterfat transferred to the plant of a producer-handler in the form of fluid milk products, shall be classified Class I milk;

(c) Skim milk and butterfat transferred or diverted in bulk form as milk or skim milk to a nonpool milk plant shall be classified Class I milk unless, (1) the transferee-plant is located less than 250 miles from the Court House in Clarksburg, West Virginia, by the shortest hard surfaced highway distance, as determined by the market administrator, (2) the transferring or diverting handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 1009.30 for the month within which such transaction occurred, (3) the operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification, and (4) not less than an equivalent amount of skim milk and butterfat was actually utilized in the nonpool plant in the use indicated in such report: *Provided,* That if it is found that an equivalent amount of skim milk and butterfat was not actually used in such plant during the month in such indicated use, the pounds transferred in excess of such actual use shall be classified Class I milk; and

(d) Skim milk and butterfat transferred in bulk form as cream to a nonpool plant shall be classified Class I milk unless, (1) the transferring handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 1009.30, (2) the handler attaches tags or labels to each container of such cream bearing the words "for manufacturing uses only" and the shipment is so invoiced, (3) the handler gives the market administrator sufficient notice to allow him to verify such shipment, (4) the operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification, and (5) not less than an equivalent amount of skim milk and butterfat was actually utilized in the nonpool plant in the use indicated in such report: *Provided;* That if it is found that an equivalent amount of skim milk and butterfat was not actually used in such plant during the month in such indicated use, the pounds transferred in excess of such actual use shall be classified Class I milk.

§ 1009.44 *Computation of skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to § 1009.30 and compute the total pounds of skim milk and butterfat respectively, in Class I milk and Class II milk at all of the pool plants of such handler: *Provided,* That the skim milk contained in any product utilized,

produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 1009.45 *Allocation of skim milk and butterfat classified.* (a) The pounds of skim milk remaining in each class after making the following computations each month with respect to the pool plant(s) of each handler, shall be the pounds of skim milk in such class allocated to the producer milk of such handler for such month,

(1) Subtract from the total pounds of skim milk in Class II milk the shrinkage of skim milk in producer milk classified as Class II milk pursuant to § 1009.41 (b),

(2) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in other source milk except that to be subtracted pursuant to subparagraph (3) of this paragraph: *Provided,* That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk,

(3) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in fluid milk products received from plants regulated under another order(s) issued pursuant to the Act and classified as Class I pursuant to such other order(s): *Provided,* That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk.

(4) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month: *Provided,* That if the pounds of skim milk in such inventory exceed the remaining pounds of skim milk in Class II milk the balance shall be subtracted from the pounds of skim milk remaining in Class I milk,

(5) Subtract the pounds of skim milk in fluid milk products received from pool plants of other handlers from the pounds of skim milk remaining in the class to which assigned, pursuant to § 1009.43 (a),

(6) 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,

(7) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in milk received from producers, subtract such excess from the pounds of skim milk remaining in the various classes in series beginning with Class II milk;

(b) Determine the pounds of butterfat in each class to be allocated to producer milk in the manner prescribed in paragraph (a) of this section for determining the allocation of skim milk to producer milk; and

(c) Add the pounds of skim milk and the pounds of butterfat in each class calculated pursuant to paragraphs (a) and (b) of this section and determine the percentage of butterfat in the producer milk allocated to each class.

MINIMUM PRICES

§ 1009.50 *Basic formula price.* The higher of the prices computed pursuant to paragraph (a), (b) or (c) of this section, rounded to the nearest whole cent, shall be known as the basic formula price.

(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 market administrator or to the Department:

Present Operator and Location

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

(b) The price resulting from the following computation:

(1) Multiply by 6 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) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the month for which prices are being computed,

(2) Add an amount equal to 2.4 times the simple average as published by the Department of Agriculture of the prices determined per pound of "Cheddars" on the Wisconsin Cheese Exchange at Plymouth, Wisconsin, for the trading days that fall within the month, and

(3) Divide by 7 and to the resulting amount add 30 percent; and then multiply by 3.5;

(c) The price per hundredweight computed by adding together the plus values of 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, and

(2) From the simple average as computed by the market administrator of the weighted averages of the carlot prices per pound for nonfat dry milk solids, 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, deduct 5.5 cents and multiply by 8.2.

§ 1009.51 *Class prices.* Subject to the provisions of §§ 1009.52 and 1009.53, the minimum class prices per hundredweight of milk containing 3.5 percent butterfat to be paid by each handler for milk received at his pool plant from producers during the month shall be determined as follows:

(a) *Class I milk price.* The Class I milk price shall be the basic formula price (computed pursuant to § 1009.50) for the preceding month plus the following amount for the month indicated:

Month	*Amount*
February, March, April, May, June, and July	$1.75
All others	2.20

Provided, That this Class I price shall be increased or decreased by the amount of any "supply-demand adjustment" effective in the calculation of the Class I price for the preceding month under the terms of the order, as amended, regulating the handling of milk in the Cleveland, Ohio, marketing area (Order No. 75, Part 975 of this chapter); and

(b) *Class II milk price.* The Class II milk price shall be the basic formula price computed pursuant to § 1009.50.

§ 1009.52 *Butterfat differentials to handlers.* For milk containing more or less than 3.5 percent butterfat, the class prices calculated pursuant to § 1009.51 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 0.13; and

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

§ 1009.53 *Location differentials to handlers.* For milk disposed of from a pool plant located 60 miles or more from the City Hall of Clarksburg, West Virginia, by shortest hard-surfaced highway distance, as determined by the market administrator, as Class I milk pursuant to paragraphs (a) and (b) of this section, but not to exceed producer milk received and milk caused to be delivered pursuant to § 1009.63 at such plant, the price specified in § 1009.51 (a) shall be reduced at the rate set forth in the following schedule:

Distance from the City Hall of Clarksburg, W. Va., (miles):	*Rate per hundredweight (cents)*
60 but not more than 70	20
70 but not more than 80	22
80 but not more than 90	24
For each additional 10 miles or fraction thereof an additional	1

(a) In the case of fluid milk products which are moved from the pool plant to another pool plant, assign to Class I milk for the purposes of this section, that portion of the milk moved which remains after assigning such milk to Class II milk in the transferee plant as determined by the calculations prescribed in § 1009.45 (a) (1) through (4), and the comparable steps in § 1009.45 (b) for the transferee plant, such assignment to Class II milk in the case of transfers from several plants to be made in the sequence to the transferring plants according to the location differential applicable at each transferring plant, beginning with the plant having the largest differential; and

(b) Class I disposition from the plant other than disposition to other pool plants.

§ 1009.54 *Rate of compensatory payments.* The rate of compensatory payment per hundredweight shall be calculated as follows, except that the rate

shall be zero in any month in which total deliveries by producers are less than 110 percent of Class I utilization (excluding duplications) in plants qualified as pool plants pursuant to § 1009.10 (a) and (b):

(a) Subtract the Class II milk price, adjusted by the Class II butterfat differential, from the Class I milk price adjusted by the Class I butterfat differential and the location differential rates set forth in § 1009.53 for the location of the plant at which the milk was received from farmers. In any month in which total producer deliveries are less than 110 percent of all handlers' Class I uses the rate pursuant to this paragraph shall be zero.

§ 1009.55 *Use of equivalent prices.* If for any reason a price quotation required by this part 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

§ 1009.60 *Producer-handlers.* Sections 1009.40 through 1009.45, 1009.50 through 1009.53, 1009.61 through 1009.63, 1009.70 through 1009.75, and 1009.80 through 1009.87 shall not apply to a producer-handler.

§ 1009.61 *Plants subject to other Federal orders.* Upon determination by the Secretary, a plant specified in paragraph (a) or (b) of this section shall be treated as a nonpool plant, except that the operator of such plant shall, with respect to 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 and allow verification of such reports by the market administrator:

(a) Any plant qualified pursuant to § 1009.10 (a) or (c) which disposes of a lesser volume of Class I milk in the Clarksburg marketing area than in a marketing area where milk is regulated pursuant to another order issued pursuant to the act, and which is subject to the classification and pricing provisions of such other order if exempted pursuant to this paragraph from regulation as a pool plant under this part;

(b) Any plant qualified pursuant to § 1009.10 (b) for any portion of the period February through August, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of another order issued pursuant to the act and the Secretary determines that such plant should be exempted from this part.

§ 1009.62 *Handlers operating nonpool plants.* Each handler who is the operator of a nonpool plant which is not subject to the classification and pricing provisions of another order issued pursuant to the act, shall, on or before the 12th day after the end of each month, pay to the market administrator for deposit into the producer-settlement fund an amount calculated by multiplying the total hundredweight of butterfat and skim milk disposed of in the form of fluid milk products from such nonpool plant to retail or wholesale outlets (including deliveries by vendors and sales through plant stores) in the marketing area during the month, by the rate of compensatory payment calculated pursuant to § 1009.54: *Provided,* That such payments shall not apply to butterfat or skim milk in excess of butterfat or skim milk received by such nonpool plant from dairy farmers and in the form of fluid milk products from plants not fully regulated under any Federal order.

§ 1009.63 *Milk caused by a handler to be delivered to another handler's pool plant.* Milk caused by a handler, as the operator of a pool plant which is an approved plant pursuant to § 1009.7 (a), to be delivered for his account to another handler's pool plant similarly qualified pursuant to § 1009.7 (a), shall be considered, for purposes of reporting, classification, and payment, to be received by the handler who so caused the milk to be delivered, if both handlers report such milk as so caused to be delivered.

