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## TITLE 6—AGRICULTURAL CREDIT

### Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

#### Subchapter B—Loans, Purchases, and Other Operations

[1955 CCC Peanut Bulletin, 721 (Peanuts-55)-1]

#### PART 446—PEANUTS

#### SUBPART—1955 CROP PEANUT PRICE SUPPORT PROGRAM

This bulletin contains the regulations applicable to the 1955 crop Peanut Price Support Program, under which the Secretary of Agriculture makes price support available through the Commodity Credit Corporation and the Commodity Stabilization Service (hereinafter referred to as CCC and CSS respectively).

- Sec.
- 446.701 Administration.
  - 446.702 Availability.
  - 446.703 Methods of price support.
  - 446.704 Definitions.
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  - 446.718 Farm storage loan provisions.
  - 446.719 Loans to cooperatives.

**AUTHORITY:** §§ 446.701 to 446.719 issued under sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, 1054; sec. 201, 68 Stat. 899; 15 U. S. C. 714c, 7 U. S. C. 1441, 1421.

§ 446.701 *Administration.* (a) The program will be administered by the Oils and Peanut Division, CSS, under the general direction and supervision of the Executive Vice President, CCC. In the field the program will be carried out by Agricultural Stabilization and Conservation State committees and by Agricultural Stabilization and Conservation county committees (hereinafter called State and county committees) and the Dallas CSS Commodity office (hereinafter called the commodity office). State

and county committees and the commodity office do not have authority to modify or waive any of the provisions of this subpart or any amendments or supplements thereto.

(b) Cooperatives operating under a Cooperative Loan Agreement, CCC Peanut Form 27 (1955) with CCC (hereinafter referred to as an Agreement with CCC), may receive, arrange for storage, and handle eligible peanuts for and on behalf of eligible producers, using such peanuts as collateral for a loan made available by CCC.

§ 446.702 *Availability.*—(a) *Areas.* The program will be available in the following areas:

(1) The Southeastern area consisting of the States of Alabama, Georgia, Mississippi, Florida, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(2) The Southwestern area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(3) The Virginia-Carolina area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

(b) *Time.* Loans will be made through January 31, 1956, and will mature on May 31, 1956, or such earlier date as may be specified by CCC. All farm storage loan documents must be dated and delivered to the county office on or before January 31, 1956. Warehouse receipts for peanuts delivered to a cooperative operating under an agreement with CCC must show that the peanuts were received not later than January 31, 1956, and that the receipt was issued within 24 hours after the peanuts were received in the warehouse.

§ 446.703 *Methods of price support.* CCC will support the price of eligible 1955 crop quota peanuts through non-recourse farm storage loans to eligible producers and non-recourse warehouse storage loans to cooperatives operating under an agreement with CCC.

§ 446.704 *Definitions.* As used in this subpart and in instructions and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein

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assigned to them unless the context or subject matter otherwise requires.

(a) *Cooperative.* A group of producers organized in accordance with the provisions of the Capper-Volstead Act, for the purpose of handling peanuts for and on behalf of its producer members, which is approved as a cooperative within the State(s) in which it

functions, and which is approved by CCC: *Provided, That,*

(1) The major portion of the peanuts handled by the cooperative are delivered to the cooperative by producer members;

(2) The members and any non-members for whom the cooperative handles peanuts have a right to share prorata in the profits made from handling peanuts;

(3) The cooperative has the legal right to pledge or mortgage the peanuts which it receives from producers, and the producers have no right to redeem or obtain possession of their peanuts after delivery to the cooperative;

(4) The manager of the cooperative must not be engaged in the business of buying, selling, storing, or dealing in peanuts, other than in his capacity as manager of the cooperative or as a producer; and

(5) The cooperative shall maintain such accounts and records as CCC may prescribe.

(b) *County office.* The office of the ASC county committee where records for the farm are kept.

(c) *Farm.* A farm as defined in the marketing quota regulations which generally refers to all adjacent or nearby farmland which is operated as one farming unit.

(d) *Farm allotment.* The farm peanut acreage allotment for the 1955 crop of peanuts established pursuant to the marketing quota regulations.

(e) *Farmers' stock peanuts.* Picked or threshed peanuts produced in the continental United States during the calendar year 1955, which have not been shelled, crushed, cleaned (except for removal of foreign material), or otherwise changed from the state in which picked or threshed peanuts are customarily marketed by producers.

(f) *Farm peanut acreage.* The 1955 farm peanut acreage determined in accordance with the marketing quota regulations which generally refers to the total acreage of peanuts on the farm which is picked or threshed.

(g) *Lot.* That quantity of peanuts for which one inspection memorandum is issued.

(h) *Marketing quota regulations.* The Marketing Quota Regulations for 1955 Crop of peanuts issued by the Secretary of Agriculture, including any amendments or supplements thereto (19 F. R. 6134 and 19 F. R. 3819).

(i) *Net weight.* That weight obtained by multiplying the gross weight by a percentage equal to 100 percent minus the sum of the percentages of (1) foreign material and (2) moisture in excess of 7 percent in the Southeastern and Southwestern areas or 8 percent in the Virginia-Carolina area.

(j) *Operator.* The person who is in charge of the supervision and conduct of the farming operations on the entire farm.

(k) *Producer.* A person who, as landowner, landlord, tenant, or sharecropper, is entitled to share in the peanuts produced on the farm or in the proceeds thereof.

(l) *Quota peanuts.* Farmers stock peanuts which are within the amount of the farm marketing quota determined

pursuant to the marketing quota regulations.

(m) *Type.* The generally known types of peanuts (i. e., Runner, Spanish, Valencia, and Virginia), as defined in Marketing Quota Regulations for Peanuts of the 1953 Crop, 1023 (Peanuts 53)-1, (18 F. R. 1881) (7 CFR Part 729) except that any peanuts which would otherwise be considered Virginia type but which contain less than 30 percent "Fancy" size (peanuts riding a  $\frac{3}{64}$  x 3 inch slotted screen) will be considered Runner type peanuts.

(n) *Within quota card.* MQ-76 Peanuts (1955) or MQ-76-VC Peanuts (1955), 1955 Peanut Within Quota Marketing Card issued pursuant to the marketing quota regulations.

§ 446.705 *Support prices.* The national average support price is \$244.80 per ton. The support prices and loan rates by types, and the premiums and discounts with respect thereto, are contained in § 446.706.

§ 446.706 *Price support schedule.* The following Price Support Schedule applies to net weight farmers stock peanuts. The prices are for peanuts in bulk in the Southeastern area and in bags in the Southwestern and Virginia-Carolina areas. The term "Southeastern Spanish" refers to Spanish-type peanuts produced east of the Mississippi River and the term "Southwestern Spanish" refers to Spanish-type peanuts produced west of the Mississippi River.

(a) *Base grade prices.* The base grade support prices for the various types and grades of peanuts shall be as follows:

|                                                            | Per ton  |
|------------------------------------------------------------|----------|
| Virginia type, 65 percent sound mature kernels.....        | \$235.00 |
| Runner type, 65 percent sound mature kernels.....          | 220.00   |
| Southeastern Spanish, 70 percent sound mature kernels..... | 241.00   |
| Southwestern Spanish, 70 percent sound mature kernels..... | 237.00   |

(b) *Premiums and discounts—(1) Sound mature kernels.* For each one

For peanuts containing loose shelled kernels of—

|                                        |                                                                                            |
|----------------------------------------|--------------------------------------------------------------------------------------------|
| From 6 percent through 10 percent....  | 75 cents for each full 1 percent in excess of 5 percent.                                   |
| From 11 percent through 20 percent.... | \$3.75 plus \$1 for each full 1 percent loose shelled kernels in excess of 10 percent.     |
| 21 percent or more.....                | \$13.75 plus \$1.50 for each full 1 percent loose shelled kernels in excess of 20 percent. |

(5) *Extra large kernels.* For Virginia type peanuts the premium for each full 1 percent extra large kernels in excess of 20 percent shall be \$1.25 per ton. "Extra large kernels" means any shelled Virginia peanuts which are whole and which are free from noticeably discolored or damaged peanuts as defined in the U. S. Standards for Shelled Virginia Peanuts (effective November 1, 1939) and which will not pass through a screen having  $\frac{21}{64}$  x 1 inch perforations.

(c) *Other—(1) Virginia type peanuts.* Any lot or load of peanuts which would otherwise be considered Virginia type but which contains less than 30 percent "Fancy" size (peanuts riding a  $\frac{3}{64}$  x 3 inch slotted screen) shall be considered Runner type peanuts.

percent sound mature kernel content above or below the base grade, the premium or discount, whichever is applicable, shall be as follows:

|                                | Per ton |
|--------------------------------|---------|
| Virginia type.....             | \$3.70  |
| Runner type.....               | 3.40    |
| Southeastern Spanish type..... | 3.50    |
| Southwestern Spanish type..... | 3.40    |

The term "sound mature kernel" means kernels which are free from damage as defined in the U. S. Standards for farmers stock (a) white Spanish peanuts in the case of Spanish and Valencia peanuts and (b) Runner and Virginia peanuts, respectively, in the case of Runner and Virginia peanuts; and which will not pass through a screen having:

- $\frac{1}{4}$  x  $\frac{3}{4}$  inch perforations in the case of Spanish peanuts.
- $\frac{1}{4}$  x 1 inch perforations in the case of Virginia peanuts, and
- $\frac{1}{4}$  x  $\frac{3}{4}$  inch perforations in the case of Runner and Valencia peanuts.

(2) *Damaged kernels.* The discount for damage in excess of one percent shall be as follows per ton by types:

| Peanuts containing damaged kernels of— | Virginia | Runners | Spanish       |               |
|----------------------------------------|----------|---------|---------------|---------------|
|                                        |          |         | South-eastern | South-western |
| 2 percent.....                         | \$3.70   | \$3.40  | \$3.50        | \$3.40        |
| 3 percent.....                         | 7.40     | 6.80    | 7.00          | 6.80          |
| 4 percent.....                         | 12.95    | 11.90   | 12.25         | 11.90         |
| 5 percent.....                         | 20.35    | 18.70   | 19.25         | 18.70         |
| 6 percent.....                         | 27.75    | 25.50   | 26.25         | 25.50         |
| 7 percent.....                         | 35.85    | 33.70   | 34.75         | 33.70         |

Peanuts containing damaged kernels of 8 percent and over shall not be eligible for price support.

(3) *Foreign material.* The discount for each full 1 percent foreign material in excess of 4 percent and not over 10 percent shall be \$1.00 per ton. Peanuts with more than 10 percent foreign material shall not be eligible for price support.

(4) *Loose-shelled kernels.* The discount for loose-shelled kernels in excess of 5 percent in farmers stock peanuts shall be as follows:

The discount per ton shall be—

|                                                                                            |
|--------------------------------------------------------------------------------------------|
| 75 cents for each full 1 percent in excess of 5 percent.                                   |
| \$3.75 plus \$1 for each full 1 percent loose shelled kernels in excess of 10 percent.     |
| \$13.75 plus \$1.50 for each full 1 percent loose shelled kernels in excess of 20 percent. |

(2) *Valencia type peanuts.* The support price for Valencia type peanuts containing less than 25 percent discoloration and damage caused by cracked or broken shells shall be the same as the support price for Virginia type peanuts of the same grade except that no premium is applicable for extra large Valencia kernels. For other Valencia type peanuts the support price shall be the same as the support price for Spanish peanuts of the same grade and in the same area.

§ 446.707 *Eligible peanuts.* (a) Peanuts eligible for price support are 1955 crop farmers stock peanuts which:

- Contain 10 percent or less foreign material; 7 percent or less damaged kernels; 10 percent or less moisture when

placed under a farm storage loan; or a percentage of moisture, when received in the warehouse, not exceeding that specified by the cooperative for peanuts which are to be pledged as collateral for a loan to the cooperative.

(2) Are identified by a within quota marketing card in accordance with the marketing quota regulations.

(3) Are produced by an eligible producer on a farm (i) on which the 1955 farm peanut acreage does not exceed the larger of the 1955 farm allotment or one acre, or (ii) for which a within quota marketing card is issued to the producer or operator upon the execution of Form MQ-92—Peanuts (1955) "Agreement by Operator of Overplanted Farm, 1955 Peanut Program", in which he agrees (a) that the farm peanut acreage will not exceed the larger of the farm allotment or one acre, and (b) if such undertaking is breached to pay liquidated damages to CCC, determined in accordance with the terms of such agreement, and to pay any marketing penalties determined to be due the Secretary of Agriculture.

(b) The liquidated damages payable to CCC under such agreement may be waived to such extent as the Executive Vice President of CCC or his designated representative may determine appropriate in any case where he determines (1) that the breach of such agreement was unintentional and occurred despite a bona fide effort by the operator and other producers on the farm to comply with the agreement and (2) that the amount by which the farm peanut acreage exceeded the acreage specified in the agreement was so small, in relation to the acreage so specified, that it did not materially impair CCC's price support operations.

(c) Copies of Form MQ-92—Peanuts (1955) may be obtained from the county committee. The county committee may decline to execute Form MQ-92—Peanuts (1955) in any case where it finds reasonable grounds to believe that such agreement will be used as a device to evade the requirements of this program or the collection of marketing penalty.

(d) Are free and clear of all liens and encumbrances, including landlord's liens, or if liens or encumbrances exist on the peanuts, acceptable waivers are obtained: *Provided, however,* That peanuts under a loan to a cooperative may be subject to liens for warehouse charges specified in CCC Peanut Form 28 (1955).

(e) If bagged, are in bags made of material weighing ten ounces or less per square yard and containing no sisal fibers.

**§ 446.708 Eligible producer.** A producer will be eligible for price support with respect to all eligible peanuts in which the beneficial interest is in him and has always been in him or in him and a former producer whom he succeeded before the peanuts were harvested.

**§ 446.709 Type and grade.** Inspectors authorized or licensed by the Secretary of Agriculture shall determine the type and grade of each lot of peanuts:

(a) To be mortgaged as security for a farm storage loan, such type and grade

to be determined on the basis of a sample taken by the county committee before the loan is made.

(b) When delivered in settlement of a farm storage loan.

(c) When received in a warehouse under contract CCC Peanut Form 28 (1955); and

(d) When delivered to CCC from a warehouse under contract CCC Peanut Form 28 (1955).

The grade shall be expressed in terms of the percentages of sound mature kernels, damaged kernels, other kernels, loose shelled kernels, foreign material, moisture, and extra large kernels in Virginia type peanuts.

**§ 446.710 Approved lending agencies.** An approved lending agency shall be a bank or other financial organization with which CCC has entered into a lending agency agreement on CCC Form 322 in the case of producer farm storage loans and on CCC Peanut Form 50 in the case of loans to peanut cooperatives.

**§ 446.711 Service charges and fees.** (a) On the quantity of peanuts placed under a farm storage loan the producer shall pay an initial service charge in the amount of 30 cents per ton, except that the minimum charge shall be \$3.00. An additional service charge at the rate of 30 cents per ton shall be paid on any additional quantity delivered to and accepted by CCC. No refund of service charges will be made. State committees may, at their option, require a deposit on farm storage loans, such deposit to be applied against the service charge when the loan is granted.

(b) The producer or cooperative will pay the fee for inspecting peanuts placed under a farm storage loan or loan to a cooperative. CCC will pay the fee for inspecting loan collateral peanuts delivered to CCC.

(c) In making loans to cooperatives, CCC will withhold storage charges in the amount of \$5.20 per ton in the Southeastern and Southwestern areas and \$4.55 in the Virginia-Carolina area. The cooperative will pay the warehouse receiving, storage and handling charges on peanuts redeemed.

(d) The service charges and fees specified in this section will be computed on gross weights.

**§ 446.712 Interest rate.** Farm storage loans and loans to cooperatives shall bear interest at the rate of  $3\frac{1}{2}$  percent per annum from the date of disbursement of the loan, except that where there is a default in satisfaction of a farm storage loan the deficiency (including accrued interest and costs incurred by the holder of the note) shall bear interest at the rate of 6 percent per annum from the date of default.

**§ 446.713 Personal liability of the borrower.** The making of any fraudulent representation in obtaining price support or the conversion or unlawful disposition of any portion of the peanuts by the borrower may render such borrower subject to criminal prosecution under Federal law and shall render him personally liable for the amount received (plus interest) and for any result-

ing expense incurred by any holder of the note.

**§ 446.714 Payments and collections; amounts not exceeding \$3.** To avoid administrative costs of making small payments and handling small accounts, amounts of \$3 or less due a producer will be paid only upon request; and a deficiency of \$3 or less, including interest, may be disregarded by a producer unless demand for payment is made by CCC.

**§ 446.715 Set-offs.** (a) If a producer who obtains a loan is indebted to CCC on any accrued obligation, or if any installment or installments on any loan made available by CCC on farm-storage facilities or mobile drying equipment are past due, or are payable or prepayable under the provisions of the note evidencing such loan out of the proceeds of the price support loan, such producer must designate CCC or the lending agency holding such note as the payee of the proceeds of the price support loan to the extent of such indebtedness or installments, but not to exceed that portion of the proceeds remaining after deduction of loan service charges and amounts due prior lienholders. If the producer is indebted to any other agency of the United States and such indebtedness is listed on the county debt register, he must designate such agency as the payee of the proceeds as provided in this section. Indebtedness owing to CCC or to a lending agency as provided in this section shall be given first consideration after claims of prior lienholders.

(b) Cooperatives shall deduct from their advance payments to producers and remit in accordance with procedure approved by CSS, the amount of indebtedness as shown on the marketing cards presented at the time the peanuts are received.

(c) Compliance with the provisions of this section shall not constitute a waiver of any right of the producer to contest the justness of the indebtedness involved either by administrative appeal or by legal action.

**§ 446.716 Purchase of notes.** (a) The county committee, acting on behalf of CCC, will purchase from approved lending agencies notes evidencing approved farm storage loans. The purchase price will be the principal sums remaining due on such notes plus interest computed according to the lending agency agreement. Lending agencies shall submit notes and reports to the county office where the loan documents were approved.

(b) Approved lending agencies making loans to cooperatives may assign all or part of such loans to CCC and obtain payment for the amounts assigned by means of sight drafts drawn on CCC payable through a designated Federal Reserve Bank or Branch Bank. Lending agencies may act as agent for CCC in servicing the loan or portion thereof assigned to CCC.

**§ 446.717 Foreclosure.** If the loan is not satisfied upon maturity by payment or by delivery of the peanuts from farm storage, the holder of the note may remove the peanuts and sell them. Any

sum due the borrower as a result of the sale of the peanuts or of the receipt of insurance proceeds paid thereon, shall be payable only to the borrower without right of assignment.

§ 446.718 *Farm storage loan provisions.* Loans will be available to eligible producers on eligible peanuts in approved farm storage. Producers who want to obtain such loans will apply at the county office where the farm program records are kept and that office will arrange for inspection of the storage facilities and for inspection, sampling and grading of the peanuts. After it is determined that the producer, the peanuts, and the storage facilities meet the requirements therefor, the county office will determine the amount of the loan and prepare and approve the loan documents. Copies of all such documents will be kept in the county office. After the loan documents are approved, the producer may obtain the loan from any approved lending agency or from CCC. The producer may deliver the peanuts to CCC upon maturity of the loan, or may redeem the peanuts at any time prior to such delivery by repaying the amount of the loan plus interest and charges.

(a) *Approved farm storage.* Approved farm storage shall consist of storage structures located on or off the farm (excluding public warehouses), which are determined by the county office to be so located and of such substantial and permanent construction as to afford safe storage of peanuts. Such structures shall be dry and well-ventilated.

(b) *Method of determining quantity—*  
(1) *Peanuts placed under loan.* The net weight of the peanuts to be placed under a farm storage loan will be calculated from an estimated gross weight determined as provided in this section. A 5 percent minimum reduction in such estimated gross weight is required in an effort to avoid underdelivery at maturity in the event the loan is not repaid.

(i) *Peanuts stored in bulk.* The estimated gross weight of bulk peanuts may be determined either by weight or by measurement. When the quantity is determined by measurement, the gross weight shall be computed on the number of pounds per cubic foot for the type of peanuts indicated below (such number of pounds has been reduced by approximately 5 percent from the estimated actual weight):

| Type:    | Weight<br>per cu. ft.<br>(pounds) |
|----------|-----------------------------------|
| Runner   | 17.0                              |
| Spanish  | 19.0                              |
| Valencia | 17.0                              |
| Virginia | 12.0                              |

If the estimated gross weight of bulk peanuts is determined by actual weight instead of by measurement, deduct from such weight an amount specified by the State committee which amount shall be not less than 5 percent of such gross weight.

(ii) *Peanuts stored in bags.* The estimated gross weight of bagged peanuts to be placed under loan shall be determined by weighing all of the bags, or

by weighing a sufficient number of bags to estimate the gross weight of all the bags and then by deducting an amount not less than 5 percent of such gross weight specified by the State committee.

(2) *Peanuts delivered to CCC at maturity.* The net weight of peanuts delivered to CCC upon maturity of the loan shall be calculated from the gross weight determined by actual weight at the time of delivery.

(c) *Forms.* Loan forms shall consist of Commodity Loan Form A, Producer's Note and Supplemental Loan Agreement, secured by Commodity Loan Form AA, Commodity Chattel Mortgage, and such other forms and documents as may be required by CCC. Commodity Loan Forms A and AA must have State and documentary revenue stamps affixed thereto where required by law. Loan documents executed by an administrator, executor, or trustee, will be acceptable only where legally valid.

(d) *Disbursement.* Disbursement of farm storage loans will be made by approved lending agencies or by sight drafts drawn on CCC by the county office. Disbursement, regardless of where made, shall not be made after February 15, 1956, unless authorized by the Executive Vice President, CCC. Payment in cash, credit to the producer's account, or the drawing of a check or draft shall constitute disbursement. The date of such draft, check, credit, or cash payment shall be considered as the date of disbursement of the funds. The producer shall not present the loan documents for disbursement unless the peanuts are in existence and in good condition. If the peanuts are not in existence or not in good condition at the time of disbursement, the total amount disbursed under the loan shall be promptly refunded by the producer. In the event the amount disbursed exceeds the amount authorized, the producer shall be personally liable for repayment of the amount of such excess.

(e) *Insurance.* CCC will not require the borrower to insure the peanuts placed under a farm-storage loan. However, if a borrower does insure such peanuts and an insurance indemnity is paid thereon, the insurance proceeds must be paid to CCC to the extent of its interest, after first satisfying the borrower's equity in the peanuts involved in the loss.

(f) *Safeguarding the peanuts.* The producer who obtains a farm storage loan is obligated to maintain the storage structure in good repair and to keep the peanuts in storage and in good condition until the loan is liquidated.

(g) *Loss or damage to the peanuts under farm storage loan.* (1) The producer is responsible for any loss in grade and for any loss in weight, except that CCC will assume uninsured physical loss or damage occurring after disbursement of the loan funds without fault, negligence or conversion on the part of the producer or of any other person having control of a storage structure not located on the farm, provided such loss or damage resulted solely from an external cause other than insect infestation, vermin or rodents and the pro-

ducer gave the county committee immediate notice confirmed in writing of such loss or damage. Losses under the provisions of this subsection will be assumed by CCC to the extent of the settlement value of the quantity destroyed or in an amount equivalent to the extent of the damage, as determined by CCC, provided there has been no fraudulent misrepresentation made by the producer in the loan documents or in obtaining the loan.

(2) No physical loss or damage occurring prior to disbursement of the loan funds will be assumed by CCC.

(h) *Redemption of the peanuts under farm storage loan.* A producer may, at any time prior to the date on which the peanuts are delivered to or removed by CCC pursuant to paragraph (i) of this section, redeem the peanuts remaining under farm storage loan by paying to the holder of the note and supplemental loan agreement the principal amount thereof, plus charges and accrued interest. All charges in connection with the collection of the note shall be paid by the producer. Upon presentation of evidence of payment, the county office shall arrange for the release of the chattel mortgage. Partial release of the peanuts prior to maturity may be arranged with the county office after making payment to the holder of the note for the quantity of peanuts to be released, plus charges and accrued interest; however, if the quantity of peanuts contained in the bin or crib and covered by the chattel mortgage is greater than the quantity with respect to which the amount of the loan was computed, all or part of such excess may be removed without payment on the loan, but only upon prior approval of the county office. A producer who wishes to liquidate all or part of his loan by contracting for the sale of the peanuts must obtain written prior approval of the county committee on Commodity Loan Form 12 to remove the peanuts from storage when the proceeds of the sale are needed to repay all or any part of the loan. Any such approval shall be subject to the terms and conditions in Commodity Loan Form 12, copies of which may be obtained by producers or prospective purchasers at the office of the county committee.

(i) *Settlement of farm storage loans.*  
(1) The producer is required to pay off the loan on or before maturity or to deliver the peanuts in accordance with instructions issued by the county office. If the producer fails to deliver mortgaged peanuts as instructed, he will be responsible for all costs of removal incurred by the holder of the note.

(2) If the peanuts are, or are in danger of, going out of condition, the producer shall notify the county office which shall determine whether the peanuts must be delivered before the maturity date of the loan. If CCC is unable to take delivery within a reasonable length of time, the producer may request and obtain through the county office an inspection and grade determination to be made at the expense of CCC. When delivery is completed, settlement shall be made on the basis of such grade or the grade

determined at the time of delivery, whichever is higher.

(3) In the event the farm is sold, the producer dies, or there is a change of tenancy, the peanuts may be delivered before the maturity date of the loan, upon prior approval by the county office. Peanuts also may be delivered before the maturity date of the loan for other reasons upon authorization by the Executive Vice President, CCC.

(4) Settlement for peanuts delivered to CCC will be made, subject to the provisions of the Producers Note and Supplemental Loan Agreement, at the applicable support price, plus an allowance for shrinkage during the storage period of four-tenths of a cent (\$0.004) per net weight pound delivered, for the type, grade (except as provided above for peanuts going out of condition), and quantity, of the peanuts delivered and accepted by the county committee: *Provided, however*, That the settlement value for peanuts delivered to CCC which do not meet the eligibility requirements with respect to moisture, damage or foreign material shall be determined at the support price for the grade placed under loan, less the difference, if any, at the time of delivery, between the market price for the grade placed under loan and the market price of the peanuts delivered, as determined by CCC. Delivery of peanuts in bulk will be accepted only from the structure(s) in which the peanuts under loan are stored. In the case of peanuts stored in bags, only the identical bags under loan may be delivered.

§ 446.719 *Loans to cooperatives.* A cooperative which desires to receive, store or arrange for storage and handle peanuts for and on behalf of producers who have the right to share in its profits from the handling of such peanuts, may obtain a loan on all eligible peanuts handled on behalf of eligible producers, stored in approved warehouses, and represented by warehouse receipts in a form prescribed by CCC. Such loan will be made pursuant to the terms of the Cooperative Loan Agreement, CCC Peanut Form 27 (1955) between the cooperative and CCC, and shall be evidenced by a blanket note in form prescribed by CCC. The cooperative may receive eligible peanuts from eligible producers who are not members of the cooperative and use such peanuts as loan collateral. Approved storage for peanuts under loan to a cooperative will be warehouses approved pursuant to instructions issued by CCC and operated under contract with the cooperative or with CCC. The names and locations of such warehouses may be obtained from the cooperative or the county office. The cooperative may obtain the loan from an approved lending agency or from CCC. Each producer from whom the cooperative receives peanuts must present his within quota card at the time he delivers the peanuts for storage. For each lot of peanuts received, the cooperative shall make an advance payment to the producer in the amount of the loan value of such peanuts less deductions approved by CCC. At any time on or before maturity, the cooperative may redeem peanuts for sale in accordance with policies established

by CCC. The cooperative shall distribute to the producers from whom it receives peanuts all proceeds from the handling of such peanuts under loan, less operating expenses, unless other disposition of such proceeds is approved by CCC.

Issued this 1st day of August 1955.

[SEAL] WALTER C. BERGER,  
*Acting Executive Vice President,  
Commodity Credit Corporation.*

[F. R. Doc. 55-6368; Filed, Aug. 4, 1955;  
8:53 a. m.]

## TITLE 7—AGRICULTURE

### Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

#### PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION AND STANDARDS)

##### SUBPART—UNITED STATES STANDARDS FOR SUMMER AND FALL PEARS<sup>1</sup>

On June 21, 1955, a notice of proposed rule making was published in the *FEDERAL REGISTER* (20 F. R. 4323) regarding a proposed revision of United States Standards for Summer and Fall Pears. After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the following United States Standards for Summer and Fall Pears are hereby promulgated pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., 7 U. S. C. 1621 et seq.).

The proposed United States Standards for Summer and Fall Pears which were contained in the aforesaid notice are hereby adopted in the form in which such standards appeared in said notice and are hereby incorporated herein by this reference except for the following changes:

(a) Table of contents § 51.1274, delete word "carefully" and substitute word "carefully".

(b) In § 51.1263, line 13, delete word "diseases" and substitute word "disease".

(c) In § 51.1269 (e), line 12, delete figure "3¾" and substitute figure "2¾".

The United States Standards for Summer and Fall Pears contained in this subpart shall become effective 15 days after publication hereof in the *FEDERAL REGISTER*, and will thereupon supersede the United States Standards for Summer and Fall Pears which have been in effect since June 27, 1940. (7 CFR, Part 51; 18 F. R. 7118).

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date of these standards until 30 days after publication hereof in the *FEDERAL REGISTER* because the packing season for summer and fall pears has already commenced and it is in the public interest

<sup>1</sup> Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

that the standards be in effect as soon as possible; and a reasonable time is permitted, under the circumstances, for preparation for such effective date.

Dated: August 2, 1955.

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

#### GENERAL

Sec. 51.1260 General.

#### GRADES

51.1261 U. S. No. 1.  
51.1262 U. S. Combination.  
51.1263 U. S. No. 2.

#### UNCLASSIFIED

51.1264 Unclassified.

#### TOLERANCES

51.1265 Tolerances.

#### APPLICATION OF TOLERANCES

51.1266 Application of tolerances.  
51.1267 Basis for calculating percentages.

#### CONDITION AFTER STORAGE OR TRANSIT

51.1268 Condition after storage or transit.

#### STANDARD PACK

51.1269 Sizing.  
51.1270 Packing.  
51.1271 Tolerances for standard pack.

#### DEFINITIONS

51.1272 Mature.  
51.1273 Overripe.  
51.1274 Carefully hand-picked.  
51.1275 Clean.  
51.1276 Black end.  
51.1277 Fairly well formed.  
51.1278 Damage.  
51.1279 Seriously misshapen.  
51.1280 Serious damage.

AUTHORITY: §§ 51.1260 to 51.1280 issued under sec. 205, 60 Stat. 1090, 7 U. S. C. 1624.

#### GENERAL

§ 51.1260 *General.* These standards apply to varieties such as Bartlett, Hardy and other similar varieties.

#### GRADES

§ 51.1261 *U. S. No. 1.* "U. S. No. 1" consists of pears of one variety which are mature, but not overripe, carefully hand-picked, clean, fairly well formed, free from decay, internal breakdown, scald, freezing injury, worm holes, black end, and from damage caused by hard end, bruises, broken skins, russetting, limbrubs, hail, scars, drought spot, sunburn, sprayburn, stings or other insect injury, disease, or mechanical or other means. (See §§ 51.1265 and 51.1268.)

§ 51.1262 *U. S. Combination.* A Combination of U. S. No. 1 and U. S. No. 2 may be packed. When such a combination is packed, at least 50 percent of the pears in any container shall meet the requirements of U. S. No. 1. (See §§ 51.1265 and 51.1268.)

§ 51.1263 *U. S. No. 2.* "U. S. No. 2" consists of pears of one variety which are mature, but not overripe, carefully hand-picked, clean, not seriously misshapen, free from decay, internal breakdown, scald, freezing injury, worm holes, black end, and from damage caused by hard end, or broken skins. The pears shall also be free from serious damage caused by bruises, russetting, limbrubs,

hail, scars, drought spot, sunburn, sprayburn, stings or other insect injury, disease, or mechanical or other means. (See §§ 51.1265 and 51.1268.)

#### UNCLASSIFIED

§ 51.1264 *Unclassified*. "Unclassified" consists of pears which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards, but is provided as a designation to show that no grade has been applied to the lot.

#### TOLERANCES

§ 51.1265 *Tolerances*. (a) In order to allow for variations incident to proper grading and handling, not more than a total of 10 percent of the pears in any lot may fail to meet the requirements of grade: *Provided*, That not more than 5 percent shall be seriously damaged by insects, and not more than 1 percent shall be allowed for decay or internal breakdown.

(b) When applying the foregoing tolerances to the combination grade no part of any tolerance shall be used to reduce the percentage of U. S. No. 1 pears required in the combination, but individual containers may have not more than 10 percent less than the percentage of U. S. No. 1 required: *Provided*, That the entire lot averages within the percentage specified.

#### APPLICATION OF TOLERANCES

§ 51.1266 *Application of tolerances*. (a) The contents of individual packages in the lot, based on sample inspection, are subject to the following limitations, provided the averages for the entire lot are within the tolerances specified for the grade:

(1) For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one pear which is seriously damaged by insects or affected by decay or internal breakdown may be permitted in any package.

(2) For packages which contain 10 pounds or less, individual packages in any lot are not restricted as to the percentage of defects or off-size: *Provided*, That not more than four times the tolerance specified may be permitted in any package for pears which are seriously damaged by insects or affected by decay or internal breakdown except that at least one defective pear may be permitted in any package.

#### BASIS FOR CALCULATING PERCENTAGES

§ 51.1267 *Basis for calculating percentages*. (a) When the numerical count is marked on the container or when pears are packed in a container to weigh 5 pounds or less, percentages shall be calculated on the basis of count.

(b) When the minimum diameter or minimum and maximum diameters are marked on a container packed to weigh

more than 5 pounds or when the pears are jumbled in a container packed to weigh more than 5 pounds, percentages shall be calculated on the basis of weight or an equivalent basis.

#### CONDITION AFTER STORAGE OR TRANSIT

§ 51.1268 *Condition after storage or transit*. Decay, scald, or other deterioration which may have developed on pears after they have been in storage or transit shall be considered as affecting condition and not grade.

#### STANDARD PACK

§ 51.1269 *Sizing*. (a) The numerical count, or the minimum size of the pears packed in closed containers shall be indicated on the package. The number of pears in the box shall not vary more than 3 from the number indicated on the box.

(b) When the numerical count is marked on western standard pear boxes the pears shall not vary more than three-eighths inch in their transverse diameter for counts 120 or less; one-fourth inch for counts 135 to 180, inclusive; and three-sixteenths inch for counts 193 or more.

(c) When the numerical count is marked on western standard half boxes or special half boxes packed three tiers deep, the pears shall not vary more than three-eighths inch for counts 75 or less; one-fourth inch for counts 80 to 110, inclusive; and three-sixteenths inch for counts 115 or more.

(d) When the numerical count is marked on western standard half boxes or special half boxes packed two tiers deep, the pears shall not vary more than three-eighths inch for counts 50 or less; one-fourth inch for counts 55 to 70, inclusive; and three-sixteenths inch for counts 80 or more.

(e) When the numerical count is not shown, the minimum size shall be plainly stamped, stenciled or otherwise marked on the container in terms of whole inches, whole and half inches, whole and quarter inches, or whole and eighth inches, as  $2\frac{1}{2}$  inches minimum,  $2\frac{3}{4}$  inches minimum, or  $2\frac{5}{8}$  inches minimum, in accordance with the facts. It is suggested that both minimum and maximum sizes be marked on the container, as  $2\frac{1}{4}$  to  $2\frac{3}{4}$  inches,  $2\frac{1}{2}$  to  $2\frac{3}{4}$  inches, as such marking is especially desirable for pears marketed in the export trade.

(f) "Size" means the greatest transverse diameter of the pear taken at right angles to a line running from the stem to the blossom end.

§ 51.1270 *Packing*. (a) Each package shall be packed so that the pears in the shown face shall be reasonably representative in size and quality of the contents of the package.

(b) Pears packed in any container shall be tightly packed. All packages shall be well filled but the contents shall not show excessive or unnecessary bruising because of overfilled packages.

(c) Pears packed in boxes shall be arranged in containers according to the approved and recognized methods with the pears packed lengthwise. A bridge shall not be allowed in any standard

pack. When wrapped, each pear shall be fairly well enclosed by its individual wrapper.

(d) Pears packed in round stave bushel baskets, tubs or in barrels shall be ring faced.

§ 51.1271 *Tolerances for standard pack*. (a) In order to allow for variations incident to proper sizing, not more than 5 percent of the pears in any lot may fail to meet the size requirements: *Provided*, That when the maximum and minimum sizes are both stated, an additional 10 percent tolerance shall be allowed for pears which are larger than the maximum size stated.

(b) In order to allow for variations incident to proper packing, not more than 10 percent of the containers in any lot may fail to meet these requirements, but no part of this tolerance shall be allowed for bridge packs, or for packs with different sizes and arrangements such as layers of 195 size and arrangement, and layers of 180 size and arrangement packed in the same box.

#### DEFINITIONS

§ 51.1272 *Mature*. (a) "Mature" means that the pear has reached the stage of maturity which will insure the proper completion of the ripening process.

(b) Before a mature pear becomes overripe it will show varying degrees of firmness, depending upon the stage of the ripening process. Therefore, a statement of firmness should be given in order to indicate the stage of the ripening process. A description of the ground color should also be given.

(1) The following terms should be used for describing the ground color: "Green", "Light Green", "Yellowish Green", and "Yellow".

(2) The following terms should be used for describing the firmness of pears:

(i) "Hard" means that the flesh of the pear is solid and does not yield appreciably even to considerable pressure.

(ii) "Firm" means that the flesh of the pear is fairly solid but yields somewhat to moderate pressure.

(iii) "Firm ripe" means that the flesh of the pear yields readily to moderate pressure.

(iv) "Ripe" means that the pear is at the stage where it is in its most desirable condition for eating.

§ 51.1273 *Overripe*. "Overripe" means dead ripe, very mealy or soft, past commercial utility.

§ 51.1274 *Carefully hand-picked*. "Carefully hand-picked" means that the pears do not show evidence of rough handling or of having been on the ground.

§ 51.1275 *Clean*. "Clean" means free from excessive dirt, dust, spray residue or other foreign material.

§ 51.1276 *Black end*. "Black end" is evidenced by an abnormally deep green color around the calyx, or black spots usually occurring on the one-third of the surface nearest to the calyx, or by an abnormally shallow calyx cavity.

§ 51.1277 *Fairly well formed*. "Fairly well formed" means that the pear may

be slightly abnormal in shape but not to an extent which detracts materially from the appearance of the fruit.

§ 51.1278 *Damage*. "Damage" means any injury or defect which materially affects the appearance, or the edible or shipping quality.

(a) Hard end shall be considered as damage if the pear shows a distinctly constricted protrusion at the blossom end, or an abnormally yellow color at the blossom end, or an abnormally smooth rounded base with little or no depression at the calyx, or if the flesh near the calyx is abnormally dry and tough or woody.

(b) Slight handling bruises and package bruises such as are incident to good commercial handling in the preparation of a tight pack shall not be considered damage.

(c) Any pear with one skin break larger than three-sixteenths inch in diameter or depth, or with more than one skin break one-eighth inch or larger in diameter or depth shall be considered damaged, and scored against the grade tolerance.\*

(1) Small inconspicuous skin breaks, less than one-eighth inch in diameter or depth, shall not be considered damage. In addition, not more than 15 percent of the pears in any container may have not more than one skin break from one-eighth inch to three-sixteenths inch, inclusive, in diameter or depth.\*

(d) Russetting which exceeds the following shall be considered as damage:

(1) On all varieties excessively rough russetting (russetting which shows "frogging" or slight cracking) when the aggregate area exceeds one-half inch in diameter.\*

(2) On Bartlett and other smooth-skinned varieties, slightly rough russetting, or thick russetting such as is characteristic of frost injury, when the aggregate area exceeds three-fourths inch in diameter.\*

(3) On Bartlett and other smooth-skinned varieties, smooth solid or smooth netlike russetting when the aggregate area exceeds 15 percent of the surface.

(4) On Hardy, Sand and other similar varieties, rough or thick russetting such as is characteristic of frost injury, when the aggregate area exceeds three-fourths inch in diameter. On any of these varieties any amount of characteristic russetting is permitted whether due to natural causes such as weather or stimulated by artificial means; leaf whips or light limbrubs which resemble and blend into russeted areas shall be considered as russet.\*

(e) Any one of the following defects or any combination thereof, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(1) Any limbrubs which are cracked, softened, or more than slightly depressed.

(2) Black discoloration caused by limbrubs, which exceeds an aggregate area of three-eighths inch in diameter.\*

\* The area refers to that of a circle of the specified diameter.

(3) Dark brown discoloration or excessive roughness caused by limbrubs which exceeds an aggregate area of one-half inch in diameter.\*

(4) Slightly rough, light colored discoloration caused by limbrubs which exceeds an aggregate area of three-fourths inch in diameter.\*

(5) Smooth, light colored discoloration caused by limbrubs which exceeds an aggregate area of 1 inch in diameter.\*

(6) Hail marks or other similar depressions or scars which are not shallow or superficial, or where the injury affects an aggregate area of more than three-eighths inch in diameter.\*

(7) Drought spot when more than one in number, or when the external injury exceeds an aggregate area of three-eighths inch in diameter, or when the appearance of the flesh is materially affected by corky tissue or brownish discoloration.\*

(8) Sunburn or sprayburn where the skin is blistered, cracked, or shows any light tan or brownish color, or the shape of the pear is appreciably flattened, or the flesh is appreciably softened or changed in color, except that sprayburn of a russet character shall be considered under the definition of russetting.

(9) Insects:

(i) More than two healed codling moth stings, or any insect sting which is over three thirty-seconds of an inch in diameter, or other insect stings affecting the appearance to an equal extent.\*

(ii) Blister mite or canker worm injury which is not shallow or superficial, or where the injury affects an aggregate area of more than three-eighths inch in diameter.\*

(10) Disease:

(i) Scab spots which are black and which cover an aggregate area of more than one-fourth inch in diameter except that scab spots of a russet character shall be considered under the definition of russetting.