DETERMINATION OF PRICES TO PRODUCERS

§ 1009.70 *Computation of the obligation of each handler.* For each month the market administrator shall compute the obligation of each pool handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 1009.45 by the applicable class price, as adjusted by location differentials on the amount of milk to which location differential allowance applies pursuant to § 1009.53;

(b) Add an amount computed by multiplying the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1009.45 (a) (2) and (b) by the rate of compensatory payment as determined pursuant to § 1009.54 for the nearest plant(s) from which an equivalent amount of other source milk was received in the form of fluid milk products;

(c) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 1009.45 (a) (7) and (b) by the applicable class price; and

(d) Add the amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I milk price for the current month by the hundredweight of skim milk and butterfat remaining in Class II milk after the calculations pursuant to § 1009.45 (a) (5) and (b) for the preceding month or the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1009.45 (a) (4) and (b) for the current month, whichever is less, respectively.

§ 1009.71 *Computation of the uniform price.* For each of the months of August through February, the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content, f. o. b. market, as follows:

(a) Combine into one total the obligations computed pursuant to § 1009.70 for all pool plants which submit reports prescribed in § 1009.30 and who are not in default of payments pursuant to § 1009.80 or § 1009.82;

(b) Subtract, if the average butterfat content of the producer milk included under paragraph (a) of this section is greater than 3.5 percent, or add, if such average butterfat content is less than 3.5 percent, an amount computed as follows: Multiply the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed to § 1009.73, and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the sum of deductions to be made from producer payments for location differentials pursuant to § 1009.74;

(d) Add an amount equal to one-half of the unobligated balance on hand in the producer-settlement fund;

(e) Add the total amount of payment due pursuant to § 1009.62;

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

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

§ 1009.72 *Computation of uniform prices for base milk and excess milk.* For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, f. o. b. market, as follows:

(a) Compute the aggregate value of excess milk for all handlers who submit reports pursuant to § 1009.30, and who are not in default of payments pursuant to §§ 1009.80 or 1009.82 as follows: (1) Multiply the hundredweight of such milk not in excess of the total quantity of producer milk assigned to Class II milk in the pool plants of such handlers by the Class II milk price, (2) multiply the hundredweight of milk not included in subparagraph (1) of this paragraph by the Class I milk price, and (3) add together the resulting amounts;

(b) Divide the total value of excess milk obtained in paragraph (a) of this section by the total hundredweight of such milk, adjust to the nearest cent and subtract 4 cents. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(c) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b) of this section, plus 4 cents, times the hundredweight of excess milk from the total value of producer milk for the month as determined according to the calculations set forth in § 1009.71 (a) through (d) then add the total amount of payments due pursuant to § 1009.62;

(d) Divide the amount calculated pursuant to paragraph (c) of this section by the total hundredweight of base milk included in these computations; and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f. o. b. market.

§ 1009.73 *Butterfat differential to producers.* The applicable uniform prices to be paid each producer shall be increased or decreased for each one-tenth of one percent which the average butterfat content of his milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the pounds of butterfat in producer milk allocated to each class by the appropriate butterfat differential for such class as determined pursuant to § 1009.52, dividing by the total butterfat in producer milk and rounding to the nearest even tenth of a cent.

§ 1009.74 *Location differential to producers.* The applicable uniform prices to be paid for producer milk, as defined in § 1009.14 (a) and (b), received at a pool plant located 60 miles or more from the City Hall of Clarksburg, West Virginia, by the shortest hard-surfaced highway distance, as determined by the market administrator, or caused to be delivered pursuant to § 1009.63 to a pool plant so located shall be reduced at the rates set forth in § 1009.53 according to the location of such plant.

§ 1009.75 *Notification of handlers.* On or before the 11th day after the end of each month, the market administrator shall mail to each handler, who submitted the report(s) prescribed in § 1009.30 at his last known address, a statement showing:

(a) The amount and value of his producer milk in each class and the totals thereof;

(b) For the months of March through July the amounts and value of his base and excess milk respectively, and the totals thereof;

(c) The uniform price(s) computed pursuant to §§ 1009.71 and 1009.72 and the butterfat differential computed pursuant to § 1009.73; and

(d) The amounts to be paid by such handler pursuant to §§ 1009.82, 1009.85, and 1009.86, or 1009.62 and the amount due such handler pursuant to § 1009.83.

PAYMENTS

§ 1009.80 *Time and method of payment for producer milk.* (a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class II price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph,

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price(s) adjusted by the butterfat and location differentials to producers multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to subparagraph (1) of this paragraph, (ii) less marketing service deductions made pursuant to § 1009.85, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1009.83 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk, and which has so requested any handler in writing, such handler shall on or before the 2d day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from the producer members of such association as determined by the market administrator an amount equal to not less than the amount due such producer members as determined pursuant to paragraph (a) of this section; and

(c) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month, and

(2) On or before the 7th day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) for the months of March through July the total pounds of base milk received, (iii) the amount or rate and nature of any deductions to be made from payments, and (iv) the amount and nature of payments due pursuant to § 1009.84.

§ 1009.81 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1009.62, 1009.82 and 1009.84, and out of which he shall make all payments pursuant to §§ 1009.83 and 1009.84: *Provided,* That any payments due to any handler shall be offset by any payments due from such handler.

§ 1009.82 *Payments to the producer-settlement fund.* On or before the 12th day after the end of each month, each handler shall pay to the market administrator any amount by which his obligation as computed pursuant to § 1009.70 for such month, is greater than the amount owed by him for such milk at the appropriate uniform price(s) adjusted by the producer butterfat and location differentials.

§ 1009.83 *Payments out of the producer-settlement fund.* On or before the 13th day after the end of each month, the market administrator shall pay to each handler any amount by which his obligation computed pursuant to § 1009.70, for such month is less than the amount owed by him for such milk at the appropriate uniform price(s) adjusted by the producer butterfat and location differentials. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1009.84 *Adjustment of accounts.* Whenever audit by the market administrator of any reports, books, records or accounts or other verification discloses errors resulting in monies due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1009.85 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1009.80, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association;

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

§ 1009.86 *Expenses of administration.* On or before the 15th day after the end of each month, each handler shall pay to the market administrator, for each of his approved plants, 4 cents or such

lesser amount as the Secretary may prescribe, for each hundredweight of butterfat and skim milk contained in (a) producer milk, (b) other source milk allocated to Class I milk pursuant to § 1009.45 (a) (2) and (b), or (c) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant as determined pursuant to § 1009.62.

§ 1009.87 *Termination of obligations.* The provisions of this section shall apply to any obligations 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 2 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 2-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 2-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 2-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 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; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar 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 8c (15) (A) of the act, a petition claiming such money.

DETERMINATION OF BASE

§ 1009.90 *Computation of daily average base for each producer.* Subject to the rules set forth in § 1009.91, the daily average base for each producer shall be an amount calculated by dividing the total pounds of milk produced by and received from such producer at all pool plants during the months of September through December immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of December, inclusive, or by 90, whichever is more: *Provided,* That any producer who, during the preceding months of September through December, delivered his milk to a nonpool plant which became a pool plant after the beginning of such period shall be assigned a base, in the same manner as if he had been a producer during such period, calculated from his deliveries during such September–December period to such plant.

§ 1009.91 *Base rules.* The following rules shall apply in connection with the establishment and assignment of bases:

(a) Subject to the provisions of paragraph (b) of this section, the market administrator shall assign a base as calculated pursuant to § 1009.90 to each person for whose account producer milk was delivered to pool plants during the months of September through December; and

(b) A base which is assigned pursuant to the proviso of § 1009.90 shall be nontransferable. An entire base which is otherwise assigned shall be transferred from a person holding such base to any other person, effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred: *Provided,* That if a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred.

§ 1009.92 *Announcement of established bases.* On or before February 15, of each year, the market administrator shall notify each producer, and the handler receiving milk from such producer, of the daily average base established by such producer.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 1009.100 *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.

§ 1009.101 *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.

§ 1009.102 *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.

§ 1009.103 *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 and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1009.110 *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.

§ 1009.111 *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. 57–9483; Filed, Nov. 15, 1957; 8:49 a. m.]

[7 CFR Part 1015]

CUCUMBERS GROWN IN FLORIDA

SAFEGUARDS AND EXEMPTION PROCEDURES

Notice is hereby given that the Secretary of Agriculture has under consideration the approval of the rules and regulations, hereinafter set forth, which were recommended by the Florida Cucumber Committee, established pursuant to Marketing Agreement No. 118 and Order No. 115 (7 CFR Part 1015; 22 F. R. 6083) regulating the handling of cucumbers grown in Florida, issued under 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).

Consideration will be given to any data, views, or arguments pertaining thereto, which are filed with the Director,

Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D. C., not later than 15 days following publication of this notice in the FEDERAL REGISTER.

The proposals are as follows:

GENERAL

Sec.
1015.110 Communications.

DEFINITIONS

1015.120 Order.
1015.121 Marketing agreement.
1015.122 Terms.

SAFEGUARDS

1015.130 Application for Certificate of Privilege.
1015.131 Issuance.
1015.132 Reports.
1015.133 Denial and appeal.

EXEMPTION PROCEDURES

1015.140 Application.
1015.141 Investigations.
1015.142 Issuance.
1015.143 Disposition of certificates.
1015.144 Reports.
1015.145 Appeals.

AUTHORITY: §§ 1015.110 to 1015.145 issued under Sec. 5, 49 Stat. 753, as amended; 7 U. S. S. and Sup. 608c.

GENERAL

§ 1015.110 *Communications.* Unless otherwise provided in the marketing agreement and order, or by specific direction of the committee, all reports, applications, submittals, requests, and communications in connection with the marketing agreement and order shall be addressed to the Florida Cucumber Committee at its principal office.

DEFINITIONS

§ 1015.120 *Order.* "Order" means Order No. 115 (§§ 1015.1 to 1015.88; 22 F. R. 6083) regulating the handling of cucumbers grown in Florida.

§ 1015.121 *Marketing agreement.* "Marketing agreement" means Marketing Agreement No. 118.

§ 1015.122 *Terms.* Terms used in this subpart shall have the same meaning as when used in the marketing agreement and order.

SAFEGUARDS

§ 1015.130 *Application for Certificate of Privilege.* (a) Whenever handling is regulated pursuant to § 1015.52, each handler desiring to make shipments of cucumbers for any of the following purposes shall, prior thereto, apply to the committee for and obtain a Certificate of Privilege permitting such shipment:

(1) For relief or charity; or

(2) For conversion into pickles or relishes.

(b) Applications for Certificates of Privilege shall be made on forms furnished by the committee. Each application shall contain the name and address of the handler, and such other information as the committee may require, such as, but not limited to, the quantity (by grade, size and quality) of cucumbers to be shipped, the mode of transportation, consignee, destination, and other appropriate information or documents necessary to safeguard against the entry of such cucumbers into trade channels other than those for which the Certificate of Privilege is granted.

§ 1015.131 *Issuance.* The committee, or its duly authorized agents, shall give prompt consideration to each application for a Certificate of Privilege and shall determine whether the application is approved. Approval of an application shall be evidenced by the issuance of a Certificate of Privilege authorizing the applicant named therein to ship cucumbers for a specified purpose for a specified period of time.

§ 1015.132 *Reports.* Each handler handling cucumbers under and pursuant to a Certificate of Privilege shall supply the committee with a report thereon within the time specified on the application for such certificate showing the name and address of the shipper, car or truck identification, loading point, destination, consignee, and, when inspection is required, the Federal-State Inspection Certificate number.

§ 1015.133 *Denial and appeal.* The committee may rescind a Certificate of Privilege issued to a handler, or deny a Certificate of Privilege to a handler, upon proof satisfactory to the committee, that such handler has shipped cucumbers contrary to the provisions of this part. A Certificate of Privilege shall be rescinded or denied for a specified period of time as determined by the committee. Any handler who has been denied a Certificate of Privilege, or who has had a Certificate of Privilege rescinded, may appeal to the committee for reconsideration. Such appeal shall be in writing.

EXEMPTION PROCEDURES

§ 1015.140 *Application.* Any person applying for exemption from regulations issued pursuant to § 1015.52 shall file such application with the committee, or its duly authorized agent for such purpose, on forms to be furnished by such committee. Each application shall state the name and address of the applicant, the grade, size, and quality regulations from which exemption is requested; and facts demonstrating that the cucumbers, for which exemption is requested, were adversely affected by acts beyond his control or by acts beyond the applicant's reasonable expectation. Applications shall set forth such additional information as the committee may find necessary in making determinations with respect thereto, including, without limitation thereto, the information required on producers' applications by paragraphs (a) and (b) of this section.

(a) The location and acreage of the farm on which cucumbers for which exemption is requested, the location where such cucumbers are to be prepared for market, and the loading point from which such cucumbers are to be shipped if exemption is granted;

(b) Quantity (by grade, size and quality) of cucumbers harvested from such acreage prior to the date of application, and to be harvested subsequent to such date, during the remainder of the season or specific portion thereof (as may be determined pursuant to this part); an estimate of the portion of such cucumbers which can be handled under regulation issued pursuant to § 1015.52, during the remainder of the season; and the reasons why all of such cucumbers cannot be handled under such regulations.

§ 1015.141 *Investigations.* The committee may authorize investigations of applications by its employees, and such other persons as may be necessary to procure adequate information to pass upon the merits of such applications.

§ 1015.142 *Issuance.* (a) The committee, or its duly authorized agents, shall give prompt consideration to all statements and facts relating to each application for exemption, and, pursuant to applicable provisions of this part, a determination shall be made as to whether or not the application is approved. The determination, if approving the application, shall be evidenced by the issuance of a certificate of exemption pursuant to § 1015.66: *Provided*, That, a separate certificate may be issued, at the request of an applicant, for each affected field.

(b) The applicant shall be notified in writing if his request for exemption is denied.

(c) Each exemption certificate issued pursuant to this subpart shall be on a form duly approved by the committee and signed by an authorized representative of such committee. At least one copy of each exemption certificate issued shall be retained in the committee records. Each such certificate shall contain the name and address of the recipient, the location of all cucumbers authorized to be shipped thereunder, the quantity (by grade, size and quality) of cucumbers which will be permitted in the exempted shipments and such other information as may be deemed necessary by the committee to provide such committee, the recipient, or both, with adequate and specific information regarding such exempted cucumbers.

§ 1015.143 *Disposition of certificates.* Each lot of cucumbers handled under an exemption certificate shall be accompanied by such certificate, or such appropriate identifying information with respect to such certificate, as the committee may require, to facilitate the administration of regulatory provisions applicable thereto.

Each shipment of a lot, or portion thereof, of cucumbers covered by an exemption certificate shall be accompanied by a Federal-State Inspection Certificate which shall show the exemption certificate number covering the lot.

§ 1015.144 *Reports.* Persons handling cucumbers under exemption certificates shall at such time as may be specified in such certificates, report thereon to the committee the quantity shipped (by grade, size and quality), the inspection certificates issued with respect thereto, the dates of such shipments, and such other information as may be requested by such committee in order to administer the regulatory provisions applicable thereto.

§ 1015.145 *Appeals.* If any applicant is dissatisfied with the determination of

the committee regarding an application for an exemption certificate, or any duly issued exemption certificate an appeal by such applicant may be taken to such committee in accordance with § 1015.68.

Dated: November 12, 1957.

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

[F. R. Doc. 57-9485; Filed, Nov. 15, 1957; 8:50 a. m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 130]

DRUGS EXEMPTED FROM PRESCRIPTION-DISPENSING REQUIREMENTS OF SECTION 503 (b) (1) (C) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

NOTICE OF PROPOSAL TO EXEMPT DIPHEMANIL METHYL SULFATE PREPARATIONS FROM PRESCRIPTION-DISPENSING REQUIREMENTS

Notice is given that the Commissioner of Food and Drugs, in accordance with the Federal Food, Drug, and Cosmetic Act (secs. 503 (b) (3), 505 (c), 701 (a); 65 Stat. 649, 52 Stat. 1052, 1055; 21 U. S. C. 353 (b) (3), 355 (c), 371 (a)) and the authority delegated to him by the Secretary of Health, Education, and Welfare (21 CFR, 1956 Supp., 130.101 (b)) hereby offers an opportunity to all interested persons to submit their views in writing to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D. C., within 30 days from the date of publication of this notice in the FEDERAL REGISTER on the proposed amendment set forth below:

It is proposed to amend paragraph (a) of § 130.102 *Exemption for certain drugs limited by new-drug applications to prescription sale* by adding the following new subparagraph:

(__) Diphemanil methylsulfate (4-diphenylmethylene - 1,1-dimethylpiperidinium methyl sulfate) preparations meeting all the following conditions:

(i) The diphemanil methylsulfate is prepared, with or without other drugs, in a dosage form suitable for use in self medication by external application to the skin, and containing no drug limited to prescription sale under the provisions of section 503 (b) (1) of the act.

(ii) The diphemanil methylsulfate and all other components of the preparation meet their professed standards of identity, strength, quality, and purity.

(iii) If the preparation is a new drug, an application pursuant to section 505 (b) of the act is effective for it.

(iv) The preparation contains not more than 2.0 percent of diphemanil methylsulfate.

(v) The preparation is labeled with adequate directions for use by external application to the skin for the relief of symptoms of mild poison ivy, oak, and sumac and other minor irritations and itching of the skin.

(vi) The directions for use recommend or suggest not more than four applications of the preparation per day, unless directed by a physician.

(vii) The labeling bears, in juxtaposition with the directions for use, a clear warning statement, such as: "Caution: If redness, irritation, swelling, or pain persists or increases, discontinue use and consult physician."

The proposed amendment will remove the drugs mentioned therein from the prescription-dispensing requirements of the Federal Food, Drug, and Cosmetic Act. (sec. 503 (b) (1) (C), 52 Stat. 1052, 65 Stat. 649; 21 U. S. C. 353 (b) (1) (C)). These drugs were previously limited by their new-drug applications to use under professional supervision because the scientific data establishing the toxic potential of the drugs and their intended use showed only that they were safe if used under professional supervision.

Pursuant to the regulations in § 130.101 (b) (21 CFR, 1956 Supp.), petitions have been submitted to remove the prescription restrictions from these drugs. Evidence now available through investigation and marketing experience shows that the drugs can be safely used by the laity in self-medication if they are used in accordance with the proposed labeling. The restriction to prescription sale is no longer necessary for the protection of the public health.

This action in removing the prior restriction limiting these drugs to prescription sale is taken under the authority of the Federal Food, Drug, and Cosmetic Act (secs. 503 (b) (3), 505 (c), 52 Stat. 1052, 65 Stat. 649; 21 U. S. C. 353 (b) (3), 355 (c)), which provides for and requires the removal of such restrictions if they are not necessary for the protection of the public health.