(ii) Sooty blotch which is thinly scattered over more than 5 percent of the surface, or dark, heavily concentrated spots which affect an area of more than three-eighths inch in diameter.\*

§ 51.1279 *Seriously misshapen*. "Seriously misshapen" means that the pear is excessively flattened or elongated for the variety, or is constricted or deformed so it will not cut three fairly uniform good quarters, or is so badly misshapen that the appearance is seriously affected.

§ 51.1280 *Serious damage*. "Serious damage" means any injury or defect which seriously affects the appearance, or the edible or shipping quality.

(a) Russetting which in the aggregate exceeds the following shall be considered as serious damage:

(1) On all varieties, excessively rough russetting (russetting which shows "frogging" or slight cracking) when the aggregate area exceeds three-fourths inch in diameter.\*

(2) On all varieties, thick russetting such as is characteristic of frost injury, 15 percent of the surface.

(b) Any one of the following defects or combination thereof, the seriousness

of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(1) Limbrubs which are more than slightly cracked, or excessively rough limbrubs or dark brown or black discoloration caused by limbrubs which exceeds an aggregate area of three-fourths inch in diameter. Other limbrubs which affect an aggregate area of more than one-tenth of the surface.\*

(2) Hail marks or other similar depressions or scars which affect an aggregate area of more than three-fourths inch in diameter, or which materially deform or disfigure the fruit.\*

(3) Drought spot when more than two in number, or where the external injury affects an aggregate area of more than three-fourths inch in diameter, or when the appearance of the flesh is seriously affected by corky tissue or brownish discoloration.\*

(4) Sunburn or sprayburn where the skin is blistered, cracked or shows any brownish color, or where the shape of the pear is materially flattened, or the flesh is softened or materially changed in color, except that sprayburn of a russet character shall be considered under the definition of russetting.

(5) Insects:

(i) Worm holes. More than three healed codling moth stings, of which not more than two may be over three thirty-seconds of an inch in diameter, or other insect stings affecting the appearance to an equal extent.\*

(ii) Blister mite or canker worm injury which affects an aggregate area of more than three-fourths inch in diameter or which materially deforms or disfigures the fruit.\*

(6) Disease:

(i) Scab spots which are black and which cover an aggregate area of more than one-half inch in diameter, except that scab spots of a russet character shall be considered under the definition of russetting.\*

(ii) Sooty blotch which is thinly scattered over more than 15 percent of the surface, or dark, heavily concentrated spots which affect an area of more than three-fourths inch in diameter.\*

[F. R. Doc. 55-6366; Filed, Aug. 4, 1955; 8:52 a. m.]

## PART 58—GRADING AND INSPECTION OF DAIRY PRODUCTS

GRADING, INSPECTION, SAMPLING, GRADE LABELING AND SUPERVISION OF PACKAGING BUTTER, CHEESE AND OTHER MANUFACTURED OR PROCESSED DAIRY PRODUCTS

A notice of proposed amendment to the regulations covering the grading and inspection of dairy products (7 CFR Part 58) was published in the FEDERAL REGISTER on June 14, 1955 (20 F. R. 4159) and afforded interested persons the opportunity to submit written data, views or arguments in connection therewith. The amendment hereinafter promulgated is pursuant to authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.).

The amendment provides for revisions of the following sections: § 58.11 has

been redesignated as § 58.12 and amended to more specifically indicate conditions when application for grading service may be rejected. Additions have been made to § 58.52 to include specific time limit for packaging natural cheese and dry milk with grade or other official identification. A new heading "Violations" has been substituted for "Miscellaneous." Section 58.58 under this heading has been changed from "Fraud or misrepresentation" to "Debarment of service." Additions have been made to this section to more clearly indicate practices that involve violation of these regulations. The heading "Miscellaneous" has been redesignated to include former §§ 58.60, 58.61, 58.63, 58.64, and 58.62, a new section entitled "Other applicable regulations." The amendment also provides for minor revisions, additions or redesignations of §§ 58.2, 58.4, 58.6, 58.7, 58.10, 58.12, 58.13, 58.14, 58.15, 58.16, 58.17, 58.23, 58.30, 58.32, 58.50, 58.51, 58.53, 58.56, 58.57, 58.60, 58.61, 58.63 and 58.64. The amendment is essentially the same as published in the aforesaid Notice of Proposed Rule Making. However, a new paragraph (d) has been added to § 58.38 to more clearly indicate the fees applicable to each service.

After consideration of all relevant material presented and the notice of rule making the amendment hereinafter set forth is promulgated to become effective 30 days after publication in the *FEDERAL REGISTER*.

The amendment is as follows:

1. Wherever the word "Administration" occurs in this part substitute the word "Service".

2. Change § 58.2 to read as follows:

§ 58.2 *Terms defined.* For the purpose of the regulations in this part, unless the context otherwise requires, the following terms shall be construed, respectively, as follows:

(a) "Act" means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.), or any other act of Congress conferring like authority.

(b) "Administrator" means the Administrator of the Agricultural Marketing Service of the Department, or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated by the Administrator, the authority to act in his stead.

(c) "Applicant" means an interested party who requests any grading service, appeal grading, or regrading with respect to any product.

(d) "Approved laboratory" means one in which the entire facilities and equipment have been approved by the Administrator as being adequate to perform the necessary official tests, in accordance with the rules and regulations.

(e) "Approved plant" means one or more buildings, or parts thereof, comprising a single plant in which the facilities and methods of operation therein have been approved by the Administrator as suitable and adequate for operation under grading or inspection service and in which grading or inspection is carried on in accordance with the regula-

tions in this part and any applicable instructions or specifications issued hereunder.

(f) "Area supervisor" means any employee of the Department in charge of dairy grading and inspection service in a designated geographical area.

(g) "Class" means any subdivision of a product based on essential physical characteristics that differentiate between major groups of the same kind or method of processing.

(h) "Condition" means any condition (including, but not being limited to, the state of preservation, cleanliness, soundness, wholesomeness, or fitness for human food) of any product which affects its merchantability.

(i) "Department" means the United States Department of Agriculture.

(j) "Grader" means any employee of the Department authorized by the Secretary, or any other person to whom a license has been issued by the Secretary, to investigate and certify, in accordance with the act and this part, to shippers of products and other interested parties the class, quality, quantity, and condition of such products.

(k) "Grading or grading service" means: (1) The act of determining, according to the regulations in this part, the class, quality, quantity or condition of any product by examining each unit thereof or a representative sample drawn by a grader or sampler; (2) the act of issuing a grading certificate with respect thereto; (3) the act of identifying, when requested by the applicant, any graded product by means of official identification pursuant to the act and this part; (4) any regrading or any appeal grading of a previously graded product; and (5) inspection including plant survey, processing, manufacturing, packaging, repackaging, condition, or quality control.

(l) "Grading certificate" means an official serially numbered, printed or written form bearing the Department seal issued and signed by a grader, pursuant to the act and this part, relative to the class, quality, quantity, or condition of the products.

(m) "Inspector" means any employee of the Department authorized by the Secretary, or any other person to whom a license has been issued by the Secretary, to inspect and certify quality, quantity, and condition of products, supervise the operation in an approved plant and perform plant surveys.

(n) "Interested party" means any person financially interested in a transaction involving any grading, appeal grading, or regrading of any product.

(o) "National Supervisor" means (1) the officer in charge of dairy inspection and grading service of the Agricultural Marketing Service and (2) such other employee of the Service as may be designated by him.

(p) "Office of grading" means the office of any grader, sampler, or inspector.

(q) "Official identification" means the symbol represented by a stamp, label, seal, mark, or other device approved by the Administrator, affixed to any product or to any container thereof, stating that the product was graded or inspected and indicating the class, quality, grade, or condition of such product.

(r) "Person" means any individual, partnership, association, business, trust, corporation, or any organized group of persons, whether incorporated or not.

(s) "Product or products" means butter, cheese (whether natural or processed), milk, cream, milk products (whether dried, evaporated, stabilized or condensed), ice cream, dry whey, dry buttermilk, and such other perishable dairy products as the Secretary may hereafter designate. Such term shall also include any food product which is prepared or manufactured from any of the aforesaid products if such products constitute at least 50 percent, by weight, of all the ingredients used in the preparation or manufacture of such food product. Such food product shall not contain any fats except milk fats and those fats inherent to the food product graded.

(t) "Quality" means the inherent properties of any product which determine its relative degree of excellence.

(u) "Regulations" means the provisions of this part.

(v) "Sampler" means any employee of the Department authorized by the Secretary, or any other person to whom a license has been issued by the Secretary, to draw samples of products for grading by a grader or for laboratory analysis under the act and this part.

(w) "Sampling" means the act of taking samples of any product for grading, laboratory analysis, or keeping quality test.

(x) "Sampling report" means a statement, either written or printed, issued by a sampler, identifying samples taken by him for grading, laboratory analysis, or keeping quality.

(y) "Secretary" means the Secretary of Agriculture or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(z) "Service" means Agricultural Marketing Service of the Department.

(aa) "Supervisor of packaging" means any employee of the Department authorized by the Secretary, or any other person to whom a license has been issued by the Secretary, to supervise the packaging and official identification of product, or any repackaging of bulk product.

3. Change § 58.4 to read as follows:

§ 58.4 *Basis of grading service.* Grading service shall be performed in accordance with methods and procedures approved by the Administrator and this part and shall be for class, quality, quantity, and condition or any single factor or combination thereof. Grading service with respect to determining quality of products shall be on the basis of United States standards for grades, Federal specifications, Department quality specifications, or specifications as defined in a specific purchase contract. The supervision of processing, manufacturing, packaging, or repackaging of products shall be in accordance with applicable specifications and instructions as may be approved or issued by the Administrator.

## 4. Change § 58.6 to read as follows:

§ 58.6 *Supervision.* All grading, inspection and sampling service shall be subject to supervision by the area supervisor or national supervisor or such other employee of the service as may be designated by him. Whenever the immediate supervisor of a grader, inspector, or sampler has evidence that such employee incorrectly graded, inspected or sampled a product, such supervisor shall immediately make a regrading, reinspection or resampling of the product and cause to be issued a grading certificate or sampling report which shall supersede the previous grading certificate or sampling report.

## 5. Change § 58.7 to read as follows:

§ 58.7 *Who may obtain grading, inspection and sampling service.*—(a) *On fee basis.* An application for grading, inspection, or sampling service may be made by any interested person, including, but not being limited to, the United States, any State, county, municipality, or common carrier, or any authorized agent of the foregoing.

(b) *On resident basis.* Application for grading service on a resident basis to be performed in an approved plant shall be made in writing on forms approved by the Administrator and filed with the Administrator.

## 6. Change § 58.10 to read as follows:

§ 58.10 *Filing of application.* An application for grading, inspection, or sampling of a specified lot of any product shall be regarded as filed only when made pursuant to this part.

## 7. Change § 58.11 to read as follows:

§ 58.11 *Granting of application.* An application may be granted (a) on fee basis when facilities and conditions are satisfactory for conduct of the grading, inspection or sampling service, and (b) on resident basis when the plant is surveyed and approved for grading, inspection or sampling service.

## 8. Change § 58.12 to read as follows:

§ 58.12 *When application may be rejected.* An application for grading, inspection or sampling service may be rejected by the Administrator (a) whenever the applicant fails to meet the requirements of the regulations prescribing the conditions under which the service is made available; (b) whenever the product is owned by or located on the premises of a person currently denied the benefits of the act; (c) where an individual holding office or a responsible position with or having a substantial financial interest or share with the applicant is currently denied the benefits of the act or was responsible in whole or in part for the current denial of the benefits of the act to any person; (d) when he determines that the application is an attempt on the part of a person currently denied the benefits of the act to obtain grading, inspection or sampling service; (e) when he determines that the product was produced from unwholesome raw material or was produced under insanitary or otherwise unsatisfactory conditions; (f) when it is determined that the product is of illegal composition

or is lacking in stability; (g) delinquent payment of fees over 60 days; or (h) non-compliance with the act or regulations in this part or instructions issued hereunder. When an application is rejected, the applicant shall be notified in writing by the area supervisor or his designated representative the reason or reasons for the rejection.

## 9. Redesignate § 58.12 to § 58.13.

## 10. Redesignate § 58.13 to § 58.14.

## 11. Redesignate § 58.14 to § 58.15 and change to read as follows:

§ 58.15 *Accessibility and condition of product.* (a) Each product for which grading, inspection or sampling service is requested shall be so conditioned and placed as to permit a proper determination of the class, quality, quantity, or condition of such product. The room or area where the service is to be performed shall be clean and sanitary, free from foreign odors and shall be provided with adequate lighting, ventilation and temperature control.

(b) The applicant shall be entirely responsible for furnishing sample packages that are truly representative of the class, quality, quantity and condition of the lot and each unit thereof. When there is any indication that the samples furnished are not truly representative additional samples shall be made available for verification.

## 12. Redesignate § 58.15 to § 58.16.

13. Change § 58.17 by adding a new sentence at the end thereof to read as follows: "The Service, its officers and employees, shall not be liable for damages occurring through acts of commission or omission in administration of this part."

14. Delete the word "superior" in § 58.23 (c) and substitute the word "supervisor" therefor.

## 15. Change § 58.30 to read as follows:

§ 58.30 *Application for regrading of a graded product.* An application for the regrading of any previously graded product may be made at any time by any interested party; and such application shall clearly indicate the reasons for requesting the regrading. The provisions of the regulations relative to grading service shall apply to regrading service.

16. Insert the word "quantity" after the word "quality" in the first sentence of § 58.32.

16a. Add to § 58.38 new paragraph (d) as follows: (d) Charges for grading service not specifically set forth in (a), (b) and (c) of this section including inspection for condition of product, plant surveys and other miscellaneous service shall be based on the time required to perform such service and travel of each grader, inspector, sampler or supervisor of packaging, at the rate of \$3.60 per hour for the time actually required.

## 17. Change § 58.50 to read as follows:

§ 58.50 *Approval and form of official identification.* (a) Any grade label, inspection mark, or packaging material which is to be used as official identification shall be used only in such manner as the Administrator may prescribe; and such label, inspection mark, and packaging material shall be of such form and

contain such information as the Administrator may require. No grade label, inspection mark, or packaging material may be used in the identification of any graded or inspected product unless finished copies or samples of such grade label, inspection mark, and packaging material have been approved by the Administrator.

(b) Inspection or grade mark permitted to be used to officially identify packages containing dairy products which are inspected or graded pursuant to this part shall be contained in a shield in the form and design indicated in figures 1, 2, 3 and 4 of this section or such other form or design as may be approved by the Administrator.



FIGURE 1.



FIGURE 2.



FIGURE 3.



FIGURE 4.

Design illustrated in figure 1 is used for graded product under USDA inspection. Designs illustrated in figures 2 and 3 are used for graded products processed and packed under USDA quality control service. Design illustrated in figure 4 is used for inspected product (when U. S. standards for grades not established) processed and packed under USDA quality control service. The grade or inspection identification shall be printed on the carton, or on the wrapper, or on both, and preferably on one of the main panels of the carton or wrapper. The shield identification shall be not less than 3/4 inch by 3/4 inch in size, and preferably one inch by one inch on one-pound cartons or wrappers.

(c) Labelling and official identification under this part shall be limited to U. S. Grade B or higher, or to an equivalent standard of quality for U. S. name grades or numerical score grades or when U. S. Standards for grades of a product have not been established.

18. Delete the word "continuous" in the first sentence of § 58.51 and add a new paragraph (c) to said section to read as follows:

(c) With respect to paragraphs (a) and (b) of this section, the date of grading or date of inspection may be shown in form of a code provided such code is made available to and approved by the Administrator.

## 19. Change § 58.52 to read as follows:

§ 58.52 *Time limit for packaging graded butter, natural cheese or dry milk*

*solids with grade or other official identification label.* Any lot of butter which is graded for packaging with grade or other official identification shall be packaged within ten days immediately following the date of grading and any lot of natural cheese or dry milk shall be packaged within 30 days immediately following date of grading provided the product is properly stored during the ten or thirty day period. If the product is moved to another location a regrading or a reinspection shall be required.

20. Place the heading, "Prerequisites to Packaging Products With Grade Identification Labels" prior to § 58.53 instead of prior to § 58.54.

21. Change § 58.53 by adding a new sentence at the end thereof to read as follows: "The supervisor of packaging shall have jurisdiction over the use and handling of all packaging material bearing any official identification."

22. Change § 58.56 to read as follows:

§ 58.56 *Incubation of butter samples to determine keeping quality.* (a) Samples of butter may be taken by a grader, pursuant to the instructions of the Administrator, from any lot of butter which is submitted for grading and packaging with grade identification labels, for the purpose of determining, by subsequent examination, whether such butter possesses satisfactory keeping quality, as determined by the grader in accordance with such standards as the Administrator may prescribe.

(b) Samples of butter may be taken by a grader for keeping quality tests pursuant to the instructions of the Administrator, from any lot of butter submitted for grading prior to issuance of the grading certificate.

23. Change § 58.57 to read as follows:

§ 58.57 *Butter of known unsatisfactory keeping quality shall not be eligible for packaging with grade identification labels.* (a) Any butter produced in a creamery whose production of butter, within 30 days prior to current grading, has shown unsatisfactory keeping quality, as evidenced by the keeping quality test pursuant to § 58.56, shall not be packaged with any grade identification label until it is determined by the grader, that such butter possesses satisfactory keeping quality.

(b) Any manufacturing or processing plants supplying product, directly or indirectly, for packaging with official identification shall be subject to survey and inspection. Product shall not be eligible for grading and official identification if processed in a plant which, on inspection, shows insanitary or otherwise unsatisfactory operating conditions.

24. Delete the heading "Miscellaneous" and substitute therefor the heading "Violations".

25. Change § 58.58 to read as follows:

§ 58.58 *Debarment of Service.* (a) The following acts or practices may be deemed sufficient cause for the debarment of any person by the Administrator from any or all benefits of the act after opportunity for hearing has been accorded him; and pending investigation and hearing the Administrator may di-

rect, without hearing, that such person shall be denied the benefits of the act.

(1) *Fraud or misrepresentation.* Any wilful misrepresentation or deceptive or fraudulent practice or act found to be made or committed by any person in connection with:

(i) The making or filing of any application for any grading service, inspection service, or sampling service, appeal, or regrading service;

(ii) The making of the product accessible for grading, inspection, or sampling;

(iii) The use of any grading certificate or inspection certificate issued pursuant to the regulations in this part or the use of any official stamp, label, or identification;

(iv) The use of the terms, "United States," or "U. S.," "Officially graded," "Officially inspected," "Federal-State graded," or "Government graded," or terms of similar import in the labeling or advertising of any product without stating in conjunction therewith the official U. S. grade of the product; or

(v) The use of any of the aforesaid terms or an official stamp, label, or identification in the labeling or advertising of any product that has not been graded pursuant to this part.

(2) *Use of facsimile form.* The use of a facsimile form which simulates in whole or in part any official identification for the purpose of purporting to evidence the U. S. grade of any product; or the unauthorized use of a facsimile form which simulates in whole or in part any official grading or inspection certificate, stamp, label, or other identification for the purpose of purporting to evidence a grade or other official inspection mark; and

(3) *Mislabeling.* The use of any words, numerals, letters, or facsimile form which simulates in whole or in part any identification purporting to be a grade when such product does not comply with any recognized standards in general use for such grade, and such activity may be deemed sufficient cause for debarring such person from any or all benefits of the act.

(4) *Wilful violation of the regulations.* Wilful violation of the regulations in this part or instructions issued by the Administrator.

(5) *Interfering with a grader, inspector, or sampler.* Any interference with or obstruction of any grader, inspector, or sampler in the performance of his duties by intimidation, threat, bribery, assault, or any other improper means.

(b) Whenever the Administrator has reason to believe that any person, or his employee, agent, or representative has wilfully, flagrantly or repeatedly committed any of the acts or practices specified in paragraph (a) of this section, he may without hearing direct that the benefits of the act be denied such person pending investigation and hearing and shall give notice thereof by registered mail. A written petition for reconsideration of such interim denial may be filed with the Administrator by any person so denied the benefits of the act if postmarked or delivered within 10 days after notice of the interim denial. Such petition shall state specifically the errors

alleged to have been made by the Administrator in denying the benefits of the act pending investigation and hearing. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall reinstate the benefits of the act or notify the petitioner by registered mail of the reasons for continued interim denial.

26. Place the heading "Miscellaneous" prior to § 58.59 instead of prior to § 58.58.

27. Redesignate §§ 58.60, 58.61, 58.63 and 58.64 as §§ 58.59, 58.60, 58.61 and 58.63, respectively.

28. Insert a new § 58.62 to read as follows:

§ 58.62 *Other applicable regulations.* Compliance with the regulations in this part shall not excuse failure to comply with any other Federal, or any State, or municipal applicable laws or regulations. (60 Stat. 1090; 7 U. S. C. 1624)

Done at Washington, D. C., this 2d day of August 1955.

[SEAL] ROY W. LENNARTSON,  
Deputy Administrator.

[F. R. Doc. 55-6367; Filed, Aug. 4, 1955; 8:52 a. m.]

## Chapter IV—Federal Crop Insurance Corporation

### PART 417—TOBACCO CROP INSURANCE

#### SUBPART—REGULATIONS FOR THE 1954 AND SUCCEEDING CROP YEARS

##### APPENDIX

Pursuant to authority contained in paragraph (a) of § 417.1 of the above-identified regulations, as amended (18 F. R. 5703; 19 F. R. 469, 5602), the following counties have been designated for insurance for the 1955 crop year. The type(s) of tobacco on which insurance is offered in each county is shown opposite the name of the county.

| State and county | Types(s)<br>of tobacco |
|------------------|------------------------|
| Connecticut:     |                        |
| Hartford         | 51, 52                 |
| Florida:         |                        |
| Alachua          | 14                     |
| Columbia         | 14                     |
| Hamilton         | 14                     |
| Madison          | 14                     |
| Suwannee         | 14                     |
| Georgia:         |                        |
| Appling          | 14                     |
| Bacon            | 14                     |
| Berrien          | 14                     |
| Bulloch          | 14                     |
| Candler          | 14                     |
| Coffee           | 14                     |
| Colquitt         | 14                     |
| Cook             | 14                     |
| Evans            | 14                     |
| Irwin            | 14                     |
| Jeff Davis       | 14                     |
| Lowndes          | 14                     |
| Pierce           | 14                     |
| Tattnall         | 14                     |
| Tift             | 14                     |
| Toombs           | 14                     |
| Kentucky:        |                        |
| Adair            | 31                     |
| Barren           | 31                     |
| Bourbon          | 31                     |
| Breckenridge     | 31                     |
| Caldwell         | 22, 31, 35             |
| Calloway         | 23, 35                 |

## RULES AND REGULATIONS

| State and county         | Type(s)<br>of tobacco |
|--------------------------|-----------------------|
| Kentucky—Continued       |                       |
| Casey                    | 31                    |
| Christian                | 22, 31, 35            |
| Daviess                  | 31, 35                |
| Graves                   | 23, 31, 35            |
| Hart                     | 31                    |
| Henry                    | 31                    |
| Larue                    | 31                    |
| Lincoln                  | 31                    |
| Logan                    | 22, 31, 35            |
| Mason                    | 31                    |
| Mercer                   | 31                    |
| Montgomery               | 31                    |
| Nelson                   | 31                    |
| Owen                     | 31                    |
| Pulaski                  | 31                    |
| Russell                  | 31                    |
| Simpson                  | 31, 35                |
| Todd                     | 22, 31, 35            |
| Warren                   | 31, 35                |
| Washington               | 31                    |
| Wayne                    | 31                    |
| Massachusetts: Hampshire | 52                    |
| North Carolina:          |                       |
| Alamance                 | 11                    |
| Beaufort                 | 12                    |
| Buncombe                 | 31                    |
| Caswell                  | 11                    |
| Columbus                 | 13                    |
| Duplin                   | 12                    |
| Forsyth                  | 11                    |
| Franklin                 | 11                    |
| Granville                | 11                    |
| Greene                   | 12                    |
| Gulford                  | 11                    |
| Harnett                  | 11                    |
| Jones                    | 12                    |
| Lenoir                   | 12                    |
| Moore                    | 11                    |
| Nash                     | 12                    |
| Person                   | 11                    |
| Pitt                     | 12                    |
| Robeson                  | 13                    |
| Rockingham               | 11                    |
| Stokes                   | 11                    |
| Surry                    | 11                    |
| Vance                    | 11                    |
| Wake                     | 11                    |
| Wilson                   | 12                    |
| Yadkin                   | 11                    |
| Ohio:                    |                       |
| Adams                    | 31                    |
| Brown                    | 31                    |
| Highland                 | 31                    |
| Pennsylvania: Lancaster  | 41                    |
| South Carolina:          |                       |
| Chesterfield             | 13                    |
| Clarendon                | 13                    |
| Darlington               | 13                    |
| Dillon                   | 13                    |
| Florence                 | 13                    |
| Horry                    | 13                    |
| Marion                   | 13                    |
| Williamsburg             | 13                    |
| Tennessee:               |                       |
| Claiborne                | 31                    |
| De Kalb                  | 31                    |
| Dickson                  | 22                    |
| Grainger                 | 31                    |
| Greene                   | 31                    |
| Hamblen                  | 31                    |
| Hawkins                  | 31                    |
| Johnson                  | 31                    |
| Loudon                   | 31                    |
| Macon                    | 31, 35                |
| Marshall                 | 31                    |
| McMinn                   | 31                    |
| Maury                    | 31                    |
| Montgomery               | 22, 31                |
| Putnam                   | 31                    |
| Robertson                | 22, 31, 35            |
| Sevier                   | 31                    |
| Smith                    | 31                    |
| Sullivan                 | 31                    |
| Sumner                   | 22, 31, 35            |
| Washington               | 31                    |
| Williamson               | 31                    |
| Wilson                   | 31                    |
| Virginia:                |                       |
| Appomattox               | 11, 21                |

| State and county   | Type(s)<br>of tobacco |
|--------------------|-----------------------|
| Virginia—Continued |                       |
| Brunswick          | 11, 21                |
| Campbell           | 11, 21                |
| Charlotte          | 11, 21                |
| Dinwiddie          | 11, 21                |
| Halifax            | 11                    |
| Lee                | 31                    |
| Lunenburg          | 11                    |
| Mecklenburg        | 11                    |
| Patrick            | 11                    |
| Pittsylvania       | 11                    |
| Russell            | 31                    |
| Scott              | 31                    |
| Washington         | 31                    |
| Wisconsin:         |                       |
| Dane               | 54                    |
| Vernon             | 55                    |

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U. S. C. 1506, 1516. Interprets or applies secs. 507-509, 52 Stat. 73-75, as amended; 7 U. S. C. 1507-1509)

[SEAL] C. S. LAIDLAW,  
Manager,  
Federal Crop Insurance Corporation.  
[F. R. Doc. 55-6369; Filed, Aug. 4, 1955;  
8:53 a. m.]

PART 421—DRY EDIBLE BEAN CROP  
INSURANCESUBPART—REGULATIONS FOR 1950 AND  
SUCCEEDING CROP YEARS

## APPENDIX

Pursuant to authority contained in paragraph (a) of § 421.21 of the above-identified regulations, as amended (14 F. R. 7684; 15 F. R. 2485, 9034; 16 F. R. 3973, 7695, 9302; 17 F. R. 5980, 10537; 18 F. R. 3634, 6992; 19 F. R. 5604, 9365; 20 F. R. 1583), the following counties have been designated for insurance for the 1955 crop year. The class(es) of beans on which insurance is offered is shown opposite the name of the county.

| State and county | Class(es) of beans<br>insured        |
|------------------|--------------------------------------|
| Colorado:        |                                      |
| Dolores          | Pinto.                               |
| Montezuma        | Do.                                  |
| Idaho:           |                                      |
| Cassia           | Great Northern, Pinto,<br>Small Red. |
| Gooding          | Do.                                  |
| Jerome           | Do.                                  |
| Minidoka         | Do.                                  |
| Twin Falls       | Do.                                  |
| Michigan:        |                                      |
| Bay              | Pea and Medium White.                |
| Huron            | Do.                                  |
| St. Clair        | Do.                                  |
| Sanilac          | Do.                                  |
| Shiawassee       | Do.                                  |
| Nebraska:        |                                      |
| Morrill          | Great Northern, Pinto.               |
| Scotts Bluff     | Do.                                  |
| New York:        |                                      |
| Cayuga           | Red Kidney.                          |
| Washington:      |                                      |
| Grant            | Great Northern, Pinto,<br>Small Red. |
| Wyoming:         |                                      |
| Goshen           | Great Northern, Pinto.               |

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U. S. C. 1506, 1516. Interprets or applies secs. 507-509; 52 Stat. 73-75, as amended; 7 U. S. C. 1507-1509)

[SEAL] C. S. LAIDLAW,  
Manager,  
Federal Crop Insurance Corporation.  
[F. R. Doc. 55-6370; Filed, Aug. 4, 1955;  
8:53 a. m.]

PART 423—SOYBEAN CROP INSURANCE  
SUBPART—REGULATIONS FOR THE 1955 AND  
SUCCEEDING CROP YEARS

## APPENDIX

Pursuant to authority contained in paragraph (a) of § 423.1 of the above-identified regulations, as amended (19 F. R. 7473, 9365; 20 F. R. 1068), the following counties have been designated for insurance for the 1955 crop year.

Illinois: Macoupin.  
Iowa: Hancock, Webster, Cerro Gordo.  
Ohio: Putnam, Mercer.  
(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U. S. C. 1506, 1516. Interprets or applies secs. 507-509, 52 Stat. 73-75, as amended; 7 U. S. C. 1507-1509)

[SEAL] C. S. LAIDLAW,  
Manager,  
Federal Crop Insurance Corporation.  
[F. R. Doc. 55-6371; Filed, Aug. 4, 1955;  
8:53 a. m.]

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

## (Subchapter A—Marketing Orders)

PART 958—IRISH POTATOES GROWN IN  
COLORADOAPPROVAL OF EXPENSES AND RATE OF  
ASSESSMENT

Notice of rule making regarding proposed expenses and rate of assessment, to be made effective under Marketing Agreement No. 97 and Order No. 58 (7 CFR Part 958; 19 F. R. 9368), regulating the handling of Irish potatoes grown in the State of Colorado, was published in the FEDERAL REGISTER July 8, 1955 (20 F. R. 4871). This regulatory program is effective under The Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, 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 proposals were adopted and submitted for approval by the area committee for Area No. 1, established pursuant to said marketing agreement and order, it is hereby found and determined that:

§ 958.218 *Expenses and rate of assessment.* (a) The reasonable expenses that are likely to be incurred by the area committee for Area No. 1, established pursuant to Marketing Agreement No. 97 and Order No. 58, to enable such committee to perform its functions pursuant to the provisions of aforesaid marketing agreement and order, during the fiscal period ending May 31, 1956, will amount to \$1,250.00.

(b) The rate of assessment to be paid by each handler, pursuant to Marketing Agreement No. 97 and Order No. 58, shall be one cent (\$0.01) per hundred-weight of potatoes handled by him as the first handler thereof during said fiscal period.

(c) The terms used in this section shall have the same meaning as when

used in Marketing Agreement No. 97 and Order No. 58.

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

Done at Washington, D. C., this 2d day of August 1955, to become effective 30 days after publication in the FEDERAL REGISTER.

[SEAL]

ROY W. LENNARTSON,  
Deputy Administrator.

[F. R. Doc. 55-6342; Filed, Aug. 4, 1955;  
8:46 a. m.]

[Avocado Order 9]

PART 969—AVOCADOS GROWN IN SOUTH  
FLORIDA

CONTAINER REGULATION

§ 969.309 *Avocado Order 9—(a) Findings.* On July 7, 1955, notice of proposed rule making was published in the FEDERAL REGISTER (20 F. R. 4825) regarding proposed limitations on the containers used for the handling of avocados pursuant to the provisions of the marketing agreement, as amended, and Order No. 69, as amended (7 CFR Part 969; 20 F. R. 4177), 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). Briefs concerning the proposal were filed within the prescribed time by the Florida Lime and Avocado Growers, Inc., and J. R. Brooks on behalf of Florida Lime and Avocado Growers, Inc., Gloria Avocado Groves, Inc., R. H. Baird, Lucerne Packing Co., Ippolito Brothers, Brooks, Inc., and D. L. Wadsworth in opposition to the proposal; and by Harold E. Kendall and the Avocado Administrative Committee in support of the proposal. After consideration of all relevant matters presented, and other available information, it is hereby found that the regulation hereinafter set forth is in accordance with the provisions of the said amended marketing agreement and order and will tend to effectuate the declared policy of the act.

(b) *Order.* (1) Beginning at the effective time of this section, no handler shall handle any variety of avocados in any container other than the following:

(1) Wooden boxes and fiberboard cartons with inside dimensions 11 by 16¾ by 10 inches;

(2) Fiberboard cartons with inside dimensions 13½ by 16½ by 3¼ inches;

(3) Fiberboard cartons with inside dimensions 13½ by 16½ by 3¾ inches;

(4) Wooden boxes with inside dimensions 13½ by 16½ by 3¾ inches; and

(5) Wooden boxes with inside dimensions by 13½ by 16½ by 4½ inches.

(2) The terms "handler," "handle," and "avocados" shall have the same meaning as when used in the amended marketing agreement and order.

(c) *Effective time.* The provisions of this section shall become effective 30

days after its publication in the FEDERAL REGISTER.

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

Dated: August 1, 1955.

[SEAL]

S. R. SMITH,  
Director, Fruit and Vegetable  
Division, Agricultural Mar-  
keting Service.

[F. R. Doc. 55-6341; Filed, Aug. 4, 1955;  
8:46 a. m.]

[992.310, Amdt. 1]

PART 992—IRISH POTATOES GROWN IN  
WASHINGTON

LIMITATION OF SHIPMENTS

*Findings.* (a) Pursuant to Marketing Agreement No. 113 and Order No. 92 (7 CFR Part 992), regulating the handling of Irish potatoes grown in the State of Washington, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.), and upon the basis of the recommendation and information submitted by the State of Washington Potato Committee, established pursuant to said marketing agreement and order, and upon other available information, it is hereby found that the amendment to the limitation of shipments, as hereinafter provided, will tend to effectuate the declared policy of the act.

(b) It is hereby 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 amendment until 30 days after publication in the FEDERAL REGISTER (5 U. S. C. 1001 et seq.) in that (i) 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, (ii) more orderly marketing in the public interest, then would otherwise prevail, will be promoted by regulating the shipment of potatoes, in the manner set forth below, on and after the effective date of this amendment, (iii) compliance with this amendment will not require any special preparation on the part of handlers which cannot be completed by the effective date, (iv) reasonable time is permitted, under the circumstances, for such preparation, and (v) information regarding the committee's recommendations has been made available to producers and handlers in the production area.

*Order, as amended.* The provisions of § 992.310 (b) (1) (20 F. R. 4366; June 22, 1955) are hereby amended as follows:

(b) *Order.* (1) During the period from August 8, 1955, to May 31, 1956, both dates inclusive, no handler shall ship potatoes of any variety unless such potatoes are "fairly clean" and (i) if they are of the round varieties (including but not limited to Kennebecs, Irish Cobblers,

Bliss Triumphs, and Pontiacs) such potatoes meet the requirements of the U. S. No. 1 or better grade, 2 inches minimum diameter, and (ii) if they are of the long varieties (including but not limited to White Rose, Russet Burbank, and Early Russet) such potatoes meet the requirements of the U. S. No. 1 or better grade, 5 ounces minimum weight, as such terms, grades, and sizes are defined in the United States Standards for Potatoes (§§ 51.1540 to 51.1559 of this title), including the tolerances set forth therein.

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

Done at Washington, D. C., this 2d day of August 1955 to become effective August 8, 1955.

[SEAL]

S. R. SMITH,  
Director, Fruit and Vegetable  
Division, Agricultural Mar-  
keting Service.

[F. R. Doc. 55-6378; Filed, Aug. 4, 1955;  
8:45 a. m.]

[Lime Order 2]

PART 1001—LIMES GROWN IN FLORIDA

CONTAINER REGULATION

§ 1001.302 *Lime Order 2—(a) Findings.* (1) On July 13, 1955, notice of proposed rule making was published in the FEDERAL REGISTER (20 F. R. 5001) regarding proposed limitations on the containers used for the handling of limes pursuant to the Marketing Agreement and Order No. 101 (7 CFR Part 1001; 20 F. R. 4179) regulating the handling of limes grown in 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).

(2) After consideration of all relevant matters presented including the proposals set forth in the aforesaid notice which were submitted by the Florida Lime Administrative Committee (established pursuant to the said marketing agreement and order), it is hereby found that the regulation hereinafter set forth is in accordance with the provisions of the said marketing agreement and order and will tend to effectuate the declared policy of the act.

(b) *Order.* (1) Beginning at the effective time of this regulation no handler shall handle:

(i) Any limes, grown in the production area covered by the aforesaid marketing agreement and order, in any container having a capacity greater than one-half bushel except a container with inside dimensions 11 by 16¾ by 10 inches; and

(ii) Any limes, grown in said production area, in the aforesaid container with inside dimensions 11 by 16¾ by 10 inches unless the net weight of the limes contained therein is at least 40 pounds.

(2) As used in this section, "production area," "handler" and "handle" shall have the same meaning as when used in said marketing agreement and order.

(c) *Effective time.* The provisions of this section shall become effective 30

days after publication hereof in the FEDERAL REGISTER.

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

Dated: August 2, 1955.

[SEAL] S. R. SMITH,  
Director, Fruit and Vegetable  
Division, Agricultural Mar-  
keting Service.

[F. R. Doc. 55-6365; Filed, Aug. 4, 1955;  
8:52 a. m.]

Subchapter B—Prohibitions of Imported  
Commodities

PART 1068—GRAPEFRUIT

GRAPEFRUIT REGULATION NO. 1

§ 1068.1 Grapefruit Regulation No. 1.

(a) On and after the effective time of this regulation, the importation into the United States of any grapefruit is prohibited unless such grapefruit meets the following requirements:

(1) Seeded grapefruit shall grade at least U. S. No. 2 Russet, and be of a size not smaller than a size that will pack 80 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box;

(2) Seedless grapefruit shall grade at least U. S. No. 2 Russet, and be of a size not smaller than a size that will pack 112 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box; and

(3) Each such importation is made in conformance with the general regulations (7 CFR Part 1060; 19 F. R. 7707, 8012) applicable to the importation of listed commodities and the requirements of this section.

(b) Inspection by the Federal or Federal-State Inspection Service with appropriate evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of grapefruit, is required on all imports of grapefruit pursuant to § 1060.3 *Eligible imports* of this subchapter.

(c) Inspection certificates shall cover only the quantity of grapefruit that is being imported at a particular port of entry by a particular importer.

(d) The inspections performed, and certificates issued, by the Federal or Federal-State Inspection Service shall be in accordance with the rules and regulations of the Department governing the inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51). The cost of any inspection and certification shall be borne by the applicant therefor.

(e) Each inspection certificate issued with respect to any grapefruit to be imported into the United States shall set forth, among other things:

- (1) The date and place of inspection;
- (2) The name of the shipper, or applicant;
- (3) The name of the importer (consignee);
- (4) The commodity inspected;
- (5) The quantity of the commodity covered by the certificate;
- (6) The principal identifying marks on the container;

(7) The railroad car initials and number, the truck and the trailer license number, the name of the vessel, or other identification of the shipment; and

(8) The following statement, if the facts warrant: "Meets U. S. import requirements under section 8e of the Agricultural Marketing Agreement Act of 1937."

(f) Notwithstanding any other provision of this section, any importation of grapefruit which, in the aggregate, does not exceed five standard nailed boxes may be imported without regard to the restrictions specified herein. The provisions of this paragraph do not supersede the restrictions or prohibitions imposed on the importation of this commodity under the Plant Quarantine Act of 1912 or any other applicable law or regulation.

(g) It is hereby determined that imports of grapefruit, during the effective time of this section, are in most direct competition with grapefruit grown in the State of Florida. The requirements set forth in this section are the same as those in effect for grapefruit grown in Florida (Grapefruit Regulation 225; § 933.741 of this chapter, 20 F. R. 3786).

(h) (1) The terms "U. S. No. 2 Russet," "standard pack," and "standard nailed box" shall have the same meaning as when used in the Revised United States Standards for Florida Grapefruit, §§ 51.750-51.790 of this title (standard nailed box—inside dimensions 12 by 12 by 24 inches).<sup>1</sup> All other terms shall have the same meaning as when used in Part 1060 of this subchapter.

(2) On July 7, 1955, notice of proposed rule making was published in the FEDERAL REGISTER (20 F. R. 4825) regarding proposed restrictions on the importation of grapefruit into the United States. Such notice afforded interested parties an opportunity to submit data, visas, or arguments for consideration in connection with the proposed action. One statement was filed, during the prescribed time, by A. B. Kolm, Secretary of the Isle of Pines Chamber of Commerce, Nueva Gerona, Isle of Pines, Cuba, requesting modification of the proposed restrictions so as to permit the shipment of Isle of Pines grapefruit to the New York market on the same basis as that existing during prior years. It is stated that at the time such grapefruit would normally be exported, it will not pass the tests which would be required under the proposed regulation; and that for economic reasons it is necessary, as in the past, to make shipments of Isle of Pines grapefruit to the United States prior to the time the fruit is "mature" on the trees.

(3) Under the provisions of section 8e of the Agricultural Marketing Agree-

<sup>1</sup> Such standards prescribe, in § 51.775 of this title, that the term "mature," as used in the specified grades, means "the same as that term is set forth in section 601.16 Florida Statutes, Chapter 26492, known as the Florida Citrus Code of 1949, as amended." Extracts of the pertinent provisions of said section 601.16 and the companion sections 601.17 and 601.18 of the aforesaid Code are appended hereto for ready reference (filed as part of the original document).

ment Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), the importation into the United States of listed commodities, including grapefruit, must be regulated thereunder whenever any grade, size, quality, or maturity restrictions are imposed upon the domestically produced commodity pursuant to a marketing order issued under the act. Such import regulation must contain the same restrictions as those imposed on the domestically produced commodity unless the Secretary finds that such regulation would not be practicable because of variations in characteristics between the domestic and imported commodity and, in such circumstances, restrictions comparable or equivalent to those imposed on the domestically produced commodity shall be established by the Secretary for the imported commodity. Available information indicates that the same types and varieties of grapefruit are grown in the Isle of Pines and in the State of Florida; and no data have been presented, or are available, to indicate that the grapefruit grown in these two areas have variations in characteristics which would require the establishment of comparable or equivalent restrictions under the provisions of the act.