(Sec. 701, 52 Stat. 1055; 21 U. S. C. 371. Interprets or applies secs. 503 (b) (3), 505 (c), 52 Stat. 1052, 65 Stat. 649; 21 U. S. C. 353 (b) (3), 355 (c))

Dated: November 8, 1957.

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

[F. R. Doc. 57-9472; Filed, Nov. 15, 1957; 8:46 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Order 2753, Amdt. 3]

BONNEVILLE POWER ADMINISTRATION

MARKETING OF ELECTRIC POWER AND ENERGY

NOVEMBER 12, 1957.

This amendment supersedes Amendment No. 2 of Order No. 2753 (22 F. R. 4169) and is issued for the purpose of including in the list appearing in section 1 an additional source of electric power and energy—John Day Dam. The order as amended reads as follows:

SECTION 1. *Designation as marketing agency.* The Bonneville Power Administration is designated as the agency to market available surplus electric power and energy generated at the sources specified in this section pursuant to the specific statutory authority as to each project.

(a) Bonneville Project, pursuant to the Act of August 20, 1937 (50 Stat. 731), as amended;

(b) McNary Dam and Ice Harbor Dam, pursuant to the Act of March 2, 1945 (59 Stat. 10);

(c) Hungry Horse Dam, pursuant to the Act of June 5, 1944 (58 Stat. 270);

(d) The following sources, pursuant to the Act of December 22, 1944 (58 Stat. 887):

Albeni Falls Dam.
Big Cliff Dam.
Chief Joseph Dam.
Detroit Dam.
Dexter Dam.
Lookout Point Dam.
The Dalles Dam.
Hills Creek Dam.
Cougar Dam.
John Day Dam.

(e) The following sources, pursuant to the Federal Reclamation laws (Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof or supplementary thereto):

Grand Coulee Dam.
Chandler Power Plant, Kennewick Division, Yakima Project.
Roza Power Plant, Roza Division, Yakima Project.

SEC. 2. *Contracts.* The Bonneville Power Administrator may, subject to the applicable statutes, enter into contracts for the sale or interchange of electric power and energy in the performance of the functions assigned by section 1 of this order. The Bonneville Power Administrator may, in writing, redelegate to officers and employees of the Administration the authority granted in this section, and he may authorize written redelegations of such authority.

SEC. 3. *Revocation.* Orders Nos. 1994 (9 F. R. 11966) and 2115 as amended (10 F. R. 14211; 11 F. R. 8830; 17 F. R. 5197; 18 F. R. 2831) are revoked.

(Sec. 2, Reorg. Plan No. 3 of 1950; 5 U. S. C., 1952 ed., sec. 133z-15, note)

FRED A. SEATON,
Secretary of the Interior.

[F. R. Doc. 57-9474; Filed, Nov. 15, 1957; 8:47 a. m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

ALABAMA

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 Alabama a production disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

ALABAMA

Autauga.	Jackson.
Baldwin.	Jefferson.
Barbour.	Lauderdale.
Blount.	Lawrence.
Bullock.	Lee.
Butler.	Limestone.
Chambers.	Macon.
Chilton.	Madison.
Clay.	Marion.
Cleburne.	Marshall.
Coffee.	Mobile.
Conecuh.	Morgan.
Coosa.	Perry.
Crenshaw.	Pickens.
Cullman.	Pike.
Dale.	Randolph.
Dallas.	Russell.
Elmore.	Shelby.
Escambia.	Talladega.
Etowah.	Tallapoosa.
Franklin.	Tuscaloosa.
Geneva.	Walker.
Henry.	Winston.

Pursuant to the authority set forth above, production emergency loans 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 13th day of November 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 57–9512; Filed, Nov. 15, 1957; 8:53 a. m.]

GEORGIA

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 Georgia a production disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

GEORGIA

Baker.	Mitchell.
Calhoun.	Quitman.
Clay.	Randolph.
Decatur.	Seminole.
Dougherty.	Stewart.
Early.	Sumter.
Lee.	Terrell.
Miller.	Webster.

Pursuant to the authority set forth above, production emergency loans 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 13th day of November 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 57–9513; Filed, Nov. 15, 1957; 8:53 a. m.]

VIRGINIA

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 Virginia a production disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

VIRGINIA

Albemarle.	King and Queen.
Amelia.	King William.
Appomattox.	Louisa.
Bedford.	Lunenburg.
Botetourt.	Madison.
Buckingham.	Mecklenburg.
Burnswick.	New Kent.
Caroline.	Norfolk.
Charlotte.	Nottoway.
Chesterfield.	Orange.
Culpeper.	Page.
Cumberland.	Powhatan.
Dinwiddie.	Prince George.
Goochland.	Rockingham.
Greensville.	Southampton.
Halifax.	Spotsylvania.
Hanover.	Surry.
Henrico.	

Pursuant to the authority set forth above, production emergency loans 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 13th day of November 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 57–9514; Filed, Nov. 15, 1957; 8:54 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 9054]

SABENA FOREIGN PERMIT

NOTICE OF HEARING ON AMENDMENT

In the matter of the application by Sabena for amendment of its foreign air carrier permit to delete the intermediate point Gander and substitute in its place the intermediate point Montreal.

Notice is hereby given pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, that a hearing in the above-entitled proceeding is assigned to be held on November 19, 1957, at 10 a. m., e. s. t., in Room 1510, Temporary Building No. 4, 17th Street and Constitution Avenue NW., Washington, D. C., before Examiner Ferdinand D. Moran.

Dated at Washington, D. C., November 12, 1957.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 57–9510; Filed, Nov. 15, 1957; 8:53 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 10968 etc.; FCC 57M–1103]

GREAT LAKES TELEVISION, INC., ET AL.

NOTICE OF HEARING CONFERENCE

In re application of Great Lakes Television, Inc., Buffalo, New York, Docket No. 10968, File No. BPCT–1812; Leon Wyszatycki, d/b as Greater Erie Broadcasting Company, Buffalo, New York, Docket No. 10969, File No. BPCT–1827; WKBW–TV, Inc., Buffalo, New York, Docket No. 10970, File No. BPCT–1841; for construction permits for new television stations (Channel 7).

Notice is hereby given that a hearing conference will be held in the above-entitled proceeding at 10:00 a. m. on Monday, November 18, 1957, in Washington, D. C.

Dated: November 8, 1957.

Released: November 12, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57–9493; Filed, Nov. 15, 1957; 8:51 a. m.]

[Docket No. 11735; FCC 57M–1106]

NEVADA TELECASTING CORP. (KAKJ)

ORDER SCHEDULING HEARING

In the matter of revocation of television construction permit of Nevada Telecasting Corporation (KAKJ), Reno, Nevada; Docket No. 11735.

In confirmation of the Notice of Place of Hearing, dated November 7, 1957: *It is ordered*, This 12th day of November 1957, that further hearing will be held November 19, 1957, at 10:00 a. m., in Room 229, U. S. Post Office and Court House, Temple and Spring Streets, Los Angeles, California.

Released: November 13, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57–9494; Filed, Nov. 15, 1957; 8:51 a. m.]

[Docket No. 12080; FCC 57M–1105]

UNITED TELECASTING AND RADIO CO.

ORDER CONTINUING HEARING

In re application of United Telecasting and Radio Company, Ogden, Utah,

Docket No. 12080, File No. BPCT-2270; for construction permit for new television broadcast station (Channel 9).

At the oral request of counsel for the applicant and with the concurrence of counsel for the Broadcast Bureau, the hearing now scheduled in the above-entitled proceedings for November 13, 1957, is continued to November 27, 1957, at 10:00 a. m.

Dated: November 12, 1957.

Released: November 12, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-9495; Filed, Nov. 15, 1957; 8:51 a. m.]

[Docket Nos. 12199, 12200; FCC 57M-1104]

KOOS, INC., AND PACIFIC TELEVISION, INC.

ORDER SCHEDULING PREHEARING CONFERENCE

In re applications of KOOS, Inc. (KOOS-TV), Coos Bay, Oregon; Docket No. 12199, File No. BMPCT-4680; for modification of construction permit (from Channel 16 to Channel 11). Pacific Television, Inc., Coos Bay, Oregon; Docket No. 12200, File No. BPCT-2309; for construction permit for a new television broadcast station (Channel 11).

The Hearing Examiner having under consideration the procedure required to be followed in the above-entitled matter which is scheduled for hearing on December 19, 1957;

Now therefore, it is ordered, This 12th day of November 1957, pursuant to §§ 1.813 and 1.841 of the Commission's rules, that the parties or their attorneys shall appear at the offices of the Commission in Washington, D. C. at 10 a. m. on Thursday, December 5, 1957, for a prehearing conference to consider:

1. The necessity or desirability of simplification, clarification, amplification, or limitation of the issues;

2. The possibility of stipulation with respect to facts;

3. The procedures to be followed prior to and at the hearing;

4. The limitation of the number of witnesses;

5. The procedures and schedules for the prior mutual exchange between the parties of prepared testimony and exhibits; and

6. Such other matters as may aid in the disposition of this proceeding.

Released: November 12, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-9496; Filed, Nov. 15, 1957; 8:51 a. m.]

[Docket No. 12217; FCC 57M-1102]

OREGON RADIO, INC.

ORDER CONTINUING HEARING

In re application of Oregon Radio, Inc., Salem, Oregon, Docket No. 12217, file No. BMPCT-4564; for extension of time to complete construction of Television Station KSLM-TV.

It is ordered, This 12th day of November 1957, that the hearing in the above-entitled matter, heretofore scheduled to commence on November 19, 1957, is hereby rescheduled to commence at 10:00 a. m., November 25, 1957, in the Commission's offices at Washington, D. C.

Released: November 12, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-9497; Filed, Nov. 15, 1957; 8:51 a. m.]

[Docket Nos. 12235, 12236; FCC 57M-1109]

LOUISIANA PURCHASE CO. AND SIGNAL HILL TELECASTING CORP.

ORDER SCHEDULING HEARING

In re applications of Louisiana Purchase Company, St. Louis, Missouri, Docket No. 12235, File No. BPCT-2295; for construction permit for a new television broadcast station. Signal Hill Telecasting Corporation, St. Louis, Missouri, Docket No. 12236, File No. BMPCT-4615; for modification of construction permit.

It is ordered, This 8th day of November 1957, that Herbert Sharfman will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on January 6, 1958, in Washington, D. C.

Released: November 13, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-9498; Filed, Nov. 15, 1957; 8:51 a. m.]

[Docket Nos. 12237, 12238; FCC 57M-1108]

OKLAHOMA TELEVISION CORP. AND SUPREME BROADCASTING CO., INC.

ORDER SCHEDULING HEARING

In re applications of Oklahoma Television Corporation, New Orleans, Louisiana, Docket No. 12237, File No. BPCT-2330; for construction permit for a new Television Broadcast Station (Channel 12). Supreme Broadcasting Company, Inc., New Orleans, Louisiana, Docket No. 12238, File No. BMPCT-4679; for modification of construction permit.

It is ordered, This 8th day of November 1957, that J. D. Bond will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on January 6, 1958, in Washington, D. C.

Released: November 13, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-9499; Filed, Nov. 15, 1957; 8:51 a. m.]

[Docket Nos. 12239, 12240; FCC 57M-1110]

FARGO TELECASTING CO. AND NORTH DAKOTA BROADCASTING CO., INC.

ORDER SCHEDULING HEARING

In re applications of Marvin Kratter d/b as Fargo Telecasting Company, Fargo, North Dakota, Docket No. 12239, File No. BPCT-2261; North Dakota Broadcasting Company, Inc., Fargo, North Dakota, Docket No. 12240, File No. BPCT-2357; for construction permits for new Television Broadcast Stations (Channel 11).

It is ordered, This 8th day of November 1957, that Elizabeth C. Smith will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on January 6, 1958, in Washington, D. C.

Released: November 13, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-9500; Filed, Nov. 15, 1957; 8:52 a. m.]

[Docket Nos. 12241, 12242; FCC 57M-1112]

RADIO FRANKLIN, INC., AND S. L. GOODMAN

ORDER SCHEDULING HEARING

In re application of Radio Franklin, Incorporated, Rocky Mount, Virginia, Docket No. 12241, File No. BP-10915; S. L. Goodman, Bassett, Virginia, Docket No. 12242, File No. BP-11249; for construction permit.

It is ordered, This 8th day of November 1957, that H. Gifford Irion will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on January 9, 1958, in Washington, D. C.

Released: November 13, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-9501; Filed, Nov. 15, 1957; 8:52 a. m.]

[Docket No. 12243; FCC 57M-1111]

PIERCE BROOKS BROADCASTING CORP. (KGIL)

ORDER SCHEDULING HEARING

In re application of Pierce Brooks Broadcasting Corp. (KGIL), San Fernando, California, Docket No. 12243, File No. BP-10512; for construction permit.

It is ordered, This 8th day of November 1957, that Annie Neal Huntting will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on January 9, 1958, in Washington, D. C.

Released: November 13, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-9502; Filed, Nov. 15, 1957; 8:52 a. m.]

[Docket No. 12244 etc.; FCC 57M-1107]

SANTA ROSA BROADCASTING CO. ET AL.

ORDER SCHEDULING HEARING

In re applications of B. Floyd Farr, George Snell, Edward W. McCleery, Robert Blum, d/b as Santa Rosa Broadcasting Company, Santa Rosa, California, Docket No. 12244, File No. BP-10626; Golden Valley Broadcasting Company (KRAK), Stockton, California, Docket No. 12245, File No. BP-10676; Joseph E. Gamble and Lew L. Gamble, d/b as Radio Santa Rosa, Santa Rosa, California, Docket No. 12246, File No. BP-11084; for construction permits.

It is ordered, This 8th day of November 1957, that Charles J. Frederick will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on January 9, 1958, in Washington, D. C.

Released: November 13, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-9503; Filed, Nov. 15, 1957; 8:52 a. m.]

FEDERAL POWER COMMISSION

[Docket Nos. G-9866, 9935]

GAS TRANSPORT, INC. AND B. H. PUTNAM

NOTICE OF APPLICATIONS AND DATE OF HEARING

NOVEMBER 12, 1957.

Take notice that Gas Transport, Inc. and B. H. Putnam, Operator, independent producers, filed separate applications, for certificates of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of natural gas facilities and for the sale of natural gas, as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the respective applications which are on file with the Commission and open to public inspection.

Gas Transport, Inc., filed its application, on January 13, 1956, for authority to construct and operate: Approximately 8 miles of 6-inch gas line from a connection with an existing 6-inch gathering line in the Ravenswood area of the Putnam gas field in Jackson County, West Virginia, to a terminus with Gas Transport, Inc. existing 14-inch transmission line at a point in Wirt County, West Virginia.

The estimated cost of the proposed facilities is $92,607 which is to be financed from cash on hand.

On January 27, 1956, B. H. Putnam, operator, filed an application for authority to sell natural gas to Gas Transport, Inc. for transportation in interstate commerce for resale from production in the Putnam Gas Field, Wood and Johnson Counties, West Virginia.

Gas Transport, Inc., a wholly owned subsidiary of Anchor Hocking Glass Corporation (Anchor) gathers natural gas from various sources in West Virginia and transports such gas to a point called Gravel Bank, Ohio. At Gravel Bank, the gas is delivered to Ohio Fuel Gas Company (Ohio Fuel) for the account of Anchor. Ohio Fuel, in turn, delivers equivalent volumes of gas to Anchor at Lancaster, Ohio, in exchange for the gas received at Gravel Bank. Should Gas Transport, Inc. have volumes of gas available in excess of Anchor's requirements, such gas is sold to Ohio Fuel. Any deficiency in Anchor's supply is sold to it by Ohio Fuel.

The application states that the volumes available for sale to Anchor have been considerably less than Anchor's requirements. The proposed facilities are for the purpose of alleviating this deficiency.

These related matters should be heard on a consolidated record and 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 hearing will be held on December 17, 1957, at 9:30 a. m., e. 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: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

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 December 1, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 57-9504; Filed, Nov. 15, 1957; 8:52 a. m.]

[Docket Nos. G-9587, 9591]

TRANSCONTINENTAL GAS PIPE LINE CORP. ET AL.

NOTICE OF APPLICATIONS AND DATE OF HEARING

NOVEMBER 12, 1957.

In the matters of Transcontinental Gas Pipe Line Corporation, Docket No. G-9587; K. D. Owen, Operator, et al., Docket No. G-9591.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco), a Delaware corporation with its principal place of business in Houston, Texas, and K. D. Owen, Operator, et al. (Owen, et al.), independent producers, filed applications on November 1, 1955, pursuant to section 7 of the Natural Gas Act, for certificates of public convenience and necessity authorizing the construction and operation of certain natural gas facilities necessary for receiving and transporting natural gas and for the sale of natural gas in interstate commerce for resale, as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the respective applications, which are on file with the Commission and open to public inspection.

Transco filed an application in Docket No. G-9587 for authority to construct and operate approximately 5,500 feet of 4-inch pipeline and appurtenant facilities. The proposed facilities will extend from a point in the Sour Lake Field, Hardin County, Texas, northerly to a point on Transco's main 30-inch pipeline. Such facilities will be used to receive and transport natural gas purchased from Owen, et al., as hereinafter set forth.

Owen, et al. filed an application in Docket No. G-9591, for authority to sell natural gas in interstate commerce to Transco for resale from production in the Sour Lake Field, Hardin County, Texas, under a contract dated June 7, 1955.

These related matters should be heard on a consolidated record and 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 hearing will be held on December 17, 1957, at 9:30 a. m., e. 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: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

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 December 1, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 57-9505; Filed, Nov. 15, 1957; 8:52 a. m.]

[Docket No. G–10781]

UNITED FUEL GAS CO.

NOTICE OF APPLICATION AND DATE OF HEARING

NOVEMBER 12, 1957.

Take notice that United Fuel Gas Company (Applicant), a West Virginia corporation with its principal place of business in Charleston, West Virginia, filed an application on July 20, 1956, pursuant to section 7 of the Natural Gas Act, for permission to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain other facilities, as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open to public inspection.

In the application herein, Applicant seeks:

(1) Permission and approval to abandon two small compressor stations, Simmons and Wallback, and one compressor unit at the Lewis Compressor Station, all in Roane County, West Virginia. It is proposed to abandon entirely the 170 hp. Simmons Station and the 340 hp. now in the Lewis Station.