(4) It is hereby found that it is impracticable and contrary to the public interest to postpone the effective time of this section beyond that hereinafter specified (5 U. S. C. 1001 et seq.) in that (i) the requirements of this import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), which makes such regulation mandatory; (ii) the grade and size requirements of this import regulation are the same as those in effect on domestic shipments of grapefruit under Grapefruit Regulation 225 (§ 933.741 of this chapter, 20 F. R. 3786); (iii) the general regulations relating to the prohibitions of imported commodities were published in the FEDERAL REGISTER issue of November 30, 1954 (19 F. R. 7707, 8012); (iv) notice that this action was being considered was published in the FEDERAL REGISTER issue of July 7, 1955 (20 F. R. 4825), and interested parties were afforded an opportunity to submit written data, views, or arguments for consideration in connection therewith; (v) compliance with this import regulation will not require any special preparation which cannot be completed by the effective time; (vi) notice hereof in excess of three days, the minimum that is prescribed by said section 8e, is given with respect to this import regulation; and (vii) such notice is hereby determined, under the circumstances, to be reasonable.

(Sec. 401 (e), 68 Stat. 907; 7 U. S. C. 608e)

Done at Washington, D. C., this 1st day of August, 1955, to become effective at 12:01 a. m., e. s. t., August 10, 1955.

[SEAL] S. R. SMITH,  
Director, Fruit and Vegetable  
Division, Agricultural Mar-  
keting Service.

[F. R. Doc. 55-6340; Filed, Aug. 4, 1955;  
8:46 a. m.]

# Chapter XI—Agricultural Conservation Program Service, Department of Agriculture

## PART 1104—AGRICULTURAL CONSERVATION; ALASKA

### SUBPART—1956

There is no more important responsibility within the Department of Agriculture than that for taking aggressive leadership for the conservation and improvement of the Nation's soil and water resources. Cost-sharing under the Agricultural Conservation Program is an important and effective means through which landowners and operators are aided in doing essential conservation work needed in the public interest.

The extent to which the program helps meet conservation objectives is dependent upon the wholehearted participation of all those interested in conservation, at National and local levels, and we solicit their cooperation in making the program effective. I am calling on all those in the Department who have responsibilities in the field of soil and water conservation to join in making the 1956 program a productive tool for conservation and improvement of the agricultural resources of the Nation's farms and ranches. We hope that the Nation's farmers and ranchers will join in using the program to meet, more than ever before, the community and the individual farm conservation problems which would not otherwise be solved.

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1104.500 Introduction.

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1104.558 Practice 8: Planting or interplanting forest trees or shrubs, or improvement of a stand of forest trees, for erosion control, shelterbelt, watershed protection, or forestry purposes.  
1104.559 Practice 9: Developing springs or seeps for livestock water to encourage better grassland management.  
1104.550 Practice 10: Constructing or sealing dams, pits, or ponds for livestock water and/or irrigation to encourage better grassland management.

AUTHORITY: §§ 1104.500 to 1104.560 issued under sec. 4, 49 Stat. 164; 16 U. S. C. 590d.

Interpret or apply secs. 7-17, 49 Stat. 1148, as amended, Pub. Law 40, 84th Cong.; 16 U. S. C. 590g-590q.

### INTRODUCTION

§ 1104.500 *Introduction.* (a) Through the 1956 Agricultural Conservation Program (referred to in this subpart as the "1956 program") administered by the Department of Agriculture, the Federal Government will share with farmers in Alaska the cost of carrying out approved conservation practices in accordance with the provisions of this subpart and such modifications thereof as may hereafter be made.

(b) Information with respect to the several practices for which costs will be shared when carried out on a particular farm, and the exact specifications and rates of cost-sharing for such practices, may be obtained from the county committee for the county in which the farm is located or from the State Committee.

### GENERAL PROGRAM PRINCIPLES

§ 1104.501 *General program principles.* The 1956 Agricultural Conservation Program for Alaska has been developed and is to be carried out on the basis of the following general principles:

(a) The program contains broad authorities to help meet the varied conservation problems of Alaska. County committees and participating agencies shall design a program for each county. Such programs should include any additional limitations and restrictions necessary for the maximum conservation accomplishment in the area. The programs should be confined to the conservation practices on which Federal cost-sharing is most needed in order to achieve the maximum conservation benefit in the county.

(b) The county programs should be designed to encourage those conservation practices which provide the most enduring conservation benefits practicably attainable in 1956 on the lands where they are to be applied.

(c) Costs will be shared with a farmer only on satisfactorily performed conservation practices for which Federal cost-sharing was requested by the farmer before the conservation work was begun.

(d) Costs should be shared only on practices which it is believed farmers would not carry out to the needed extent without program assistance. Generally, practices that have become a part of regular farming operations in a particular county should not be eligible for cost-sharing. Individual farmers should be encouraged to utilize cost-sharing for only those practices which have not become a part of regular farming operations on their farms.

(e) The rates of cost-sharing in a county are to be the minimum required to result in substantially increased performance of needed practices within the limits prescribed in the State program.

(f) The purpose of the program is to help achieve additional conservation on the land. Such of the available funds that cannot be wisely utilized for this purpose will be returned to the public treasury.

(g) If the Federal Government shares the cost of the initial application of con-

servations practices which farmers otherwise would not perform but which are essential to the national interest, the farmers should assume responsibility for the upkeep and maintenance of those practices.

#### DISTRIBUTION OF FUNDS

§ 1104.502 *County funds.* The State Committee will allocate the funds available for conservation practices among the counties within Alaska, taking into consideration, to the extent practicable, the conservation needs in the counties within the territory. A total of \$27,000 will be available for program purposes, exclusive of the amount set aside for administrative expenses, and the amount required for increases in small Federal cost-shares in § 1104.527.

#### COUNTY AGRICULTURAL CONSERVATION PROGRAMS

§ 1104.504 *Agencies to participate in development of county programs.* (a) A county agricultural conservation program (referred to in this subpart as "county program") shall be developed in each county in accordance with the provisions of the State program and such modifications thereof as may be made. The county committee, the designated representative of the Soil Conservation Service in the county with the governing body of the Soil Conservation Subdistrict, and the Federal Forest Service representative having jurisdiction of farm forestry in the county, working with the County Agricultural Extension Agent for the county (if he is not included in the foregoing group as ex officio member of the county committee), shall develop recommendations for the county program.

(b) The program for the county then shall be formulated by the county committee, the local Soil Conservation Service technician, and the Forest Service representative having jurisdiction of farm forestry in the county, in consultation with the governing body of the Soil Conservation Subdistrict on the overall conservation problems in the county and, especially, on the work plans of the Soil Conservation Subdistrict and of the Federal agencies involved to assure the most effective use of the available technical assistance and funds for cost-sharing. The program as formulated shall be recommended to the State Committee for approval by the State Committee, the State Conservationist of the Soil Conservation Service, and the Forest Service official having jurisdiction of farm forestry in the State, and upon such approval shall become the 1956 program for the county.

§ 1104.505 *Selection of practices.* Practices to be included in the county program shall be only those practices set forth in this subpart for which cost-sharing is essential to permit accomplishment of needed conservation work which would not otherwise be carried out in the desired volume.

§ 1104.506 *Adaptation of practices.* The practices included in the county program must meet all conditions and requirements of the State program. Additional conditions and requirements

may be included where necessary for effective use in meeting the conservation problems in the county.

§ 1104.507 *Use of commercial fertilizers.* For practices which authorize Federal cost-sharing for applications of commercial fertilizers, the minimum application on which cost-sharing is authorized shall, in each case, be determined on the basis of a current soil test or Experiment Station recommendations.

§ 1104.508 *Responsibility for technical phases of practices.* (a) The Soil Conservation Service is responsible for the technical phases of the practices contained in §§ 1104.551 to 1104.553, 1104.555, 1104.556, 1104.559, and 1104.560 (practices 1, 2, 3, 5, 6, 9, and 10). This responsibility shall include (1) a finding that the practice is needed and practicable on the farm, (2) necessary site selection, other preliminary work, and layout work of the practice, (3) necessary supervision of the installation, and (4) certification of performance. In addition, upon agreement of the State Committee and the State Conservationist of the Soil Conservation Service, responsibility for all or part of the technical phases of other practices may be assigned to the Soil Conservation Service for all counties in the State or for specified counties. The State Conservationist of the Soil Conservation Service may utilize assistance from private, State, or Federal agencies in carrying out these assigned responsibilities.

(b) The Forest Service is responsible for the technical phases of the practice contained in § 1104.558 (practice 8). This responsibility shall include (1) providing necessary specialized technical assistance, (2) development of specifications for forestry practices, and (3) working through State and county committees, determining performance in meeting these specifications.

§ 1104.509 *Handbooks, bulletins, instructions, and forms.* The Administrator, ACPS, is authorized to prepare and issue handbooks, bulletins, instructions, and forms required in administering the 1956 program. Copies of handbooks, bulletins, instructions, and forms containing detailed information with respect to the 1956 program will be available in the office of the State Committee and the office of the county committee. Persons wishing to participate in the program should obtain from the State Committee or county committee all information needed in order to comply with all provisions of the program.

#### APPROVAL OF CONSERVATION PRACTICES ON INDIVIDUAL FARMS

§ 1104.511 *Opportunity for requesting cost-sharing.* Each farm operator shall be given an opportunity to request that the Federal Government share in the cost of those practices on which he considers he needs such assistance in order to permit their performance in adequate volume on his farm. The county committee, taking into consideration the farmer's request and any conservation plan developed by the farmer with the assistance of any State or Federal agency, shall direct the available

funds for cost-sharing to those farms and to those practices where cost-sharing is considered most essential to the accomplishment of the basic conservation objective of the Department—the use of each acre of agricultural land within its capabilities and the treatment of each acre in accordance with its needs for protection and improvement.

§ 1104.512 *Prior request for cost-sharing.* Costs will be shared only for those practices, or components of practices, for which cost-sharing is requested by the farm operator before performance thereof is started. For practices for which (a) approval was given under the 1955 Agricultural Conservation Program, (b) performance was started but not completed during the 1955 program year, and (c) the county committee believes the extension of the approval to the 1956 program is justified under the 1956 program regulations and provisions, the filing of the request for cost-sharing under the 1955 program may be regarded as meeting the requirement of the 1956 program that a request for cost-sharing be filed before performance of the practice is started.

§ 1104.513 *Method and extent of approval.* The county committee, in accordance with a method approved by the State Committee, will determine the extent to which Federal funds will be made available to share the cost of each approved practice on each farm, taking into consideration the county allocation, the conservation problems in the county and of the individual farm, and the conservation work for which requested Federal cost-sharing is considered by the county committee as most needed in 1956. The method approved shall provide for the issuance of notices of approval showing for each approved practice the number of units of the practice for which the Federal Government will share in the cost and the amount of the Federal cost-share for the performance of that number of units of the practice. To the extent practicable, notices of approved practices shall be issued before performance of the practice is started.

§ 1104.514 *Initial establishment, improvement, or installation of practices.* (a) Federal cost-sharing may not be authorized under the 1956 program for the performance of any practice on land on which cost-sharing for the performance of the same practice, or a practice to accomplish the same conservation purpose, was allowed under the 1955 program, except as provided in §§ 1104.516 and 1104.522.

(b) It is contemplated that this policy will be continued for subsequent programs.

§ 1104.515 *Repair, upkeep, and maintenance of practices.* Federal cost-sharing is not authorized for repairs or for upkeep or maintenance of any practice.

§ 1104.516 *Replacement, enlargement, or restoration of practices.* Federal cost-sharing may be approved for replacement, enlargement, or restoration of practices for which cost-sharing was allowed under a previous program but which are not now adequately meeting

the conservation problem, if all of the following conditions exist:

(a) Replacement, enlargement, or restoration of the practice is needed to meet the conservation problem.

(b) The failure of the original practice was not due to the lack of proper maintenance by the current operator.

(c) The practice has not served for the length of time for which it normally could be expected to effectively meet the conservation problem. This does not apply to practices for which cost-sharing was allowed prior to the 1954 program, or to practices for which costs were shared under the 1954 or a subsequent program before the current operator assumed control of the farm.

(d) The county committee believes that the replacement, enlargement, or restoration of the practice merits consideration under the program to an equal extent with similar practices for which cost-sharing for initial establishment is requested.

**§ 1104.517 Pooling agreements.** Farmers in any local area may agree in writing, with the approval of the county committee, to perform designated amounts of practices which will conserve or improve the agricultural resources of the community. For purposes of eligibility for cost-sharing, practices carried out under such an approved written agreement will be regarded as having been carried out on the farms of the persons who performed the practices.

#### PRACTICE COMPLETION REQUIREMENTS

**§ 1104.519 Completion of practices.** Federal cost-sharing for the practices contained in this subpart is conditioned upon the performance of the practices in accordance with all applicable specifications and program provisions. Except as provided in §§ 1104.520 to 1104.522, practices must be completed during the program year in order to be eligible for cost-sharing.

**§ 1104.520 Practices substantially completed during program year.** Approved practices may be deemed, for purposes of payment of cost-shares, to have been carried out during the 1956 program year, if the county committee determines that they are substantially completed by the end of the program year. However, no cost-shares for such practices shall be paid until they have been completed in accordance with all applicable specifications and program provisions.

**§ 1104.521 Practices requiring more than one program year for completion.**

(a) Cost-sharing may be approved under the 1956 program for a component of a practice completed during the program year in accordance with all applicable specifications and program provisions, provided:

(1) The farmer agrees in writing to complete all remaining components of the practice in accordance with all applicable specifications and program provisions within the time prescribed by the county committee, if cost-sharing is offered to him therefor under a subsequent program; and

(2) The county committee determines that under the circumstances prevailing on the farm in 1956, completion of that component is a reasonable attainment in 1956 toward the ultimate completion of all components of the practice.

(b) Any advance cost-share so paid shall be refunded if the remaining components of the practice are not completed in accordance with all specifications and program provisions within the time prescribed by the county committee, provided the farmer is offered cost-sharing under a subsequent program for completing such components. The extension of the period for completion of the remaining components of the practice will not constitute a commitment to approve cost-sharing therefor under a subsequent program. Approval of cost-sharing for other practices under subsequent programs may be denied until the remaining components are completed.

**§ 1104.522 Practices involving the establishment or improvement of vegetative cover.** Costs for practices involving the establishment or improvement of vegetative cover may be shared even though a good stand is not established, if the county committee determines, in accordance with standards approved by the State Committee, that the practice was carried out in a manner which would normally result in the establishment of a good stand, and that failure to establish a good stand was due to weather or other conditions beyond the control of the farm operator. The county committee may require as a condition of cost-sharing in such cases that the area be reseeded or that other needed protective measures be carried out.

#### FEDERAL COST-SHARES

**§ 1104.524 Conservation materials and services—(a) Availability.** Part or all of the Federal cost-share for an approved practice may be in the form of conservation materials or services furnished through the program for use in carrying out the practice. Materials or services may not be furnished to persons who are indebted to the Federal Government, as indicated by the register of indebtedness maintained in the office of the county committee, except in those cases where the agency to which the debt is owed waives its rights to setoff in order to permit the furnishing of materials and services. Title to any material furnished through the program shall vest in the Federal Government until the material is applied or planted, or all charges for the material are satisfied.

(b) *Cost to farmer.* The farmer will pay that part of the cost of the material or service, as established under instructions issued by the Administrator, ACPs, which is in excess of the Federal cost-share attributable to the use of the material or service or, upon request by the farmer and approval by the county committee, the farmer will pay that part of the cost of the material or service which is in excess of the farmer's Federal cost-share for all components of the practice which will likely be completed during the program year.

(c) *Discharge of responsibility for materials and services.* The person to whom a material or service is furnished under the 1956 program will be relieved of responsibility for the material or service upon determination by the county committee that the material or service was used for the purpose for which it was furnished and that any other components of the practice, on which the amount of the Federal cost-share advance toward the cost of the material or service was determined, have been carried out in accordance with all applicable specifications and program provisions. If the person uses any material or service for any purpose other than that for which it was furnished, he shall be indebted to the Federal Government for that part of the cost of the material or service borne by the Federal Government and shall pay such amount to the Treasurer of the United States direct or by withholdings from Federal cost-shares otherwise due him under the program. Any person to whom materials are furnished shall be responsible to the Federal Government for any damage to the materials, unless he shows that the damage was caused by circumstances beyond his control. If materials are abandoned or not used during the program year, they may, in accordance with instructions issued by the Administrator, ACPs, be transferred to another person or otherwise disposed of at the expense of the person who abandoned or failed to use the material, or be retained by the person for use in a subsequent program year.

**§ 1104.525 Practices carried out with State or Federal aid.** The Federal share of the cost for any practice shall not be reduced because it is carried out with materials or services furnished through the program or by any agency of a State to another agency of the same State, or with technical advisory services furnished by a State or Federal agency. In other cases of State or Federal aid, the total Federal cost-share computed on the basis of the total number of units of the practice performed shall be reduced by the value of the aid, as determined by the county committee, in computing the amount of the Federal cost-share to be paid for performance of the practice. Materials or services furnished or used by a State or Federal agency for the performance of practices on its land shall not be regarded as State or Federal aid for the purposes of this section.

**§ 1104.526 Division of Federal cost-shares—(a) Federal cost-shares.** The Federal cost-share attributable to the use of conservation materials or services shall be credited to the person to whom the materials or services are furnished. Other Federal cost-shares shall be credited to the person who carried out the practices by which such other Federal cost-shares are earned. If more than one person contributed to the carrying out of such practices, the Federal cost-share shall be divided among such persons in the proportion that the county committee determines they contributed to the carrying out of the practices. In

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making this determination, the county committee shall take into consideration the value of the labor, equipment, or material contributed by each person toward the carrying out of each practice on a particular acreage, and shall assume that each contributed equally unless it is established to the satisfaction of the county committee that their respective contributions thereto were not in equal proportion. The furnishing of land or the right to use water will not be considered as a contribution to the carrying out of any practice.

(b) *Death, incompetency, or disappearance.* In case of death, incompetency, or disappearance of any person, any Federal share of the cost due him shall be paid to his successor, determined in accordance with the provisions of the regulations in ACP-122, as amended (Part 1108 of this chapter).

§ 1104.527 *Increase in small Federal cost-shares.* The Federal cost-share computed for any person with respect to any farm shall be increased as follows: *Provided, however,* That in the event legislation is enacted which repeals or amends the authority for making such increases, the Secretary may in such manner and at such time as is consistent with such legislation discontinue such increases:

(a) Any Federal cost-share amounting to \$0.71 or less shall be increased to \$1.

(b) Any Federal cost-share amounting to more than \$0.71, but less than \$1, shall be increased by 40 percent.

(c) Any Federal cost-share amounting to \$1 or more shall be increased in accordance with the following schedule:

| Amount of cost-share computed: | Increase in cost-share |
|--------------------------------|------------------------|
| \$1 to \$1.99                  | \$0.40                 |
| \$2 to \$2.99                  | .80                    |
| \$3 to \$3.99                  | 1.20                   |
| \$4 to \$4.99                  | 1.60                   |
| \$5 to \$5.99                  | 2.00                   |
| \$6 to \$6.99                  | 2.40                   |
| \$7 to \$7.99                  | 2.80                   |
| \$8 to \$8.99                  | 3.20                   |
| \$9 to \$9.99                  | 3.60                   |
| \$10 to \$10.99                | 4.00                   |
| \$11 to \$11.99                | 4.40                   |
| \$12 to \$12.99                | 4.80                   |
| \$13 to \$13.99                | 5.20                   |
| \$14 to \$14.99                | 5.60                   |
| \$15 to \$15.99                | 6.00                   |
| \$16 to \$16.99                | 6.40                   |
| \$17 to \$17.99                | 6.80                   |
| \$18 to \$18.99                | 7.20                   |
| \$19 to \$19.99                | 7.60                   |
| \$20 to \$20.99                | 8.00                   |
| \$21 to \$21.99                | 8.20                   |
| \$22 to \$22.99                | 8.40                   |
| \$23 to \$23.99                | 8.60                   |
| \$24 to \$24.99                | 8.80                   |
| \$25 to \$25.99                | 9.00                   |
| \$26 to \$26.99                | 9.20                   |
| \$27 to \$27.99                | 9.40                   |
| \$28 to \$28.99                | 9.60                   |
| \$29 to \$29.99                | 9.80                   |
| \$30 to \$30.99                | 10.00                  |
| \$31 to \$31.99                | 10.20                  |
| \$32 to \$32.99                | 10.40                  |
| \$33 to \$33.99                | 10.60                  |
| \$34 to \$34.99                | 10.80                  |
| \$35 to \$35.99                | 11.00                  |
| \$36 to \$36.99                | 11.20                  |
| \$37 to \$37.99                | 11.40                  |
| \$38 to \$38.99                | 11.60                  |
| \$39 to \$39.99                | 11.80                  |
| \$40 to \$40.99                | 12.00                  |

| Amount of cost-share computed—Continued | Increase in cost-share |
|-----------------------------------------|------------------------|
| \$41 to \$41.99                         | \$12.10                |
| \$42 to \$42.99                         | 12.20                  |
| \$43 to \$43.99                         | 12.30                  |
| \$44 to \$44.99                         | 12.40                  |
| \$45 to \$45.99                         | 12.50                  |
| \$46 to \$46.99                         | 12.60                  |
| \$47 to \$47.99                         | 12.70                  |
| \$48 to \$48.99                         | 12.80                  |
| \$49 to \$49.99                         | 12.90                  |
| \$50 to \$50.99                         | 13.00                  |
| \$51 to \$51.99                         | 13.10                  |
| \$52 to \$52.99                         | 13.20                  |
| \$53 to \$53.99                         | 13.30                  |
| \$54 to \$54.99                         | 13.40                  |
| \$55 to \$55.99                         | 13.50                  |
| \$56 to \$56.99                         | 13.60                  |
| \$57 to \$57.99                         | 13.70                  |
| \$58 to \$58.99                         | 13.80                  |
| \$59 to \$59.99                         | 13.90                  |
| \$60 to \$185.99                        | 14.00                  |
| \$186 to \$199.99                       | ( <sup>1</sup> )       |
| \$200 and over                          | ( <sup>2</sup> )       |

<sup>1</sup> Increase to \$200.

<sup>2</sup> No increase.

§ 1104.528 *Maximum Federal cost-share limitation.* (a) The total of all Federal cost-shares under the 1956 program to any person with respect to farms, ranching units, and turpentine places in the United States (including Alaska, Hawaii, Puerto Rico, and the Virgin Islands) for approved practices which are not carried out under pooling agreements shall not exceed the sum of \$1,500, and for all approved practices, including those carried out under pooling agreements, shall not exceed the sum of \$10,000.

(b) All or any part of any Federal cost-share which otherwise would be due any person under the 1956 program may be withheld or required to be refunded if he has adopted, or participated in adopting, any scheme or device, including the dissolution, reorganization, revival, formation, or use of any corporation, partnership, estate, trust, or any other means, designed to evade, or which has the effect of evading, the provisions of this section.

§ 1104.529 *Persons eligible to file application for payment of Federal cost-shares.* Any person who, as landlord, tenant, or sharecropper on a farm, bore a part of the cost of an approved conservation practice is eligible to file an application for payment of the Federal cost-share due him.

§ 1104.530 *Time and manner of filing application and required information.*

(a) It shall be the responsibility of persons participating in the program to submit to the county office forms and information needed to establish the extent of the performance of approved conservation practices and compliance with applicable program provisions. Time limits with regard to the submission of such forms and information shall be established where necessary for efficient administration of the program. Such time limits shall afford a full and fair opportunity to those eligible to file the forms or information within the period prescribed. At least 2 weeks' notice to the public shall be given of any general time limit prescribed. Such notice shall be given by mailing notice to the office of each county committee

and making copies available to the press. Other means of notification, including radio announcements and individual notices to persons affected, shall be used to the extent practicable. Notice of time limits which are applicable to individual persons, such as time limits for reporting performance of approved practices, shall be issued in writing to the persons affected. Exceptions to time limits may be made in cases where failure to submit required forms and information within the applicable time limits is due to reasons beyond the control of the farmer.

(b) Payment of Federal cost-shares will be made only upon application submitted on the prescribed form to the county office by December 31, 1957, or such earlier date as is prescribed by the Administrator, ACPS. Any application for payment may be rejected if any form or information required of the applicant is not submitted to the county office within the applicable time limit.

§ 1104.531 *Appeals.* (a) Any person may, within 15 days after notice thereof is forwarded to or made available to him, request the county committee or State Committee in writing to reconsider its recommendation or determination in any matter affecting the right to or the amount of his Federal cost-shares with respect to the farm. The county committee or State Committee shall notify him of its decision in writing within 15 days after receipt of written request for reconsideration. If the person is dissatisfied with the decision of the county committee, he may, within 15 days after the decision is forwarded to or made available to him, appeal in writing to the State Committee. The State Committee shall notify him of its decision in writing within 30 days after the submission of the appeal. If he is dissatisfied with the decision of the State Committee, he may, within 15 days after its decision is forwarded to or made available to him, request the Administrator, ACPS, to review the decision of the State Committee. The decision of the Administrator, ACPS, shall be final. Written notice of any decision rendered under this section by the county or State committee shall also be issued to each other landlord, tenant, or sharecropper on the farm who may be adversely affected by the decision.

(b) Appeals considered under this section shall be decided in accordance with the provisions of this program and of the applicable county program on the basis of the facts of the individual case: *Provided,* That the Secretary, upon the recommendation of the Administrator, ACPS, and the State and county committees, may waive the requirements of any such provision, where not prohibited by statute, if, in his judgment, such waiver under all the circumstances is justified to permit a proper disposition of an appeal where the farmer, in reasonable reliance on any instruction or commitment of any member, employee, or representative of a State or county committee, in good faith performed an eligible conservation practice and such performance reasonably accomplished the purpose of the practice.

GENERAL PROVISIONS RELATING TO  
FEDERAL COST-SHARING

§ 1104.533 *Compliance with regulatory measures.* Persons who carry out conservation practices under the 1956 program shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with applicable laws and regulations. The person with whom the cost of the practice is shared shall be responsible to the Federal Government for any losses it may sustain because he infringes on the rights of others or fails to comply with applicable laws and regulations.

§ 1104.534 *Maintenance of practices.* The sharing of costs, by the Federal Government, for the performance of approved conservation practices on any farm under the 1956 program will be subject to the condition that the person with whom the costs are shared will maintain such practices in accordance with good farming practices as long as the land on which they are carried out is under his control.

§ 1104.535 *Practices defeating purposes of programs.* If the State Committee finds that any person has adopted or participated in any practice which tends to defeat the purposes of the 1956 or any previous program, including, but not limited to, failure to maintain, in accordance with good farming practices, practices carried out under a previous program, it may withhold, or require to be refunded, all or any part of the Federal cost-share which otherwise would be due him under the 1956 program.

§ 1104.536 *Depriving others of Federal cost-share.* If the State Committee finds that any person has employed any scheme or device (including coercion, fraud, or misrepresentation), the effect of which would be or has been to deprive any other person of the Federal cost-share due that person under the program, it may withhold, in whole or in part, from the person participating in or employing such a scheme or device, or require him to refund in whole or in part, the Federal cost-share which otherwise would be due him under the 1956 program.

§ 1104.537 *Filing of false claims.* If the State Committee finds that any person has knowingly filed claim for payment of the Federal cost-share under the program for practices not carried out, or for practices carried out in such a manner that they do not meet the required specifications therefor, such person shall not be eligible for any Federal cost-sharing under the 1956 program and shall refund all amounts that may have been paid to him under the 1956 program. The withholding or refunding of Federal cost-shares will be in addition to and not in substitution of any other penalty or liability which might otherwise be imposed.

§ 1104.538 *Misuse of purchase orders.* If the State Committee finds that any person has knowingly used a purchase order issued to him for conservation materials or services for a purpose other

than that for which it was issued, and that such misuse of the purchase order tends to defeat the purpose for which it was issued, such person shall not be eligible for any Federal cost-sharing under the 1956 program and shall refund all amounts that may have been paid to him under the 1956 program. The withholding or refunding of Federal cost-shares will be in addition to and not in substitution of any other penalty or liability which might otherwise be imposed.

§ 1104.539 *Federal cost-shares not subject to claims.* Any Federal cost-share, or portion thereof, due any person shall be determined and allowed without regard to questions of title under State law; without deduction of claims for advances (except as provided in § 1104.540, and except for indebtedness to the United States subject to setoff under orders issued by the Secretary (Part 1109 of this chapter)); and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the owner or any other creditor.

§ 1104.540 *Assignments.* Any person who may be entitled to any Federal cost-share under the 1956 program may assign his right thereto, in whole or in part, as security for cash loaned or advances made for the purpose of financing the making of a crop in 1956, including the carrying out of soil and water conserving practices. No assignment will be recognized unless it is made in writing on Form ACP-69 and in accordance with the instructions in ACP-70—Insular Region.

## DEFINITIONS

§ 1104.543 *Definitions.* For the purposes of the 1956 program:

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

(b) "Administrator, ACPS," means the Administrator of the Agricultural Conservation Program Service.

(c) "State" means Alaska.

(d) "State Committee" means the persons designated by the Secretary as the Agricultural Stabilization and Conservation State Committee.

(e) "County" refers to any of the three areas designated as "counties" by the State Committee. Fairbanks County is the 2d and 4th Judicial Districts. Homer County is the Kenai Peninsula and Kodiak Island. Palmer County is the 1st and 3d Judicial Districts exclusive of Homer County.

(f) "County committee" means the persons elected within a county as the county committee pursuant to regulations governing the selection and functions of Agricultural Stabilization and Conservation county committees.

(g) "Person" means an individual, partnership, association, corporation, estate, or trust, or other business enterprise, or other legal entity (and, where applicable, a State, a political subdivision of a State, or any agency thereof) that, as landlord, tenant, or

sharecropper, participates in the operation of a farm.

(h) "Farm" means all adjacent or nearby farm or range land under the same ownership which is operated by one person, including also (1) any other adjacent or nearby farm or range land which the county committee, in accordance with instructions issued by the Administrator, ACPS, determines is operated by the same person as part of the same unit in producing range livestock or with respect to the rotation of crops, and with work stock, machinery, and labor substantially separate from that for any other land; and (2) any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops. A farm shall be regarded as located in the county in which the principal dwelling is situated or, if there is no dwelling thereon, it shall be regarded as located in the county in which the major portion of the farm is located.

(i) "Cropland" means farmland which in 1955 was tilled or was in regular crop rotation, excluding (1) bearing orchards and vineyards (except the acreage of cropland therein), (2) plowable noncrop open pasture, and (3) any land which constitutes, or will constitute if tillage is continued, a wind erosion hazard to the community.

(j) "Program year" means the period September 1, 1955, through December 31, 1956.

AUTHORITY, AVAILABILITY OF FUNDS, AND  
APPLICABILITY

§ 1104.545 *Authority.* The program contained in this subpart is approved pursuant to the authority vested in the Secretary of Agriculture under sections 7-17 of the Soil Conservation and Domestic Allotment Act, as amended (49 Stat. 1148, 16 U. S. C. 590g-590q), and the Department of Agriculture and Farm Credit Administration Appropriation Act, 1956.

§ 1104.546 *Availability of funds.* (a) The provisions of the 1956 program are necessarily subject to such legislation as the Congress of the United States may hereafter enact; the paying of the Federal cost-shares provided in this subpart is contingent upon such appropriation as the Congress may hereafter provide for such purpose; and the amounts of such Federal cost-shares will necessarily be within the limits finally determined by such appropriation.

(b) The funds provided for the 1956 program will not be available for paying Federal cost-shares for which applications are filed in the county office after December 31, 1957.

§ 1104.547 *Applicability.* (a) The provisions of the 1956 program contained in this subpart are not applicable to (1) any department or bureau of the United States Government or any corporation wholly owned by the United States; (2) grazing lands owned by the United States which were acquired or reserved for conservation purposes, or which are to be retained permanently under Government ownership, including, but not lim-

ited to, grazing lands administered by the Forest Service of the United States Department of Agriculture, or by the Bureau of Land Management (including lands administered under the Taylor Grazing Act) or the Fish and Wildlife Service of the United States Department of the Interior; and (3) nonprivate persons for performance on any land owned by the United States or a corporation wholly owned by it.

(b) The program is applicable to (1) privately owned lands; (2) lands owned by Alaska or a political subdivision or agency thereof; (3) lands owned by corporations which are partly owned by the United States, such as production credit associations; (4) lands temporarily owned by the United States or a corporation wholly owned by it which were not acquired or reserved for conservation purposes, including lands administered by the Farmers Home Administration, the Federal Farm Mortgage Corporation, the United States Department of Defense, or by any other Government agency designated by the Administrator, ACPs; and (5) any cropland farmed by private persons which is owned by the United States or a corporation wholly owned by it.

#### CONSERVATION PRACTICES AND MAXIMUM RATES OF COST-SHARING

**§ 1104.551 Practice 1: Diversion ditches to divert excess water to protected outlets.** These ditches are for the purpose of removing excess water from snow melting in the spring, or from seeps, springs, or other ground water, to protect cropland or potential cropland below. They should be constructed on a grade ranging from 0 at the upper end to not in excess of 1 percent at the lower end. Grades should be either uniform or gradually increasing from the upper end. Side slopes normally should not be steeper than 1 foot vertical to 3 feet horizontal. Capacities will depend on the area draining into each ditch. In all cases the ditches must be staked by a qualified technician. Diversion ditches must be provided with an outlet channel.

*Maximum Federal cost-share.* 50 percent of the cost.

**§ 1104.552 Practice 2: Establishing permanent sod waterways to dispose of excess water without causing erosion.** This practice is essential to adequate water disposal. The waterway may be either an excavated ditch or a natural drainageway. In either case, more than natural runoff is carried in the outlet channel; therefore, protection is needed to avoid channel erosion and the formation of gullies. They must be planted long enough in advance to develop a protective cover in the channel before water is diverted into them. In all cases the outlet channels will be selected by a qualified technician. New channels must be staked, constructed according to lines and grades, and sod established. Sod stripping may be utilized. Seeding in established permanent sod waterways shall be at a rate of at least 15 pounds per acre and will contain not less than 50 percent of adapted sod-forming per-

ennial grasses with the balance in other grasses or adapted legumes. A cereal nurse crop in conjunction with grass seedings should be used where desirable.

*Maximum Federal cost-share.* (1) 50 percent of the cost of grass and legume seed, or sodding, and the minimum required application of commercial fertilizer, including nitrogen.

(2) 50 percent of the cost of earth moved with dirt-moving equipment in shaping and filling.

**§ 1104.553 Practice 3: Constructing permanent open drainage systems to dispose of excess water.** Cost-sharing will be limited to construction or enlargement of permanent ditches and structural work necessary to the proper functioning of the ditches. Cost-sharing may be authorized for clearing the necessary minimum width right-of-way and, where necessary for the effective utilization of the drainage system, for the spreading of spoil banks. No cost-sharing will be allowed for cleaning or maintaining a ditch or for structures installed for crossings or the convenience of the operator. Due consideration shall be given to the maintenance of wildlife. In all cases the system must be staked by a qualified technician.

*Maximum Federal cost-share.* (1) 50 percent of the average cost of earth moving.

(2) 50 percent of the average cost of materials used in the permanent structure, excluding forms.

(3) 50 percent of the average cost of necessary land clearing.

**§ 1104.554 Practice 4: Initial establishment or improvement of permanent grass or grass-legume cover for soil or watershed protection and on steep slopes.** Costs will be shared for the initial establishment or the initial improvement of a protective vegetative cover by seeding adapted varieties of perennial grasses or legumes on areas which will remain in such cover. The seed must be adapted to local conditions, and must be properly distributed over the area sown, a sufficient amount being used to insure a good stand at maturity. Seeding on steep slopes must be at the rate of one and one-half times that for normal land conditions. Each county committee will establish seeding rates, mixtures, and varieties in line with Experiment Station recommendations for that area.

*Maximum Federal cost-share.* 50 percent of the cost of seed and the minimum required application of commercial fertilizer, including nitrogen.

**§ 1104.555 Practice 5: Clearing land to permit land-use adjustments needed in establishing soil conserving cropping systems.** The conservation value of this practice is in getting sufficient cleared land on the farm so that good land management practices can be carried out on all parts of the farm. Clearing areas which will result in increased erosion will not qualify for cost-sharing. Methods of clearing which result in destruction of needed organic material are considered to be disqualifying practices. Removal of mineral soil will be considered evidence of excessive removal of

organic material. Needed conservation practices must be applied to land cleared under previous programs in order to qualify an applicant for cost-sharing for additional land development under this program. Clearing and developing land for cultivation involves several distinctly different types of operations. Clearing includes those operations which require the use of special equipment not normally required in farming operations for crop and livestock production. Breaking includes burning, removing roots, and preparing land for tillage. To be eligible for land clearing, the farmer must either own or be buying the farm, lease or rent the farm, or, if on a homestead, have completed the requirements necessary to prove up on the homestead.

*Maximum Federal cost-share.* (1) When all operations, clearing and breaking, are accomplished during one program year—50 percent of the cost but not in excess of \$40 per acre; or

(2) When the clearing and breaking are not all accomplished within one program year but spread over a period of years to take advantage of methods of progressive clearing, grubbing, and burning—50 percent of the cost of each completed operation but not in excess of a total cost of \$40 per acre for all operations.

**§ 1104.556 Practice 6: Installation of facilities for sprinkler irrigation to provide vegetative cover needed for soil protection on rolling land.** This practice is applicable where primary use is for permanent pasture on excessively sloping or rolling land. The installation must be in accordance with written plans approved by the Soil Conservation Service technician and the county committee. The practice is not applicable on land for which water is not available. The power unit must be of capacity adequate to supply uniform distribution. Nozzle openings shall be of a size to hold application rate within intake capacity of soils to be irrigated.

*Maximum Federal cost-share.* (1) 50 percent of the average cost of permanently installed pipe and fittings.

(2) 50 percent of the average cost of portable pipe and fittings.

**§ 1104.557 Practice 7: Constructing wells for livestock water to provide soil protection through the adoption of livestock farming systems and increased acreages of permanent vegetative cover.** In order to qualify for cost-sharing, the farmer must show that the well is necessary for establishing livestock on the farm. Standards and requirements shall be established by the county committee. Even though the well may be constructed at the headquarters to prevent freezing during the winter months, it is not to be used primarily for household utility. The well and pumping equipment must be large enough to provide the minimum amount of water for the particular livestock enterprise. Adequate storage facilities must be provided. Pumping equipment must be installed, except for artesian wells. To be eligible for a livestock well, the farmer must either own or be buying the farm, rent or lease the farm, or, if on a homestead, have com-

pleted the requirements necessary to prove up on the homestead.

*Maximum Federal cost-share.* 50 percent of the cost of drilling and casing, including installation of the casing.

§ 1104.558 *Practice 8: Planting or interplanting forest trees or shrubs, or improvement of a stand of forest trees, for erosion control, shelterbelt, watershed protection, or forestry purposes.* Federal cost-sharing may be allowed for (a) thinning, (b) pruning crop trees, (c) removing or killing competing and undesirable vegetation, and (d) planting or interplanting desirable trees and shrubs. The area must be protected from fire. Seedlings must be protected from grazing. Technical assistance shall be utilized as available.

*Maximum Federal cost-share.* 50 percent of the average cost, including land preparation.

§ 1104.559 *Practice 9: Developing springs or seeps for livestock water to encourage better grassland management.* Site selection must be approved by a qualified technician. Cutoff walls must be of impervious material and water developed must be piped to a suitable water trough. The spring or developed seep must be protected from livestock. Plans must be approved by the Soil Conservation Service. Appreciable use of this water for other than livestock shall be considered as defeating the purpose of this practice.

*Maximum Federal cost-share.* (1) 50 percent of the cost of excavating earth, rock, and gravel.

(2) 50 percent of the cost of materials used in the permanent structure, excluding forms.

§ 1104.560 *Practice 10: Constructing or sealing dams, pits, or ponds for livestock water and/or irrigation to encourage better grassland management.* Design and construction must conform to Soil Conservation Service specifications and be supervised by a qualified technician. Earth fills must be thoroughly compacted and core walls extend to semi-impervious material. Downstream slopes shall be not less than 3 feet horizontal to 1 foot vertical. Upstream slopes shall be not less than 4 feet horizontal to 1 foot vertical. Necessary fencing and seeding or sodding to protect the dam and pond must be accomplished. A suitable water trough should be installed with pipe from pond to trough. Dams shall have a spillway capacity adequate to carry off surplus water. The spillway must be designed by a qualified engineer. Appreciable use of this water source for other than livestock or grassland irrigation shall be considered as defeating the purpose of this practice.

*Maximum Federal cost-share.* (1) 50 percent of the average cost of earth moving.

(2) 50 percent of the cost of materials in the permanent structure, excluding forms.

Done at Washington, D. C., this 2d day of August 1955.

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

[F. R. Doc. 55-6344; Filed, Aug. 4, 1955; 8:47 a. m.]

## TITLE 21—FOOD AND DRUGS

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

#### PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

#### PART 130—DRUGS EXEMPTED FROM PRESCRIPTION-DISPENSING REQUIREMENTS OF SECTION 503 (b) (1) (C) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

#### EXEMPTION OF ISOAMYLHYDROCUPREINE AND ZOLAMINE HYDROCHLORIDE OINTMENT AND RECTAL SUPPOSITORIES FROM PRESCRIPTION-DISPENSING REQUIREMENTS

The Commissioner of Food and Drugs, in accordance with the Federal Food, Drug, and Cosmetic Act (secs. 503 (b) (3), 701 (a); 52 Stat. 1055; 65 Stat. 649; 21 U. S. C. 353 (b) (3), 371 (a)) and the authority delegated to him by the Secretary of Health, Education, and Welfare (§ 1.108 (c); 21 CFR, 1954 Supp.), and no written comments having been filed with respect to the notice of proposed rule making published in the FEDERAL REGISTER on June 10, 1955 (20 F. R. 4093), hereby orders the following recodification and amendment:

1. Section 1.108 (f) is transferred to Part 130 and renumbered and redesignated § 130.1 *Exemption for certain drugs limited by new-drug applications to prescription sale.* The context of the introduction to former § 1.108 (f) and the context of subparagraphs (1) and (2) of that paragraph remain the same, but the introduction to the paragraph is renumbered as paragraph (a). As renumbered and redesignated, the section title and paragraph (a) read as follows:

§ 130.1 *Exemption for certain drugs limited by new-drug applications to prescription sale.* (a) The prescription-dispensing requirements of section 503 (b) (1) (C) of the Federal Food, Drug, and Cosmetic Act are not necessary for the protection of the public health with respect to the following drugs subject to new-drug applications:

The following amendment removes the drugs mentioned therein from the prescription-dispensing requirements of the 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 that they were safe only if used under professional supervision.

Pursuant to the regulations contained in § 1.108 (c) of this chapter (21 CFR, 1954, Supp., 1.108 (c)), 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 (sec. 503 (b) (3), 52 Stat. 1052, 65 Stat. 649; 21 U. S. C. 353 (b) (3)) which provides for the removal of such requirements if they are not necessary for the protection of the public health.

2. There is added to § 130.1 (a) a new subparagraph (3), reading as follows:

(3) Isoamylhydrocupreine and zolamine hydrochloride (N, N-dimethyl-N'-2-thiazolyl-N'-p-methoxybenzyl-ethylenediamine hydrochloride) preparations meeting all the following conditions:

(i) The isoamylhydrocupreine and zolamine hydrochloride are prepared in dosage form suitable for self-medication as rectal suppositories or as an ointment and containing no drug limited to prescription sale under the provisions of section 503 (b) (1) of the act.

(ii) The isoamylhydrocupreine, zolamine hydrochloride, 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 0.25 percent of isoamylhydrocupreine and 1.0 percent of zolamine hydrochloride.

(v) If the preparation is in suppository form, it contains not more than 5.0 milligrams of isoamylhydrocupreine and not more than 20.0 milligrams of zolamine hydrochloride per suppository.

(vi) The preparation is labeled with adequate directions for use in the temporary relief of local pain and itching associated with hemorrhoids.

(vii) The directions provide for the use of not more than two suppositories or two applications of ointment in a 24-hour period.

(viii) The labeling bears, in juxtaposition with the dosage recommendations, a clear warning statement against use of the preparation in case of rectal bleeding, as this may indicate serious disease.

3. Preceding § 1.108 of this chapter, the following note is inserted:

NOTE: Paragraph (f) (1) and (2) of § 1.108 has been transferred to Part 130, as § 130.1 (a).

4. Following the title of Part 130, insert the following cross-reference:

CROSS REFERENCE. See § 1.108 of this chapter for general regulations covering exemptions from prescription requirements.

*Effective date.* This order shall become effective 30 days after the date of its publication in the FEDERAL REGISTER.

(Sec. 701, 52 Stat. 371, as amended; 21 U. S. C. 371. Interprets or applies sec. 505, 52 Stat. 1051, as amended; 21 U. S. C. 353)

Dated: July 29, 1955.

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

[F. R. Doc. 55-6348; Filed, Aug. 4, 1955; 8:48 a. m.]

## TITLE 32—NATIONAL DEFENSE

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

#### Subchapter A—Armed Services Procurement Regulation [Amdt. 5]

##### MISCELLANEOUS AMENDMENTS

This subchapter is amended as follows:

#### PART 4—COORDINATED PROCUREMENT

##### SUBPART B—POLICIES AND GENERAL PRINCIPLES

Section 4.214 has been revised to provide that the Requiring Department shall be responsible for providing specifications required for a purchase; the Procuring Department may not authorize waivers or deviations without express authority of the Requiring Department. Section 4.214, as revised, reads as follows:

§ 4.214 *Specifications.* The Requiring Department shall be responsible for providing the Procuring Department a list of (or copies of) specifications required for purchase. Under no circumstances will the Procuring Department direct or authorize deviations or waivers from the specifications cited in the MIPR without express authority of the Requiring Department.

(R. S. 161; 5 U. S. C. 22)

#### PART 7—CONTRACT CLAUSES

##### SUBPART A—CLAUSES FOR FIXED-PRICE SUPPLY CONTRACTS

Uniform contract clauses are set forth in a new § 7.106 for use when price escalation is authorized pursuant to § 3.403-2. Separate clauses are provided for the following:

- (1) Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products (§ 7.106-1);
- (2) Non-Standard Steel Items (§ 7.106-2);
- (3) Standard Supplies (§ 7.106-3); and
- (4) Semi-Standard Supplies (§ 7.106-4). Section 7.106 reads as follows:

§ 7.106 *Price escalation clauses (established prices).* This section sets forth uniform clauses for use when it is desired to provide for price escalation in the event of changes in the contractor's established prices. Each clause is preceded by a statement of the conditions under which it may be used.

§ 7.106-1 *Escalation clause for basic steel, aluminum, brass, bronze or copper mill products.* The following price escalation clause is authorized for use in advertised or negotiated fixed-price supply contracts for basic steel, aluminum, brass, bronze or copper mill products, such as sheets, plates and bars, when:

- (a) An established price exists for the particular supply being procured; and
- (b) The contract is made with a producer of steel, aluminum, brass, bronze or copper, or with an operator of a steel foundry.

The percentage figure to be used in paragraph (d) (3) of the following clause shall not exceed 10 percent.

##### PRICE ESCALATION

(a) The Contractor warrants that the unit prices stated herein, excluding any part of the prices which reflects requirements for preservation, packaging and packing, beyond standard commercial practice, are not in excess of the Contractor's applicable established prices in effect on the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by means of formal advertising) for like quantities of the supplies covered by this contract.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each applicable contract unit price shall be decreased by the same percentage that the applicable established price is decreased. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. On the final invoice submitted under this contract, the Contractor shall certify either that there has been no decrease in the applicable established price since the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by means of formal advertising), or that all decreases which have been made in such price have been reflected in amendments to this contract, specifying the amendments involved.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions.

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by means of formal advertising).

(2) No unit price shall be increased by a percentage greater than the percentage increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed ---- percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, or the date of receipt by the Contracting Officer of the Contractor's request for adjustment, whichever is the later.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (b) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the

Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, within 30 days after receipt of the Contractor's request, cancel without liability to either party the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such cancellation, except that the Contractor may make delivery of all or any of the supplies which a duly authorized officer of the company shall certify were completed or in the process of manufacture at the time of receipt of notice of such cancellation. In such event the Government shall pay for all supplies so delivered at the applicable unit price contained in the Contractor's request, and the contract shall be amended accordingly; provided, that such certification is made within 10 days after receipt of notice of such cancellation, and provided further that such requested increase satisfies all of the conditions and does not exceed the limitations of paragraph (d). In the event this contract is for standard steel supplies, they shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or cancellation of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d), and provided further that if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor cancels the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

§ 7.106-2 *Escalation clause for non-standard steel items.* The following price escalation clause is authorized for use in negotiated fixed-price supply contracts when—

(a) The contractor is a steel producer and actually manufactures the basic steel item referred to in paragraph (d) of the following clause; and

(b) Items being procured are non-standard steel items made wholly or in major part of steel.

##### PRICE ESCALATION

(a) The Contractor represents that the unit prices set forth in this contract do not include any contingency allowance to cover the possibility of increased costs of performance resulting from increases in either (1) the Contractor's rates of pay for labor employed by it, or (2) the prices which the Contractor charges its manufacturing shops for the steel required in the performance of this contract.

(b) Each contract unit price shall be subject to revision, pursuant to the provisions of this clause, to reflect changes in the costs of labor and steel. For the purpose of any such price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below shall be ---- percent, and the proportion of the contract unit price attributable to the cost of steel shall be ---- percent.

(c) For the purposes of this paragraph, the term "labor index" shall mean the average straight time hourly earnings of the Contractor's employees in the [see Note (1)] shop of the Contractor's [see Note (1)] plant for any particular month. The word "month" as used herein means "calendar month"; provided, however, that if the Contractor's accounting period does not coincide with the calendar month, then such accounting period shall be used throughout the clause in lieu of "month." Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the particular shop identified above for any given month by the total number of straight time hours worked by such employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index," which shall be the average of the labor indices for the three months consisting of the month of [see Note (2)] 19--., the month immediately preceding and the month immediately following, and to the "current labor index," which shall be the average of the labor indices for the month in which delivery of supplies is required to be made in accordance with the terms of this contract and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "base steel index," which shall be the Contractor's established or published price to the public [see Note 3] including all applicable extras of \$--- per --- (unit) for [see Note (4)] on [see Note (5)], 19--., and the "current steel index," which shall be the Contractor's established or published price to the public [see Note 3] of said item including all applicable extras in effect [see Note (6)] days prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and such revised contract unit price(s) shall apply to the deliveries of those quantities of supplies required to be made in that month regardless of when actual delivery be made of said quantities of supplies. Each revised contract unit price for any month shall be computed by adding together the following three amounts: (i) the amount (representing the adjusted cost of labor) obtained by multiplying --- percent of the contract unit price by a fraction, the numerator of which shall be the current labor index and the denominator of which shall be the base labor index; (ii) the amount (representing the adjusted cost of steel) obtained by multiplying --- percent of the contract unit price by a fraction, the numerator of which shall be the current steel index and the denominator of which shall be the base steel index; and (iii) the amount equal to --- percent of the original contract unit price (representing that portion of such unit price which relates neither to the cost of labor nor to the cost of steel and which is therefore not subject to revision); provided, however, that any revised contract unit price made pursuant to the provisions of this clause shall in no event exceed 10 percent of the original contract unit price. All computations shall be made to the nearest one-hundredth of one cent.

(f) Pending revisions of the contract unit price(s), if any, to be made pursuant to this clause, the Contractor shall be paid the contract unit price(s) for deliveries made. Within thirty days after the final delivery of supplies, or within such further period of time as may be authorized by the Contracting Officer, the Contractor shall furnish a statement signed by the official supervising accounting with respect to this contract setting forth and certifying the correctness

of (i) the average straight time hourly earnings of the Contractor's employees in the shop of the Contractor identified in paragraph (c) above which earnings are relevant to the computations of the "base labor index" and the "current labor index," and (ii) the Contractor's established or published prices to the public [see Note 3] including all applicable extras, for like quantities of the item identified in paragraph (d) above, which prices are relevant to the computation of the "base steel index" and the "current steel index." Upon request of the Contracting Officer or his duly authorized representative, the Contractor shall make available its records used in the computation of the labor indices. After the receipt of such certificate by the Contracting Officer, the revised contract unit price(s) shall be computed in accordance with the provisions of this clause, and this contract shall be amended accordingly.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the Contractor, if prior to the month in which delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current labor and materials indices under paragraphs (c) and (d) hereof; provided, however, that as to the quantity of such item which is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said indices. In the case of termination of any item for default on the part of the Contractor, any price revision shall be limited to the quantity of each item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of notice of termination for default.

(h) As used in this clause the phrase "the month in which delivery of supplies is required to be made in accordance with the terms of this contract" shall mean any month in which under the terms of this contract a specific quantity of units of the supplies called for by this contract is required to be delivered; provided, however, that in case the failure of the Contractor to make delivery of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (b) of the clause of this contract entitled "Default," the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule set forth in this contract shall be amended accordingly.

(i) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

#### NOTES

(1) Identify the shop and plant in which the standard steel mill item identified in paragraph (d) will be finally fabricated or processed into the contract item.

(2) Insert the month in which the Contractor submitted its quotation.

(3) When there is no established or published price to the public, or when it is not desirable to use such price, this paragraph may refer to another appropriate price basis, such as an established interplant price.

(4) Identify the standard steel mill item used by the Contractor in the manufacture of the contract item.

(5) Insert the date of the Contractor's quotation.

(6) Insert the number of days which represents the Contractor's best estimate of the period of time required for processing the

standard steel mill item in the shop identified in paragraph (c).

**§ 7.106-3 Escalation clause for standard supplies.** The following price escalation clause is authorized for use in negotiated fixed-price supply contracts for standard supplies for which established prices exist. The clause may be used only when the total contract price is over \$5,000 and delivery is not to be completed within six months after the contract date. The percentage figure to be used in subparagraph (d) (3) of the following clause shall not exceed 10 percent. If any standard trade discounts offered by the contractor against its list or catalog price are taken into account in negotiating the contract unit price, the Contracting Officer's file should contain a statement setting forth the list or catalog price and the discounts. The discounts referred to do not include prompt payment or cash discounts.

#### PRICE ESCALATION

(a) The Contractor warrants that the unit prices stated herein, excluding any part of the prices which reflects requirements for preservation, packaging, and packing beyond standard commercial practice, are not in excess of the Contractor's applicable established prices in effect on the contract date for like quantities of the supplies covered by this contract. The term "established price" as used in this clause is the net price after applying any applicable standard trade discounts offered by the Contractor from its list or catalog price.

(b) The Contractor shall promptly notify the Contracting Officer as to amount and effective date of each decrease in any applicable established price, and each applicable contract unit price shall be decreased by the same percentage that the applicable established price is decreased. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. On the final invoice submitted under this contract, the Contractor shall certify either that there has been no decrease in the applicable established price since the contract date, or that all decreases which have been made in such price have been reflected in amendments to this contract, specifying the amendments involved.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the contract date.

(2) No unit price shall be increased by a percentage greater than the percentage increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed --- percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, or the date of receipt by the Contracting Officer of the Contractor's request for adjustment, whichever is the later.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (b) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, within 30 days after receipt of the Contractor's request, cancel without liability to either party the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such cancellation.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or cancellation of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d), and provided further that if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor cancels the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

**§ 7.106-4 Escalation clause for semi-standard supplies.** The following price escalation clause is authorized for use in negotiated fixed-price supply contracts for semistandard supplies, the prices of which can be reasonably related to the prices of nearly equivalent standard supplies for which established prices exist. The clause may be used only when the total contract price is over \$5,000 and delivery is not to be completed within six months after the contract date. A clear understanding should be set forth in writing prior to making the contract as to the identity of the standard supply items which are applicable. The percentage figure to be used in subparagraph (d) (3) of the following clause shall not exceed 10 percent. If any standard trade discounts offered by the Contractor against its list or catalog price are taken into account in negotiating the contract unit price, the Contracting Officer's file should contain a statement setting forth the list or catalog price and the discounts. The discounts referred to do not include prompt payment or cash discounts. When the supplies being purchased are standard supplies in all respects except for preservation, packaging, and packing requirements, the fol-

lowing clause should not be used; in such cases the Escalation Clause for Standard Supplies, in § 7.106-3, is the appropriate clause.

#### PRICE ESCALATION

(a) The Contractor warrants that the supplies covered by this contract are supplies which the Contractor customarily offers for sale commercially, except for modifications in accordance with the specifications of this contract, and that as of the contract date any differences between the unit prices stated herein and the Contractor's established prices for like quantities of the supplies which are the nearest commercial equivalents of the supplies covered by this contract (herein referred to as "the established prices") are due to compliance with such specifications, and to compliance with any requirements which this contract may contain for preservation, packaging, and packing beyond standard commercial practice. The term "established price" as used in this clause is the net price after applying any applicable standard trade discounts offered by the Contractor from its list or catalog price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each applicable contract unit price shall be decreased by the same percentage that the applicable established price is decreased. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. On the final invoice submitted under this contract, the Contractor shall certify either that there has been no decrease in the applicable established price since the contract date, or that all decreases which have been made in such price have been reflected in amendments to this contract, specifying the amendments involved.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the contract date.

(2) No unit price shall be increased by a percentage greater than the percentage increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed ---- percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, or the date of receipt by the Contracting Officer of the Contractor's request for adjustment, whichever is the later.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (b) of the clause of this contract entitled "Default," in which case the

contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, pursuant to the clause of the contract entitled "Termination for Convenience of the Government," terminate the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such termination.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or termination of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d), and provided further that if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor terminates the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

(R. S. 161; 5 U. S. C. 22)

#### PART 12—LABOR

##### SUBPART F—WALSH-HEALEY PUBLIC CONTRACTS ACT

A new § 12.703 informs Contracting Officers to direct inquiries concerning the subject act to the appropriate Regional Director of the Wage and Hour and Public Contracts Divisions of the Department of Labor. § 12.703 reads as follows:

**§ 12.703 Rulings on applicability or interpretation.** Contractors or contractor employees who inquire concerning applicability or interpretation of the Fair Labor Standards Act shall be advised that rulings concerning such matters fall within the jurisdiction of the Department of Labor, and shall be given the address of the appropriate Regional Director of the Wage and Hour and Public Contracts Divisions of the Department of Labor.

(R. S. 161; 5 U. S. C. 22)

#### PART 13—GOVERNMENT PROPERTY

##### SUBPART E—CONTRACT CLAUSES

Extensive editorial changes have been made in the contract clauses which appear in this subpart. The substance of the clauses has not been altered. However, immediate action should be taken to correct local forms containing such clauses inasmuch as the editorial changes clarify matters which have been the subject of controversy with contractors. Subpart E, as revised, now reads as follows:

## SUBPART E—CONTRACT CLAUSES

§ 13.500 *Scope of subpart.* This subpart sets forth uniform contract clauses pertaining to Government Property provided for use in connection with the performance of contracts for supplies or services.

§ 13.501 *Applicability.* (a) As used in this subpart, the term "fixed-price contract for supplies or services" shall mean any contract (i) entered into either by formal advertising or by negotiation, but excluding purchase orders for \$5,000 or less, letter contracts, letters of intent, preliminary notices of award and amendments or modifications to contracts or purchase orders; (ii) at a fixed-price (with or without provisions for price redetermination, escalation, or other form of price adjustment) as covered in § 3.403; and (iii) for supplies or services other than the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property.

(b) As used in this subpart, the term "cost-reimbursement type contract for supplies or services" shall mean any contract (other than a letter contract, letter of intent, preliminary notice of award, or amendment or modification of a contract) entered into by negotiation on a cost or cost-plus-a-fixed-fee basis as covered in § 3.404 for supplies or services other than the construction alteration, or repair of buildings, bridges, roads, or other kinds of real property.

§ 13.502 *Government-furnished property clause for fixed-price contracts.* The following clause shall be used in fixed-price contracts for supplies or services (except contracts for experimental, developmental, or research work with educational or nonprofit institutions, where no profit to the contractor is contemplated) under which a Department is to furnish to the contractor, material, special tooling, or such industrial facilities as may be furnished under § 13.402 (a).

## GOVERNMENT-FURNISHED PROPERTY

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event the Government-furnished Property is received by the Con-

tractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon the written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provisions affected by the decrease, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) Title to the Government-furnished Property shall remain in the Government. Title to Government-furnished Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished Property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall maintain adequate property control records of Government-furnished Property in accordance with the requirements of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Part 30 § 30.2 of this subchapter) as in effect on the date of the contract, which § 30.2 is hereby incorporated by reference and made a part of this contract.

(d) The Government-furnished Property shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government-furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by the Contracting Officer. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at its own expense.

The following provision (f) is for use in advertised fixed-price contracts:

(f) Unless otherwise provided in this contract, the Contractor, upon delivery to it of any Government-furnished Property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract.

The following provision (f) is for use in negotiated fixed-price contracts:

(f) (i) Except for loss, destruction or damage resulting from a failure of the Contractor due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection and preservation of the Government-furnished Property, as required by paragraph (e) hereof, and except as specifically provided in the clause or clauses of this contract designated in the Schedule, the Contractor shall not be liable for loss or destruction of or damage to the Government-furnished Property (A) caused by any peril while the property is in transit off the Contractor's premises, or (B) caused by any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils:

(I) Fire; lighting; windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces, or by an agent of any such government, power, authority, or forces; or

(II) Other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

The perils as set forth in (A) and (B) above are hereinafter called "excepted perils."

This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to the Government-furnished Property while in its possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government-furnished Property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of (I) all or substantially all of the Contractor's business; (II) all or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; (III) a separate and complete major industrial operation in connection with the performance of this contract.

(ii) The Contractor represents that it is not including in the price hereunder, and agrees that it will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserve) covering loss or destruction of or damage to the Government-furnished Property caused by any excepted peril.

(iii) Upon the happening of loss or destruction of or damage to any Government-furnished Property caused by an excepted peril, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government-furnished Property from further damage, separate the damaged and undamaged Government-furnished Property, put all the Government-furnished Property in the best possible order, and furnish to the Contracting Officer a statement of: (A) the lost, destroyed and damaged Government-furnished Property (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government-furnished Property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under this subparagraph (iii) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement.

(iv) With the approval of the Contracting Officer after loss or destruction of or damage to Government-furnished Property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-furnished Property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(v) Except to the extent of any loss or destruction of or damage to Government-furnished Property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-furnished Property in accordance with the provisions of this contract, the Government-furnished Property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(vi) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-furnished Property, caused by an excepted peril, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government-furnished Property, the Contractor shall enforce the liability of the subcontractor

for such loss or destruction of or damage to the Government-furnished Property for the benefit of the Government.

(vii) [Where applicable] In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government-furnished Property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks," to the extent such clause is, by its terms, applicable.

(g) The Government shall at all reasonable times have access to the premises wherein any Government-furnished Property is located.

(h) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government-furnished Property not consumed in the performance of this contract (including any resulting scrap), or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government-furnished Property, as may be directed or authorized by the Contracting Officer. Recoverable scrap from Government-furnished Property shall be reported in accordance with a procedure and in such form as the Contracting Officer may direct. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(i) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this Clause shall be in writing.

**§ 13.503 Government property clause for cost-reimbursement type contracts.** The following clause shall be used in cost-reimbursement type contracts for supplies and services (except contracts for experimental, developmental, or research work with educational or non-profit institutions, where no profit to the contractor is contemplated) under which a Department is to furnish to the contractor, or the contractor is to acquire for the account of the Government, material, special tooling, or industrial facilities within the policy set forth in § 13.402 (a).

#### GOVERNMENT PROPERTY

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished Property is received by the Contractor

in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, which ever first occurs. All Government-furnished Property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government Property."

(c) Title to the Government Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government Property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty. The Contractor shall maintain adequate property control records of the Government Property and shall identify the Government Property as such in accordance with the requirements of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, § 30.2 of this subchapter), as in effect on the date of the contract, which § 30.2 is hereby incorporated by reference and made a part of this contract.

(d) The Government Property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer in accordance with sound industrial practice, a program, for the maintenance, repair, protection and preservation of Government Property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government Property.

(f) (i) The Contractor shall not be liable for any loss of or damage to the Government Property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) (A) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representa-

tives, who has supervision or direction of (I) all or substantially all of the Contractor's business, or (II) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (III) a separate and complete major industrial operation in connection with the performance of this contract; or (B) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, (I) to maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection and preservation of Government Property as required by paragraph (e) hereof, or (II) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (e) hereof; or (C) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule; or (D) which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or (E) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement; provided that, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to Government Property in its possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government Property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(ii) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government Property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(iii) Upon the happening of loss or destruction of or damage to the Government Property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of (A) the lost, destroyed and damaged Government Property, (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government Property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall make repairs and renovations of the damaged Government Property or take such other action, as the Contracting Officer directs.

(iv) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government Property, it shall use the proceeds to repair, renovate or replace the Government Property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government Property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government Property for the benefit of the Government.

For use where applicable:

(v) In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government Property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks," to the extent such clause is, by its terms, applicable.

(g) The Government shall at all reasonable times have access to the premises where any of the Government Property is located.

(h) The Government Property shall remain in the possession of the Contractor for such period of time as is required for the performance of this contract unless the Contracting Officer determines that the interests of the Government require removal of such property. In such case the Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of Government Property. In any such instance, the contract may be amended to accomplish an equitable adjustment in the terms and provisions thereof.

(i) Upon the completion of this contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government Property not consumed in the performance of this contract (including any resulting scrap), or not theretofore delivered to the Government, and shall deliver or make such other disposal of the Government Property as may be directed by the Contracting Officer. Recoverable scrap shall be reported in accordance with a procedure and in such form as the Contracting Officer may direct. The net proceeds of any such disposal approved by the Contracting Officer shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct.

(j) Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore, or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government Property.

(k) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

**§ 13.504 Special tooling clause for fixed-price contracts.** The following clause shall be used in fixed-price contracts for supplies or services (except contracts for experimental, developmental, or research work) for the per-

formance of which the contractor furnishes special tooling, under the conditions set forth in § 13.302 (b) (i), but is not for use in contracts in which special tooling is called for as a separate item in the Schedule (see § 13.302 (a)).

#### SPECIAL TOOLING

(a) The term "special tooling" as used in this clause, includes all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, and other special articles of equipment and manufacturing aids acquired or manufactured by the Contractor for use in the performance of this contract, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts hereof, or the performance of such services, called for by this contract, as are peculiar to the needs of the Government. The term does not include: (i) items of tooling or equipment heretofore acquired by the contractor, or replacements thereof, whether or not altered or adapted for use in the performance of this contract; (ii) items of tooling or equipment which are usable for the production of supplies or parts thereof, or for the performance of services, which are not peculiar to the needs of the Government, or (iii) general or special machine tools or similar capital items.

(b) The Contractor agrees not to use any items of special tooling except in the performance of this contract, or except as otherwise provided by this clause, without prior written approval of the Contracting Officer. The Contractor may, with the approval of the Contracting Officer, use the special tooling in the performance of other contracts with the Government, or subcontracts under Government contracts, provided that the Contractor agrees not to include in the price or prices for any such contracts or subcontracts, involving the use of such special tooling, the cost of such tooling or any allowance or charge to cover depreciation or amortization which has previously been charged against this contract.

(c) As and when any substantial portion of usable special tooling is no longer needed by the Contractor for the performance of this contract, and of other Government contracts and subcontracts as to which approval has been obtained under paragraph (b) above, the Contractor shall promptly notify the Contracting Officer thereof, and shall furnish to the Contracting Officer a list of the products, parts or services for the manufacture or performance of which such special tooling was used or designed. Upon completion or termination of all work under this contract, or of this contract and other Government contracts and subcontracts as to which approval has been obtained under paragraph (b) above, the Contractor shall furnish a final list in the same form covering all items not previously reported under this paragraph. Special tooling which has become obsolete as a result of changes in design or specification need not be reported, except as provided for in paragraph (d).

(d) In the event of any changes in design or specifications which affect interchangeability of parts, the Contractor shall, unless otherwise agreed to by the Contracting Officer, give the Contracting Officer notice of any part which is not interchangeable with the new or superseding part and the usable special tooling for each part covered in such notice shall be retained by the Contractor subject to the provisions of paragraph (i), pending disposition under paragraph (f).

(e) At the time it furnishes any list or notice under (c) or (d) above, the Contractor may designate those items of special tooling (either specifically or by listing the particular products, parts, or services for which such items were used or designed) which it desires to retain, together with a

written offer: (i) to retain any or all of such items, free and clear of any Government interest, for an amount designated therein, which should ordinarily not be less than the then fair value of such items (which fair value takes into account, among other things, the value of such items to the Contractor for use in further work by it); or (ii) to retain any or all such items for such period of time and subject to such terms and conditions as may be agreed to by the parties hereto, subject to ultimate retention or disposition of such items in accordance with paragraph (f) hereof.

(f) Within 90 days after receipt of any list or notice under paragraph (c) or (d) hereof, or such further period as may be agreed upon by the parties, the Contracting Officer shall furnish to the Contractor: (i) a list specifying the particular products, parts, or services for which the Government may require special tooling together with a request that the Contractor transfer title and deliver to the Government all usable items of special tooling which were used or designed for the manufacture or performance of any designated portion of such products, parts, or services, and which were on hand when production of such products or parts, or performance of such services, ceased; or (ii) an acceptance or rejection of any offer made by the Contractor under paragraph (e) above, or a request for further negotiation with respect thereto; or (iii) subject to the provisions of paragraph (j) hereof, a direction to the Contractor to sell, or to dispose of as scrap, for the account of the Government, any or all of the special tooling covered by such list; or (iv) a statement with respect to any or all of the special tooling covered by such list that the Government has no further interest therein and waives its rights therein; or (v) any combination of the foregoing, as the circumstances warrant. The Contractor shall promptly comply with any request by the Contracting Officer under this paragraph to transfer title to any items of special tooling, and shall, subject to the provisions of paragraph (j) hereof, (1) immediately prepare such items for shipment by proper packaging, packing, and marking, in accordance with any instructions which may be issued by the Contracting Officer, and shall promptly deliver such items to the Government, as directed by the Contracting Officer, or (2) if a storage agreement has been entered into, prepare such items for storage in accordance therewith, as directed by the Contracting Officer. Any items of special tooling so delivered or stored shall be accompanied by such operation sheets or other appropriate data as are necessary to show the manufacturing operations or processes for which such items were used or designed. If the Contracting Officer has requested further negotiations under (ii) of this paragraph, the Contractor agrees that it will enter into such negotiations in good faith with the Contracting Officer. Any items of special tooling which are not disposed of by transfer of title and delivery to the Government under this paragraph, or by acceptance of an offer of the Contractor made under paragraph (e), or of such offer as modified in the course of negotiations, shall be disposed of in the manner set forth in (iii) or (iv) of this paragraph.

(g) If the Contracting Officer accepts an offer of the Contractor to retain any items of special tooling, or if any such items are sold to third parties or disposed of as scrap, the net proceeds shall: (i) be deducted from the amounts due to the Contractor under this contract and the contract amended accordingly; or (ii) be otherwise paid as the Contracting Officer may direct.

(h) The Contractor agrees that it will follow its normal industrial practice in maintaining property control records on all the special tooling, and that it will make such records available for inspection by the Government at all reasonable times. The Con-

tractor further agrees that, to the extent practicable, it will identify by appropriate stamp, tag or other mark all special tooling subject to this clause.

(i) The Contractor agrees that between the date any usable items of special tooling are no longer needed by it, within the meaning of this clause, and the date of final disposition of such items under this clause, it will take all reasonable steps necessary to maintain the identity and existing conditions of such items, unless the Contracting Officer has directed that such items be disposed of as scrap or has given notice under (f) (iii). The Contractor shall not be required to keep any such items in place.

(j) Any preparation of items for shipment required of the Contractor under paragraph (f) of this clause, or any disposal as scrap under paragraph (f) (iii), or any action required of the Contractor under paragraph (i), shall be taken pursuant to written instructions of the Contracting Officer, which shall (1) provide for an equitable adjustment of the contract price to cover any additional cost, to the Contractor, not taken into account in the negotiation of this contract, of complying with such instructions, which adjustment shall be made in accordance with the procedure set forth in the clause of this contract entitled "Changes," or (ii) otherwise provide for payment to the Contractor of any such additional cost. Any failure of the Contracting Officer to issue the Contractor specific disposition instructions shall be construed as an instruction to the Contractor to take the action required under paragraph (i) with provision for equitable adjustment or payment as provided for above.

The following paragraph relating to subcontracts shall be used in cases where the Contracting Officer deems the use of such paragraph to be necessary in order to protect the Government's interest in special tooling which may be acquired under such subcontracts:

(k) The Contractor agrees, that, in placing any subcontracts or purchase orders under this contract which involve the use of special tooling, the full cost of which is charged to such subcontract or purchase order, it will include therein appropriate provisions to obtain rights comparable to those granted to the Government by this clause, and agrees that it will exercise such rights for the benefit of the Government, as the Contracting Officer may direct.

In appropriate cases, the following *alternative clause*, relating to subcontracts may be used:

(k) The Contractor agrees that, in placing any subcontracts or purchase orders under this contract which involve the use of special tooling, the full cost of which is charged to such subcontract or purchase order, it will to the extent consistent with its normal business practice include appropriate provisions therein to obtain rights comparable to those granted to the Government by this clause, and agrees that it will exercise such rights for the benefit of the Government, as the Contracting Officer may direct.

**§ 13.505 Government-furnished property clause for fixed-price contracts; (non-profit research and development contracts).** The following clause shall be used in fixed-price research and development contracts with non-profit organizations (provided such contracts are executed on a non-profit basis) under which a Department is to furnish property to the contractor:

#### GOVERNMENT-FURNISHED PROPERTY

(a) The Government shall deliver to the Contractor, for use in connection with and

under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished Property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision effected by the return or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon the written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provisions affected by the decrease, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) Title to the Government-furnished Property shall remain in the Government. Title to Government-furnished Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished Property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) The Government-furnished property shall, unless otherwise provided herein, and except as may be otherwise approved by the Contracting Officer, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection and preservation of Government-furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the

property as the Government directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor may reject such property. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at its own expense.

(f) The provisions of § 30.3 Appendix C, of this subchapter, Manual for Control of Government Property in Possession of Non-Profit Research and Development Contractors, as in effect on the date of this contract are hereby incorporated by reference and made a part of the contract, insofar as they relate to Government-furnished Property. The Contractor agrees to comply with the provisions thereof relating to the keeping of property control records, identification and marking, segregation and commingling, taking of inventories, and control of salvage and scrap, and the Contractor also accepts the responsibilities set forth in said Part III of § 30.3 with respect to Government-furnished Property.

(g) The Contractor agrees to make available to authorized representatives of the Contracting Officer at all reasonable times at the office of the Contractor all of its property records under this contract, and access to any premises where any of the Government-furnished Property is located.

(h) (i) The Contractor shall not be liable for any loss of or damage to the Government-furnished Property, or for expenses incidental to such loss or damage except that the Contractor shall be liable for any such loss or damage (including expenses incidental thereto):

(A) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed; or

(B) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of Government-furnished Property as required by subparagraph (e) above; or

(C) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule; or

(D) Which results from a risk expressly required to be insured under some other provision of this contract, or of the schedules or task orders thereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater; or

(E) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

provided that, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(ii) The Contractor represents that it is not including in the price hereunder, and agrees that it will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government-furnished Property, except to the extent that the risk of loss is imposed on the Contractor under (i) (C) above, or insurance has been required under (i) (D) above.

(iii) Upon the happening of loss or destruction of or damage to any Government-furnished Property, the Contractor shall notify the Contracting Officer thereof and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed) shall take all reasonable steps to protect the Government-furnished Property from further damage, separate the damaged and undamaged Government-furnished Property, put all the Government-furnished Property in the best possible order, and furnish to the Contracting Officer a statement of:

(A) The lost, destroyed and damaged Government-furnished Property;

(B) The time and origin of the loss, destruction or damage;

(C) All known interests in commingled property of which the Government-furnished Property is a part; and

(D) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under this subparagraph (iii) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement or amendment to this contract.

(iv) With the approval of the Contracting Officer after loss or destruction of or damage to Government-furnished Property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-furnished Property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(v) Except to the extent of any loss or destruction of or damage to Government-furnished Property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-furnished Property in accordance with the provisions of this contract, the Government-furnished Property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(vi) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-furnished Property, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of in-

struments of assignment in favor of the Government) in obtaining recovery.

(vii) (Where applicable). In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government-furnished Property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks," to the extent such clause is, by its terms, applicable.

(i) Upon completion or expiration of this contract, any Government property which has not been consumed in the performance of this contract, or which has not been disposed of as hereinafter provided in subparagraph (i) of this article, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in subparagraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the price or costs of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(j) If the Contracting Officer determines that the interests of the Government require removal of any Government-furnished Property, or if the Contractor determines any Government-furnished Property to be in excess of its needs under this contract, such Government-furnished Property shall be disposed of in the same manner as covered by paragraph (i) above. In the event that the Contracting Officer requires the removal of any Government-furnished Property under this subparagraph (j) or subparagraph (i) above, upon written request of the Contractor, an equitable adjustment shall be made in the contract price in accordance with the procedures provided for in the clause of this contract entitled "Changes," to cover the direct cost to the Contractor of such removal and of any property damage occasioned thereby.

§ 13.506 *Government property clauses for cost-reimbursement type contracts (Nonprofit research and development contracts).* The following shall be used in cost-reimbursement type research and development contracts with nonprofit organizations (provided such contracts are executed on a nonprofit basis) under which a Department is to furnish Government property to the contractor, or the contractor is to acquire property for the account of the Government.

#### GOVERNMENT PROPERTY

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-

furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that the Government-furnished Property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) The Government may deliver to the Contractor Government-furnished Property in addition to that set forth in the Schedule or specifications. At the time of such delivery the contract may be amended, if appropriate, to accomplish an equitable adjustment in the terms and provisions thereof.

(c) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is to be reimbursed to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All Government-furnished Property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government Property."

(d) Title to the Government Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government Property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(e) The Government Property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein and except as may be otherwise approved by the Contracting Officer, be used only for the performance of this contract.

(f) The Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection and preservation of Government Property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all

appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Government Property.

(g) The provisions of Part III of § 30.3, Appendix C, of this subchapter, Manual for Control of Government Property in Possession of Non-Profit Research and Development Contractors, as in effect on the date of this contract, are herein incorporated by reference and made a part of this contract. The Contractor agrees to comply with the provisions thereof relating to the keeping of property control records, identification and marking, segregation and commingling, taking of inventories, and control of salvage and scrap, and the Contractor also accepts the responsibility set forth in said Part III of § 30.3 with respect to Government Property.

(h) The Contractor agrees to make available to authorized representatives of the Contracting Officer at all reasonable times at the office of the Contractor all of its property records under this contract, and access to any premises where any of the Government Property is located.

(i) The Contractor shall not be liable for any loss of or damage to the Government Property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(A) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed; or

(B) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, (I) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of Government property as required by subparagraph (f) above, or (II) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under subparagraph (f) above; or

(C) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the schedule; or

(D) Which results from a risk expressly required to be insured under some other provision of this contract, or of the schedules or task orders thereunder, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(E) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement; provided that, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(ii) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government Property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(iii) Upon the happening of loss or destruction of or damage to the Government Property, the Contractor shall notify the

Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government Property from further damage, separate the damaged and undamaged Government Property, put all the Government Property in the best possible order, and furnish to the Contracting Officer a statement of:

(A) The lost, destroyed and damaged Government Property,

(B) The time and origin of the loss, destruction or damage,

(C) All known interests in commingled property of which the Government Property is a part, and

(D) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government Property or take such other action the Contracting Officer directs.

(iv) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, it shall use the proceeds to repair, renovate or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(v) (Where applicable.) In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government Property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks," to the extent such clause is, by its terms, applicable.

(j) The Government Property shall remain in the possession of the Contractor for such period of time as is required for the performance of this contract unless the Contracting Officer determines that the interests of the Government require removal of such property. In such case the Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of Government Property. In any such instance, the contract may be amended to accomplish an equitable adjustment in the terms and provisions thereof.

(k) Upon completion or expiration of this contract, any Government Property which has not been consumed in the performance of this contract, or which has not been disposed of as hereinafter provided in subparagraph (l) of this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in subparagraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the cost of the work covered by this contract, or shall be paid in such other manner as the Con-

tracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(l) If the Contracting Officer determines that the interests of the Government require removal of any Government Property, or if the Contractor determines any Government Property to be in excess of its needs under this contract, such Government Property shall be disposed of in the same manner as provided by subparagraph (k) above. In the event that the Contracting Officer requires the removal of any Government Property under this subparagraph (l) or subparagraph (k) above, the direct cost to the Contractor of such removal and of any property damage occasioned thereby shall constitute an allowable cost thereunder.

(m) Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government Property.

(n) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

(Sec. 3, 62 Stat. 259; 50 U. S. C. App. 1193)

#### PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATION

In § 30.2 *Appendix B—Manual for control of Government property in the possession of contractors*, a new paragraph 304.6 provides that Government-furnished "related data and information" (drawings, instructions, etc.) will be subject to such controls and accountability only as may be in accordance with sound industrial practice. The detailed provisions of the manual are consequently not applicable to such property. 304.6 reads as follows:

304. Records to be maintained by the contractor.

304.6 Records of related data and information. Except as provided in this subparagraph, the requirements of this § 30.2 are not applicable to manufacturing or assembly drawings, installation, operation, repair or maintenance instructions, or other similar data and information furnished by the Government to the contractor. The contractor shall maintain property control and accountability with respect to such Government-furnished Property in accordance with sound industrial practice.

In § 30.3 *Appendix C—Manual for control of Government property in possession of non-profit research and development contractors*, a new paragraph 306 (e) has been added providing that Government-furnished "related data and information" (drawings, instructions, etc.) will be subject to such controls and accountability only as may be in accordance with sound industrial practice. The detailed provisions of the Manual are consequently not applicable to such property. Paragraph 306 (e) reads as follows:

306 Property control records. \* \* \* [(a) through (d) unchanged.]

(e) Records of related data and information. Except as provided in this subparagraph, the requirements of this § 30.3 are not applicable to manufacturing or assembly drawings, installation, operation, repair or maintenance instructions, or other similar data and information furnished by the Gov-

ernment to the contractor. The contractor shall maintain property control and accountability with respect to such Government-furnished property in accordance with sound industrial practice.

(R. S. 161; 5 U. S. C. 22)

T. P. PIKE,  
Assistant Secretary of Defense  
(Supply and Logistics).

[F. R. Doc. 55-6354; Filed, Aug. 4, 1955;  
8:50 a. m.]

[Amdt. 6]

#### MISCELLANEOUS AMENDMENTS

This subchapter is amended as follows:

##### PART 8—TERMINATION OF CONTRACTS

##### SUBPART E—SETTLEMENT OF CONTRACTS TERMINATED FOR CONVENIENCE—GENERAL

1. A new paragraph (d) is added to § 8.503-1, as follows:

§ 8.503-1 *Submission of settlement proposals.* \* \* \*

(d) Unless otherwise instructed by the Contracting Officer, when the total charges claimed are less than \$1,000, settlement proposals may be submitted on DD Form 831. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract should be consolidated whenever possible. They must not be divided in such a way as to bring them below \$1,000.

2. Section 8.503-3 *Forms for settlement proposals* is revised as follows:

§ 8.503-3 *Forms for settlement proposals.* (a) The forms which shall be used by the contractor in submitting its claim for the termination of a fixed-price contract are set forth in Subpart G of this part. They consist of the following:

(1) DD Form 540. Designed for settlement proposals on the inventory basis;

(2) DD Form 541. Designed for settlement proposals on the total cost basis;

(3) DD Form 831. Designed for settlement proposals on fixed-price contracts and orders when the total charges being claimed are less than \$1,000;

(4) DD Forms 542, 543, 544, and 545. Termination Inventory Schedules A, B, C, and D for use in supporting settlement proposals on DD Forms 540 or 541;

(5) DD Form 832. Termination Inventory Schedule E, for use in supporting settlement proposals on DD Form 831;

(6) DD Form 546. Schedule of Accounting Information.