(2) A certificate of public convenience and necessity authorizing construction and operation of: An additional 2,000 horsepower compression unit at the existing Ceredo Compressor Station, Wayne County, West Virginia; 13 miles of 10¾-inch loop line extending north from the existing Hunt Compressor Station, Kanawha County, West Virginia, to Applicant's main 20-inch Line SM–80; and, finally, supercharging from 880 hp. to 1,100 hp. the existing gas engine driven compressor unit at Hunt Compressor Station.

Applicant states that it has been producing and purchasing local gas from the Clendenin area in West Virginia where the Simmons, Wallback and Lewis Stations are located. Because of declining production in these areas, Applicant has not been using the compressors proposed to be abandoned, but has been using, instead, other existing facilities to recover the remaining reserves in the area. The compressors are not now in use and Applicant does not anticipate needing them in the future. Therefore, it proposes to abandon them.

The Lewis Station is one of Applicant's main line stations pumping gas received from Tennessee Gas Transmission Company and local gas toward Pennsylvania. The application states that Applicant does not use all the 8,000 installed compressor horsepower at Lewis Station. Even on peak days and in summer periods, when the station will pump gas into storage pools X–17 and X–18, it needs no more than 7,000 hp. Applicant does not foresee any need for the eighth 1,000 horsepower unit and wishes to retire it.

There will be no curtailment of service by reason of the proposed abandonments.

Applicant states that it wishes to increase in Wayne County, West Virginia the compressor capacity of its Ceredo Compressor Station, by installing 2,000 horsepower increasing the rating from 6,000 to 8,000 hp. The purpose of this increase is to augment the summer flow of gas into storage pool X–52, while maintaining service to the markets dependent on Ceredo Station.

In Kanawha County, Applicant proposes to augment the winter peak day capacity of certain of its facilities by constructing and operating 1.3 miles of 10¾-inch pipe line looping an existing line north from Applicant's Hunt Compressor Station to Applicant's 20-inch line SM–80 and superchanging the compressor there from 880 horsepower to 1,100. This is required to increase the winter deliverability from storage pool X–54 in order to meet anticipated peak day demands in the 1956–57 winter.

The estimated cost of removal of facilities and construction of new facilities is $659,100 less $23,000 for salvage or a net of $635,800 which will come out of Applicant's current financing program. This is accomplished by sale of securities to Applicant's parent, the Columbia Gas System, Incorporated.

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 juridiction 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 hearing will be held on December 10, 1957 at 9:30 a. m., e. 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 application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

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 December 2, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 57–9506; Filed, Nov. 15, 1957; 8:52 a. m.]

[Docket No. G–13002]

UNITED GAS PIPE LINE CO.

NOTICE OF APPLICATION AND DATE OF HEARING

NOVEMBER 12, 1957.

Take notice that United Gas Pipe Line Company (Applicant), a Delaware corporation, with its principal place of business in Shreveport, Louisiana, filed an application on August 1, 1957, for a certificate of public convenience and necessity, authorizing the construction and operation of certain additional pipeline and appurtenant facilities in order to sell additional quantities of natural gas to the Sterlington Steam Electric Generating Station[1] (Sterlington Station), of Louisiana Power & Light Company (Louisiana Power), all as more fully represented in the application which is on file with the Commission and open to public inspection.

Applicant is supplying boiler fuel for the presently operating electric generating units at the Sterlington Station. To meet the expanding market for electric power, Louisiana Power & Light is building a new unit, Number Six, which, because of its relatively large size, will practically double the firm annual gas requirement of the power plant.

Applicant proposes to construct and operate in order to render the additional service: 0.82 of a mile of 16-inch and 1.99 miles of 20-inch pipeline, with appurtenances, extending northward from its existing Sterlington Compressor Station, to the existing meter station serving the Sterlington Generating Station.

Applicant estimates that the firm contract increase to Louisiana Power will be from the present 18,580 Mcf per day to 50,000 Mcf per day. Applicant gives the following actual and estimated annual requirements of the power plant:

	Mcf at 14.73#
1955 actual	8,162,866
1956 actual	8,196,106
1957 actual and estimated	7,444,755
1958 estimated	13,655,790
1959 estimated	17,724,204
1960 estimated	17,724,204

In addition to the 50,000 Mcf of firm peak-day gas, Applicant seeks authority to sell such volumes of excess gas as the Sterlington plant needs from day to day and Applicant has available. No indication of the magnitude of such excess volumes is given.

Applicant will finance the estimated cost of the proposed facilities, $203,949, from current working funds.

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 hearing will be held on December 11, 1957, at 9:30 a. m., e. 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 application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnec-

[1] Located in Ouachita Parish, Louisiana.

essary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 2, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-9507; Filed, Nov. 15, 1957; 8:53 a. m.]

[Docket No. E-6785]

GULF STATES UTILITIES CO.

NOTICE OF APPLICATION

NOVEMBER 12, 1957.

Take notice that on November 6, 1957, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Gulf States Utilities Company ("Applicant"), a corporation organized under the laws of the State of Texas and doing business in the States of Texas and Louisiana, with its principal business office at Beaumont, Texas, seeking an order authorizing the issuance of $18,000,000 unsecured Promissory Notes. Applicant has entered into Agreements, both dated November 4, 1957, with Irving Trust Company, New York, New York and the The Chase Manhattan Bank, New York, New York under which Applicant may borrow or reborrow at any time and from time to time from December 1, 1957, to and including November 30, 1958, up to an aggregate principal amount of $18,000,000 on Notes which mature not later than nine months from the date of each borrowing and in no event later than December 1, 1958, with the right, from time to time to renew all or any part of Notes maturing prior to December 1, 1958, as they mature for various periods with maturities up to and including December 1, 1958. The interest rate on all borrowings will be the prime rate of the lender in effect at the time of each borrowing and interest will be payable on the first day of March, June, September and December, and at maturity or on date of payment. Applicant proposes to use the proceeds from the sale of the aforesaid Notes to meet $4,300,000 of obligations maturing under agreements with the aforesaid Banks dated October 15, 1956 as supplemented by agreements dated April 29, 1957 and also to finance in part Applicant's current construction program.

Any person desiring to be heard or to make any protest with reference to said application should, on or before the 26th day of November 1957, file with the Federal Power Commission, Washington 25, D. C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-9508; Filed, Nov. 15, 1957; 8:53 a. m.]

[Docket No. G-13536]

MIDWEST OIL CORP.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES; CORRECTION

NOVEMBER 12, 1957.

In the Order For Hearing and Suspending Proposed Changes in Rates, issued October 18, 1957, and Published in the FEDERAL REGISTER on October 24, 1957 (22 F. R. 8405-6), after the words "By the Commission." on page 2, last line, "Commissioners Digby and Kline dissenting" should be added.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-9509; Filed, Nov. 15, 1957; 8:53 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24SF-2217]

JONTEX, INC.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

NOVEMBER 12, 1957.

I. Jontex, Inc., 139 N. Virginia Street, Reno, Nevada, filed with the Commission on December 27, 1955, a notification and offering circular relative to a proposed offering of 1,500,000 shares at 20 cents per share, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation A promulgated thereunder.

II. The Commission has reasonable grounds to believe that the terms and conditions of Regulation A have not been complied with by the issuer in that:

1. It has filed a report on Form 2-A, dated September 30, 1956, which is materially false and misleading; and

2. It has failed to file on Form 2-A subsequent reports of sales as required by Rule 224 of Regulation A and has ignored requests by the Commission's staff for such reports.

III. *It is ordered,* Pursuant to Rule 223 (a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it is hereby, temporarily suspended.

Notice is hereby given, that any person having any interest in the matter may file with the Secretary of the Commission a written request for a hearing; that, within twenty days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and the notice of the time and place of said hearing will be promptly given by the Commission.

By the Commission.

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

[F. R. Doc. 57-9478; Filed, Nov. 15, 1957; 8:48 a. m.]

[File No. 70-3634]

COLUMBIA GAS SYSTEM, INC.

NOTICE OF PROPOSED EXECUTION OF SURETY BONDS BY HOLDING COMPANY FOR PUBLIC UTILITY SUBSIDIARIES

NOVEMBER 8, 1957.

Notice is hereby given that The Columbia Gas System, Inc. ("Columbia"), a registered holding company, has filed a declaration pursuant to the Public Utility Holding Company Act of 1935 ("act"), designating section 12 (b) of the act and Rule U-45 thereunder as applicable to the proposed transactions, which are summarized as follows:

Amere Gas Utilities Company ("Amere"), United Fuel Gas Company ("United"), and Cumberland and Alleghany Gas Company ("Cumberland"), three wholly-owned public utility subsidiaries of Columbia, have filed with the Public Service Commission of West Virginia revised rate schedules which will provide estimated annual increases in revenues approximately as follows: to Amere, $267,000; to United, $4,000,000; to Cumberland, $750,000. The effectiveness of two of these schedules was suspended for a period of five months from the date of filing and it is expected that the third one will receive similar treatment. The suspension period as to Amere expired on October 29, 1957, and the suspension period as to United will expire on December 17, 1957. It is estimated that the suspension period as to Cumberland will expire on or about April 1, 1958. Under applicable State law the companies may commence collecting the higher rates provided for in their revised schedules at the end of the several suspension periods, subject to an obligation to refund with interest any portion of the higher rates which the State commission may ultimately determine to be excessive. Such obligation to refund must be supported by a refunding bond, with approved surety, in an amount not exceeding $300,000 as to Amere, $5,000,000 as to United, and $750,000 as to Cumberland.