(b) DD Form 546, Schedule of Accounting Information, is required to be filed only once with respect to any termination. It is not required when the settlement proposal on DD Form 831 is used.

(c) Where the standard forms for settlement proposals set forth in Subpart G are not appropriate for any particular contract, the head of the procuring activity concerned may authorize appropriate modifications thereof.

3. Section 8.515 (a) is amended as follows:

§ 8.515 *Audit of settlement proposals and of subcontract settlements.* (a) Each settlement proposal of \$1,000 or over submitted by a prime contractor shall be referred by the Contracting Officer to the audit agency of the Department concerned or the cognizant audit agency, whichever is applicable, for appropriate examination and recommendation. Settlement proposals in an amount of less than \$1,000 may be submitted for audit when the Contracting Officer deems it necessary. The request of the Contracting Officer shall be made in writing and shall recommend the scope of the audit but such recommendation shall in no way limit the extent thereof should the auditor in his professional opinion find expansion necessary. The report and recommendations of the audit agency thereon shall be submitted to the Contracting Officer, in writing, in accordance with the procedures of the Department concerned.

(R. S. 161; 5 U. S. C. 22)

#### PART 15—CONTRACT COST PRINCIPLES

##### SUBPART F—COST INTERPRETATIONS

A new § 15.602, *Depreciation*, has been added to this subpart as follows:

§ 15.602 *Depreciation.*

§ 15.602-1 *Applicability and effective date.* This cost interpretation pertains to §§ 15.204 (d), 15.205 (b) and (c). It is applicable with respect to all cost-reimbursement type contracts placed on and after 1 June 1955 and, also, to all existing cost-reimbursement type contracts not completed at that date except as to predetermined overhead rates or fixed amounts of overhead which have finally been agreed upon for particular periods. However, the foregoing sentence does not supersede any express agreement in writing that a different interpretation shall be applicable.

§ 15.602-2 *Allowances for depreciation.* Allowances for depreciation (other than "true depreciation") as provided in Section 167 of the Internal Revenue Code of 1954, subject to the limitations set forth in § 15.602-3, shall be acceptable for contract costing purposes. Allowances for "true depreciation," as that term is defined in DOD Instruction 4105.34 of 1 July 1954, shall be in accordance with said Instruction, and shall be exclusive of other methods of depreciation with respect to the assets involved in the determination of "true depreciation."

§ 15.602-3 *Interpretation.* Depreciation computed in accordance with § 15.602-2 above is allowable provided it meets the test of reasonableness and allocability to defense contracts and other applicable provisions of this part. Meeting these tests may depend upon whether (a) the depreciation allowance in the particular case is acceptable for tax purposes, and (b) the costing of defense contracts is on a basis consistent with the costing of the contractor's non-

defense work and is so reflected in its books and records.

(Sec. 1, 54 Stat. 712, as amended, sec. 201, 55 Stat. 839, 62 Stat. 20, sec. 638, 66 Stat. 537; 50 U. S. C. App. 1171, 611, 41 U. S. C. 151-162, E. O. 9001, 6 F. R. 6787, as amended by E. O. 9296, 8 F. R. 1429; 3 CFR, 1943 Cum. Supp.)

#### PART 16—PROCUREMENT FORMS

Section 16.014 *Royalty report form* (DD Form 783) is revised as follows:

§ 16.014 *Royalty report form* (DD Form 783).

§ 16.014-1 *General*. DD Form 783 is approved for use by contractors in making reports as required by paragraph (a) of the Reporting of Royalties clause of § 9.110, or for individual reports by contractors as required by the Reporting of Royalties clause of former § 9.103 (prior to Revision No. 1, 4 January 1955, 1955 edition), notwithstanding the fact that the contract clause of former § 9.103 requires the reporting of all royalties. While it is preferred that contractors use DD Form 783, the contractor may submit the royalty information in such other form as is considered desirable by the contractor, provided such other form contains all of the information required by the Reporting of Royalties clause of the contract.

§ 16.014-2 *Forms superseded*. DD Form 783, as revised 1 April 1955, supersedes all previous editions and all other forms promulgated by the military departments for the reporting of royalties under individual contracts.

(R. S. 161; 5 U. S. C. 22)

T. P. PIKE,  
Assistant Secretary of Defense  
(Supply and Logistics).

[F. R. Doc. 55-6355; Filed, Aug. 4, 1955;  
8:50 a. m.]

## TITLE 19—CUSTOMS DUTIES

### Chapter I—Bureau of Customs, Department of the Treasury

[T. D. 53859]

#### PART 3—DOCUMENTATION OF VESSELS

##### MARKING OF DRAFT OF REGISTERED VESSELS

Section 3.15 of the Customs Regulations now requires the marking of the draft of every registered vessel upon the stem and sternpost. That regulation is predicated upon the provisions of section 48, title 46, United States Code. The legislative history of the law, enacted in 1891, shows that it was intended to apply only to vessels engaged in foreign trade to insure safety of life and property at sea. It is the Bureau's opinion, and the Commandant of the United States Coast Guard has concurred therein, that the responsibility of the administration of the provisions of the law was transferred to the Commandant by Executive Order

No. 9083 (7 F. R. 1609; T. D. 50575) and that such transfer was later confirmed and made permanent under Reorganization Plan No. 3 of 1946 (3 CFR, 1946 Supp., ch. IV; 60 Stat. 1097).

In view of the above, § 3.15 of the Customs Regulations is hereby revoked, and § 3.15 and the marginal reference to T. D. 10830 shall be deleted from the Customs Regulations.

(R. S. 161; 5 U. S. C. 22.)

[SEAL] D. B. STRUBINGER,  
Acting Commissioner of Customs.

Approved: August 1, 1955.

H. CHAPMAN ROSE,  
Acting Secretary of the Treasury.

[F. R. Doc. 55-6353; Filed, Aug. 4, 1955;  
8:49 a. m.]

## TITLE 33—NAVIGATION AND NAVIGABLE WATERS

### Chapter I—Coast Guard, Department of the Treasury

#### Subchapter K—Security of Vessels

[CGFR 55-33]

#### PART 124—CONTROL OVER MOVEMENT OF VESSELS

##### ADVANCE NOTICE OF VESSEL'S TIME OF ARRIVAL TO CAPTAIN OF THE PORT, U. S. COAST GUARD

By Executive Order 10173 the President found that the security of the United States is endangered by reason of subversive activity and prescribed certain regulations relating to the safeguarding against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature, of vessels, harbors, ports, and waterfront facilities in the United States, and all territory and water, continental or insular, subject to the jurisdiction of the United States exclusive of the Canal Zone.

Pursuant to the authority of 33 CFR 6.04-8 in Executive Order 10173 (15 F. R. 7007; 3 CFR, 1950 Supp.) the Captain of the Port may supervise and control the movement of any vessel and shall take full or partial possession or control of any vessel or any part thereof within the territorial waters of the United States under his jurisdiction whenever it appears to him that such action is necessary in order to secure such vessel from damage or injury or to prevent damage or injury to any waterfront facility or waters of the United States or to secure the observance of rights and obligations of the United States. The purpose for adding a new paragraph (c) to 33 CFR 124.10 and redesignating paragraphs (c), (d), and (e) thereof to (d), (e), and (f), respectively, is to grant authority to Coast Guard District Commanders to prescribe instructions under which Coast Guard Captains of the Ports under their com-

mand may construe constructive compliance regarding the reporting of time of arrival in the cases of certain United States documented vessels whose owners, operators or agents have complied with the requirements prescribed by the District Commander, where harbor entrance patrols can readily identify such vessels, and where the operation of the regulation would work an undue and unnecessary hardship on such owners, operators, or agents.

Since the security interests of the United States call for the aforesaid application of the provisions of 33 CFR 6.04-8 in Executive Order 10173 at the earliest practicable date and because of the national emergency declared by the President, it is found that compliance with the notice of proposed rule making, public rule making procedure thereon, and effective date requirements of the Administrative Procedure Act is impracticable and contrary to the public interest.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Executive Order 10173, as amended by Executive Orders 10277 and 10352, the following amendments are prescribed which shall become effective on the date of publication of this document in the FEDERAL REGISTER:

Section 124.10 is amended by redesignating paragraphs (c), (d), and (e), to (d), (e), and (f), respectively, and by adding a new paragraph (c), reading as follows:

§ 124.10 *Advance notice of vessel's time of arrival to Captain of the Port.*

(c) In the case of a vessel which is engaged in operations in and out of the same port, either on voyages to sea and return without having entered any other port, or on coastwise voyages within the same Coast Guard district, or from ports within the first, ninth, thirteenth or seventeenth Coast Guard Districts to adjacent Canadian ports, and where no reason exists which renders such action prejudicial to the rights and interests of the United States, the Coast Guard District Commander having jurisdiction may prescribe conditions under which Coast Guard Captains of the Ports may consider such a vessel as being in constructive compliance with the requirements of paragraph (a) of this section without the necessity for reporting 24 hours in advance of each individual arrival.

(Sec. 1, 40 Stat. 220, as amended; 50 U. S. C. 191, E. O. 10173, Oct. 18, 1950, 15 F. R. 7005, 3 CFR, 1950 Supp., E. O. 10277, Aug. 1, 1951, 16 F. R. 7537, 3 CFR, 1951 Supp., E. O. 10352, May 19, 1952, 17 F. R. 4607, 3 CFR, 1952 Supp.)

Dated: August 1, 1955.

[SEAL] A. C. RICHMOND,  
Vice Admiral, U. S. Coast Guard  
Commandant.

[F. R. Doc. 55-6352; Filed, Aug. 4, 1955;  
8:49 a. m.]

## PROPOSED RULE MAKING

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## [ 25 CFR Part 180 ]

LEASING OF OSAGE RESERVATION LANDS FOR  
OIL AND GAS MINING

## NOTICE OF HEARING

Pursuant to the authority vested in the Secretary of the Interior by section 3 of the act of June 28, 1906 (34 Stat. 543), and section 1 of the act of March 2, 1929 (45 Stat. 1478), a hearing will be held by a special representative of the Secretary of the Interior on September 6, 1955, at 10 a. m., at the Osage Agency, Pawhuska, Oklahoma, to consider proposed amendments to 25 CFR 180.5 (a), 180.51 (b), 180.30 and 180.46 (b), Osage oil and gas regulations.

Section 180.5 (a) is proposed to be amended so as to increase the amounts payable as well as location and tanksite fees and to clarify the usage of water by the lessee. Section 180.51 (b) is proposed to be amended as to the procedure for payment of location fees when the surface owner cannot be reached in person or by mail, or where the surface owner refuses to accept such payment when tendered to him by the lessee.

It is also proposed to amend § 180.30 to cover the measurement of all kinds of gas rather than only that of casing-head gas. Section 180.46 (b) is proposed to be amended so as to enable the Superintendent, Osage Agency, to approve an agreement rescinding a unit (blanket) lease and restoring to their original status the Form B leases theretofore merged into the unit lease.

The hearing will be open to the attendance of all interested parties. Those desiring to be heard in person at such hearing should file notice thereof with Russell G. Fister, Superintendent, Osage Agency, Pawhuska, Oklahoma, not later than September 2, 1955. Written statements may be filed at the same office by any party so desiring on or prior to September 6, 1955, or with the Chairman at the hearing.

Following the hearing, the Secretary of the Interior will, upon consideration of the complete record, determine whether the following proposed amendments should be adopted and 25 CFR Part 180 be changed accordingly. Such regulations, if adopted will be duly published in the FEDERAL REGISTER.

**§ 180.5 Use of surface lands: settlement of damages to lands and crops.** (a) Lessee shall have the right to use so much of the surface of the land as may be necessary for operations, including the right to lay and maintain pipe lines, telephone and telegraph lines, pull rods and other appliances necessary for the operation of the wells; also the right of ingress and egress and the right of way to any point of operations under condition of least injury and inconvenience to the owner and occupant of

the surface. Lessee may use water from streams and natural water courses for lease operations as set out in § 180.57. Before commencing operations for the drilling of any well the lessee shall pay to the surface owner the sum of \$200 for such well located on cultivated land (tilled or cultivated within the immediately preceding three years, and including hay-meadow land), \$150 for open pasture land, and \$100 for such location on brush or wooded lands, and other lands not suitable for cultivation. Upon payment of such location site money, lessee shall be entitled to possession. Location sites shall be held to the minimum area essential for operations, and in no event shall exceed one and one-half acres in area. Lessee shall also pay tank site fees at the rate of \$20 per tank of not exceeding 1,000 barrels capacity: *Provided, however,* That no tank site fee shall be paid for a tank temporarily set on a well location site for testing purposes during the completion of the well. Tank sites shall be held to the minimum area essential to efficient operations, and in no event shall exceed an area of 50 feet square per tank. The sum to be paid for an oil tank site of larger capacity and occupying a greater area shall be as agreed upon between the surface owner and the lessee, and on failure to agree, the same shall be fixed by arbitration.

**§ 180.51 Well locations fees. \* \* \***

(b) Where the surface owner is a restricted Indian, adult or minor, well location fee shall be paid to the Superintendent of the Osage Agency for such Indian. All other surface owners, whether Indians or whites, shall be paid or tendered such fees direct, and where such surface owners are not residents of Osage County nor have a representative located therein, such payments shall be made or tendered by check, postage prepaid, to last known address of said surface owner at least 5 days before commencing drilling operations on any well: *Provided,* That should the lessee be unable to reach the owner of the surface of the land for the purpose of tendering the location fee, or if owner of the surface of the land upon being tendered the location fee by the lessee, shall refuse to accept the same, the lessee may tender the location fee to the Superintendent of the Osage Agency, and if the lessee and the Superintendent shall agree upon the amount of the location fee, the lessee shall deposit such amount with the Superintendent for payment to the owner of the surface of the land upon demand, and the Superintendent shall thereupon advise the owner of the surface of the land by mail at his last known address, that the location fee is being held for payment to him upon his request.

**§ 180.30 Measurement of gas.** Gas of all kinds (except gas used for purposes of production on the leasehold or unavoidably lost) is subject to royalty, and all gas shall be measured by meter (preferably of the orifice-meter type) unless otherwise agreed to by the Superintendent.

All gas meters must be approved by the Superintendent and installed at the expense of the lessee at such places as may be agreed to by the Superintendent. For computing the volume of all gas produced, sold, or subject to royalty, the standard of pressure shall be 10 ounces above an atmospheric pressure of 14.4 pounds to the square inch, regardless of the atmospheric pressure at the point of measurement, and the standard of temperature shall be 60° F. All measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was actually measured, unless otherwise authorized in writing by the Superintendent.

**§ 180.46 Approval of lease instruments. \* \* \***

(b) *Unitization of oil leases.* As a consideration for their further development by the water flood process, two or more oil leases may be unitized and merged in a single blanket lease with the approval of the Superintendent. The instrument of unitization (blanket lease) shall include all the requirements and provisions of sections numbered 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19 and 20 of Osage oil lease Form B, *Provided:* That the preamble of Form B and the provisions of section numbered 2 in respect to royalty rates; section numbered 3 in respect to payment of rental; section numbered 4 in respect to payment of well site and tank location fees; and section numbered 14 in respect to the surrender of the lease, may be modified and/or supplemented by the parties, with the approval of the Superintendent, to the extent deemed appropriate for the equitable and efficient conduct of unitized operations, and not otherwise in conflict with the regulations in this part. Lessee(s) shall, before commencing water flood operations, and on or before December 31st of each year thereafter, submit to the Superintendent an acceptable plan of development and operation for the unit area for the ensuing year. Upon a finding by him that such action would be in the best interest of the Osage Tribe, the Superintendent may also approve an agreement between the lessor and the lessee(s) rescinding a unit (blanket lease) and restoring to their original status the Form B leases theretofore merged in the unit lease: *Provided,* That if oil is being produced in paying quantities on a particular quarter section tract on the date of approval of such agreement, the lessee shall be entitled to hold such tract under the terms of the original Form B lease so long as oil is produced on said tract in paying quantities.

ORME LEWIS,  
Assistant Secretary of the Interior.

AUGUST 4, 1955.

[F. R. Doc. 55-6443; Filed, Aug. 4, 1955;  
11:43 a. m.]

## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## [ 7 CFR Part 989 ]

[Docket No. AO 198-A 2]

HANDLING OF RAISINS PRODUCED FROM  
RAISIN VARIETY GRAPES GROWN IN  
CALIFORNIADECISION WITH RESPECT TO PROPOSED  
AMENDMENTS TO MARKETING AGREEMENT  
AND ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), hereinafter referred to as the "act", and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR, Part 900; 19 F. R. 57), a public hearing was held at Fresno, California, from April 4 to 9, 1955, inclusive, on proposed amendments to Marketing Agreement No. 109 and Order No. 89 (7 CFR, 1953 Rev., Part 989), regulating the handling of raisins produced from raisin variety grapes grown in California. Such hearing was held pursuant to a notice thereof which was published in the FEDERAL REGISTER (20 F. R. 1666) on March 19, 1955.

On the basis of the evidence adduced at the hearing and the record thereof, the Deputy Administrator, Marketing Services, Agricultural Marketing Service, United States Department of Agriculture, on July 6, 1955, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of the filing of such recommended decision, affording opportunity to file written exceptions thereto, was published in the FEDERAL REGISTER (20 F. R. 4899) on July 9, 1955.

**Rulings on exceptions.** Exceptions to the recommended decision have been filed: (1) On behalf of the California Packing Corporation, Rosenberg Bros. & Co., Inc., Bonner Packing Company, and West Coast Growers and Packers (large independent handler exceptors); (2) on behalf of El Mar Packing Co., Pacific Raisin Co., Vagim Packing Co., Lion Packing Co., Enoch Packing Co., Clovis Packing Co., Chooljian Bros. Packing Co., Del Rey Packing Co., Tuson Packing Co., and Peloian Packing Co. (small independent handler exceptors); (3) on behalf of the Raisin Administrative Committee (committee exceptor); and (4) by Eugene B. Williams, a raisin producer (producer exceptor).

These exceptions have been considered carefully and fully in conjunction with the record evidence pertaining thereto in arriving at the findings and conclusions set forth in this decision. Rulings on such exceptions are set forth hereinafter in connection with the findings and conclusions to which they refer. To any extent that the findings and conclusions of this decision are at variance with any such exception not otherwise specifically ruled upon, such exception is overruled.

**Findings and conclusions.** The material issues, findings, and conclusions, of the aforesaid recommended decision (F. R. Doc. 55-5547; 20 F. R. 4899) are

hereby approved and adopted as the material issues, findings, and conclusions of this decision as if set forth in full herein, except for the corrections which are set forth below, and except as they may be modified by the findings and conclusions hereinafter set forth.

The corrections are as follows: In the findings and conclusions on the issue numbered 3 (in the third line of the fourth full paragraph in the first column on page 4903) insert the word "Act" following the word "Agreement," and in the same findings and conclusions (in the eleventh line of the first partial paragraph in the center column on page 4903) change the word "raisins" to "raisin."

The exceptions, and the rulings thereon, are as follows:

In the discussion in the recommended decision of material issue numbered (2), it was concluded that those amendment proposals sponsored by the Raisin Administrative Committee relative to the composition of the respective memberships of the Raisin Advisory Board and the committee should be adopted. Those amendment proposals sponsored by the independent handlers, which would have provided for greater representation of this group on the board and the committee, were denied. In the exceptions filed on behalf of the large independent handler exceptors, it was contended that the hearing testimony given by the independent handlers in support of their membership proposals was disregarded in the denial of such proposals and that the committee's proposals as to representation were recommended on the basis that they were in accordance with the preponderant view in the industry. It was further contended that the recommended decision did not recognize a suggestion made at the hearing by the independent handlers that a provision be included in the amended order to require that at least 11 of the 14 members of the committee must concur in recommending to the Secretary the establishment of the percentages of raisins for any crop year which shall be free tonnage, reserve tonnage, and surplus tonnage, respectively.

The hearing evidence elicited from all persons who testified regarding the composition of the committee and the board, and the briefs on this subject which were filed after the hearing, were considered carefully and objectively in reaching the conclusion that the committee's proposals as to representation should be adopted. The reasons for this conclusion are stated in the recommended decision.

The suggestion advanced by the independent handlers that 11 concurring votes be required on establishment of percentages was not recommended for adoption because, although submitted at the hearing as a compromise offer, it was not accepted by any group other than independent handlers.

In view of the reasons stated hereinabove, the exceptions filed by the large independent handler exceptors with respect to representation on the board and the committee, and regarding committee voting requirements, are denied.

In the notice of hearing it was provided that six specific methods of com-

petition and trade practices should be deemed to be unfair and be prohibited. All six of these proposals were denied in the recommended decision.

The committee exceptor and the large independent handler exceptors objected to the bases on which the first two proposed prohibitions were denied and requested that they be included in the amended order. They contended that it was unnecessary to submit conclusive proof in support of these proposals and that it was sufficient to show, by the sworn testimony given at the hearing, only the reasonable possibility that the ill-effects therein indicated would occur if these practices were not prohibited. They contended that the industry was unanimous in support of the two proposals and that no objections were raised by any interested party at the hearing nor was opposing testimony offered by any such person.

The small independent handler exceptors, however, contended that the two proposed prohibitions should not be included in the amended order because the two practices have been used in the raisin industry for many years and are among the few methods which small handlers can employ to help them survive in a competitive market.

It often happens that reasonable persons will draw different conclusions from the same testimony. In this instance, the Department, after carefully reviewing the hearing testimony, was unable to reach the conclusions considered desirable by the proponents. Inasmuch as the evidence indicated that these two trade practices are quite commonly used in the raisin industry and that their prohibition would have important consequences, it was and is believed necessary that the evidence in support of their prohibition should be of such a nature as to leave no reasonable doubt regarding the desirability of that action. On the basis of the record of this proceeding, the Department is unable to arrive at conclusions as to whether the use of the two trade practices tends to lessen competition or create more competition in the selling of raisins, whether they result in smaller or greater monetary returns to producers, or whether or not they constitute unfair trade practices in the raisin industry. The industry is divided on the question of whether the two trade practices should be prohibited. While no direct testimony was offered at the hearing in opposition, it was apparent from the line of questioning pursued by other persons participating in the hearing that they were having difficulty in reaching the conclusion that the practices should be prohibited. Actually, the small independent handler exceptors, as demonstrated by their exceptions, oppose the proposed prohibitions on the basis that this segment of the raisin industry needs to employ these practices if it is to survive in a competitive market.

Therefore, the exceptions filed by the committee exceptor and the large independent handler exceptors, with respect to the two trade practices in question, are denied.

The large independent handler exceptors made several statements from

which it could be inferred that the survival of the large independent handlers in the raisin business depends on amendment of the order to give them increased representation on the committee and the board, a greater weight to their vote on committee recommendations as to volume percentages, and the prohibition of the two trade practices referred to above. It also could be inferred from these statements that the Department disregarded the financial losses testified to at the hearing as having been sustained by some independent handlers in the raisin business.

The large independent handler exceptors are invited to recognize the fact that the amended order would include several new provisions which are designed to benefit handlers as well as producers. Specifically, attention is invited to the following provisions of the proposed amended order: (1) The provisions of § 989.68 which would channel the business of exporting surplus tonnage raisins through the hands of handlers, except under unusual conditions; (2) the provisions of § 989.66 (f) which would permit a handler to be relieved of his obligation to store surplus tonnage raisins carried over from one crop year to another; (3) the provisions of § 989.68 (a) which would require the committee to dispose of surplus tonnage raisins as nearly as may be practicable, by August 31 of the crop year, and which would limit the period of time during which surplus tonnage raisins carried from one crop year to another could be disposed of for human consumption as raisins; (4) the provisions of § 989.66 (c) which would make it mandatory that the committee defer, upon the written request of any handler and for good and sufficient cause, the meeting of his pooling obligations for a specified period ending not later than November 15 of the particular crop year; and (5) the provisions of §§ 989.26 and 989.39 which, in effect, could result in increased representation on the board and the committee for independent packers.

It was concluded in the recommended decision that a new provision should be included in § 989.66 (f) of the amended order, reading as follows:

Any handler may request the committee at any time, by registered mail, to remove all surplus tonnage raisins held for the account of the committee and remaining in his possession from any previous crop year, and at any time after August 1 of any crop year may request removal of all surplus tonnage raisins remaining in his possession from the current crop year and may request that the committee provide the necessary containers for such removal. In this event, the committee shall make the removal within 30 days after the receipt of the request, supplying the necessary containers if so requested. If any handler makes such a request, the committee shall immediately give notice thereof to the Secretary.

The committee exceptor states that the above quoted provision is a desirable one but suggests that it be amended by adding to it an additional provision which would require a handler to reimburse the committee for the expenses of removal, storage, and redelivery of the surplus tonnage if such raisins are removed from his premises by the com-

mittee in conformity with his demand and if he later repossesses the surplus tonnage for contract packing, for sale in export, or otherwise. It is deemed undesirable to include a provision in the amended order to cover this situation. To the extent that there is merit to the proposal, it could be more appropriately dealt with in rules and procedures.

The committee exceptor suggested that the provisions of § 989.68 (e) of the proposed amended order should be modified to make it clear that the committee may sell surplus tonnage raisins not only to foreign government agencies in any country removed from the list of foreign countries provided for in § 989.68 (c) of the amended order but also to foreign importers in any country removed from such list. Inasmuch as this clarifying change is in conformity with the intent of this provision, § 989.68 (e) of the proposed amended order should be changed to read as follows:

(e) The committee may sell surplus raisins as provided in paragraph (b) (3) of this section only when such country is not included in the list of specified countries established pursuant to paragraph (c) of this section and may sell surplus raisins to foreign government agencies or foreign importers in any country removed from such list but no such sale shall be entered into by the committee until five days (exclusive of Saturdays, Sundays and holidays) have elapsed from the time it files with the Secretary information as to the quantity, price, and foreign country involved in such sale, and no such sale shall be made if the Secretary disapproves thereof.

Section 989.68 (f) of the proposed amended order provides that the committee may undertake market development projects to promote the consumption of surplus tonnage raisins in existing export outlets or in new export outlets. Although this provision does not specify the source of funds from which the expenses of such projects shall be paid, provision for such expenses is made in § 989.82. Section 989.53 of the proposed amended order provides that the committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of raisins. This provision specifies that the expense of such projects shall be paid from assessment funds collected from handlers. The committee exceptor contended that the language of these two provisions appears to overlap and, therefore, creates doubt as to whether projects related to the promotion of the consumption of surplus tonnage raisins in export should be financed from assessment funds or surplus pool proceeds. The committee exceptor suggested that these provisions be clarified to resolve this doubt.

If a market development project is undertaken pursuant to § 989.53, its expense should be paid from assessment funds. If a project is undertaken pursuant to § 989.68 (f), its expense should be paid from surplus pool proceeds as authorized in § 989.82. If the project covers not only the disposition of surplus tonnage raisins in export but also raisins in general, the expense of such

project should be allocated between the two funds on a cost accounting basis. The determination as to whether the expense of a particular market development project should be borne by assessment funds or surplus pool funds should be based on the purpose of the particular project. Therefore, no revision of the order in this respect is necessary.

The committee exceptor suggested for the purpose of making its intended meaning clear, that the words "and reoffers" be added to the end of the second sentence of § 989.66 (e) (2) of the recommended amended order and that the sentence immediately following the said second sentence be revised in the same connection, so that the two sentences would read as follows:

In the event that any handler fails to purchase any or all of his share of any such offer, the remaining portion of the offer shall be reoffered by the committee to all handlers who purchased all of their respective shares of such offer, in proportion to their respective volumes purchased in the current and all prior offers and reoffers. Any handler whose holdings of reserve tonnage raisins have been exhausted may participate in any reoffer in proportion to the volume purchased by him in the current and all prior offers and reoffers.

Since the revisions would clarify the intended meaning, it is concluded that the second and third sentences of § 989.66 (e) (2) of the recommended amended order should be revised as suggested by the committee exceptor.

The small independent handler exceptors urged that § 989.66 (e) (2) of the recommended amended order be revised so that it would, in part, read as follows:

*Provided*, that any reserve tonnage for which a deferment has been granted to a handler, pursuant to provisions of paragraph (c), shall be included in his holdings in determining his share. In the event that any handler fails to purchase any or all of his share of any such offer, the remaining portion of the share shall be re-offered by the committee to all handlers who purchased any of their respective shares in such offer, in proportion to their respective volumes purchased in the current and all prior offers.

The proposed revision would require all or any part of a handler's share of an offer of reserve tonnage raisins which he did not purchase to be reoffered to all handlers who purchased any of their respective shares in the offer, whereas the recommended amended order would permit only handlers who purchased all of their respective shares of the offer to participate in the reoffer. The purpose of a reoffer, which would follow immediately after an offer, is to make any tonnage offered to a handler but not purchased by him available to other handlers who may require additional tonnage. Since the interval between an offer and the reoffer is only a day or two, it is unlikely that the position of handlers who purchased part but not all of their respective shares of an offer would be so changed that they would desire to participate in the reoffer. If handlers who did not purchase their full shares in the offer were permitted to participate in the reoffer, the tonnages represented by their shares in the reoffer would again be unavailable to those handlers who in-

licated they desire additional tonnage by purchasing all of their respective shares in the offer and the purpose of the reoffer would, in part, be defeated. The fact that a handler failed to purchase all of his share in one offer and is precluded from a reoffer following that offer would not prevent him from participating in any subsequent offer during the marketing season.

In view of the foregoing, it is concluded that this exception should be denied.

The exceptions filed by Mr. Eugene B. Williams are as follows:

1. This proposed order is of low moral character, because it perpetuates the corrupt practices in the present Federal marketing agreement and order governing raisins.

2. It fails to include "interpretative" definitions of the terms: "Free tonnage", "reserve tonnage", and "surplus tonnage".

3. In important particulars it does not conform to the provisions of the authorizing legislation, that is, the Agricultural Marketing Agreement Act of 1937, as amended; and it disregards the letter and spirit of the Act.

4. In important particulars its "interpretative" and "legislative" provisions exceed the authority authorized by the Agricultural Marketing Agreement Act of 1937, as amended.

5. It does not, and it will not effectuate the declared policy of Congress and the declared policy of the Act.

6. It lays the basis for continued indefensible corruption in its administration.

7. As a whole, it does not embody sound economic practice and policy.

All of these exceptions have been examined carefully in light of the evidence adduced at the public hearing in an attempt to find a factual or reasonable basis for them. No such basis has been found. In view of this, these exceptions are denied.

After the period for filing exceptions had expired, communications were received from the Raisin Administrative Committee and from a number of wineries, including several cooperative winery associations of grape producers, protesting the absence of any restriction (in § 989.68 of the recommended amended order) against the disposition of surplus tonnage raisins for the production of high-proof brandy used in wine making. The protestants contended that surplus tonnage raisins should be disposed of only in channels which would be noncompetitive with the marketing of raisin variety grapes. Provision to ensure such noncompetitive disposition was not included in § 989.68 of the proposed amended order because experience has shown the need for more flexibility in the disposition of surplus tonnage raisins. However, this does not mean that the committee should dispose of surplus raisins in the distillation outlet without first attempting to sell them for human consumption as raisins at the prices prevailing in such outlets. It is recognized that raisin producers have a real interest in the wine situation because a considerable portion of the raisin variety grape production is crushed. Therefore, in considering any proposal to offer surplus raisins for sale in the distillation outlet, it is expected that the committee would consider carefully the effect that the proposed offer would have on wine inventories and the prices which vintners would pay for

grapes in the following marketing season. Moreover, offers by the committee to sell surplus tonnage raisins for distillation would be subject to the prior review of the Secretary. In order to protect producer returns, the committee should include in its rules and procedures governing the disposal of surplus raisins, criteria for the control of such disposal in the distillation outlet. In view of operational safeguards which would be available under the amended program, it is concluded that the protestants have no material cause for concern.

*Marketing agreement and order.* Annexed hereto, and made a part hereof, are two documents entitled, respectively, "Marketing Agreement, as Amended, Regulating the Handling of Raisins Produced from Raisin Variety Grapes Grown in California" and "Order, as Amended, Regulating the Handling of Raisins Produced from Raisin Variety Grapes Grown in California," which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. The marketing agreement, as amended, and the order, as amended, 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.

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

Done at Washington, D. C., this 2d day of August 1955.

[SEAL]

TRUE D. MORSE,  
Acting Secretary.

*Order, as Amended,<sup>1</sup> Regulating the Handling of Raisins Produced From Raisin Variety Grapes Grown in California*

#### DEFINITIONS

| Sec.   |                                         |
|--------|-----------------------------------------|
| 989.1  | Secretary.                              |
| 989.2  | Act.                                    |
| 989.3  | Person.                                 |
| 989.4  | Area.                                   |
| 989.5  | Raisin variety grapes.                  |
| 989.6  | Raisins.                                |
| 989.7  | Bleached raisins.                       |
| 989.8  | Golden Seedless raisins.                |
| 989.9  | Natural condition raisins.              |
| 989.10 | Packed raisins.                         |
| 989.11 | Varietal type.                          |
| 989.12 | Producer.                               |
| 989.13 | Dehydrator.                             |
| 989.14 | Processor.                              |
| 989.15 | Packer.                                 |
| 989.16 | Handler.                                |
| 989.17 | Acquire.                                |
| 989.18 | Board.                                  |
| 989.19 | Committee.                              |
| 989.20 | Ton.                                    |
| 989.21 | Crop year.                              |
| 989.22 | District.                               |
| 989.23 | File.                                   |
| 989.24 | Standard raisins and off-grade raisins. |
| 989.25 | Part and subpart.                       |

<sup>1</sup> This amended 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 orders have been met.

#### RAISIN ADVISORY BOARD

| Sec.   |                               |
|--------|-------------------------------|
| 989.26 | Establishment and membership. |
| 989.27 | Eligibility.                  |
| 989.28 | Term of office.               |
| 989.29 | Nominations.                  |
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AUTHORITY: §§ 989.1 to 989.97 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c; 68 Stat. 906, 1047.

§ 989.0 Findings and determinations—(a) Findings upon the basis of the hearing record. (1) The findings hereinafter set forth are supplementary and in addition to the findings and determinations which were made in connection with the original issuance (14 F. R. 5136) of this marketing agreement and order, and all of said previous findings and determinations, except the finding as to the base period for the parity computation, are hereby ratified and confirmed except insofar as such findings and determinations may be in conflict with the findings set forth herein;

(2) The amended order, as herein-after set forth, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(3) Said amended order will be applicable only to persons in the respective classes of industrial and commercial activities specified or necessarily included in the proposals upon which the amendment hearing has been held; and

(4) There are no differences in the production and marketing of raisins in the production area covered by said amended order, which make necessary different terms applicable to different parts of such area.

It is therefore, ordered, That, on and after the effective date hereof, the handling of raisins produced from raisin variety grapes grown in California shall be in conformity to, and in compliance with, the terms and conditions of this amended order; and the terms and conditions of said amended order are as follows:

#### DEFINITIONS

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

§ 989.2 Act. "Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047).

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

§ 989.4 Area. "Area" means the State of California.

§ 989.5 Raisin variety grapes. "Raisin variety grapes" means grapes of the Thompson Seedless (or Sultanina), Muscat of Alexandria (or Muscat), Muscatel Gordo Blanco (or Muscat), Black Corinth (or Zante Currant), White

Corinth (or Zante Currant), and Seedless Sultanina (or Sultanina), varieties grown in the area.

§ 989.6 Raisins. "Raisins" means any raisin variety grapes from which a part of the natural moisture has been removed by sun-drying or artificial dehydration after such grapes have been removed from the vines.

§ 989.7 Bleached raisins. "Bleached raisins" means (a) any raisins which have been produced by soda dipping, with or without oil, whether sun-dried or artificially dehydrated, or (b) any raisins which have been produced by soda dipping, sulfuring, and sun-drying.

§ 989.8 Golden Seedless raisins. "Golden Seedless raisins" means raisins, the production of which includes soda dipping, sulfuring, and artificial dehydration.

§ 989.9 Natural condition raisins. "Natural condition raisins" means raisins the production of which includes sun-drying or artificial dehydration, with or without bleaching, but which have not been further processed to a point where they meet any of the conditions for "packed raisins", as defined in § 989.10.

§ 989.10 Packed raisins. "Packed raisins" means raisins which have been stemmed, graded, sorted, cleaned, or seeded, and placed in any container customarily used in the marketing of raisins or in any container suitable or usable for such marketing. Raisins in the process of being packed or raisins which are partially packed shall be subject to the same requirements as packed raisins.

§ 989.11 Varietal type. "Varietal type" means natural (sun-dried) Thompson Seedless, natural (sun-dried) Muscat, natural (sun-dried) or artificially dehydrated Sultanina, natural (sun-dried) or artificially dehydrated Zante Currants, Layer Muscat, Golden Seedless, Sulfur Bleached, Soda Dipped, or Valencia raisins.

§ 989.12 Producer. "Producer" means any person engaged, in a proprietary capacity, in the production of raisin variety grapes.

§ 989.13 Dehydrator. "Dehydrator" means any person who produces raisins by dehydrating raisin variety grapes by means of artificial heat.

§ 989.14 Processor. "Processor" means any person who acquires raisins and uses them within the area, with or without other ingredients, in the production of a product other than raisins, for market or distribution.

§ 989.15 Packer. "Packer" means any person who, within the area, stems, sorts, cleans, or seeds raisins, grades stemmed raisins, or packages raisins for market as raisins: *Provided*, That any producer or dehydrator shall be deemed to be a packer, with respect to the raisins produced or dehydrated by him, only if he stems, cleans, seeds or packages them for market as raisins.

§ 989.16 Handler. "Handler" means any person who ships natural condition

raisins out of the area, or any processor or packer.

§ 989.17 Acquire. "Acquire" means to have or obtain physical possession of raisins by a handler at his packing or processing plant or at any other established receiving station operated by him: *Provided*, That a handler shall not be deemed to acquire any raisins (including raisins produced or dehydrated by him) while: (a) He stores them for another person or as handler-produced tonnage in compliance with the provisions of §§ 989.58 and 989.70; (b) he reconditions them, or; (c) he has them in his possession for the purpose of inspection; and *Provided further*, That the term shall apply only to the handler who first acquires the raisins.

§ 989.18 Board. "Board" means the Raisin Advisory Board established pursuant to § 989.26.

§ 989.19 Committee. "Committee" means the Raisin Administrative Committee established pursuant to § 989.39.

§ 989.20 Ton. "Ton" means a short ton of 2,000 pounds.

§ 989.21 Crop year. "Crop year" means the 12-month period beginning with September 1 of any year and ending with August 31 of the following year: *Provided*, That the first crop year under this amended subpart shall begin at the effective time of this amended subpart: *And provided further*, That the crop year which began on August 15, 1954, is hereby extended from August 14, 1955, to the effective time of this amended subpart.

§ 989.22 District. "District" means any one of the geographical areas referred to in § 989.26 and specified in § 989.96 (Exhibit A).

§ 989.23 File. "File" means transmit or deliver to the Secretary or committee, as the case may be, and such act shall be deemed to have been accomplished at the time: (a) Of actual receipt by the Secretary or committee in the event of personal delivery; (b) of receipt at the office of the telegraph company, in case submission is by telegram; or (c) shown by the postmark, in case submission is by mail.

§ 989.24 Standard raisins and off-grade raisins. (a) "Standard raisins" means raisins which have been certified as meeting the then effective minimum grade and condition standards for natural condition raisins.

(b) "Off-grade raisins" means raisins which fail to meet the then effective minimum grade and condition standards for natural condition raisins.

§ 989.25 Part and subpart. "Part" means the order regulating the handling of raisins produced from raisin variety grapes grown in California, and all rules, regulations, and supplementary orders issued thereunder. This order regulating the handling of raisins produced from raisin variety grapes grown in California shall be a "subpart" of such part.

#### RAISIN ADVISORY BOARD

§ 989.26 Establishment and membership. The Raisin Advisory Board is hereby established, consisting of 46 mem-

bers of whom 36 shall represent producers, eight shall represent handlers and two shall represent dehydrators. The dehydrator members shall represent all dehydrators within the area and shall be selected from dehydrators as provided in § 989.29 (b) (4). The handler members of the board shall include the following: (a) One member selected from and representing handlers doing business as cooperative marketing associations, or cooperative marketing organizations engaged in the business of packing raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year; (b) two members selected from and representing the two handlers, other than cooperatives, who acquired the largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year; (c) one member selected from and representing the three handlers, other than cooperatives, who acquired the next largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year; (d) two members selected from and representing the five handlers, other than cooperatives, who acquired the next largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year; and (e) two members selected from and representing all other handlers, including cooperatives each of which acquired less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year, and including all processors. The 36 producer members shall be selected in the number and for the districts as designated in § 989.96 (Exhibit A). For each member of the board there shall be an alternate member who shall have the same qualifications as the member for whom he is an alternate.

§ 989.27 *Eligibility.* No person shall be selected or continue to serve as a member or alternate member of the board, who is not actively engaged in the business of the group which he represents, either in his own behalf, or as an officer, agent, or employee of a business unit engaged in such business: *Provided*, That any handler eligible to represent a particular size group at the time of his selection who later falls in a different size group shall continue to represent for the entire term the size group for which he was selected.

§ 989.28 *Term of office—(a) Producer members.* One-third of the producer members and producer alternate members of the board initially selected pursuant to § 989.30 by the Secretary shall hold office for a period beginning on a date to be designated by the Secretary and ending on April 30, 1950, and until the respective successors are selected and have qualified. One-third of the producer members and producer alternate members of the board initially selected pursuant to § 989.30 by the Secretary shall hold office for a period beginning on a date to be designated by the Secretary and ending on April 30, 1951, and until the respective successors are

selected and have qualified. One-third of the producer members and producer alternate members of the board initially selected pursuant to § 989.30 by the Secretary shall hold office for a period beginning on a date to be designated by the Secretary and ending on April 30, 1952, and until the respective successors are selected and have qualified. The persons to hold office as producer members and producer alternate members for the respective terms of office specified above shall be determined by the drawing of lots by those persons selected by the Secretary as producer members and alternate members pursuant to § 989.30, and the results of such drawings shall be filed promptly with the Secretary. The term of office of succeeding producer members and producer alternate members of the board shall be three years, but each such member and alternate member shall continue to serve until his respective successor is selected and has qualified.