The State commission has indicated that it will accept Columbia as surety on the refunding bond of Amere, and it is assumed that Columbia will be similarly acceptable as surety on the bonds of United and Cumberland. Columbia proposes to act as surety without fee or other compensation, in order to relieve its said subsidiaries of the expense of

paying the customary fees of a surety company.

Notice is further given that any interested person may, not later than November 27, 1957 at 5:30 p. m., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law, if any, raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date the declaration, as filed or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rules U-20 (a) and U-100 thereof, or take such other action as it may deem appropriate under the circumstances.

By the Commission.

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

[F. R. Doc. 57-9479; Filed, Nov. 15, 1957; 8:48 a. m.]

[File No. 8-5437]

F. W. HORNE & CO., INC.

ORDER DENYING REGISTRATION AS BROKER-DEALER

NOVEMBER 7, 1957.

In the matter of F. W. Horne & Company, Inc., 96 South Main Street, Rochester, New Hampshire; File No. 8-5437.

Proceedings having been instituted pursuant to sections 15 (b) and 15A (b) (4) of the Securities Exchange Act of 1934 to determine whether the application of F. W. Horne & Company, Inc., for registration as a broker and dealer should be denied or permitted to become effective, and whether Frank W. Horne and Walter A. Smith should each be found a cause of any order of denial;

Hearings having been held after appropriate notice, proposed findings and conclusions having been submitted, the hearing officer having filed a recommended decision, and the Division of Trading and Exchanges having filed a further brief;

The Commission having this day issued its Findings and Opinion herein; on the basis of said Findings and Opinion:

It is ordered, That the application of F. W. Horne & Company, Inc. for registration as a broker and dealer be, and it hereby is, denied, and it is found that Frank W. Horne and Walter A. Smith are each a cause of this order of denial.

By the Commission.

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

[F. R. Doc. 57-9480; Filed, Nov. 15, 1957; 8:48 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 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Bali Bra Manufacturing Co., Inc., 2445 Bedford Street, Johnstown, Pa.; effective 12-1-57 to 11-30-58 (brassieres).

Bamberg Manufacturing Co., Inc., Bamberg, S. C.; effective 10-29-57 to 10-28-58 (robes for women and children).

Bayly Manufacturing Co., 1319 Southeast Union Avenue, Portland, Oreg.; effective 10-28-57 to 3-31-58 (men's work clothing, overalls and jeans).

Blue Bell, Inc., 301 North Main Street, Abingdon, Ill.; effective 11-21-57 to 3-31-58 (men's and boys' pants).

Byrds Manufacturing Corp., Byrdstown, Tenn.; effective 11-1-57 to 10-31-58 (ladies' dress shirts).

Cater Frock Co., New Braunfels, Tex.; effective 11-9-57 to 4-8-58 (children's dresses).

Champion Garment Co., 100½ West Third Avenue, Rome, Ga.; effective 11-14-57 to 3-31-58 (men's and boys' slacks).

Chase City Manufacturing Co., Walker Street, Chase City, Va.; effective 10-31-57 to 3-31-58. Workers engaged in the manufacture of boys' dungarees and trousers (boys' dungarees).

Cluett, Peabody & Co., Inc., Virginia, Minn.; effective 11-19-57 to 3-31-58 (men's dress shirts).

Continental Manufacturing Co., Oskaloosa, Iowa; effective 11-1-57 to 10-31-58 (single pants, jackets).

Corman & Wasserman, Inc., 1220 Curtain Avenue, Baltimore, Md.; effective 11-1-57 to 10-31-58 (men's trousers).

Freeland Manufacturing Co., 156 Ridge Street, Freeland, Pa.; effective 11-1-57 to 10-31-58 (sport jackets, work clothing, work uniforms).

H & H Manufacturing Co., Statham, Ga.; effective 11-1-57 to 10-31-58 (men's slacks).

Harriet Shirt Co., Inc., Exmore, Va.; effective 11-1-57 to 10-31-58 (boys' shirts).

Higgins Slacks, Inc., Lineville, Ala.; effective 11-1-57 to 10-31-58 (men's and boys' single pants).

Hollywood Corset Co., 214 First Street SW., Paris, Tex.; effective 11-1-57 to 10-31-58 (brassieres).

Hubbard Pants Co., Bremen, Ga.; effective 11-1-57 to 10-31-58 (men's dress slacks).

Jackson Garment Co., Jackson, Tenn.; effective 11-1-57 to 10-31-58 (ladies' dresses).

Key Work Clothes, Inc., 523 East Wall Street, Fort Scott, Kans.; effective 10-31-57 to 10-30-58 (overalls, pants, jackets).

Key Work Clothes of Missouri, Nevada, Mo.; effective 11-1-57 to 10-31-58 (work pants, work shirts).

McMinnville Garment Co., McMinnville, Tenn.; effective 11-8-57 to 4-7-58 (cotton tan tropical trousers).

Movie Star of Mississippi, Inc., Purvis, Miss.; effective 10-31-57 to 3-30-58 (slips and petticoats).

Newport News Children's Dress Co., South 39th Street, Newport News, Va.; effective 11-17-57 to 3-31-58 (children's and girls' dresses, playsuits).

Park Avenue Shirt Co., 422 Park Avenue, Perth Amboy, N. J.; effective 11-1-57 to 10-31-58 (men's dress and sport shirts).

Pollack Bros., Inc., 227 West Main Street, Fort Wayne, Ind.; effective 11-1-57 to 10-31-58 (dresses, smocks, dusters).

The R & R Manufacturing Co., Inc., Auburn, Ga.; effective 11-1-57 to 10-31-58 (men's and boys' dress slacks).

Rugby Knitting Mills, Inc., 1490 Jefferson Avenue, Buffalo, N. Y.; effective 11-1-57 to 10-31-58 (men's and boys' jackets).

Salant & Salant, Inc., South First Street, Union City, Tenn.; effective 11-13-57 to 4-12-58 (men's and boys' pants).

Salemburg Manufacturing Co., Salemburg, N. C.; effective 10-30-57 to 10-29-58 (cotton dresses).

Savada Bros., Inc., 36-46 South Laurel Street, Bridgeton, N. J.; effective 11-1-57 to 3-31-58 (boys' sport shirts).

Spartans Manufacturing Co., Inc., Smithville, Tenn.; effective 11-1-57 to 10-31-58 (sport shirts).

Spartans Manufacturing Co., Inc., Sparta, Tenn.; effective 11-1-57 to 10-31-58 (ladies' sport shirts).

The Warner Brothers Co., Marianna, Fla.; effective 11-1-57 to 10-31-58 (corsets and brassieres).

Wentworth Manufacturing Co., Blanding Street, Lake City, S. C.; effective 11-1-57 to 10-31-58 (women's cotton housedresses).

Jack Winter, Inc., 183 North Milwaukee Street, Milwaukee, Wis.; effective 11-1-57 to 10-31-58 (ladies' slacks).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

"Bundle O' Joy" Baby Wear Co., 43 South Pennsylvania Ave., Wilkes-Barre, Pa.; effective 11-1-57 to 10-31-58; 10 learners (infants' gowns, kimonos).

The Loudoun Manufacturing Co., Emmitsburg Manufacturing Co. Division, Emmitsburg, Md.; effective 11-1-57 to 10-31-58; 10 learners (men's trousers).

Madison Dress Co., Green and Wyoming Streets, Hazleton, Pa.; effective 11-1-57 to 10-31-58; 10 learners (women's dresess).

Prairie Manufacturing Co., East Prairie, Mo.; effective 11-1-57 to 10-31-58; 10 learners (work clothes and semi-dress pants).

Wolens Trouser Co., 6 West Fifth Street, Sterling, Ill.; effective 11-1-57 to 10-31-58; five learners (slacks).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and

the number of learners authorized are indicated.

Bali Bra Manufacturing Co., Inc., 2445 Bedford Street, Johnstown, Pa.; effective 11–1–57 to 4–30–58; 40 learners (brassieres).

Carolina Sportswear Co., Warrenton, N. C.; effective 10–30–57 to 4–29–58; 20 learners (men's and boys' knitted sportswear).

Harriet Shirt Co., Inc., Exmore, Va.; effective 11–1–57 to 4–30–58; 15 learners (boys' shirts).

LaCrosse Sportswear Corp., LaCrosse, Va.; effective 11–1–57 to 4–30–58; 30 learners (knitted sport shirts).

Cigar Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.80 to 522.85, as amended).

Bayuk Cigars, Inc., Second and Washington Streets, Steelton, Pa.; effective 10–31–57 to 3–30–58; 10 percent of the total number of factory production workers for normal labor turnover purposes in the occupations of: (1) cigar machine operating for a learning period of 320 hours at the rate of 80 cents an hour; and (2) packing (cigars retailing for 6 cents or less) 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).

Wells Lamont Corp., Barry, Ill.; effective 11–3–57 to 3–31–58; five learners for normal labor turnover purposes (work gloves).

Wells Lamont Corp., Hugo, Okla.; effective 11–1–57 to 3–31–58; 10 percent of the total number of machine stitchers for normal labor turnover purposes (work gloves).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.40 to 522.43, as amended).

Francis-Louise Fall Fashion Mills, Inc., Valdese, N. C.; effective 10–30–57 to 10–29–58; 5 percent of the total number of factory production workers for normal labor turnover purposes (full-fashioned).

Mary Grey Hosiery Mills, Bristol, Va.; effective 10–31–57 to 10–30–58; 5 percent of the total number of factory production workers for normal labor turnover purposes (full-fashioned, seamless).