(b) *Handler and dehydrator members.* The handler members and dehydrator members, and their respective alternates, shall each serve for terms of one year, beginning on May 1, and ending on April 30 of the following year, but each such member and alternate member shall continue to serve until his respective successor is selected and has qualified: *Provided*, That the terms of office of the initial handler and dehydrator members and their respective alternates under this amended subpart shall begin on a date to be designated by the Secretary. Handler and dehydrator members, and their respective alternates, who are holding office on the effective date of this amended subpart shall continue to do so until the successors have been selected and have qualified.

§ 989.29 *Nominations—(a) Initial members.* Producer members and alternate producer members of the board serving on the effective date of this amended subpart shall continue to serve as the initial producer and alternate producer members of the board established by § 989.26, as amended, for their specified terms of office and until their respective successors have been selected and have qualified. Initial nominations for each of the handler and dehydrator members and alternate members of the board established by § 989.26, as amended, shall be filed with the Secretary not later than 10 calendar days after the effective date of this amended subpart.

(b) *Successor members.* Nominations for successor members and alternate members of the board shall be made as set forth in subparagraphs (1) to (6) of this paragraph.

(1) The board shall give reasonable publicity of a meeting or meetings of producers, handlers and dehydrators, respectively, for the purpose of making nominations for member and alternate member positions to be filled on the board: *Provided*, That, with respect to producer members and producer alternate members, a meeting or meetings shall be held in each respective district for which nominations are to be made to fill producer member and producer alternate member positions on the board.

(2) Only producers who produced raisin variety grapes during the then current crop year in the respective district for which nominations are to be made may nominate, or vote for, any producer member or producer alternate member for such district. Any producer who produced raisin variety grapes during the then current crop year in any of the districts may be nominated to represent any district as producer member or producer alternate member of the board, except that a producer may be a nominee from only one district. One or more eligible producers for each producer member position to be filled on the board may be proposed for nomination and one or more eligible producer for each alternate member position to be filled may be proposed for nomination. Each producer shall cast only one vote with respect to each position for which nomination is to be made. The person receiving a majority of votes with respect to each producer member or producer alternate member position shall be the person to be certified to the Secretary as the nominee for each such position. In the event no person receives a majority, there shall be a run-off vote between the two persons receiving the largest number of votes.

(3) Only handlers who packed or processed raisins during the then current crop year may nominate, or vote for, handler members or handler alternate members. One or more eligible handlers for each handler member position to be filled may be proposed for nomination, and one or more eligible handlers for each alternate member position to be filled on the board may be proposed for nomination. Nominations by each of the handler groups specified in § 989.26 shall be made by and from handlers, or employees, representatives, or agents of handlers falling within such groups. Each handler shall cast only one vote with respect to each position for which nomination is to be made: *Provided*, That only handlers coming within the particular group, as specified in § 989.26, for which nomination is to be made, shall vote. The person receiving the most votes with respect to each handler member or handler alternate member position shall be the person to be certified to the Secretary as the nominee for each such position.

(4) Only dehydrators who produced raisins by dehydrating raisin variety grapes during the then current crop year may nominate, or vote for, dehydrator members or dehydrator alternate members. One or more eligible dehydrators for each dehydrator member position to be filled on the board may be proposed for nomination, and one or more eligible dehydrators for each alternate member position may be proposed for nomination. Each dehydrator shall cast only one vote with respect to each position for which nomination is to be made. The person receiving the most votes with respect to each dehydrator member or dehydrator alternate member position shall be the person to be certified to the Secretary as the nominee for each such position.

(5) Each vote cast shall be on behalf of the person voting, his agents, subsidiaries, affiliates, and representatives. Voting at each meeting shall be in person. The result of each ballot at each such meeting shall be announced at that meeting. Voting at each meeting of producers shall be by secret ballot, and at each meeting of handlers, and dehydrators, voting may be by secret ballot.

(6) Each such nomination shall be certified by the board to the Secretary on or before April 5 immediately preceding the commencement of the term of office of the member or alternate member position for which the nomination is certified.

**§ 989.30 Selection.** The Secretary shall select producer, handler, and dehydrator members and alternate members in the numbers specified in § 989.26 and with the qualifications specified in § 989.27. Such selections may be made from the nominations certified pursuant to § 989.29 or from other producers, handlers, and dehydrators, but each such selection shall be made, on the basis of the respective producer, handler, and dehydrator representations and qualifications set forth in §§ 989.26 and 989.27.

**§ 989.31 Failure to nominate.** In the event nomination for a member or alternate member position on the board is not certified pursuant to and within the time specified in § 989.29, the Secretary may select such member or alternate member without regard to nomination, but such selection shall be on the basis of the respective producer, handler and dehydrator representations and qualifications set forth in §§ 989.26 and 989.27.

**§ 989.32 Acceptance.** Each person selected by the Secretary as a member or as an alternate member of the board shall, prior to serving on the board, qualify by filing with the Secretary a written acceptance within 10 calendar days after being notified of his selection.

**§ 989.33 Alternate members.** The alternate for a member of the board shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified.

**§ 989.34 Vacancies.** To fill any vacancy occasioned by the failure of any person selected as a member, or as an alternate member of the board to qualify, or in the event of the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated and selected in the manner set forth in §§ 989.29 and 989.30, insofar as such provisions are applicable. If nomination to fill any vacancy is not filed within 20 calendar days after such vacancy occurs, the Secretary may fill such vacancy without regard to nomination, but on the basis of the applicable representation and qualifications set forth in §§ 989.26 and 989.27.

**§ 989.35 Meetings.** The board shall meet at the call of its chairman or its vice chairman when acting as chairman,

or at the call of any officer of the board upon the request of at least one-third of its producer or handler members. Reasonable advance notice of each meeting shall be given by mail or other appropriate means to each member and alternate member and such notice shall be given as widespread publicity as is practicable. The notice of each meeting shall specify the time, place, and general purpose thereof.

**§ 989.36 Duties.** The duties of the board shall consist of the conducting of meetings for the purpose of making nominations for membership on the board and the certifying of nominations made for such purpose to the Secretary, the making of nominations to the Secretary for member and alternate member positions on the committee, the making of recommendations to the committee with respect to marketing policy, the free, reserve, and surplus percentages, and such other operational matters as it deems proper or as the committee may request.

**§ 989.37 Procedure.** (a) Except as otherwise provided in § 989.42, all decisions of the board shall be by majority vote of the members present. The presence of not less than 19 producer members and not less than five members other than producer members shall be required to constitute a quorum.

(b) The board shall give to the Secretary the same notice of meetings of the board as it gives to its members.

#### RAISIN ADMINISTRATIVE COMMITTEE

**§ 989.39 Establishment and membership.** A Raisin Administrative Committee is hereby established to administer the terms and provisions of this part. Such committee shall consist of 14 members, of whom eight shall represent producers (one of whom shall be a producer of raisin variety grapes used in the production of Golden Seedless raisins), five shall represent handlers, and one shall represent dehydrators. Of the five handler members, one shall be selected from and represent each of the following divisions: (a) The handlers doing business as cooperative marketing associations, or cooperative organizations engaged in the business of packing raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year; (b) the two handlers, other than cooperatives, who acquired the largest percentages of total raisin acquisitions during the 12-month period preceding the then current crop year; (c) the three handlers, other than cooperatives, who acquired the next largest percentages of total raisin acquisitions during the 12-month period preceding the then current crop year; (d) the five handlers, other than cooperatives, who acquired the next largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year; and (e) all other handlers, including cooperatives each of which acquired less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year, and including all processors. For each member of

the committee there shall be an alternate member who shall have the same qualifications as the member for whom he is an alternate.

**§ 989.40 Eligibility.** No person shall be selected, or continue to serve, as a member or alternate member of the committee, who is not actively engaged in the business of the group which he represents, either in his own behalf, or as an officer, agent, or employee of a business unit engaged in such business: *Provided*, That any handler eligible to represent a particular size group at the time of his selection who later falls in a different size group shall continue to represent for the entire term the size group for which he was selected.

**§ 989.41 Term of office.** Members and alternate members of the committee shall each serve for terms of one year, beginning on June 1, and ending on May 31 of the following year but each such member and alternate member shall continue to serve until his respective successor is selected and has qualified: *Provided*, That the term of office of initial dehydrator and handler members and alternate members under this amended subpart shall begin on a date to be designated by the Secretary.

**§ 989.42 Nomination—(a) Producer members.** The producer members of the board, and producer alternate members when acting as members, shall nominate from among the producer members and producer alternate members of the board eight persons for producer member positions on the committee and an alternate for each such person: *Provided*, That one of the persons nominated for a producer member position on the committee and his alternate shall be producers of raisin variety grapes used in the production of Golden Seedless raisins.

(b) *Handler members.* The handler members of the board and handler alternate members when acting as members, shall nominate from among the handler members and alternate members of the board, five persons for handler member positions on the committee, and an alternate for each such person: *Provided*, That such nominations shall be made on the basis of one member and one alternate member for each of the groups specified in § 989.39. Nomination for each of the handler groups specified in § 989.39 shall be made by and from handlers, employees, representatives or agents of handlers falling within each such group.

(c) *Dehydrator members.* The dehydrator members of the board, and dehydrator alternate members when acting as members, shall nominate from among the dehydrator members and dehydrator alternate members of the board one person for the dehydrator member position on the committee and an alternate for such person.

(d) *Initial members.* Nominations for initial handler and dehydrator members and alternate members of the committee as provided in § 989.39, as amended, shall be certified by the board to the Secretary not later than 10 calendar days after the selection by the Secretary of board members. The handler and dehydrator members and alternate

members who are serving as such at the effective time of this amended subpart shall continue to serve until the successors have been selected and have qualified. The producer members and alternate members who are serving as such at the effective time of this subpart shall continue to serve for their specified terms of office and until their respective successors have been selected and have qualified.

(e) *Successor members.* Nominations for successor members and alternate members of the committee shall be certified by the board to the Secretary annually within 30 days following the selection by the Secretary of board members.

§ 989.43 *Selection.* The Secretary shall select producer, handler, and dehydrator members and alternate members of the committee in the numbers and with the qualifications specified in §§ 989.39 and 989.40. Such selections may be made by him from the nominations certified pursuant to § 989.42 or from other eligible producers, handlers, and dehydrators, but such selections shall be made on the basis of the respective producer, handler and dehydrator representations and qualifications set forth in §§ 989.39 and 989.40.

§ 989.44 *Failure to nominate.* In the event any of the groups entitled pursuant to § 989.42 to submit nominations to the Secretary shall fail to do so within the time specified in § 989.42, the Secretary may select the particular members or alternate members of the committee without regard to nominations, but such selections shall be on the basis of the applicable producer, handler and dehydrator representations and qualifications set forth in §§ 989.39 and 989.40.

§ 989.45 *Acceptance.* Each person selected by the Secretary as a member or as an alternate member of the committee shall, prior to serving on the committee, qualify by filing with the Secretary a written acceptance within 10 calendar days after being notified of such selection.

§ 989.46 *Alternate members.* An alternate for a member of the committee shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death until a successor for such member's unexpired term has been selected and has qualified.

§ 989.47 *Vacancies.* To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated and selected in the manner set forth in §§ 989.42 and 989.43, insofar as such provisions are applicable. If nomination to fill any such vacancy is not made within 20 calendar days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, but on the basis of the applicable representations and qualifications set forth in §§ 989.39 and 989.40.

§ 989.48 *Compensation and expenses.* The members of the committee and the board, and the alternate members when acting as members, shall serve without compensation but shall be allowed their necessary expenses as approved by the committee.

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

(a) To administer the terms and provisions of this part;

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

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

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

§ 989.50 *Duties.* The committee shall have, among others, the following duties:

(a) To act as intermediary between the Secretary and any producer, packer, dehydrator, or processor;

(b) To keep minutes, books, and other records, which shall clearly reflect all of its acts and transactions, and such minutes, books, and other records shall be subject to examination by the Secretary at any time;

(c) To investigate and assemble data on the production, handling, and market conditions with respect to raisins;

(d) To submit to the Secretary such available information with respect to raisins and raisin variety grapes as he may request, and such other information as the committee may deem desirable and pertinent;

(e) To select, from among its members, a chairman and other officers, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(f) To appoint or employ such other persons as it may deem necessary, and to determine the salaries and define the duties of each such person;

(g) To cause the books of the committee to be audited by certified public accountants at least once each crop year, and at such other times as the committee may deem necessary or as the Secretary may request, and the report of each such audit shall show, among other things, the receipts and expenditures of funds, and at least two copies of each such audit shall be submitted to the Secretary;

(h) To prepare quarterly statements of its financial operations and make such statements, together with the minutes of its meetings, available at the office of the committee for inspection by producers, handlers and dehydrators;

(i) To give reasonable advance notice of the times, places, and purposes of its meetings by mail or other appropriate means to each member and alternate member and such notice shall be given as widespread publicity as is practicable.

(j) To investigate compliance with and to use means available to the committee to prevent violation of the provisions of this part; and

(k) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this subpart as may be consistent with the provisions contained in this subpart and as may be

necessary to accomplish the purposes of the act and the efficient administration of this subpart.

§ 989.51 *Obligation.* Upon the removal, resignation, disqualification, or expiration of the term of office of any member or alternate member, such member or alternate member shall account for all receipts and disbursements and deliver to his successor, to the committee, or to a designee of the Secretary all property (including, but not limited to, all books and records) in his possession or under his control as member or alternate member, and he shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, committee, or designee full title to such property and funds, and all claims vested in such member or alternate member. Upon the death of any member or alternate member of the committee, full title to such property, funds, and claims vested in such member or alternate member shall be vested in his successor or, until such successor has been selected and has qualified, in the committee.

§ 989.52 *Procedure.* (a) All decisions of the committee reached at an assembled meeting shall be by majority vote of the members present and a quorum must be present. All votes in an assembled meeting shall be cast in person. The presence of nine members shall be required to constitute a quorum. The committee may vote by mail or telegraph, but any proposition to be so voted upon first shall be explained accurately, fully and identically by mail or telegraph to all members. Fourteen concurring votes shall be required to reach a decision on a mail or telegraphic vote.

(b) The committee shall give to the Secretary the same notice of its meetings as it gives to its members and also advance notice of all subcommittee meetings.

(c) The committee shall defer action with respect to any marketing policy or percentage recommendation of the board until at least the day following the day on which any such recommendation is adopted by the board.

#### RESEARCH AND DEVELOPMENT

§ 989.53 *Research and development.* The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of raisins. The expense of such projects shall be paid from funds collected pursuant to § 989.79.

#### MARKETING POLICY

§ 989.54 *Marketing policy.* Not later than August 20 preceding the beginning of each crop year, the committee shall hold a meeting to formulate and adopt a marketing policy for the marketing of raisins for the ensuing crop year and shall submit to the Secretary within 10 days a report setting forth its marketing policy for the regulation of the handling of raisins in such crop year. Such report shall include the data and information used by the committee in

formulating such marketing policy and the recommendations of the board: *Provided*, That with respect to the initial crop year the committee shall hold a meeting for such purpose as soon as practicable after the effective date of this amended subpart. In developing the marketing policy, the committee shall give consideration to the following factors with respect to each varietal type of raisins:

(a) The estimated tonnage of raisins held by producers and handlers;

(b) The estimated tonnage of raisins which will be produced during the crop year;

(c) An appraisal of the quality of raisins of the crop to be produced in such crop year, including the estimated tonnage of standard raisins and off-grade raisins, respectively;

(d) The tonnage of raisins marketed during recent crop years in the domestic market and in Canada;

(e) The tonnage of raisins marketed in recent crop years in foreign markets, segregated to show the quantities marketed from free and surplus tonnage raisins and the countries in which such raisins were marketed;

(f) The current price being received for raisins by producers and handlers;

(g) The estimated trade demand during the crop year for raisins in normal market channels both domestic and foreign;

(h) The trend and level of consumer income in the domestic market;

(i) The estimated probable market requirements for raisins during the crop year in foreign markets segregated by countries or groups of countries;

(j) Such factors, if any, which, in the supplying of foreign markets, may tend to directly affect or burden the normal domestic market;

(k) Any other pertinent factors bearing on the marketing of raisins; and

(l) The conditions, including pricing formula, for the sale of surplus tonnage raisins in foreign markets pursuant to the provisions of § 989.68.

§ 989.55 *Modification*. In the event the committee subsequently deems it advisable to modify such marketing policy, because of changed demand or supply conditions, it should hold a meeting for that purpose, and file a report thereof with the Secretary within five days (exclusive of Saturdays, Sundays, and holidays) after the holding of such meeting, which report shall show each modification, the bases therefor, as well as the recommendation of the board.

§ 989.56 *Verbatim record*. The committee shall file with its report to the Secretary a verbatim record of that portion of its meeting or meetings relating to its marketing policy.

§ 989.57 *Publicity and notice*. The committee shall promptly give reasonable publicity to producers, dehydrators, and handlers of each meeting to consider a marketing policy or any modifications thereof, and each such meeting shall be open to them. Similar notice shall be given to producers, dehydrators, and handlers of each marketing policy report, or modification thereof, filed with

the Secretary. Copies of all such reports shall be maintained in the office of the committee where they shall be made available for examination by any producer, dehydrator, or handler.

#### GRADE AND CONDITION STANDARDS

§ 989.58 *Natural condition raisins—*

(a) *Regulation*. No handler shall acquire or receive natural condition raisins which fail to meet the minimum grade and condition standards as set forth in § 989.97 (Exhibit B) or as later modified; *Provided*, That any handler may acquire storable off-grade raisins for the account of the committee, may receive raisins for inspection, and may receive storable or non-storable off-grade raisins for reconditioning; *And provided further*, That a handler who is a processor may acquire storable or non-storable off-grade raisins for use in distillation, animal feed, or any outlet other than for human consumption. All storable off-grade raisins acquired by a handler for the account of the committee shall be held separate and apart from any other raisins held by him, shall not be held for the account of anyone but the committee, and shall be identified as storable off-grade raisins.

(b) *Modification of minimum grade and condition standards for natural condition raisins*. The committee may recommend to the Secretary modifications of the minimum grade and condition standards for natural condition raisins of any varietal type, as set forth in § 989.97 (Exhibit B), and shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall issue such modification of the minimum grade and condition standards for natural condition raisins if he finds upon the basis of the recommendation and supporting data submitted to him by the committee, or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

(c) *Publicity and notice*. The committee shall give prompt and reasonable publicity to producers, dehydrators, and handlers of each recommendation submitted by it to the Secretary and of each regulation issued by the Secretary. Notice of each such regulation shall be given to all handlers by registered mail.

(d) *Inspection and certification*. Each handler shall cause an inspection and certification to be made of all natural condition raisins acquired or received by him, except with respect to an inter-plant or inter-handler transfer as described in § 989.59 (e). The cost of all such inspection shall be borne initially by the handler but he shall be reimbursed by the committee for inspection costs applicable to pool tonnage held for the account of the committee. Prior to acquiring raisins, storing raisins, reconditioning raisins, or acquiring raisins which have been reconditioned, each handler shall obtain an inspection certificate showing whether or not the raisins meet the applicable minimum grade and condition standards. The handler shall submit or cause to be sub-

mitted to the committee a copy of such certificate, together with such other documents or records as the committee may require. Such certificate shall be issued by inspectors of the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency would improve the administration of this amended subpart. The committee may require that raisins held on memorandum receipt be reinspected and certified as a condition for their acquisition by a handler.

(e) *Options as to off-grade natural condition raisins*. Any natural condition raisins tendered to a handler which fail to meet the applicable minimum grade standards may at the option of either the handler or the person making the tender: (1) Be returned to the person tendering the raisins; (2) if storable, be turned over to the handler to be held by him as off-grade natural condition raisins for the account of the committee; or (3) be turned over to the handler for reconditioning under the terms of a written agreement between the person making the tender and the handler. If the handler is to acquire such raisins after they are reconditioned, his obligations with respect to such raisins shall be based on the weight of the raisins (if stemmed, adjusted to natural condition weight) after they have been reconditioned. If after such reconditioning, such raisins meet the minimum grade standards but are no longer natural condition raisins, any handler who acquires such raisins shall meet his surplus and reserve tonnage obligations from natural condition raisins acquired by him. Any off-grade raisins (including stemmer waste and raisin offal) accumulated by a handler in reconditioning raisins shall, depending on the terms of the written agreement, be returned by the handler to the person making the tender, or be disposed of by the handler pursuant to § 989.59 (f). Each lot of raisins received by a handler for reconditioning shall be kept by him separate and apart from all other raisins, including other lots received by him for reconditioning, until the quality of the raisins is established by inspection and certification after the raisins have been reconditioned.

§ 989.59 *Regulation of the handling of raisins subsequent to their acquisition by handlers—*(a) *Regulation*. Unless otherwise provided herein, no handler shall: (1) Ship or otherwise make final disposition of natural condition raisins unless they meet the effective applicable minimum grade and condition standards for natural condition raisins; or (2) ship or otherwise make final disposition of packed raisins unless they at least meet the following minimum grade standards or such standards as modified pursuant to the provisions of paragraph (b) of this section: (i) With respect to all raisins except Layer Muscats and Zante Currants, "U. S. Grade C" as defined in effective United States Standards for Grades of Processed Raisins; (ii) with respect to Golden Seedless and Sulfur

Bleached Raisins, the color requirements for "bleached color" (or "choice color") as defined in the said standards; (iii) with respect to Layer Muscat raisins, "U. S. Grade B" as defined in the said standards; and (iv) with respect to Zante Currant raisins, "U. S. Grade B" as defined in the effective United States Standards for Grades of Dried Currants.

(b) *Minimum grade standards for packed raisins.* The committee may recommend to the Secretary modifications of the minimum grade standards for packed raisins of any varietal type as prescribed in paragraph (a) of this section, and shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall issue such modification if he finds upon the basis of the recommendation and supporting data submitted to him by the committee, or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

(c) *Publicity and notice.* The committee shall give prompt and reasonable publicity to producers, dehydrators, and handlers of each recommendation submitted by it to the Secretary and of each regulation issued by the Secretary. Notice of each such regulation shall be given to all handlers by registered mail.

(d) *Inspection and certification.* Unless otherwise provided in this section, each handler shall, at his own expense, before shipping or otherwise making final disposition of raisins, cause an inspection to be made of such raisins to determine whether they meet the then applicable minimum grade and condition standards for natural condition raisins or the then applicable minimum grade standards for packed raisins. Such handler shall obtain a certificate that such raisins meet the aforementioned applicable minimum standards and shall submit or cause to be submitted to the committee a copy of such certificate together with such other documents or records as the committee may require. The certificate shall be issued by the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency will improve the administration of this amended subpart. Any certificate issued pursuant to this paragraph shall be valid only for such period of time as the committee may specify, with the approval of the Secretary, in appropriate rules and regulations.

(e) *Inter-plant and inter-handler transfers.* Any handler may transfer raisins from his plant to his own or another handler's plant within the State of California without having had such raisins inspected as provided in paragraph (d) of this section. The transferring handler shall submit promptly to the committee a report of such transfer. Before shipping or otherwise making final disposition of such raisins, the receiving handler shall comply with the requirements of this section.

(f) *Off-grade raisins accumulated by handlers.* Any off-grade raisins (including stemmer waste and raisin offal) which may be received by a processor or accumulated by a handler by removing them from his standard raisins, and any raisins acquired as standard raisins by a handler which do not meet the applicable grade and condition standards for shipment or final disposition as raisins, shall be disposed of or marketed, without further inspection, for distillation, animal feed, or uses other than for human consumption. The committee shall establish with the approval of the Secretary, such rules and procedures as may be necessary to insure such uses.

(g) *Exemption of gift and specialty packs.* The committee may establish, with the approval of the Secretary, rules and procedures providing for the exemption of gift and specialty packs of raisins from the grade, inspection, and certification requirements of this section.

§ 989.60 *Pooling and disposition of storable off-grade raisins held for the account of the committee.* Except as provided in § 989.62, a separate pool shall be established for storable off-grade raisins held by handlers for the account of the committee. Such raisins shall be disposed of or marketed for distillation, animal feed, or uses other than for human consumption. The committee shall establish, with the approval of the Secretary, such rules and procedures as are necessary for the administration of the pool. These rules and procedures shall include provisions dealing with handlers' obligations and responsibilities, payments to handlers for performing pooling functions, and distribution of net proceeds to equity holders in a manner similar to those comparable provisions dealing with surplus tonnage raisins.

§ 989.61 *Exemption.* Notwithstanding any other provisions of this amended subpart, the committee may establish, with the approval of the Secretary, such rules and procedures as may be necessary to permit the acquisition and disposition of any off-grade or surplus pool raisins, free from any or all regulations, for uses in distillation, animal feed, or any use other than for human consumption.

§ 989.62 *Above parity situations.* The provisions hereof relating to minimum grade and condition standards and inspection requirements, within the meaning of section 2 (3) of the act, and any other provisions pertaining to the administration and enforcement thereof, shall continue in effect irrespective of whether the estimated season average price to producers for raisins is in excess of the parity level specified in section 2 (1) of the act. Any off-grade raisins received by a handler during a period when minimum grade standards are in effect and when the season average price to producers for raisins, as estimated by the Secretary, is in excess of the parity level shall be disposed of by such handler pursuant to the provisions of § 989.59 (f), rather than through the off-grade pool.

§ 989.63 *Recommendations for designation of percentages.* (a) If the committee concludes that the supply and demand conditions for raisins make it advisable to designate the percentages of standard raisins acquired by handlers in any crop year which shall be free tonnage, reserve tonnage, and surplus tonnage, respectively, it shall recommend such percentages to the Secretary. The committee may recommend such percentages separately for each varietal type. The committee also shall submit, together with any recommendation with respect to percentages, the information on the basis of which such recommendation was made, and the recommendations of the board, and also shall specify for each varietal type of raisins the outlets which were considered in determining the free and surplus tonnages and the free and surplus percentages. In the event the committee subsequently deems it desirable to modify, suspend, or terminate any designation by the Secretary of such percentages, it shall submit to the Secretary its recommendation in that regard along with the information on the basis of which such modification, suspension, or termination is recommended, and the recommendation of the board. The committee shall file with its recommendation to the Secretary, a verbatim record of that portion of its meeting or meetings, relating to the free, reserve, and surplus percentages. The recommendations of the committee for the fixing of the initial free, reserve, and surplus percentages for any crop year shall be made not later than October 1 of such year.

(b) In determining any recommendation referred to in paragraph (a) of this section, the committee shall consider and analyze with respect to each varietal type of raisins the same pertinent factors as set forth in § 989.54 of the revised order, relating to marketing policy.

(c) The committee shall give prompt and reasonable publicity to producers, dehydrators and handlers of each meeting to consider the recommendation of the percentages to be fixed pursuant to § 989.64 or of any recommendation to modify, suspend or terminate such percentages and each such meeting shall be open to them. The committee shall also give similar notice to producers, dehydrators and handlers, of all such recommendations submitted to the Secretary.

§ 989.64 *Regulation by the Secretary.* (a) Whenever the Secretary finds from the recommendation and supporting information supplied by the committee, or from any other available information, that to designate the percentages of standard raisins acquired by handlers during any crop year which shall be free tonnage, reserve tonnage and surplus tonnage, respectively, would tend to effectuate the declared policy of the act, he shall so designate the percentages of standard raisins acquired by handlers during such crop year which shall be free tonnage, reserve tonnage, and surplus tonnage, respectively. In the event the Secretary subsequently

finds from the recommendations and supporting information supplied by the committee, or from any other available information, that modification, suspension, or termination of any such designation will tend to effectuate the declared policy of the act, he shall so modify, suspend, or terminate such designation. No such modification shall decrease the free percentage initially designated by the Secretary.

(b) The Secretary may designate separately for each varietal type of standard raisins acquired by handlers in any crop year, the percentages which shall be considered as free tonnage, reserve tonnage, and surplus tonnage, respectively.

(c) The Secretary shall notify the committee promptly of each such percentage so fixed. The committee shall give prompt and reasonable publicity thereof to producers and shall notify handlers and dehydrators of such percentages by registered mail.

§ 989.65 *Free tonnage.* The standard raisins acquired by a handler which are designated as free tonnage may be disposed of by him in any marketing channel, subject to the applicable provisions of this amended subpart.

§ 989.66 *Reserve and surplus tonnage generally.* (a) The standard raisins acquired by a handler which are designated as reserve tonnage and those which are designated as surplus tonnage shall be held by him for the account of the committee and subject to the applicable restrictions of this part.

(b) (1) Each handler shall hold in storage all reserve and surplus tonnage acquired by him until he has been relieved of such responsibility by the committee, either by delivery to the committee, or otherwise. Such handler shall store such reserve and surplus tonnage raisins in natural condition without addition of moisture and in such a manner as will maintain the raisins in the same condition as when he acquired them, except for normal and natural deterioration and shrinkage, and except for loss through fire, acts of God, force majeure, or other conditions beyond the handler's control: *Provided*, That, in the case of Layer Muscat raisins, the committee may permit handlers to satisfy the applicable reserve and surplus tonnage obligations with residual Muscat raisins obtained by them in layering operations subject to such safeguards as it may prescribe.

(2) Reserve, surplus and off-grade raisins acquired or held by each handler shall be stored separate and apart from other raisins and from each other to such extent, and identified in such manner, as the committee may specify by its rules and procedures as approved by the Secretary.

(3) Each handler may, under the direction and supervision of the committee, substitute for any quantity of reserve tonnage or surplus tonnage raisins a like quantity of free tonnage raisins of like quality and varietal type and of the same or more recent year's production. Each such handler shall give the committee reasonable advance notice of his intention to substitute, the

exact location of the raisins for which substitution is to be made, and arrange with the committee a mutually satisfactory time for the substitution.

(4) The committee may, after giving reasonable notice, require a handler to deliver to it, or to any one designated by it, at such handler's warehouse or at such other place as the raisins may be stored, part or all of the reserve tonnage or surplus tonnage raisins held by him. The committee may require that such delivery consist of natural condition raisins, or it may arrange for such delivery to consist of packed raisins.

(c) Each handler shall, at all times, hold in his possession or under his control reserve and surplus tonnage referable to his acquisitions of standard raisins, less any quantity of such reserve or surplus tonnage delivered by him pursuant to instructions of the committee and any quantity of such tonnage sold to him by the committee: *Provided*, That the committee shall defer, upon the written request of any handler and for good and sufficient cause, the meeting by such handler of such requirement for a specified period ending not later than November 15 of the particular crop year. As a condition to the granting of any such deferment, the committee shall require the handler to obtain and file with it a written undertaking that by the end of the deferment period he will have fully satisfied his obligation with respect to the holding or control by him of the reserve or surplus tonnages applicable to his acquisitions of raisins. Such undertaking shall be secured by a bond or bonds to be filed with and acceptable to the committee, with surety or sureties satisfactory to the committee, running in favor of the committee and the Secretary, and for an amount computed on the basis of the then current market value of the raisins in the quantity for which the deferment is granted. The cost of such bond shall be borne by the handler. Any sums collected through default of a handler on his bond shall, after reimbursement of the committee for any expenses incurred by it in effecting collection, be deposited with the funds obtained by it from the disposition of the reserve or surplus pools as applicable and disbursed to producers as set forth in paragraph (g) of this section. In addition to the foregoing, the committee may establish other reasonable and necessary terms and conditions upon which such deferments may be granted.

(d) Reserve tonnage and surplus tonnage raisins delivered by any handler to the committee, or to any person designated by it, whether in the form of natural condition raisins or packed raisins shall meet the applicable minimum grade and condition standards, except for normal and natural deterioration. The committee shall have the authority to require, in its discretion and at its expense, such reinspection and certification of reserve and surplus pool tonnage raisins as it may deem necessary.

(e) (1) In the event the committee offers to handlers reserve tonnage raisins for purchase as provided in § 989.67, or surplus tonnage raisins for contract packing or for sale in export as provided

in § 989.68, each such handler shall be given the opportunity to purchase his share of each offer. Each share of an offer or reoffer under such an offer shall be determined in accordance with the appropriate provisions of subparagraphs (2), (3) or (4) of this paragraph, unless the committee determines and prescribes that any such share shall be in accordance with any modified procedure established pursuant to subparagraph (5) of this paragraph.

(2) Each handler's share of an offer of reserve tonnage raisins for purchase shall be determined as the same proportion that the reserve tonnage held by him is of the reserve tonnage held by all handlers: *Provided*, That any reserve tonnage for which a deferment has been granted to a handler pursuant to the provisions of paragraph (c) of this section shall be included in his holdings in determining his share. In the event that any handler fails to purchase any or all of his share of any such offer, the remaining portion of the offer shall be reoffered by the committee to all handlers who purchased all of their respective shares of such offer, in proportion to their respective volumes purchased in the current and all prior offers and reoffers. Any handler whose holdings of reserve tonnage raisins have been exhausted may participate in any reoffer in proportion to the volume purchased by him in the current and all prior offers and reoffers. If the committee determines an offer to be the last which will be made prior to July 1 of each crop year, each handler entitled to participate in any reoffer made in connection therewith, shall be eligible to purchase an equal share of the tonnage reoffered, and as many reoffers of unpurchased tonnage as the committee deems advisable may be made.

(3) Each packer's share of an offer of surplus tonnage raisins for contract packing shall be determined as the same proportion that the surplus tonnage raisins acquired by him is of the surplus tonnage raisins acquired by all packers. In the event that any packer fails to contract for packing any or all of his share of any offer, the remaining portion thereof shall be reoffered by the committee to all packers who contracted for packing all of their respective shares, in proportion to their respective acquisitions: *Provided*, That, if such amount which packers fail to contract for packing does not exceed 250 tons, or if it is necessary to deviate from the foregoing in order to meet terms and conditions of shipment, the committee may, in its discretion, allocate such surplus tonnage raisins among packers as it deems appropriate, but the shares of packers in subsequent offers or reoffers shall be adjusted accordingly.

(4) Each handler's share of an offer of surplus tonnage raisins for sale in export shall be determined as the same proportion that the surplus tonnage raisins acquired by him is of the surplus tonnage raisins acquired by all handlers. If, prior to the close of any offer of surplus tonnage raisins for export, a handler has purchased his entire share of such offer and makes application to the committee for additional surplus ton-

nage raisins for sale in export, the committee shall allocate to such handler surplus tonnage raisins held by him. In the event that a handler wishes to purchase surplus tonnage raisins for export and no longer holds any surplus tonnage raisins for the account of the committee, the committee shall withdraw surplus tonnage raisins from other handlers and deliver them to the handler applying to the committee for the purchase of additional surplus tonnage raisins for sale in export. In making such allocation, the committee shall, insofar as is practicable, first withdraw such surplus tonnage raisins from those handlers who have purchased for sale in export the smallest percentage of the surplus tonnage raisins acquired by them, or who for other reasons are holding the largest percentage of their acquisitions of surplus tonnage. The cost of transporting any such surplus tonnage raisins from one handler to another shall be paid by the committee from surplus pool funds.

(5) In the event the committee determines that the applicable procedures, as specified in subparagraphs (2), (3), or (4) of this paragraph, will not provide an allocation for handlers which is suitable for a particular situation, the committee, with the prior approval of the Secretary, may establish such modifications of such applicable procedures, consistent with the provisions of subparagraph (1) of this paragraph, as will facilitate the disposition of reserve and surplus tonnages through handlers.

(f) Handlers shall be compensated for receiving, storing, handling, and inspection of reserve and surplus tonnage raisins held by them for the account of the committee, in accordance with a schedule of payments established by the committee and approved by the Secretary. A box rental shall be paid by the committee to producers or handlers for boxes used in storing reserve or surplus tonnage raisins beyond the crop year of acquisition in accordance with a rental schedule established by the committee and approved by the Secretary. Any handler may request the committee at any time, by registered mail, to remove all surplus tonnage raisins held for the account of the committee and remaining in his possession from any previous crop year, and at any time after August 1 of any crop year may request removal of all surplus tonnage raisins remaining in his possession from the current crop year, and may request that the committee provide the necessary containers for such removal. In this event, the committee shall make the removal within 30 days after the receipt of the request, supplying the necessary containers if so requested. If any handler makes such a request, the committee shall immediately give notice thereof to the Secretary.

(g) The committee shall have the authority, in its discretion, to obtain loans, nonrecourse or otherwise, on any part or all of the reserve tonnage or surplus tonnage, or both, and to pledge or hypothecate the raisins on which such loans are obtained as security therefor: *Provided*, That, in every such case, there shall be included in the loan agreement a provision to the effect that, in case the

lender obtains possession or control of such raisins, he will dispose of them in such a manner as will not tend to defeat the objectives of this amended subpart. The net proceeds of any such loan shall be distributed by the committee to the respective producers, or their successors in interest, on the basis of the volume of their respective contributions to the pooled raisins of each varietal type on which the loan is obtained. The net proceeds from the disposition of reserve and surplus tonnages of raisins of each varietal type shall be distributed by the committee to the respective producers, or their successors in interest thereto, on the basis of the volume of their respective contributions to the reserve and surplus tonnages of such varietal type. Distribution of the proceeds in connection with the reserve and surplus tonnages contributed by a nonprofit cooperative marketing association which has authority to market the raisins of its members and to allocate the proceeds therefrom to such members shall be made to such association. Advance or progress payments may be made by the committee, in conformity with the provisions of this paragraph, as sufficient funds become available.

(h) The committee may establish, from time to time, with the approval of the Secretary, additional procedures, not inconsistent with the provisions of this amended subpart, which are deemed necessary to effectuate the provisions of this section, and §§ 989.67, 989.68, 989.69 and 989.70.

§ 989.67 *Special provisions relating to reserve tonnage.* (a) The committee may sell reserve tonnage of any varietal type to handlers so as to provide them with the quantity which is needed to meet the free tonnage commercial trade requirements for that varietal type in the event that such requirements cannot be filled by the total free tonnage of that varietal type: *Provided*, That no such sale of natural (sun-dried) Thompson Seedless raisins shall be made prior to December 1 of the particular crop year. Any such quantities made available for such sale to handlers shall be offered to them pro rata as required by the provisions of § 989.66 (e).

(b) Reserve tonnage of any varietal type shall not be sold at a price below that which the committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the committee, to which shall be added the costs incurred by the committee on account of the receiving, inspecting, storing, insuring and holding of said raisins: *Provided*, That where the outlook for the next crop or other factors have caused a downward trend in the price received by producers for free tonnage, reserve tonnage may be sold to handlers at the current field price, as determined by the committee. The committee shall file with the Secretary, five days (exclusive of Saturdays, Sundays and holidays) prior to making any offer to sell reserve tonnage raisins, information relating to the quantity of raisins to be offered and

the price or prices at which such raisins are to be offered. The Secretary shall have the right to disapprove the making of such an offer or any price at which reserve tonnage raisins may be offered for sale.

(c) Reserve tonnage held unsold by the committee on July 1, shall on July 1, and any reserve tonnage acquired between July 1 and the end of the crop year shall, at the time of acquisition, become surplus tonnage for all purposes and subject to the provisions of this amended part relating to surplus tonnage. If the committee finds within a crop year that the current holdings of surplus tonnage are insufficient to meet the current demand therefor and that it would be inappropriate to change the volume percentages, it may temporarily borrow, with the prior approval of the Secretary, sufficient reserve tonnage for disposition in the surplus outlets with provision for subsequent replacement from the surplus tonnage.

(d) If the committee finds that because of national emergency, crop failure or other major change in economic conditions, a shortage of raisins has developed or is likely to develop, it may waive for any crop year, with the prior approval of the Secretary, the time limitations of paragraph (c) of this section.

§ 989.68 *Disposal of surplus raisins.*

(a) The committee shall dispose of all surplus tonnage raisins in such a manner as to achieve, as nearly as may be practicable, complete disposal of such raisins by August 31 of the crop year. Any surplus tonnage raisins held unsold by the committee on October 15 of the subsequent crop year shall be physically disposed of promptly in any available outlet not competitive with normal market channels for free tonnage raisins or sales of surplus tonnage raisins in export: *Provided*, That, whenever the Secretary approves a finding by the committee or finds on the basis of information otherwise available to him, that, because of national emergency, crop failure, or other major change in economic conditions, retention of the surplus raisins carried over is warranted, the foregoing requirement as to disposal shall not apply and the committee may then sell any of such surplus tonnage raisins as though they were reserve tonnage raisins.

(b) Surplus tonnage raisins shall be disposed of by the committee: (1) By sale to handlers for sale in specified surplus outlets or for resale to exporters for sale in such outlets; (2) by direct sale to any agency of the United States Government for non-competitive use; (3) by direct sale to foreign government agencies or foreign importers in any country not listed pursuant to paragraph (c) of this section or where the procurement of raisins is so regulated as to preclude purchases from domestic handlers; (4) by gift; and (5) by any other means consistent with the provisions of this section, and in outlets non-competitive with those for free tonnage raisins.

(c) The committee shall sell surplus raisins to handlers for export sale to listed countries. The Secretary shall establish, on the basis of the recommendation of the committee or from other available information, a list specifying

the countries to which sale in export of surplus tonnage raisins may be made by or through handlers. The recommended list shall be submitted by the committee to the Secretary at the time it submits its recommendation as to volume percentages, and in recommending such list the committee shall give consideration to the pertinent factors enumerated in § 989.54. The list shall not be changed except upon approval by the Secretary of a recommendation by the committee subsequent to its review of such pertinent factors. No country may be removed from the list unless a finding is made by the committee that such removal and subsequent direct sale by the committee will not lead to disruption of sales of surplus tonnage raisins by handlers in other countries on the list and a further finding that, although handlers have been able to offer surplus tonnage raisins at competitive prices to the country to be removed, there remains an unfulfilled demand in such country which has not been supplied by handlers and which could be supplied by the committee at the same prices by means of direct sale. No country may be added to the list unless a finding is made by the committee that such addition represents a practical means of making sales of surplus raisins to such country.