Hansen Hosiery Mills, Inc., 176 South Coldbrook Avenue, Chambersburg, Pa.; effective 10–31–57 to 10–30–58; five learners for normal labor turnover purposes (full-fashioned).

Hansen Hosiery Mills, Inc., 176 South Coldbrook Avenue, Chambersburg, Pa.; effective 10–31–57 to 4–30–58; five learners for plant expansion purposes (full-fashioned).

Hodges Knitting Mills, Inc., Milledgeville, Ga.; effective 10–31–57 to 10–30–58; five learners for normal labor turnover purposes (seamless).

Prim Hosiery Mills, Chester, Ill.; effective 11–2–57 to 5–1–58; 40 learners for plant expansion purposes (full-fashioned, seamless).

Russell Hosiery Mills, Inc., Star, N. C.; effective 10–31–57 to 10–30–58; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.30 to 522.35, as amended).

P. H. Hanes Knitting Co., Jefferson Plant, Jefferson, N. C.; effective 11–10–57 to 11–9–58; 5 percent of the total number of factory production workers for normal labor turnover purposes. Authorized occupations include final inspection of assembled garments for a learning period of 160 hours (men's and boys' undershorts).

P. H. Hanes Knitting Co., Jefferson Plant, Jefferson, N. C.; effective 11–10–57 to 5–9–58; 90 learners for plant expansion purposes. Authorized occupations include final inspection of assembled garments for a learning period of 160 hours (men's and boys' undershorts).

Sancar Corp., 28 West Rock Street, Harrisonburg, Va.; effective 11–1–57 to 1–9–58; 30 learners for plant expansion purposes. Authorized occupations include final inspection and machine trimming, each for a learning period of 160 hours (Replacement Certificate) (ladies' underwear).

Sancar Corp., 28 West Rock Street, Harrisonburg, Va.; effective 11–1–57 to 10–31–58; 5 percent of the total number of factory production workers for normal labor turnover purposes. Authorized occupations include final inspection and machine trimming, each for a learning period of 160 hours (ladies' underwear).

Santa Cruz Shirt Co., 1010 Fair Avenue, Santa Cruz, Calif.; effective 10–31–57 to 4–30–58; 10 learners for plant expansion purposes (sport shirts, swim wear).

Santa Cruz Shirt Co., 1010 Fair Avenue, Santa Cruz, Calif.; effective 10–31–57 to 10–30–58; five learners for normal labor turnover purposes (sport shirts and swim wear).

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.11, as amended).

Dixie Paper Box Co., Inc., Hartsville, Tenn.; effective 11–1–57 to 4–30–58; authorizing the employment of six learners for normal labor turnover puropses, in the occupation of basic hand and machine production operations, excluding cutting, scoring and slitting, for a learning period of 240 hours at the rates of 85 cents an hour for the first 160 hours and 90 cents an hour for the remaining 80 hours (paper boxes).

Hawaiian Casuals, 1024 Bethel Street, Honolulu, Hawaii; effective 11–1–57 to 10–31–58; authorizing the employment of five learners for normal labor turnover purposes, in the occupations of sewing machine operating and finishing operations involving hand sewing, each for a learning period of 480 hours at the rates of 80 cents an hour for the first 320 hours and 85 cents an hour for the remaining 160 hours. Learners may not be employed at special minimum wage rates in the production of separate skirts (ladies' dresses, sportswear, swim wear, men's shirts and swim trunks).

Sarmont, Inc., 111 East Third, Caruthersville, Mo.; effective 11–4–57 to 5–3–58; authorizing the employment of 40 learners for plant expansion purposes, in the occupation of sewing machine operator only for a learning period of 320 hours at the rate of 85 cents an hour (Replacement Certificate) (tents, tarpaulins, canvas bags, boys' pants).

Silver Craft Studio, Sandwich, N. H.; effective 11–4–57 to 5–3–58; authorizing the employment of four learners for normal labor turnover purposes, in the occupations of sawing, chasing, shaping, filing and soldering and buffing and finishing, for a learning period of 480 hours at the rates of 80 cents an hour for the first 240 hours and 90 cents an hour for the remaining 240 hours. The combined learning period for all the above occupations shall not exceed 480 hours (handmade sterling silver jewelry).

Each learner certificate has been issued upon the representations of the employer which, among other things, were 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 annulled 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.

Signed at Washington, D. C., this 5th day of November 1957.

MILTON BROOKE,
Authorized Representative of the Administrator.

[F. R. Doc. 57–9475; Filed, Nov. 15, 1957; 8:47 a. m.]

[Administrative Order 495]

ADMINISTRATOR'S ADVISORY COMMITTEE ON SHELTERED WORKSHOPS

APPOINTMENTS

Pursuant to authority under the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, 29 U. S. C. 201), and Reorganization Plan No. 6 of 1950 (3 CFR 1950 Supp., p. 165), I, Clarence T. Lundquist, Acting Administrator of the Wage and Hour Division, United States Department of Labor, do hereby appoint the following named persons to constitute the Administrator's Advisory Committee on Sheltered Workshops:

Mr. John M. Convery, National Association of Manufacturers, New York, N. Y.

Mr. Willis C. Gorthy, Institute for the Crippled & Disabled, New York, N. Y.

Mr. Kenneth Hamilton, Ohio State University, Columbus, Ohio.

Mr. Lewis Hines, American Federation of Labor-Congress of Industrial Organizations, Washington, D. C.

Mr. Edward Hochhauser, Altro Health & Rehabilitation Services, Inc., New York, N. Y.

Mr. S. L. Hoffman, S. L. Hoffman Manufacturing, Co., New York, N. Y.

Mrs. Elizabeth K. Lammie, Pennsylvania Branch Shut-In Society, Philadelphia, Pa.

Mr. Walter J. Mason, American Federation of Labor-Congress of Industrial Organizations, Washington, D. C.

Colonel John F. McMahon, Volunteers of America, New York, N. Y.

Rt. Rev. Msgr. John O'Grady, National Conference of Catholic Charities, Washington, D. C.

Mr. Kenneth E. Pohlmann, United Mine Workers of America Welfare & Retirement Fund, Washington, D. C.

Mr. Alvin D. Puth, National Rehabilitation Association, Washington, D. C.

Mr. Peter J. Salmon, Industrial Home for the Blind, Brooklyn, N. Y.

Mr. Percy J. Trevethan, Goodwill Industries of America, Inc., Washington, D. C.

Mr. Arthur H. Korn (Non-voting member), Wage and Hour and Public Contracts Divisions, United States Department of Labor, Washington, D. C.

The above appointments will expire June 30, 1959.

Signed at Washington, D. C., this 12th day of November 1957.

CLARENCE T. LUNDQUIST,
Acting Administrator.

[F. R. Doc. 57–9511; Filed, Nov. 15, 1957; 8:53 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 13, 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. 34287: *Iron and steel articles from, to and between points in the West.* Filed by W. J. Prueter, Agent (WTL No. A–1938), for interested rail carriers. Rates on iron and steel articles, carloads from, to and between points in western trunkline territory included in the schedules listed below.

Grounds for relief: Short-line distance formula.

Tariffs: Supplement 200 to Agent Prueter's tariff I. C. C. A–3748. Supplement 153 to Agent Prueter's tariff I. C. C. A–3991. Supplement 71 to Agent Prueter's tariff I. C. C. A–4071.

FSA No. 34288: *Trailership service—Motor - ocean - motor, Pan Atlantic Steamship—Class and commodity rates.* Filed by Pan Atlantic Steamship Corporation (Passco No. 16), for interested motor carriers. Rates on property moving on class and commodity rates loaded in motor-truck trailers and transported aboard ship in trailership service between (a) eastern and southwestern points, between eastern and southeastern points, and between southern ports and points, as to class rates, and (b) eastern and southwestern points, as to commodity rates. Grounds for relief—Rail-Ocean, ocean-rail, and rail-ocean-rail competition, also competition with all-rail carriers.

Tariff: Supplement 2 to Pan Atlantic Steamship Corporation tariff I. C. C. No. 269.

FSA No. 34289: *Caustic soda—Calvert, Ky., to Foley, Fla.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on liquid caustic soda, tank-car loads from Calvert, Ky., to Foley, Fla.

Grounds for relief: Market competition.

Tariff: Supplement 73 to Agent Spaninger's tariff I. C. C. 1548.

FSA No. 34290: *Paper and paper articles—Eau Claire, Wis., to the Southwest.* Filed by F. C. Kratzmeir, Agent (SWFB No. B–7153) for interested rail carriers. Rates on paper and paper articles, carloads, also pulpboard and related articles, carloads from Eau Claire, Wis., to specified points in Arkansas, Louisiana (west of the Mississippi River), Missouri (southern portion), New Mexico (eastern portion), Oklahoma, and Texas.

Grounds for relief: Short-line distance formula.

Tariff: Supplement 60 to Agent Kratzmeir's tariff I. C. C. 4198.

FSA No. 34291: *T. O. F. C. Service—Class rates between Omaha, Nebr. and Southwest.* Filed by F. C. Kratzmeir, Agent (SWFB No. B–7155), for interested rail carriers. Rates on property moving on class rates loaded in trailers and transported on railroad flat cars between Omaha, Nebr., on the one hand, and specified points in Arkansas, Louisiana, and Texas, also Natchez, Miss., and Memphis, Tenn., on the other.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 25 to Agent Kratzmeir's tariff I. C. C. 4254.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F. R. Doc. 57–9476; Filed, Nov. 15, 1957; 8:47 a. m.]