(d) Surplus tonnage raisins shall be sold to handlers at prices and in a manner intended to maximize producer returns and achieve complete disposition of such raisins by August 31 of the crop year. No offer to sell surplus raisins to handlers shall be made by the committee until five days (exclusive of Saturdays, Sundays and holidays) have elapsed from the time it files with the Secretary information as to the quantity and varietal type of raisins to be offered and the prices at which they are to be offered, and no such offer shall be made if the Secretary disapproves thereof.

(e) The committee may sell surplus raisins as provided in paragraph (b) (3) of this section only when such country is not included in the list of specified countries established pursuant to paragraph (c) of this section and may sell surplus raisins to foreign government agencies or foreign importers in any country removed from such list but no such sale shall be entered into by the committee until five days (exclusive of Saturdays, Sundays and holidays) have elapsed from the time it files with the Secretary information as to the quantity, price, and foreign country involved in such sale, and no such sale shall be made if the Secretary disapproves thereof.

(f) The committee may undertake market development projects to promote the consumption of surplus tonnage raisins in existing export outlets or in new export outlets.

(g) The committee may, with the approval of the Secretary, refuse to sell surplus tonnage raisins for export to any handler who is in default on any previous purchase of such raisins from the committee or if the committee finds that such handler is currently not in compliance with the provisions of a sales agreement covering surplus tonnage raisins executed by such handler with the committee.

(h) The committee shall prescribe, with the approval of the Secretary, such rules and procedures as are necessary for carrying out the provisions of this section.

§ 989.69 *Substitution for Layer Muscats.* A handler may substitute an equal quantity of natural (sun-dried) Muscat or Valencia raisins for any portion or all of the reserve and surplus tonnage referable to his acquisitions of Layer Muscat raisins: *Provided*, That he shall have made arrangements satisfactory to each producer of the Layer Muscat raisins for such substitution. The handler shall report promptly to the committee any such substitution.

§ 989.70 *Storage of raisins held on memorandum receipt and of packer-owned tonnage.* All raisins stored by a handler for another person on memorandum or warehouse receipt, or raisins produced and stored by a handler, shall be stored separate and apart from other raisins and shall be clearly marked or tagged as raisins stored on memorandum or warehouse receipt or as raisins produced by the handler but not acquired by him in his capacity as a handler.

#### REPORTS AND RECORDS

§ 989.73 *Reports.—(a) Inventory reports.* Each handler shall, upon request of the committee, file promptly with the committee a certified report, showing such information as the committee shall specify with respect to any raisins which were held by him on a date designated by the committee, which information as specified may include, but not be limited to: (1) The quantity of any raisins so held, segregated as to varietal type, natural condition, packed, standard quality or off-grade quality; and (2) the locations of the raisins.

(b) *Acquisition reports.* Each handler shall file with the committee in accordance with such rules and procedures as are prescribed by the committee, with the approval of the Secretary, certified reports, for such periods as the committee may require, with respect to his acquisitions of each varietal type of raisins during the particular period covered by such report, which report shall include, but not be limited to: (1) The total quantity acquired; (2) the quantity of off-grade raisins acquired as such for the account of the committee, and the reserve and surplus tonnages, separately, referable to his acquisitions of standard raisins; (3) the locations of such reserve, surplus and off-grade tonnages; and (4) cumulative totals of such acquisitions from the beginning of the then current crop year to and including the end of the period for which the report is made. In the case of a weekly report, it shall be filed not later than Wednesday of the week following the week which is covered by such report, and reports for any other period shall be filed as required by the committee. Upon written application made to the committee, a handler may be relieved of filing such reports upon completing his packing operations for the season. Upon request of the committee, each handler shall furnish to the committee, in such manner and at such times as it may require,

the name and address of each person from whom he acquired raisins and the quantity of each varietal type of raisins acquired from each such person.

(c) *Other reports.* Upon the request of the committee, with the approval of the Secretary, each handler shall furnish to the committee such other information as may be necessary to enable it to exercise its powers and perform its duties under this amended part.

§ 989.75 *Confidential information.* All reports and records furnished or submitted by a handler to the committee shall be received by, and at all times kept under the custody or control of, one or more employees of the committee, who shall disclose to no person, except the Secretary upon request therefor or to the committee in connection with its investigations of alleged violations, data or information obtained or extracted therefrom which would constitute a trade secret or the disclosure of which might affect the trade position, financial condition, or business operations of the particular handler from whom received: *Provided*, That the committee may require such an employee to disclose to it, or to any person designated by it or by the Secretary, information and data of a general nature, compilations of data affecting handlers as a group, and any data affecting one or more handlers, so long as to identity of the individual handlers involved is not disclosed.

§ 989.76 *Records.* Each handler shall maintain such records of all raisins acquired by him as prescribed by the committee. Such records shall include, but not be limited to, the quantity of raisins of each varietal type acquired from each person and the name and address of each such person, total acquisitions, total sales, and total other disposition of each varietal type which he handles, and each handler shall maintain such records for at least two years after the termination of the crop year in which the transactions occurred.

§ 989.77 *Verification of reports.* For the purpose of checking and verifying reports filed by handlers, the committee, through its duly authorized representatives, shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any raisins held by such handler, and any and all records of the handler with respect to the holding or disposition of raisins by him. Each handler shall furnish all labor and equipment necessary to make such inspections. Each handler shall store raisins in a manner which will facilitate inspection, and shall maintain storage records which will permit accurate identification of raisins held by him or theretofore disposed of. Insofar as is practicable and consistent with the carrying out of the provisions of this amended subpart, all data and information obtained or received through checking and verification of reports shall be treated as confidential information.

#### EXPENSES AND ASSESSMENTS

§ 989.79 *Expenses.* The committee is authorized to incur such expenses (other

than those specified in § 989.82) as the Secretary finds are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the committee and the board. The funds to cover such expenses shall be obtained by levying assessments as provided in § 989.80. The committee shall file with the Secretary for each crop year and not later than October 1 thereof, a proposed budget of these expenses and a proposal as to the assessment rate to be fixed pursuant to § 989.80, together with a report thereon. Also, it shall file at the same time a proposed budget of the expenses likely to be incurred during the crop year in connection with reserve, surplus, or off-grade raisins held for the account of the committee, exclusive of the receiving, storing, and handling expenses which are covered by a schedule of payments to handlers effective pursuant to § 989.66 (f) or any rules and procedures established by the committee, and exclusive of any expenses it may incur in connection with the disposition of such raisins and which are unknown at the time. The said report shall also cover this proposed budget.

§ 989.80 *Assessments.* Each handler shall, with respect to all free tonnage acquired by him, and all reserve tonnage sold to him pursuant to § 989.67, pay to the committee, upon demand, his pro rata share of the expenses (exclusive of expenses for receiving, handling, holding, or disposing of any quantity of reserve and surplus tonnage and natural condition off-grade raisins held for the account of the committee) which the Secretary finds will be incurred, as aforesaid, by the committee during each crop year. Such handler's pro rata share of such expenses shall be equal to the ratio between the total free tonnage acquired by such handler, plus all reserve tonnage sold to him for use as free tonnage during the applicable crop year and the total free tonnage acquired by all handlers, plus all reserve tonnage sold to all handlers for use as free tonnage during the same crop year. The Secretary shall fix the rate of assessment to be paid by such handler on the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to apply to all free tonnage acquired, plus all reserve tonnage sold to handlers as free tonnage, during such crop year to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. In order to provide funds to carry out the functions of the committee and the board, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against the respective handler during the crop year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

§ 989.81 *Accounting.* (a) If, at the end of the crop year, the assessments collected for such crop year exceed the expenses incurred with respect to such crop year, each handler's share of such excess shall be credited to him against, and may be used for, the operations of the following crop year, unless such handler demands payment thereof, in which case his share shall be paid to him.

(b) The committee may, with the approval of the Secretary, maintain in its own name or in the name of its members, a suit against any handler for the collection of such handler's prorata share of the expenses.

§ 989.82 *Expenses of reserve, surplus, and off-grade raisin operations.* The committee is authorized to incur such expenses as are reasonable and are necessary in discharging its obligations, pursuant to this part with respect to the receiving, handling, holding, or disposing of any quantity of reserve, surplus or off-grade raisins held for the account of the committee. The committee is authorized to pay any taxes assessed against raisins held by or for the account of the committee on the first Monday in March, in the reserve, surplus, or off-grade pools established pursuant to this part: *Provided*, That any equity holder may pay his own taxes upon giving notice to the committee on or before May 1 of each year of his intention to do so. All pool expenses shall be deducted from the proceeds obtained by the committee from the sale or other disposal of such reserve, surplus or off-grade raisins held for the account of the committee.

§ 989.83 *Funds.* All funds received by the committee pursuant to the provisions of this part, shall be used solely for the purposes authorized, and shall be accounted for in the manner provided, in this part. The Secretary may, at any time, require the committee and its members and alternate members to account for all receipts and disbursements.

#### MISCELLANEOUS PROVISIONS

§ 989.84 *Disposition limitation.* No handler shall dispose of any free, reserve, surplus tonnage raisins, or off-grade raisins except in accordance with the provisions of this subpart or pursuant to regulations and instructions issued by the committee.

§ 989.85 *Personal liability.* No member or alternate member of the committee or any employee or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any person, for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty.

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

§ 989.87 *Derogation.* Nothing contained in this amended subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

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

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

§ 989.90 *Effective time.* The provisions of this amended subpart, as well as any amendments to this amended subpart shall become effective at such time as the Secretary may declare, and shall continue in force until terminated, or during suspension, in one of the ways specified in § 989.91.

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

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

(c) The Secretary shall terminate the provisions of this amended subpart at the end of any crop year whenever he finds that such termination is favored by a majority of the producers of raisin variety grapes, who during a representative period determined by Secretary, have been engaged in the production for market of raisin variety grapes in the State of California: *Provided*, That such majority have, during such representative period, produced for market more than 50 percent of the volume of such raisin variety grapes produced for market within said State; but such termination shall be effective only if announced on or before August 31 of the then current crop year.

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

§ 989.92 *Proceedings after termination.* (a) Upon the termination of the provisions of this amended subpart, the members of the committee then functioning shall continue as joint trustees for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession or under the control of the committee, including claims for any funds unpaid or property not delivered at the time of such termi-

nation. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) Said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the joint trustees pursuant to this subpart.

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

**§ 989.93 Effect of termination or amendment.** Unless otherwise expressly provided by the Secretary, the termination of this amended subpart or any regulation issued pursuant to this amended subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this amended subpart or any regulation issued under this amended subpart, (b) release or extinguish any violation of this amended subpart, or of any regulation issued under this amended subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person, with respect to any such violation.

**§ 989.94 Amendments.** Amendments to this amended subpart may be proposed from time to time, by any person or by the committee.

**§ 989.96 Exhibit A; producer members of the Raisin Advisory Board.** (a) One member for each of the following districts in Fresno County:

**CLOVIS—DISTRICT NO. 1**

All of T. 12 S., R. 20 E. in said county; all of T. 11 S., R. 20 E. in said county; all of T. 11 S., R. 21 E. in said county; all of T. 12 S., R. 21 E.; all of T. 12 S., R. 22 E.; Secs. 1, 2, 11, 12, 13, and 14 of T. 13 S., R. 20 E.; Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36 of T. 13 S., R. 21 E.; and Secs. 4, 5, 6, 7, 8, 9, 18, 19, 30, and 31 of T. 13 S., R. 22 E.

**KERMAN—DISTRICT NO. 2**

All of T. 13 S., R. 14 E. in said county; all of T. 13 S., R. 15 E. in said county; all of T. 13 S., R. 16 E. in said county; all of T. 13 S., R. 17 E. in said county; Secs. 30 and 31 of T. 13 S., R. 18 E.; all of T. 14 S., R. 14 E.; all of T. 14 S., R. 15 E.; all of T. 14 S., R. 16 E.; all of T. 14 S., R. 17 E.; all of T. 14 S., R. 18 E.; the west two-thirds of T. 14 S., R. 19 E.; all of T. 15 S., R. 14 E.; all of T. 15 S., R. 15 E.; all of T. 15 S., R. 16 E.; all of T. 15 S., R. 17 E.; and all of T. 15 S., R. 18 E.

**BIOLA—DISTRICT NO. 3**

All of T. 13 S., R. 18 E. in said county, except Secs. 30 and 31; all of T. 12 S., R. 19

E. in said county; and all of T. 13 S., R. 19 E., except Secs. 25, 26, 27, 28, 33, 34, 35, and 36.

**FRESNO—DISTRICT NO. 4**

Secs. 25, 26, 27, 28, 33, 34, 35, and 36, T. 13 S., R. 19 E.; all of T. 13 S., R. 20 E., except Secs. 1, 2, 11, 12, 13, and 14; Secs. 19, 20, 29, 30, 31, and 32 of T. 13 S., R. 21 E.; the east one-third of T. 14 S., R. 19 E.; all of T. 14 S., R. 20 E.; and Secs. 5, 6, and 7 of T. 14 S., R. 21 E.

**SANGER—DISTRICT NO. 5**

The east one-half and Secs. 16, 17, 20, 21, 28, 29, 32, and 33, T. 13 S., R. 22 E.; all of T. 13 S., R. 23 E. lying north and west of the east channel of Kings River; all of T. 14 S., R. 23 E.; lying west of the east channel of Kings River; and Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 35, and 36, T. 14 S., R. 22 E.; all of Secs. 5 and 6, T. 15 S., R. 23 E., lying north of Kings River.

**LONE STAR—DISTRICT NO. 6**

All of T. 14 S., R. 21 E., except Secs. 5, 6, 7, and 36.

**EASTON-OLEANDER—DISTRICT NO. 7**

The north one-half of T. 15 S., R. 19 E.; the north two-thirds of T. 15 S., R. 20 E., except Sec. 19; and Secs. 6, 7, 18, and 19, T. 15 S., R. 21 E.

**FOWLER—DISTRICT NO. 8**

The south one-half of Sec. 1, and Secs. 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 26, 27, 28, 29, and 33, T. 15 S., R. 21 E.; and Sec. 18, T. 15 S., R. 22 E.

**DEL REY—DISTRICT NO. 9**

Secs. 29, 30, 31, 32, 33, and 34, T. 14 S., R. 22 E.; Sec. 36, T. 14 S., R. 21 E.; the north one-half of Sec. 1, T. 15 S., R. 21 E.; and Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, and 17, T. 15 S., R. 22 E.

**PARLIER—DISTRICT NO. 10**

All of Secs. 4, 9, 16, and 21 lying west of Kings River, and all of Secs. 5 and 6 lying west and south of Kings River, and Secs. 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, T. 15 S., R. 23 E.; Secs. 1, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 35, and 36, T. 15 S., R. 22 E.; and Secs. 5 and 6, T. 16 S., R. 23 E.

**REEDLEY—DISTRICT NO. 11**

All of T. 13 S., R. 24 E., lying east and south of the east channel of Kings River; all of T. 13 S., R. 23 E., lying east and south of the east channel of Kings River; all of T. 14 S., R. 23 E., lying east and south of the east channel of Kings River; T. 14 S., R. 24 E.; T. 14 S., R. 25 E.; all of T. 15 S., R. 23 E., lying east of the east channel of Kings River; all of Secs. 28 and 34, T. 15 S., R. 23 E., lying west of Kings River; Sec. 33, T. 15 S., R. 23 E.; all of Sec. 4, T. 16 S., R. 23 E., lying within said county; and T. 15 S., R. 24 E.

**KINGSBURG—DISTRICT NO. 12**

Secs. 11, 12, 13, 14, 15, 21, 22, 23, 27, 28, and 33, T. 16 S., R. 22 E., and those portions of Secs. 24, 26 and 34, T. 16 S., R. 22 E., lying within said county; Sec. 7, T. 16 S., R. 23 E., and those portions of Secs. 8 and 18, T. 16 S., R. 23 E., lying within said county; and those portions of Secs. 4, 5, 8, 9, and 17, T. 17 S., R. 22 E., lying within said county.

**SELMA—DISTRICT NO. 13**

Secs. 25, 34, 35, and 36, T. 15 S., R. 21 E.; Secs. 19, 20, 28, 29, 30, 31, 32, 33, and 34, T. 15 S., R. 22 E.; Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 29, 30, 31, and 32, T. 16 S., R. 22 E.; the east one-half of T. 16 S., R. 21 E.; Secs. 1 to 23, both inclusive, T. 17 S., R. 21 E., and that part of Secs. 24 to 30, both inclusive, T. 17 S., R. 21 E., lying within said county; Secs. 6, and 7, T. 17 S., R. 22 E.; and

those portions of Secs. 18 and 19, T. 17 S., R. 22 E., lying within said county.

**MONMOUTH—DISTRICT NO. 14**

Secs. 25, 26, 27, 34, 35, and 36, T. 15 S., R. 20 E.; Secs. 30, 31, and 32, T. 15 S., R. 21 E.; and the west one-half of T. 16 S., R. 21 E.

**CARUTHERS—DISTRICT NO. 15**

The south one-half of T. 15 S., R. 19 E.; Secs. 19, 28, 29, 30, 31, 32, and 33, T. 15 S., R. 20 E.; T. 16 S., R. 15 E.; T. 16 S., R. 16 E.; T. 16 S., R. 17 E.; T. 16 S., R. 18 E.; T. 16 S., R. 19 E.; T. 16 S., R. 20 E.; T. 17 S., R. 16 E.; T. 17 S., R. 17 E.; T. 17 S., R. 18 E.; T. 17 S., R. 19 E.; T. 17 S., R. 20 E.; T. 18 S., R. 16 E.; T. 18 S., R. 17 E.; T. 18 S., R. 18 E.; T. 19 S., R. 17 E.; T. 19 S., R. 18 E.; T. 20 S., R. 17 E.; and all of T. 20 S., R. 18 E., lying within said county.

(b) Three members for District No. 16 (Kings, Monterey, and San Benito Counties).

(c) Five members for District No. 17 (Tulare and Inyo Counties).

(d) Three members for District No. 18 (Kern, San Bernardino, Riverside, Imperial, San Diego, Orange, Los Angeles, Ventura, Santa Barbara, and San Luis Obispo Counties).

(e) Three members for District No. 19 (Madera and Mono Counties).

(f) Three members for District No. 20 (Merced, Tuolumne, and Mariposa Counties).

(g) Three members for District No. 21 (Stanislaus, Santa Clara, San Francisco, San Mateo, Santa Cruz, Alameda, Contra Costa, Calaveras, and Alpine Counties).

(h) One member for District No. 22 (San Joaquin, Marin, Solano, Sacramento, Amador, Eldorado, Placer, Nevada, Sutter, Yolo, Napa, Sonoma, Mendocino, Lake, Colusa, Yuba, Sierra, Plumas, Butte, Glenn, Tehama, Shasta, Lassen, Modoc, Siskiyou, Del Norte, Humboldt, and Trinity Counties).

**§ 989.97 Exhibit B; minimum grade and condition standards for natural condition raisins.**

Raisins meeting the varietal standards set forth hereinafter shall be considered as standard raisins and those failing to meet such standards shall be considered as off-grade raisins. In each category, only those raisins which have been properly dried and cured in original natural condition, are free from active infestation, and are in such condition that they are capable of being received, stored, and packed without undue deterioration or spoilage, shall be considered as storable raisins.

**A. Thompson Seedless raisins.**

Natural condition Thompson Seedless raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured and shall meet the following additional requirements:

1. Shall be fairly free from damage by sugaring, mechanical injury, sunburn or other similar injury.

2. Shall be fairly free from immature (skinny) raisins and shall have a normal characteristic color, flavor, and odor of properly prepared raisins.

3. The moisture content shall not exceed 16 percent (except Golden Seedless, Sulfur Bleached, and Soda Dipped shall not exceed 14 percent), as determined by Dried Fruit Moisture Tester Method and the raisins shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order and that when processed in accordance with good commercial practice will meet "U. S. Grade

C" or better grade as defined in the effective United States Standards for Grades of Processed Raisins.

4. Golden Seedless and Sulfur Bleached raisins shall possess a characteristic bleached color (or choice color). "Choice color" (or "bleached color") means that the raisins may be variable in color and may range from yellowish green to dark amber or dark greenish amber; that not more than 15 percent, by weight, of all the raisins may be definitely dark berries.

5. Soda Dipped raisins shall possess a good typical color characteristic of such raisins.

#### B. Muscat raisins.

Natural condition Muscat raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured and shall meet the following additional requirements:

1. Shall be fairly free from damage by sugaring, mechanical injury, sunburn or other similar injury.

2. Shall be fairly free from immature (skinny) raisins and shall have a normal characteristic color, flavor and odor of properly prepared raisins.

3. The moisture content shall not exceed 16 percent (except Layer Muscats shall not exceed 18 percent) as determined by Dried Fruit Moisture Tester Method and the raisins (except Layer Muscats) shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order and that when processed in accordance with good commercial practice will meet "U. S. Grade C" or better grade as defined in the effective United States Standards for Grades of Processed Raisins; and that with respect to Layer Muscat raisins in addition to the above requirements the raisins shall be:

a. Fairly free from shattered (or loose end) berries.

b. Uniformly cured.

c. 30 percent or more "3 Crown size" or larger.

d. Of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order, and that when processed in accordance with good commercial practice will meet "U. S. Grade B" or better grade as defined in the effective United States Standards for Grades of Processed Raisins.

4. Muscat (Valencia), soda dipped raisins shall possess a good typical color with not more than 10 percent, by weight, that may be dark reddish-brown raisins.

#### C. Sultana raisins.

Natural condition Sultana raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured and shall meet the following additional requirements:

1. Shall be fairly free from damage by sugaring, mechanical injury, sunburn or other similar injury.

2. Shall be fairly free from immature (skinny) raisins and shall have a normal characteristic color, flavor, and odor of properly prepared raisins.

The moisture content shall not exceed 16 percent as determined by Dried Fruit Moisture Tester Method and the raisins shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order and that when processed in accordance with good commercial practice will meet "U. S. Grade C" or better grade as defined in the effective United States Standards for Grades of Processed Raisins.

#### D. Zante Currants.

Natural condition Zante Currants shall have been prepared from sound, wholesome, matured grapes properly dried and cured and shall meet the following additional requirements:

1. Shall be fairly free from damage by sugaring, mechanical injury, sunburn or other similar injury.

2. Shall be fairly free from immature (skinny) raisins and shall have a normal characteristic color, flavor and odor of properly prepared raisins for the varietal type.

3. The moisture content shall not exceed 16 percent as determined by Dried Fruit Moisture Tester Method and the raisins shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order and that when processed in accordance with good commercial practice will meet "U. S. Grade B" or better grade as defined in the effective United States Standards for Grades of Dried Currants.

#### Order Directing That a Referendum Be Conducted; Designating Agents To Conduct Such Referendum; and Determining the Representative Period

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), it is hereby directed that a referendum be conducted among the producers who, during the period July 1, 1954 through June 30, 1955 (which is hereby determined to be a representative period for the purpose of such referendum), were engaged, in the State of California, in the production for market of raisin variety grapes, to determine whether such producers approve or favor the issuance of an amended order regulating the handling of raisins produced from raisin variety grapes grown in California, which order, as proposed to be amended, is annexed to the decision of the Secretary of Agriculture filed simultaneously herewith.

O. C. Fuqua, W. B. Blackburn, W. Allmendinger, M. G. Young, and G. R. Eastman of the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, are hereby designated agents of the Secretary of Agriculture to conduct said referendum severally or jointly.

The procedure applicable to this referendum shall be the "Procedure for the Conduct of Referenda Among Producers in Connection with Marketing Orders (Except Those Applicable to Milk and Its Products) to Become Effective Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (15 F. R. 5176; 19 F. R. 35), except that (c) (6) is hereby amended for the purposes of this referendum to read as follows:

"(6) Cause copies of the text of the order, as proposed to be amended (regulating the handling of raisins produced from raisin variety grapes grown in California), instructions on voting, and appropriate ballot and other necessary forms to be mailed to each such cooperative association, and each producer of raisin variety grapes who produced raisins during the representative period, whose name and address is on record with the Raisin Administrative Committee established under marketing agreement No. 109 and marketing order No. 89 (7 CFR, 1953 Rev., Part 989); and such agents shall make copies of the ballot, and other necessary forms and instructions available in the office of Farm Advisor, County Director of Agricultural Extension, in each county in California

in which raisin variety grapes are produced for market."

Any producer of raisin variety grapes for market who does not receive a ballot and other necessary forms and instructions for use in the referendum by mail, may obtain them in his county from the Farm Advisor, County Director of Agricultural Extension, or from O. C. Fuqua, Fresno Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, 3529 East Tulare Street, Fresno 2, California and W. Allmendinger, Oakland Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, 6th Floor, 1515 Clay Street, Oakland 12, California.

Copies of the aforesaid amended order, of the aforesaid referendum procedure, and of this order may be examined in the Office of the Hearing Clerk, United States Department of Agriculture, Room 112A, Administration Building, Washington 25, D. C.

[F. R. Doc. 55-6373; Filed, Aug. 4, 1955; 8:54 a. m.]

## [ 7 CFR Part 986 ]

[Docket No. AO 263]

### HANDLING OF MILK IN INDIANAPOLIS, IND., MARKETING AREA

#### NOTICE OF EXTENSION OF TIME FOR FILING WRITTEN EXCEPTIONS TO RECOMMENDED DECISION

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and orders (7 CFR Part 900), notice is hereby given that the time within which interested parties may file exceptions to the recommended decision of the Acting Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to a proposed marketing agreement and order, to regulate the handling of milk in the Indianapolis, Indiana marketing area, which recommended decision was published in the FEDERAL REGISTER on June 17, 1955 (20 F. R. 4258) is hereby extended so that such written exceptions may be filed not later than the close of business on August 15, 1955.

Filed: August 2, 1955.

[SEAL] ROY W. LENNARTSON,  
Deputy Administrator.

[F. R. Doc. 55-6343; Filed, Aug. 4, 1955; 8:47 a. m.]

## Agricultural Research Service

### [ 7 CFR Part 301 ]

#### EUROPEAN CHAFER

#### AMENDMENT OF NOTICE OF PROPOSED ADMINISTRATIVE INSTRUCTIONS REGARDING PROPOSED QUARANTINE IN CONNECTICUT, NEW YORK, AND WEST VIRGINIA

On July 19, 1955, there was published in the FEDERAL REGISTER (20 F. R. 5147) a notice of proposed administrative instructions designating areas that would

be regulated in the event that the proposed European chafer quarantine and regulations are adopted. Late season surveys have disclosed that infestations of the European chafer exist in or near the towns of Canandaigua, Geneva, Gorham, Hopewell, and Seneca, and the cities of Canandaigua and Geneva, in Ontario County, and the towns of Junius and Tyre, in Seneca County, New York. It is, therefore, proposed to designate these towns and cities as regulated areas in addition to those already listed in said notice.

All persons who desire to submit written data, views, or arguments in connection with this matter should file the same with the Chief of the Plant Pest Control Branch, Agricultural Research Service, United States Department of Agriculture, Washington 25, D. C., on or before August 19, 1955.

(Sec. 8, 37 Stat. 318, as amended; 7 U. S. C. 161)

Done at Washington, D. C., this 29th day of July 1955,

[SEAL]

E. D. BURGESS,  
Acting Chief,  
Plant Pest Control Branch.

[F. R. Doc. 55-6345; Filed, Aug. 4, 1955;  
8:47 a. m.]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration

#### [ 21 CFR Part 120 ]

#### TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

#### NOTICE OF FILING OF PETITION FOR ESTABLISHMENT OF TOLERANCES FOR RESIDUES OF CHLORDANE

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d) (1), 68 Stat. 512; 21 U. S. C. 346a (d) (1)), the following notice is issued:

A petition has been filed by Velsicol Corporation, Division of Arvey Corporation, 330 East Grand Avenue, Chicago, Illinois, for the extension of the tolerance of 0.3 part per million for residues of the insecticide chlordane on various fruit and vegetable crops (21 CFR 120.101 (e); 20 F. R. 1473) to the following raw agricultural commodities:

Alfalfa, clover, sweet clover, lespedeza.  
Grass.  
Sweetpotatoes.  
Meat.

The analytical method proposed in the petition for the determination of residues of chlordane is an adaptation of the method described by Davidow in the Journal of the Association of Official Agricultural Chemists, Volume 33, pages 886-894 (1950), except for meat, in which the chlordane residue is determined by a method that measures total organic chlorine.

Dated: July 29, 1955.

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

[F. R. Doc. 55-6347; Filed, Aug. 4, 1955;  
8:48 a. m.]

No. 152—7

#### [ 21 CFR Part 130 ]

#### DRUGS EXEMPTED FROM PRESCRIPTION- DISPENSING REQUIREMENTS

#### EXEMPTION FOR CERTAIN DRUGS LIMITED BY NEW-DRUG APPLICATIONS TO PRESCRIPTION SALE

Notice is given that the Commissioner of Food and Drugs, in accordance with the Federal Food, Drug, and Cosmetic Act (secs. 503 (b) (3), 701 (a); 65 Stat. 649, 52 Stat. 1055; 21 U. S. C. 353 (b) (3), 371 (a)) and the authority delegated to him by the Secretary of Health, Education, and Welfare by 21 CFR, 1954 Supp., 1.108 (c) 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, D. C., within 30 days from the date of publication of this notice in the FEDERAL REGISTER on the proposed amendments set forth below:

The proposed amendments 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. 648; 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 uses showed that they were safe only if used under professional supervision.

Pursuant to the regulations in § 1.108 (c) of this chapter (21 CFR, 1954 Supp., 1.108 (c)), petitions have been submitted to remove the prescription restrictions from them. 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 (sec. 503 (b) (3), 65 Stat. 649; 21 U. S. C. 353 (b) (3)), which provides for the removal of such requirements if they are not necessary for the protection of the public health.

It is proposed to amend paragraph (a) of § 130.1 *Exemption for certain drugs limited by new-drug applications to prescription sale*, by adding the following new subparagraphs (4) and (5):

(4) Phenyltoloxamine dihydrogen citrate (N,N dimethyl-( $\alpha$ -phenyl-O-toloxo) ethylamine dihydrogen citrate) preparations meeting all the following conditions:

(i) The phenyltoloxamine dihydrogen citrate is prepared, with or without other drugs, in tablet or other dosage form suitable for oral use in self-medication, and containing no drug limited to prescription sale under the provisions of section 503 (b) (1) of the act.

(ii) The phenyltoloxamine dihydrogen citrate and all other components of the preparation meet their professed stand-

ards 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 88 milligrams of phenyltoloxamine dihydrogen citrate (equivalent to 50 milligrams of phenyltoloxamine) per dosage unit.

(v) The preparation is labeled with adequate directions for use in the temporary relief of the symptoms of hay fever and/or the symptoms of other minor conditions in which it is indicated.

(vi) The dosages recommended or suggested in the labeling do not exceed: For adults, 88 milligrams of phenyltoloxamine dihydrogen citrate (equivalent to 50 milligrams of phenyltoloxamine) per dose or 264 milligrams of phenyltoloxamine dihydrogen citrate (equivalent to 150 milligrams of phenyltoloxamine) per 24-hour period; for children 6 to 12 years of age, one-half of the maximum adult dose or dosage.

(vii) The labeling bears, in juxtaposition with the dosage recommendations:

(a) Clear warning statements against administration of the drug to children under 6 years of age, except as directed by a physician, and against driving a car or operating machinery while using the drug, since it may cause drowsiness.

(b) If the article is offered for temporary relief of the symptoms of colds, a statement that continued administration for such use should not exceed 3 days, except as directed by a physician.

(5) Oxytetracycline and polymyxin B sulfate preparations meeting all the following requirements:

(i) The oxytetracycline and polymyxin B sulfate are prepared in ointment or other dosage form suitable for 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 oxytetracycline, polymyxin B sulfate, 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 per gram an amount of oxytetracycline hydrochloride equivalent to not more than 30 milligrams of oxytetracycline and an amount of polymyxin B sulfate equivalent to not more than 10,000 units of polymyxin B.

(v) The preparation is labeled with adequate directions for use by external application to prevent infection in minor burns, minor wounds, and abrasions.

(vi) The labeling bears, in juxtaposition with the directions for use, clear warning statements against:

(a) Use of the preparation in the eye.

(b) Use if irritation or infection develops, except as directed by a physician.

Dated: July 29, 1955.

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

[F. R. Doc. 55-6346; Filed, Aug. 4, 1955;  
8:47 a. m.]

## NOTICES

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## COLORADO

RESTORATION ORDER NO. 9 (AREA III) UNDER  
FEDERAL POWER ACT

JULY 27, 1955.

Pursuant to Determination DA-339 and DA-341, Colorado, of the Federal Power Commission and in accordance with Order No. 541, Section 2.5, of the Director, Bureau of Land Management, approved April 21, 1954 (19 F. R. 2473), it is ordered as follows:

The lands hereinafter described, so far as they are reserved for power purposes, are hereby restored to disposition under the public land laws, subject to provisions of Section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U. S. C. 818), as amended:

## SIXTH PRINCIPAL MERIDIAN, COLORADO

## T. 15 S., R. 104 W.

- Sec. 16:  $W\frac{1}{2}$ ;  $SE\frac{1}{4}$ ;
- Sec. 17:  $NE\frac{1}{4}$ ;  $W\frac{1}{2}SE\frac{1}{4}$ ;  $W\frac{1}{2}$ ;
- Sec. 18: Lots 1, 2, 3, 4;
- Sec. 20:  $NW\frac{1}{4}NE\frac{1}{4}$ ;  $S\frac{1}{2}NE\frac{1}{4}$ ;
- Sec. 21:  $N\frac{1}{2}NE\frac{1}{4}$ ;  $SW\frac{1}{4}NW\frac{1}{4}$ ;  $SW\frac{1}{4}$ ;  $NE\frac{1}{4}SE\frac{1}{4}$ ;  $S\frac{1}{2}SE\frac{1}{4}$ ;
- Sec. 22:  $W\frac{1}{2}W\frac{1}{2}$ ;  $SE\frac{1}{4}SW\frac{1}{4}$ ;
- Sec. 27:  $W\frac{1}{2}$ ;  $SW\frac{1}{4}NE\frac{1}{4}$ ;  $W\frac{1}{2}SE\frac{1}{4}$ ;
- Sec. 28:  $NE\frac{1}{4}$ ;  $E\frac{1}{2}NW\frac{1}{4}$ ;  $N\frac{1}{2}SE\frac{1}{4}$ ;  $SE\frac{1}{4}$ ;
- Sec. 33:  $NE\frac{1}{4}NE\frac{1}{4}$ ;
- Sec. 34:  $NW\frac{1}{4}NE\frac{1}{4}$ ;  $S\frac{1}{2}NE\frac{1}{4}$ ;  $W\frac{1}{2}SE\frac{1}{4}$ .

## NEW MEXICO PRINCIPAL MERIDIAN, COLORADO

## T. 46 N., R. 16 W.

- Sec. 2: Lot 4,  $SW\frac{1}{4}NW\frac{1}{4}$ ;  $W\frac{1}{2}SW\frac{1}{4}$ ;
- Sec. 3: Lots 1, 2, 3, 4,  $S\frac{1}{2}N\frac{1}{2}$ ;  $N\frac{1}{2}S\frac{1}{2}$ ;  $SE\frac{1}{4}SE\frac{1}{4}$ ;
- Sec. 4: Lots 1, 2, 3,  $S\frac{1}{2}NE\frac{1}{4}$ ;  $SE\frac{1}{4}NW\frac{1}{4}$ ;  $NE\frac{1}{4}SE\frac{1}{4}$ ;  $W\frac{1}{2}SW\frac{1}{4}$ ;
- Sec. 5: Lots 2, 3,  $S\frac{1}{2}NE\frac{1}{4}$ ;  $SE\frac{1}{4}$ ;
- Sec. 8:  $NE\frac{1}{4}NE\frac{1}{4}$ ;
- Sec. 9:  $N\frac{1}{2}N\frac{1}{2}$ ;  $SE\frac{1}{4}NE\frac{1}{4}$ ;
- Sec. 10: Lots 3, 4, 5, 6, 7,  $SW\frac{1}{4}NE\frac{1}{4}$ ;  $S\frac{1}{2}NW\frac{1}{4}$ ;  $W\frac{1}{2}SE\frac{1}{4}$ ;
- Sec. 11:  $W\frac{1}{2}NW\frac{1}{4}$ ;  $SE\frac{1}{4}NW\frac{1}{4}$ ;  $SW\frac{1}{4}$ ;
- Sec. 14: Lots 1, 2, 3, 4, 5, 8;  $NE\frac{1}{4}NW\frac{1}{4}$ ;  $NW\frac{1}{4}SE\frac{1}{4}$ ;  $SE\frac{1}{4}SE\frac{1}{4}$ ;
- Sec. 15: Lots 1, 2,  $W\frac{1}{2}NE\frac{1}{4}$ ;  $SE\frac{1}{4}NW\frac{1}{4}$ ;  $N\frac{1}{2}S\frac{1}{2}$ ;  $SE\frac{1}{4}SE\frac{1}{4}$ ;
- Sec. 23:  $NW\frac{1}{4}$ ;  $NW\frac{1}{4}NE\frac{1}{4}$ ;  $S\frac{1}{2}$ ;
- Sec. 24:  $S\frac{1}{2}NE\frac{1}{4}$ ;
- Sec. 25:  $NE\frac{1}{4}$ ;  $N\frac{1}{2}NW\frac{1}{4}$ ;  $SE\frac{1}{4}NW\frac{1}{4}$ .

## T. 47 N., R. 16 W.

- Sec. 18: Lot 4,  $SE\frac{1}{4}SW\frac{1}{4}$ ;
- Sec. 19: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,  $N\frac{1}{2}NE\frac{1}{4}$ ;  $SE\frac{1}{4}NE\frac{1}{4}$ ;
- Sec. 20: Fractional  $S\frac{1}{2}$ ;
- Sec. 21:  $SW\frac{1}{4}$ ;
- Sec. 28:  $NW\frac{1}{4}$ ;
- Sec. 29: Lots 1, 2, 3, 4, 5, 6, 7, 8,  $N\frac{1}{2}NE\frac{1}{4}$ ;  $SE\frac{1}{4}NE\frac{1}{4}$ ;  $W\frac{1}{2}SW\frac{1}{4}$ ;  $E\frac{1}{2}SE\frac{1}{4}$ ;
- Sec. 30: Lots 1, 2,  $W\frac{1}{2}NE\frac{1}{4}$ ;  $SE\frac{1}{4}NE\frac{1}{4}$ ;  $NE\frac{1}{4}NW\frac{1}{4}$ ;  $SE\frac{1}{4}$ ;
- Sec. 31:  $E\frac{1}{2}E\frac{1}{2}$ ;
- Sec. 32: Lots 1, 2, 3, 4, 5, 6, 7,  $NE\frac{1}{4}NE\frac{1}{4}$ ;  $W\frac{1}{2}NW\frac{1}{4}$ ;  $SE\frac{1}{4}NW\frac{1}{4}$ ;  $SW\frac{1}{4}$ ;  $SW\frac{1}{4}SE\frac{1}{4}$ ;
- Sec. 33: Fractional  $W\frac{1}{2}$ .

## T. 47 N., R. 17 W.

- Sec. 1:  $N\frac{1}{2}$ ;  $SW\frac{1}{4}$ ;  $N\frac{1}{2}SE\frac{1}{4}$ ;
- Sec. 2: All;
- Sec. 3:  $S\frac{1}{2}$ ;
- Sec. 4: All;
- Sec. 10:  $NE\frac{1}{4}$ ;  $NW\frac{1}{4}SE\frac{1}{4}$ ;
- Sec. 11:  $N\frac{1}{2}$ ;  $N\frac{1}{2}SE\frac{1}{4}$ ;  $SE\frac{1}{4}SE\frac{1}{4}$ ;
- Sec. 12:  $W\frac{1}{2}$ ;  $W\frac{1}{2}E\frac{1}{2}$ ;
- Sec. 13:  $W\frac{1}{2}$ ;  $W\frac{1}{2}E\frac{1}{2}$ ;  $SE\frac{1}{4}NE\frac{1}{4}$ ;  $NE\frac{1}{4}SE\frac{1}{4}$ ;

- Sec. 14:  $E\frac{1}{2}NE\frac{1}{4}$ ;  $NE\frac{1}{4}SE\frac{1}{4}$ ;
- Sec. 24:  $W\frac{1}{2}NE\frac{1}{4}$ ;  $SE\frac{1}{4}NE\frac{1}{4}$ ;  $NE\frac{1}{4}NW\frac{1}{4}$ .

## T. 48 N., R. 17 W.

- Sec. 19: Lots 3, 4,  $E\frac{1}{2}SW\frac{1}{4}$ ;
- Sec. 28:  $S\frac{1}{2}NE\frac{1}{4}$ ;  $SE\frac{1}{4}$ ;  $W\frac{1}{2}$ ;
- Sec. 29: All;
- Sec. 30: All;
- Sec. 32:  $NE\frac{1}{4}$ ;  $N\frac{1}{2}SE\frac{1}{4}$ ;  $SE\frac{1}{4}SE\frac{1}{4}$ ;  $E\frac{1}{2}NW\frac{1}{4}$ ;  $NW\frac{1}{4}NW\frac{1}{4}$ ;
- Sec. 33:  $W\frac{1}{2}$ ;
- Sec. 34:  $E\frac{1}{2}$ ;
- Sec. 35:  $S\frac{1}{2}SW\frac{1}{4}$ .

## T. 47 N., R. 18 W.

- Sec. 1: Lots 3, 4;
- Sec. 2:  $N\frac{1}{2}$ ;  $SW\frac{1}{4}$ ;
- Sec. 3: Lots 1, 2,  $S\frac{1}{2}N\frac{1}{2}$ ;  $S\frac{1}{2}$ ;
- Sec. 4:  $NE\frac{1}{4}SE\frac{1}{4}$ ;  $W\frac{1}{2}SE\frac{1}{4}$ ;
- Sec. 6:  $SW\frac{1}{4}SE\frac{1}{4}$ ;
- Sec. 8:  $NW\frac{1}{4}SW\frac{1}{4}$ ;
- Sec. 9:  $SE\frac{1}{4}NE\frac{1}{4}$ ;  $E\frac{1}{2}SE\frac{1}{4}$ ;
- Sec. 10:  $NE\frac{1}{4}NW\frac{1}{4}$ ;  $W\frac{1}{2}W\frac{1}{2}$ ;
- Sec. 15:  $N\frac{1}{2}NW\frac{1}{4}$ ;  $SE\frac{1}{4}NW\frac{1}{4}$ ;  $NE\frac{1}{4}SW\frac{1}{4}$ ;  $S\frac{1}{2}SW\frac{1}{4}$ ;
- Sec. 16:  $SW\frac{1}{4}SE\frac{1}{4}$ ;
- Sec. 19:  $SW\frac{1}{4}SE\frac{1}{4}$ ;
- Sec. 20:  $S\frac{1}{2}SE\frac{1}{4}$ ;  $SE\frac{1}{4}SW\frac{1}{4}$ ;
- Sec. 21:  $NW\frac{1}{4}NE\frac{1}{4}$ ;  $SW\frac{1}{4}SE\frac{1}{4}$ ;  $S\frac{1}{2}SW\frac{1}{4}$ ;
- Sec. 22:  $NW\frac{1}{4}NE\frac{1}{4}$ ;  $S\frac{1}{2}NE\frac{1}{4}$ ;  $E\frac{1}{2}SE\frac{1}{4}$ ;  $NW\frac{1}{4}$ ;
- Sec. 26:  $SE\frac{1}{4}NW\frac{1}{4}$ ;
- Sec. 27:  $NE\frac{1}{4}SE\frac{1}{4}$ ;  $N\frac{1}{2}SW\frac{1}{4}$ ;
- Sec. 28:  $W\frac{1}{2}NE\frac{1}{4}$ ;  $SE\frac{1}{4}NE\frac{1}{4}$ ;  $N\frac{1}{2}NW\frac{1}{4}$ ;
- Sec. 29:  $N\frac{1}{2}N\frac{1}{2}$ ;
- Sec. 30: Lots 3, 4,  $NW\frac{1}{4}NE\frac{1}{4}$ ;  $E\frac{1}{2}SE\frac{1}{4}$ ;  $E\frac{1}{2}W\frac{1}{2}$ ;
- Sec. 31: Lots 1, 2, 4,  $E\frac{1}{2}E\frac{1}{2}$ ;  $E\frac{1}{2}NW\frac{1}{4}$ ;  $SE\frac{1}{4}SW\frac{1}{4}$ ;
- Sec. 32:  $S\frac{1}{2}NW\frac{1}{4}$ ;  $S\frac{1}{2}$ .

## T. 48 N., R. 18 W.

- Sec. 2:  $N\frac{1}{2}$ ;  $SW\frac{1}{4}$ ;
- Sec. 3: Lots 1 to 5, inclusive, Lot 8, Lots 16 to 38, inclusive,  $W\frac{1}{2}SW\frac{1}{4}$ ;
- Sec. 4: Lots 1, 2, 4, 7, 8, 11, 13, 14, 17 to 20, inclusive;
- Sec. 5: Lots 1 to 12, inclusive, 15 and 16;
- Sec. 9:  $NW\frac{1}{4}NW\frac{1}{4}$ ;
- Sec. 10:  $NE\frac{1}{4}$ ;  $NE\frac{1}{4}SE\frac{1}{4}$ ;  $NE\frac{1}{4}NW\frac{1}{4}$ ;
- Sec. 11:  $W\frac{1}{2}E\frac{1}{2}$ ;  $W\frac{1}{2}$ ;
- Sec. 14:  $N\frac{1}{2}N\frac{1}{2}$ ;  $SW\frac{1}{4}NW\frac{1}{4}$ ;  $NW\frac{1}{4}SW\frac{1}{4}$ ;  $S\frac{1}{2}SW\frac{1}{4}$ ;
- Sec. 23:  $W\frac{1}{2}$ ;
- Sec. 24:  $N\frac{1}{2}$ ;  $SE\frac{1}{4}$ ;
- Sec. 25: All;
- Sec. 26: All;
- Sec. 34:  $E\frac{1}{2}$ ;
- Sec. 35: All;
- Sec. 36: All.

## T. 49 N., R. 18 W.

- Sec. 5:  $SW\frac{1}{4}$ ;  $W\frac{1}{2}SW\frac{1}{4}$ ; unsurveyed  $SW\frac{1}{4}NE\frac{1}{4}$ ;  $W\frac{1}{2}SE\frac{1}{4}$ ;  $SE\frac{1}{4}SE\frac{1}{4}$ ;
- Sec. 6: Unsurveyed  $N\frac{1}{2}NE\frac{1}{4}$ ;
- Sec. 8:  $NE\frac{1}{4}NE\frac{1}{4}$ ;  $S\frac{1}{2}NE\frac{1}{4}$ ;  $SE\frac{1}{4}$ ;  $NW\frac{1}{4}$ ;  $NW\frac{1}{4}$ ;  $S\frac{1}{2}NW\frac{1}{4}$ ;
- Sec. 9:  $W\frac{1}{2}SW\frac{1}{4}$ ;
- Sec. 17: Unsurveyed  $E\frac{1}{2}$ ;  $E\frac{1}{2}SW\frac{1}{4}$ ;
- Sec. 20: Unsurveyed  $NE\frac{1}{4}$ ;  $N\frac{1}{2}SE\frac{1}{4}$ ;  $SE\frac{1}{4}$ ;  $NE\frac{1}{4}NW\frac{1}{4}$ ;
- Sec. 21: Unsurveyed  $W\frac{1}{2}NW\frac{1}{4}$ ;  $SW\frac{1}{4}$ ;
- Sec. 27: Unsurveyed  $W\frac{1}{2}SW\frac{1}{4}$ ;
- Sec. 28: Unsurveyed All;
- Sec. 29: Unsurveyed  $E\frac{1}{2}NE\frac{1}{4}$ ;
- Sec. 33: Unsurveyed  $NE\frac{1}{4}$ ;  $E\frac{1}{2}NW\frac{1}{4}$ ;  $S\frac{1}{2}$ ;
- Sec. 34: Unsurveyed  $W\frac{1}{2}$ ;  $S\frac{1}{2}SE\frac{1}{4}$ .

## T. 50 N., R. 18 W.

- Sec. 19:  $W\frac{1}{2}SW\frac{1}{4}$ ; unsurveyed  $SW\frac{1}{4}$ ;  $NW\frac{1}{4}$ ;
- Sec. 30:  $NW\frac{1}{4}$ ;  $NE\frac{1}{4}SW\frac{1}{4}$ ; unsurveyed  $S\frac{1}{2}SE\frac{1}{4}$ ;
- Sec. 31:  $E\frac{1}{2}$ ;  $W\frac{1}{2}NW\frac{1}{4}$ ;  $SE\frac{1}{4}NW\frac{1}{4}$ ;
- Sec. 32:  $SW\frac{1}{4}$ .

## T. 46 N., R. 19 W.

- Sec. 1:  $W\frac{1}{2}$ ;  $SE\frac{1}{4}$ ; unsurveyed  $NE\frac{1}{4}$ ;
- Sec. 2: All;
- Sec. 10:  $SE\frac{1}{4}$ ;
- Sec. 11: All;
- Sec. 12:  $W\frac{1}{2}$ ;

- Sec. 13:  $W\frac{1}{2}W\frac{1}{2}$ ;

- Sec. 14: All;

- Sec. 15:  $E\frac{1}{2}$ .

## T. 47 N., R. 19 W.

- Sec. 12:  $S\frac{1}{2}NW\frac{1}{4}$ ;
- Sec. 35:  $SE\frac{1}{4}$ ;  $E\frac{1}{2}SW\frac{1}{4}$ ;
- Sec. 36: Lots 2, 3, 4,  $SE\frac{1}{4}NE\frac{1}{4}$ ;  $S\frac{1}{2}NW\frac{1}{4}$ ;  $W\frac{1}{2}SE\frac{1}{4}$ ;  $SW\frac{1}{4}$ ;  $SW\frac{1}{4}NE\frac{1}{4}$ .

## T. 50 N., R. 19 W.

- Sec. 1:  $W\frac{1}{2}$ ;
  - Sec. 2: Lots 1, 2, 3,  $S\frac{1}{2}NE\frac{1}{4}$ ;  $SE\frac{1}{4}NW\frac{1}{4}$ ;  $SE\frac{1}{4}$ ;
  - Sec. 11: Unsurveyed  $E\frac{1}{2}NE\frac{1}{4}$ ;
  - Sec. 12:  $SW\frac{1}{4}NE\frac{1}{4}$ ;  $W\frac{1}{2}$ ;  $SE\frac{1}{4}$ ;
  - Sec. 13:  $N\frac{1}{2}$ ;  $SE\frac{1}{4}$ ;  $E\frac{1}{2}SW\frac{1}{4}$ ;
  - Sec. 24:  $E\frac{1}{2}$ ;  $NE\frac{1}{4}NW\frac{1}{4}$ ;
  - Sec. 25: Unsurveyed  $E\frac{1}{2}E\frac{1}{2}$ ;
  - Sec. 36: Unsurveyed  $NE\frac{1}{4}$ .
- T. 51 N., R. 19 W.
- Sec. 8: Lots 1, 2;
  - Sec. 9: Unsurveyed  $SW\frac{1}{4}SE\frac{1}{4}$ ;
  - Sec. 15:  $NW\frac{1}{4}NE\frac{1}{4}$ ;  $SE\frac{1}{4}SE\frac{1}{4}$ ; unsurveyed  $S\frac{1}{2}NW\frac{1}{4}$ ;
  - Sec. 16: Lot 5, unsurveyed  $W\frac{1}{2}NE\frac{1}{4}$ ;  $SE\frac{1}{4}NE\frac{1}{4}$ ;
  - Sec. 17:  $W\frac{1}{2}NE\frac{1}{4}$ ;  $SE\frac{1}{4}SE\frac{1}{4}$ ;
  - Sec. 21:  $N\frac{1}{2}$ ;  $N\frac{1}{2}SE\frac{1}{4}$ ;
  - Sec. 22: Lots 1 to 5, incl., Lot 8,  $E\frac{1}{2}NE\frac{1}{4}$ ;  $S\frac{1}{2}SE\frac{1}{4}$ ;  $NW\frac{1}{4}SW\frac{1}{4}$ ;
  - Sec. 23:  $NW\frac{1}{4}SW\frac{1}{4}$ ;  $S\frac{1}{2}SW\frac{1}{4}$ ;
  - Sec. 26:  $N\frac{1}{2}SE\frac{1}{4}$ ;  $SE\frac{1}{4}SE\frac{1}{4}$ ;  $SW\frac{1}{4}SW\frac{1}{4}$ ;  $SW\frac{1}{4}NE\frac{1}{4}$ ;
  - Sec. 27: Unsurveyed  $NE\frac{1}{4}NE\frac{1}{4}$ ;
  - Sec. 35:  $E\frac{1}{2}NE\frac{1}{4}$ ;  $SW\frac{1}{4}SE\frac{1}{4}$ ;  $W\frac{1}{2}W\frac{1}{2}$ ;  $SE\frac{1}{4}SW\frac{1}{4}$ ;
  - Sec. 36: Unsurveyed  $W\frac{1}{2}SW\frac{1}{4}$ .

The areas described total approximately 42,851 acres of public lands.

These lands are located in western Colorado along the San Miguel and Dolores rivers, in Mesa and Montrose counties. The topography is generally quite rough. The soils are generally shallow and rocky and support only juniper and pinon trees and some shrubs and grass.

No application for these lands will be allowed under the homestead, desert-land, small tract, or any other nonmineral public-land law, unless the lands have already been classified as valuable or suitable for such type of application, or shall be so classified upon consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

Any disposition of the lands described herein shall be subject to the stipulation that if and when the land is required in whole or in part for power development purposes, any structures or improvements placed thereon which may be found to obstruct or interfere with such development, shall without cost, expense, or delay to the United States, its licensees or permittees, be removed or relocated insofar as may be necessary to eliminate interference with such power development.

The lands described shall be subject to application by the State of Colorado for a period of 90 days from the date of publication of this order in the FEDERAL REGISTER for right-of-way for public highways or as a source of material for construction and maintenance of such highways, in accordance with and subject to the provisions of section 24 of the Federal Power Act, as amended, and the

special stipulation provided in the preceding paragraph.

This order shall not otherwise become effective to change the status of the described land until 10:00 a. m. on the 35th day after the date of this order. At that time the said land shall become subject to application, petition, location and selection under the applicable public-land laws, subject to valid existing rights, the provisions of existing withdrawals, the requirements of applicable laws, and the 91-day preference right filing period for veterans and others entitled to preference under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279-284), as amended. All applications filed pursuant to the Veterans' Preference Act of 1944, on or before 10:00 a. m. of the 35th day after the date of this order shall be treated as though simultaneously filed at that time. All other applications under the public-land laws filed on or before 10:00 a. m. of the 126th day after the date of this order shall be treated as though simultaneously filed at that time.

Inquiries concerning these lands shall be addressed to State Supervisor, Bureau of Land Management, P. O. Box 1018, 357 New Custom House, Denver 1, Colorado.

MAX CAPLAN,  
State Supervisor.

[F. R. Doc. 55-6226; Filed, Aug. 4, 1955;  
8:45 a. m.]

## GENERAL SERVICES ADMINISTRATION

[Project No. 3-DC-01]

### FEDERAL OFFICE BUILDING

#### PROSPECTUS FOR PROPOSED BUILDING IN SOUTHWESTERN PORTION OF THE DISTRICT OF COLUMBIA

**EDITORIAL NOTE:** This prospectus of proposed Project Number 3-DC-01 is published pursuant to section 412 (f) of the Public Buildings Purchase Contract Act of 1954, as amended by Public Law 150, 84th Congress, which requires publication in the FEDERAL REGISTER for a period of ten consecutive days from date of submission to the Committees on Public Works of the Senate and House of Representatives.

Project Number 3-DC-01

PROSPECTUS FOR PROPOSED BUILDING UNDER TITLE I, PUBLIC LAW 519, 83d CONGRESS, 2d SESSION

FEDERAL OFFICE BUILDING, WASHINGTON, D. C.

#### A. Brief description of proposed building:

The project contemplates the erection of a Federal Office Building on a site to be acquired in the Southwest redevelopment area.

The proposed building will be a six-story and penthouse structure, stone exterior, with cafeteria included, and air conditioned throughout. It will have a gross floor area of 815,000 square feet, that will provide 558,000 square feet of net space, of which 500,000 square feet will be office area, 10,000 square feet for shops, 34,000 square feet for cafeteria, and 14,000 square feet for custodial, health unit, etc.

#### B. Maximum cost and financing:

|                                                          |                              |
|----------------------------------------------------------|------------------------------|
| 1. Total over-all value of project                       | \$20,200,000                 |
| a. Items not included in purchase contract:              |                              |
| (1) Architectural                                        | \$995,000                    |
| (2) Land                                                 | 2,500,000                    |
|                                                          | \$3,495,000                  |
| b. Purchase contract costs:                              |                              |
| (1) Improvements                                         | \$16,705,000                 |
| 2. Contract Term                                         | 10 to 25 years               |
| 3. Maximum rate of interest on purchase contract         | 4%                           |
| C. Estimated annual costs:                               |                              |
| 1. 25 Year Contract Term:                                |                              |
| a. Purchase contract payments:                           |                              |
| (1) Amortization and interest                            | \$1,069,320                  |
| (2) Taxes                                                | 251,213                      |
|                                                          | Rate per net sq. ft. \$2.37. |
|                                                          | \$1,320,533                  |
| b. Costs not included in purchase contract payments:     |                              |
| (1) Custodial and utilities                              | \$538,000                    |
| (2) Repair and maintenance                               | 82,000                       |
|                                                          | Rate per net sq. ft. \$1.11. |
|                                                          | \$620,000                    |
| c. Total Estimated Annual Cost                           | \$1,940,533                  |
|                                                          | Rate per net sq. ft. \$3.48. |
| 2. Second 25 Year Term:                                  |                              |
| a. Custodial and utilities                               | \$538,000                    |
| b. Repairs and maintenance                               | 160,000                      |
|                                                          |                              |
| c. Total Estimated Annual Cost                           | \$698,000                    |
|                                                          | Rate per net sq. ft. \$1.25. |
| 3. 50 Year Average:                                      |                              |
| a. Total Estimated Annual Cost                           | \$1,319,267                  |
|                                                          | Rate per net sq. ft. \$2.36. |
| 4. Annual Rental Costs for Comparable Space (Net Agency) | \$1,970,000                  |
|                                                          | Rate per net sq. ft. \$3.94. |
| 5. Maximum Annual Payment Permitted                      | \$3,030,000                  |
|                                                          | (15% of fair market value.)  |

NOTE: All estimates based on 1955 price levels.

#### D. Present annual rental and other housing costs:

|                                                                                             | Net sq. ft. | Unit cost | Total cost |
|---------------------------------------------------------------------------------------------|-------------|-----------|------------|
| 1. Existing Tempo's 4, 5 and T (or comparable space), to be supplanted by proposed building | 500,522     | \$0.99    | \$495,760  |

#### E. Justification of project:

##### 1. Lack of Suitable Space:

a. The needs for space for the permanent activities of the Federal Government cannot be satisfied by utilization of existing Government-owned space.

b. Suitable rental space of comparable sort and characteristics is not available at a price commensurate with that to be afforded through the contract proposed.

c. The space requested and proposed is needed for permanent activities of the Federal Government.

d. The best interest of the Government will be served by taking the action proposed.

##### 2. Existing Conditions:

During the past several years there has been an active and widespread movement on the part of the public and Governmental agencies, notably the Commission of Fine Arts, concerning the removal of World War I and II Tempos and the restoration of the park lands.

Data compiled as of December 31, 1954, indicates that the Federal Government is currently utilizing four (4) World War I Tempos, providing 2,083,903 square feet of net agency space, with 16,506 personnel; and 35 World War II Tempos, providing 3,585,063 square feet, with 22,823 personnel. In summary, 39 Tempos, providing a total of 5,668,966 square feet of net agency space, with aggregate personnel of 39,329. The aforementioned figures do not include space or personnel of the Central Intelligence Agency.

The Congress, long sympathetic to the insistent demand for the razing of the Tempo's has considered several proposed bills to ac-

complish this purpose. Among these was S 1290, passed in the Senate on June 8, 1955, and enacted as Public Law 150, 84th Congress, approved July 12, 1955. That law expressly manifests the intent of Congress that (1) provision of accommodations for executive agencies by GSA as a part of the program for redevelopment of the southwest portion of the District of Columbia be accomplished on a lease-purchase basis and (2) temporary space of equivalent occupancy be demolished.

The proposed building will provide approximately 500,000 square feet of net office space, to accommodate equivalent personnel displaced from temporary buildings contemplated for initial demolition under current long-range planning programs.

##### 3. Direct and Indirect Benefits Expected to Accrue.

a. Agencies whose related operations are scattered among two or more locations will be able to concentrate all of them in a single location and thereby realize appreciable economies deriving from such factors as contiguity of operating elements, immediate accessibility of employees and records, and elimination of transportation and communication delays.

b. The accommodation of Federal agencies in a single building will provide flexibility in making internal reassignments of agency space where increases or decreases in requirements occur.

c. The proposed building will be functional in concept and devoid of excessive embellishment and extravagant appointments. The design of the building and facilities will provide for the utmost economy in construction; maintenance and operation costs considered. It will be provided with modern fittings, appointments and conveniences comparable to those provided in buildings of private enterprise. Maintenance and improvement of employee morale and the consequent increasing of employee efficiency over a period of years may thus be confidently expected to result in intangible though nonetheless real economies.

## F. Analysis of project space:

1. Since this project is intended to provide for relocation of numerous Federal activities now housed in temporary buildings, no specific allocation of space among agencies can be made. Therefore requirement for Certificate of Need otherwise required by Section 411 (e) of the Public Buildings Purchase Contract Act of 1954 was waived in Public Law 150, 84th Congress.
2. Space:
  - a. Distribution:

| Agency                                                                                                          | Tempo's 4, 5, and T proposed |           |             |           |
|-----------------------------------------------------------------------------------------------------------------|------------------------------|-----------|-------------|-----------|
|                                                                                                                 | Net sq. ft.                  | Personnel | Net sq. ft. | Personnel |
| The specific allocation of agencies to be quartered in the proposed building has not been presently determined. |                              |           |             |           |
| Subtotal, Agency Space.....                                                                                     | 500,520                      | 3,072     | 500,000     | 3,700     |
| General Services:                                                                                               |                              |           |             |           |
| Custodial and Shops.....                                                                                        |                              |           | 22,000      | 132       |
| Health Unit and Vending Stand.....                                                                              |                              |           | 2,000       | 3         |
| Cafeteria.....                                                                                                  |                              |           | 34,000      | 50        |
| Total.....                                                                                                      | 500,520                      | 3,072     | 558,000     | 3,885     |

## b. Utilization:

Agency Space—sq. ft. per person..... 163 135  
 Total Space—sq. ft. per person..... 163 144

c. Efficiency: Ratio, net to gross (net assignable)..... 68.5%

## G. Analysis of project cost:

## 1. Costs of Improvements—Normal:

a. Construction.....\$12,250,000  
 b. Elevator.....430,000  
 c. Air Conditioning.....1,750,000  
 d. Interest, taxes, etc., during construction.....730,000  
 Cost per gross sq. ft. \$18.60.....\$15,160,000

## 2. Costs of Improvements—Additional:

a. Approaches & utilities.....\$150,000  
 b. Steam connection.....120,000  
 c. Stone face.....525,000  
 d. Contingencies.....750,000  
 \$1,545,000

3. Total Cost of Improvement.....\$16,705,000

## 4. Costs Not Included in Purchase Contract:

a. Architectural.....\$995,000  
 b. Land to be acquired (Est. Cost).....2,500,000  
 \$3,495,000

5. Total over-all value of project.....\$20,200,000

## H. Other selected data:

1. The proposed contract provisions will not exceed the amount necessary to:
  - a. Amortize principal.
  - b. Provide interest not to 4% of the outstanding principal.
  - c. Reimburse contractor for the cost of taxes and interest during construction.
  - d. Reimburse contractor for proportional charge for redevelopment general area, streets and utilities.
2. It is proposed to make awards on financing and construction by competition.
3. Estimated completion date for the project is 40 months from date of final approval.
4. Taxes computed on basis of 75% ratio and \$22.00 per \$1,000.
5. Insurance included during construction only as part of total cost borne by construction contractor. During post-construction period Government will act as self-insurer.

Project Number 3-DC-01

## Submission

Submitted at Washington, D. C.

## Recommended:

[S] PETER A. STROBEL,  
 Commissioner of Public Buildings Service,  
 General Services Administration.

## Approved:

[S] A. E. SNYDER,  
 Acting Administrator,  
 General Services Administration.

Statement of Director, Bureau of the Budget  
 EXECUTIVE OFFICE OF THE PRESIDENT  
 BUREAU OF THE BUDGET  
 WASHINGTON, D. C.

Project 3-DC-01  
 Federal Office Building,  
 Southwest Redevelopment Area,  
 Washington, D. C.

JULY 22, 1955.

## MY DEAR MR. MANSURE:

Pursuant to section 411 (e) (8) of the Public Buildings Purchase Contract Act of 1954 (Public Law 519), the proposal for a Federal Office Building, transmitted with your letter of June 28, 1955, has been examined and in my opinion "is necessary and in conformity with the policy of the President." This approval is given with the following understandings:

1. That the project cost of \$20,200,000 (including \$2,500,000 for land to be acquired) is a maximum figure.
2. That the reported annual operating cost of existing Tempos 4, 5 and T, i. e., 99¢ per sq. ft., represents minimum maintenance in anticipation of demolition, and that temporary Government buildings actually cost more to maintain than the proposed new building.
3. That the proposed building will house some 10 percent of Federal employees presently housed in temporary buildings, and that the specific allocation of agencies in the proposed building is to be determined later by GSA.

4. That every effort will be made to design and construct space conducive to maximum efficient utilization and to take advantage of any revision of cost downward which may be found possible as the plans develop and negotiations are advanced.

You appreciate, of course, that this project will receive a more detailed review as to cost and space utilization prior to approval of the lease-purchase agreement.

Sincerely yours,

[Signed] ROWLAND HUGHES,  
 Director.

HON. EDMUND F. MANSURE,  
 Administrator,  
 General Services Administration,  
 Washington 25, D. C.

[F. R. Doc. 55-6130; Filed, July 26, 1955;  
 10:09 a. m.]

## SECURITIES AND EXCHANGE COMMISSION

[File Nos. 24D-1133, etc.]

LILLY BELLE MINING & MILLING CO., INC.,  
 ET AL.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

JULY 29, 1955.

In the matter of Lilly Belle Mining & Milling Co., Inc. (File No. 24D-1133), American Mining & Smelting, Inc. (File No. 24D-1174), World Uranium Mining Corporation (File No. 24D-1352), Southwestern Uranium Trading Corporation (File No. 24D-1358), Pony Tungsten Enterprise (File No. 24S-1212), Bellevue Mining and Concentrating Company (File No. 24S-1215), Rock Creek Tungsten Company (File No. 24S-1230), Rescue Mining Company (File No. 24S-1249), Lucky Custer Mining Corporation (File No. 24S-1252), Gibbonsville Mining and Exploration Company (File No. 24S-1254), Butte Highlands Mining Company (File No. 24S-1261), U. S. Gold Corporation (File No. 24S-1307).

Lilly Belle Mining and Milling Co., Inc., 215 Mining Exchange Building, Colorado Springs, Colorado; American Mining and Smelting, Inc., Spearfish, South Dakota; World Uranium Mining Corporation, 323 Newhouse Building, Salt Lake City, Utah; Southwestern Uranium Trading Corporation, Silver State Building, Denver, Colorado; Pony Tungsten Enterprise, Pony, Montana; Bellevue Mining and Concentrating Company, Hailey, Idaho; Rock Creek Tungsten Company, Box 1364, Missoula, Montana; Rescue Mining Company, Warren, Idaho; Lucky Custer Mining Corporation, 329 Yates Building, Boise, Idaho; Gibbonsville Mining and Exploration Company, 711 Hutton Building, Spokane, Washington; Butte Highlands Mining Company, 519 Spokane and Eastern Building, Spokane, Washington; and U. S. Gold Corporation, 409 Empire State Building, Spokane, Washington having each filed with the Commission a notification on Form 1-A relating to a proposed public offering of securities 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; and

The Commission having been advised that the terms and conditions of said Regulation A have not been complied with in that each issuer has failed to file on Form 2-A reports of sales as required by Rule 224 of Regulation A and has ignored requests by the Commission's staff for such reports.

It is ordered Pursuant to Rule 223 (a) of the General Rules and Regulations under the Securities Act of 1933 that the exemption under Regulation A be, and it hereby is, temporarily suspended in each instance.

Notice is hereby given that any person having any interest in the matter with respect to any aforesaid company or companies may file with the Secretary of the Commission a written request for a hearing; that, within 20 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 for any such company, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place for said hearing will be promptly given by the Commission.

It is further ordered, That this Order and Notice shall be served upon Lilly Belle Mining & Milling Co., Inc.; American Mining & Smelting, Inc.; World Uranium Mining Corporation; Southwestern Uranium Trading Corporation; Pony Tungsten Enterprise; Bellevue Mining and Concentrating Company; Rock Creek Tungsten Company; Rescue Mining Company; Lucky Custer Mining Corporation; Gibbonsville Mining and Exploration Company; Butte Highlands Mining Company; and U. S. Gold Corporation personally or by registered mail or by confirmed telegraphic notice, and shall be published in the FEDERAL REGISTER.

By the Commission.

[SEAL]

ORVAL L. DUBOIS,  
Secretary.

[F. R. Doc. 55-6338; Filed, Aug. 4, 1955;  
8:45 a. m.]

[File No. 70-3392 and 70-3395]

MILWAUKEE GAS LIGHT CO. AND MICHIGAN  
CONSOLIDATED GAS CO.

ORDER PERMITTING DECLARATIONS TO BECOME EFFECTIVE REGARDING ISSUANCE BY SUBSIDIARIES OF REGISTERED HOLDING COMPANY OF NOTES TO BANKS

JULY 29, 1955.

Milwaukee Gas Light Company and Michigan Consolidated Gas Company, both subsidiary public-utility companies of American Natural Gas Company, a registered holding company, having filed, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), separate declarations with the Commis-

sion concerning the issuance of certain notes to banks, in the respective amounts of \$12,500,000 by Milwaukee Gas Light Company and \$35,000,000 by Michigan Consolidated Gas Company, which declarations were consolidated for hearing; and

A hearing having been held with respect to such declarations at which interested persons were present, the Commission having considered the record and having entered its Memorandum Opinion herein, and the Commission, on the basis of the record herein, finding that the applicable provisions of the Act are satisfied, that no adverse findings are necessary, that the fees and expenses proposed are not unreasonable, and that it is appropriate in the public interest and the interest of investors and consumers that the declarations should be permitted to become effective forthwith, without the imposition of terms and conditions, other than those contained in Rule U-24 promulgated under the Act;

It is hereby ordered, Pursuant to the provisions of Sections 6 (a) and 7 of the Act, that the declarations herein be and the same hereby are permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL]

ORVAL L. DUBOIS,  
Secretary.

[F. R. Doc. 55-6337; Filed, Aug. 4, 1955;  
8:45 a. m.]

## UNITED STATES TARIFF COMMISSION

[Investigation 4]

NICOTINE SULPHATE

NOTICE OF INVESTIGATION AND PUBLIC  
HEARING

Investigation instituted. On July 27, 1955, the Tariff Commission received advice from the Treasury Department that nicotine sulphate from the firm of N. V. Alhamex, Amsterdam, Netherlands, is being, or is likely to be, sold in the United States at less than its fair value. Accordingly, the Tariff Commission has instituted an investigation under section 201 (a) of the Antidumping Act, 1921, as amended, to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

As of this time, the Commission has not ordered a public hearing in this investigation. In accordance with section 208.4 of the Commission's Rules of Practice and Procedure (19 CFR, 1954 Supp., 208.4) any interested party who believes that a public hearing should be held in this investigation may, within 15 days after the date of publication in the FEDERAL REGISTER of this notice of investigation, submit a request in writing to the Secretary, United States Tariff Commission, Washington 25, D. C., that a public hearing be held, stating the reasons for such request.

Any interested party may submit to the Commission a written statement of information pertinent to the subject matter of this investigation. If a public hearing is held in this investigation such statement may be presented in lieu of appearance of such hearing. Fifteen clear copies of such statement should be submitted, and information which is desired to be submitted in confidence should be on separate pages clearly marked "Submitted in confidence".

By order of the United States Tariff Commission this 1st day of August 1955.

Issued: August 2, 1955.

[SEAL]

DONN N. BENT,  
Secretary.

[F. R. Doc. 55-6362; Filed, Aug. 4, 1955;  
8:51 a. m.]

[Investigation 5]

CAST IRON SOIL PIPE

NOTICE OF INVESTIGATION AND PUBLIC  
HEARING

Investigation instituted. On July 27, 1955, the Tariff Commission received advice from the Treasury Department that Cast iron soil pipe from the United Kingdom is being, or is likely to be, sold in the United States at less than its fair value. Accordingly, the Tariff Commission has instituted an investigation under section 201 (a) of the Antidumping Act, 1921, as amended, to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

As of this time, the Commission has not ordered a public hearing in this investigation. In accordance with section 208.4 of the Commission's Rules of Practice and Procedure (19 CFR, 1954 Supp., 208.4) any interested party who believes that a public hearing should be held in this investigation may, within 15 days after the date of publication in the FEDERAL REGISTER of this notice of investigation, submit a request in writing to the Secretary, United States Tariff Commission, Washington 25, D. C., that a public hearing be held, stating the reasons for such request.

Any interested party may submit to the Commission a written statement of information pertinent to the subject matter of this investigation. If a public hearing is held in this investigation such statement may be presented in lieu of appearance at such hearing. Fifteen clear copies of such statement should be submitted, and information which is desired to be submitted in confidence should be on separate pages clearly marked "Submitted in confidence".

By order of the United States Tariff Commission this 1st day of August 1955.

Issued: August 2, 1955.

[SEAL]

DONN N. BENT,  
Secretary.

[F. R. Doc. 55-6363; Filed, Aug. 4, 1955;  
8:51 a. m.]

## NOTICES

[Investigation 42]

## FLUORSAPAR, ACID GRADE

## NOTICE OF INVESTIGATION AND PUBLIC HEARING

*Investigation instituted.* Upon resolution of the Committee on Finance of the United States Senate, adopted July 29, 1955, the United States Tariff Commission, on the first day of August 1955, under the authority of section 7 of the Trade Agreements Extension Act of 1951, as amended, and section 332 of the Tariff Act of 1930, instituted an investigation to determine whether fluorspar containing more than 97 per centum of calcium fluoride, provided for in paragraph 207 of the Tariff Act of 1930, is, as a result in whole or in part of the duty or other customs treatment reflecting the concessions granted thereon under the General Agreement on Tariffs and Trade, being imported into the United States in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products.

*Public hearing.* All parties interested will be given opportunity to be present, to produce evidence, and to be heard at a public hearing in connection with this investigation to be held in the Tariff Commission building, 8th and E Streets, NW., Washington, D. C., beginning at 10 a. m. on the 27th day of September, 1955.

*Request to appear at hearing.* Interested parties desiring to appear at the public hearing should notify the Secretary of the Commission in writing, at the Commission's offices in Washington, D. C., at least 3 days in advance of the hearing.

By order of the United States Tariff Commission.

Issued: August 2, 1955.

[SEAL] DONN N. BENT,  
Secretary.

[F. R. Doc. 55-6364; Filed, Aug. 4, 1955;  
8:52 a. m.]

## FEDERAL POWER COMMISSION

[Docket No. G-2506]

## PANHANDLE EASTERN PIPE LINE CO.

## NOTICE OF FURTHER CONTINUANCE OF HEARING

JULY 27, 1955.

Upon consideration of the motion of Panhandle Eastern Pipe Line Company, filed July 22, 1955, for a further continuance of the hearing now scheduled for September 8, 1955, in the above-designated matter;

The hearing now scheduled for September 8, 1955, is hereby postponed to October 3, 1955, at 10:00 a. m., in the Commission's Hearing Room, 441 G Street NW., Washington, D. C.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 55-6349; Filed, Aug. 4, 1955;  
8:49 a. m.]

[Docket Nos. G-3685, etc.]

## RIO BRAVO OIL CO. ET AL.

## NOTICE OF FINDINGS AND ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

AUGUST 1, 1955.

In the matters of Rio Bravo Oil Company, Docket Nos. G-3685, G-3686, G-3687, and G-3688; Morris Rauch, et al., Docket No. G-3791; A. W. Smith, Trustee, E. D. Block, et al., Docket No. G-4138; Docket No. G-4166; Hope Natural Gas Company, Docket No. G-8782.

Notice is hereby given that on July 12, 1955, the Federal Power Commission issued its findings and orders adopted July 8, 1955, issuing certificates of public convenience and necessity in the above-entitled matters.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 55-6350; Filed, Aug. 4, 1955;  
8:49 a. m.]

## INTERSTATE COMMERCE COMMISSION

## FOURTH SECTION APPLICATIONS FOR RELIEF

AUGUST 2, 1955.

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. 30904: Crude sulphur—Louisiana and Texas to Virginia. Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on crude sulphur (brimstone), carloads from specified origins in Louisiana and Texas to specified points in Virginia, including Hampton Roads ports and Richmond, Va.

Grounds for relief: Rail-water competition and circuitry.

Tariff: Supplement 272 to Agent Kratzmeir's I. C. C. 3862.

FSA No. 30905: Methanol—Sterlington, La., to Chicago, Ill. Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on methanol (methyl alcohol), tank-car loads from Sterlington, La., to Chicago, Ill., and specified points in the Chicago switching district.

Grounds for relief: Barge competition and circuitry.

Tariff: Supplement 73 to Agent Kratzmeir's I. C. C. 4064.

FSA No. 30907: Animal or poultry feed—Jefferson, Wis., to Lower Mississippi River crossings. Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on animal or poultry feed from Jefferson, Wis., to Memphis, Tenn., Natchez, Miss., Baton Rouge and New Orleans, La., and certain other stations in Louisiana.

Grounds for relief: Circuitous routes in part west of the Mississippi River.

## AGGREGATE OF INTERMEDIATES

FSA No. 30906: Methanol—Sterlington, La., to Chicago, Ill. Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on methanol (methyl alcohol), tank-car loads from Sterlington, La., to Chicago, Ill., and specified points in the Chicago switching district.

Grounds for relief: Maintenance of existing through one-factor rates from more distant origins to more distant destinations.

Tariff: Supplement 73 to Agent Kratzmeir's I. C. C. 4064.

By the Commission.

[SEAL] HAROLD D. MCCOY,  
Secretary.

[F. R. Doc. 55-6351; Filed, Aug. 4, 1955;  
8:49 a. m.]

## DEPARTMENT OF JUSTICE

## Office of Alien Property

RUDOLF SOCHA

## NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to § 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., Property, and Location*

Rudolf Socha, Linz-Donau, Austria, Claim No. 61302, Vesting Order No. 17128, \$584.70 in the Treasury of the United States.

Executed at Washington, D. C., on July 29, 1955.

For the Attorney General.

[SEAL] PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 55-6356; Filed, Aug. 4, 1955;  
8:50 a. m.]

EDUARD BARUCH

## NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to § 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., Property, and Location*

Eduard Baruch, New York, N. Y., Claim No. 43923; \$1,000.00 in the Treasury of the United States. Wally Blaustein, New York, N. Y., Claim No. 43924; \$1,000.00 in the Treasury of the United States. Emma Zydower, Haifa, Israel, Claim No. 34503; \$1,000.00 in the

Treasury of the United States; Vesting Order No. 7774.

Executed at Washington, D. C., on July 29, 1955.

For the Attorney General.

[SEAL]

PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 55-6357; Filed, Aug. 4, 1955;  
8:50 a. m.]

#### CORNELIS ADRIAAN BRUYN

#### NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to § 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provisions for taxes and conservatory expenses:

#### Claimant, Claim No., and Property

Cornelis Adriaan Bruyn, Vienna XIII, Austria, Claim No. 4688, Vesting Order No. 3555, all right, title and interest held by the Attorney General, including all physical prints in the possession of the Attorney General, of the German language motion picture entitled "Singende Jugend" (Orphan Boy of Vienna) acquired pursuant to Vesting Order No. 3555 (9 F. R. 6467, June 13, 1944).

Executed at Washington, D. C., on July 29, 1955.

For the Attorney General.

[SEAL]

PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 55-6358; Filed, Aug. 4, 1955;  
8:50 a. m.]

CHARLES JOSEPH GIAFFERI AND MRS. MARIE ANTOINETTE CHARLOTTE BAILLY, NEE GIAFFERI

#### NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to § 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof

prior to return, and after adequate provision for taxes and conservatory expenses:

#### Claimant, Claim No., Property, and Location

Charles Joseph Giafferi and Mrs. Marie Antoinette Charlotte Bailly, nee Giafferi, both of Paris, France, Claim No. 36630, to each claimant,  $\frac{1}{2}$  of \$2,420.37 in the Treasury of the United States and an undivided  $\frac{1}{2}$  part of the following property:

All interests and rights (including all royalties and other monies payable or held with respect to such interests and rights and all damages for breach of the agreement hereinafter described, together with the right to sue therefor) created in Charles Paul Giafferi, a/k/a Charles Giafferi, by virtue of an agreement dated June 26, 1928, by and between Societe Francaise de Filetage Indesserrable D. D. G. and Dardelet Threadlock Corporation (including all modifications of and supplements to such agreement, including but without limitation, seven memoranda dated October 23, 1928, from Dardelet Threadlock Corporation to Societe Francaise de Filetage Indesserrable D. D. G. and accepted by the latter company, and two supplemental agreements executed by Dardelet Threadlock Corporation and Societe Francaise de Filetage Indesserrable D. D. G. dated December 6, 1935 and October 3, 1939, respectively) which agreement, as modified and supplemented, relates, among other things, to certain United States Letters Patent, including Patent No. 1,657,244, to the extent that such interests and rights were owned by Marie Josephine Giafferi, nee Cagninacci, Charles Joseph Giafferi and Marie Antoinette, Charlotte Bailly, nee Giafferi, immediately prior to vesting by Vesting Order No. 3177 (9 F. R. 2709, March 10, 1944).

Executed at Washington, D. C., on July 29, 1955.

For the Attorney General.

[SEAL]

PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 55-6359; Filed, Aug. 4, 1955;  
8:50 a. m.]

#### AUGUSTA HEMMERDINGER ET AL.

#### NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to § 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

#### Claimant, Claim No., Property, and Location

Augusta Hemmerdinger a/k/a Augusta Hemmer, New York, New York, Claim No. 37080, \$792.40 in the Treasury of the United States:  $\frac{1}{3}$  thereof to Augusta Hemmerdinger, a/k/a Augusta Hemmer, Erna Michaelis, nee Hemmerdinger, Lisbon, Portugal;  $\frac{1}{3}$  thereof to Erna Michaelis, nee Hemmerdinger, Herman Igersheimer, New York, New York; and  $\frac{1}{3}$  thereof to Herman Igersheimer, University City, Missouri, Claim No. 37079,  $\frac{1}{3}$  thereof to Hanna Winkler, nee Igersheimer; Vesting Order No. 1778.

Executed at Washington, D. C., on July 29, 1955.

For the Attorney General.

[SEAL]

PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 55-6360; Filed, Aug. 4, 1955;  
8:51 a. m.]

#### HENNY HELENE LIZZI CHRISTENSEN

#### NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to § 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

#### Claimant, Claim No., Property, and Location

Henny Helene Lizzi Christensen, Ny Allegade 24, Haderslev, Denmark, Claim No. 62797, Vesting Order No. 3335, \$2,424.32 in the Treasury of the United States. All right, title, interest, and claim of any kind or character whatsoever of Mrs. Henny Christensen, in and to the trust estate created under the will and codicil of Henry D. A. Papenhuse, deceased. Such property is in the process of administration by St. Louis Union Trust Company, 323 North Broadway, St. Louis, Missouri, Executor and Trustee, acting under the judicial supervision of the Probate Court, Clinton County, Illinois, and St. Louis Probate Court, St. Louis, Missouri.

Executed at Washington, D. C., on July 29, 1955.

For the Attorney General.

[SEAL]

PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 55-6361; Filed, Aug. 4, 1955;  
8:51 a. m.]

